

## **The complaint**

Ms T complains about how St. James's Place Wealth Management Plc (SJP) has treated her since she became a client in 2010. Ms T says SJP took instructions and allowed her ex-husband to make investment decisions about her pension policy without her knowledge or consent. Ms T has complained about ongoing poor service from SJP.

## **What happened**

In 2010, Ms T became a client of SJP. Her ex-husband introduced Ms T to SJP, who recommended she open a Retirement Account (RA) with it. Over the next few years, Ms T's ex-husband was involved in the management of her RA and this included some contact with SJP in Ms T's absence and accessing her online wealth account to view and manage her RA.

By 2015, Ms T had initiated divorce proceedings. Ms T has provided information on the events that led to her divorce, which I have omitted from the background section of this decision to prevent all parties involved from being identified. These events were distressing for Ms T, and I am sorry for what she has experienced.

SJP removed her ex-husband's access to her online wealth account as requested by Ms T and say it was involved with assisting Ms T in her divorce in respect of her finances. SJP continued to offer and charge Ms T for ongoing advice with regards to her RA, including offering advice on her pensions after her divorce was finalised in 2017.

More recently, Ms T obtained the services of a new financial adviser, which I will refer to as L. On 1 December 2020, L sent SJP a letter of authority (LOA) dated 16 November 2020. SJP responded on 30 December 2020 to say the address did not match its records and requested a new LOA.

L sent SJP LOAs in February 2021, April 2022 and May 2022. Each time, SJP said Ms T's address on the LOA did not match its records. SJP say it did assist in providing information requested.

In June 2022, Ms T complained to SJP. She said in summary:

- She suffered financial abuse from her ex-husband, which had a significant emotional and psychological impact on her. She thought SJP ought to have had checks in place which would have identified this.
- Her ex-husband had access to her online wealth account prior to 2015, which he should not have had.
- She was not made aware of what was happening with her RA, and she was excluded from conversations between her ex-husband and SJP. Ms T said she was not made aware her husband stopped contributions to her RA in 2011, which later restarted in 2012.
- She was concerned she may have lost out on investment growth as a result of her husband's transactions on her pension, that happened without her knowledge.

- She had been paying for advice about her pension and had not really received any ongoing advice from SJP despite it charging her for it.
- It was only in the last 12 months that she was getting her finances in order.

In its response to her complaint of 15 September 2022, SJP said:

- It did not doubt Ms T suffered economic abuse. However, there were no actions or transactions that would have alerted SJP to any financial abuse.
- Ms T signed applications, direct debit mandates and cheques in relation to her RA. Whilst SJP did communicate with Ms T's ex-husband without her involvement at times, correspondence was sent to her, and she signed documentation to follow up on transactions.
- SJP wrote to Ms T in 2011 when contributions into her RA were stopped. She signed a direct debit mandate when contributions restarted in 2012.
- Had SJP been made aware Ms T's ex-husband intercepted her post, it could have made alternative arrangements.
- Its adviser should have checked Ms T was happy for her ex-husband to have access to her online wealth account. Once it was made aware he should not have access in 2015, this was actioned, and her ex-husband was no longer able to make further enquiries on her account.
- Ms T discussed her attitude to risk with SJP in 2017, confirming she had an upper-medium attitude to risk. This was in line with her attitude to risk since the outset of her RA. If Ms T had concerns about her portfolio, she could have raised these issues in 2017. In 2019, SJP noted Ms T was happy with the fund-split and performance of her investment.
- It did not think the instructions received from Ms T's ex-husband adversely affected the performance of her RA.
- SJP responded to a letter dated 1 December 2020 from L on 30 December 2020. It responded to L's letter of 1 February 2021 on 3 March 2021 and L's letter of 6 April 2022 on 22 April 2022. Each time, SJP note the address given for Ms T on the IFA's LOA did not match SJP's record.
- SJP provided Ms T with advice in 2018 and 2019 but did not provide advice from 2020-2022. SJP offered a refund of the £7,333.58 Ms T paid in ongoing advice charges from 2020 to 2022.
- SJP told Ms T she had a right to switch off the ongoing advice charge.
- It would waive an early withdrawal charge that would have applied to Ms T's fund if she transferred it elsewhere
- It would offer Ms T £550 compensation for the distress and inconvenience caused because of her having to complain - £150 of the award was to recognize the time it had taken to respond to her complaint.

SJP also set out that some matters complained about had taken place more than six years before she had complained to them and this meant it could have said her complaints were outside the relevant time limits, but it had decided it was fair to answer her complaints in full.

Unhappy with this response, Ms T referred her complaint to our Service to review. SJP added that since its final response of 15 September 2022, it had offered Ms T an annual review in November 2022. It had reminded Ms T again she could switch off the ongoing advice charge on 4 and 6 January 2023.

When referring her complaint to our Service, Ms T added that it was only after receiving advice from a new adviser that she realised she had not received any advice from SJP since she became a client. One of our Investigators reviewed Ms T's complaint but didn't uphold it.

In summary, he said Ms T referred her complaint about events that occurred prior to June 2016 too late – our Service did not have the power to consider them.

Having considered the events that were referred in time, our Investigator said SJP's offer to refund charges applied to Ms T's policy from 2020 to the date of its final response was fair. Our Investigator noted SJP had also offered to waive any withdrawal charges. Our Investigator thought SJP could have responded to L's letters and LOAs in a more timely manner but thought SJP's offer of £400 compensation was fair.

Ms T requested an Ombudsman review her complaint, reiterating the reasons for her complaint. Ms T has highlighted a statement made by one of SJP's staff members investigating her complaint, who said *"We want it right for Ms T"*. Ms T reiterated she wants SJP to calculate whether she was worse off as a result of her ex-husband's involvement in the running of her RA. In addition, Ms T's adviser added SJP continued to apply an ongoing advice charge. SJP reiterated it had reminded Ms T she could switch off the ongoing advice charge on 4 and 6 January 2023. So, SJP was not prepared to increase its offer.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I would first like to acknowledge Ms T's experiences in respect of her ex-husband and the undoubted distress and impact these have had on her. As such the circumstances leading to Ms T's complaint will have been upsetting and revisiting events has been distressing for Ms T.

I understand Ms T would like to bring about policy and procedural changes within SJP and has offered up seven questions she believes SJP should ask clients to help protect them from and to enable SJP to identify financial abuse. This is not something the Financial Ombudsman Service can consider; it is not the regulator – and I cannot tell SJP to alter its wider business practices in the way proposed. My role here is to decide which parts of Ms T's complaint I can consider, if any, and what, if anything, SJP should do to put things right.

I would next like to acknowledge that Ms T has taken a lot of time to explain her complaint in detail. I want to reassure Ms T that I have read everything she has said and I have thought about all of the points that she has raised within her complaint. I may not respond to each and every point. Nor will I respond in the level of detail in which Ms T has set out her complaint. I hope that Ms T realises I mean no disrespect by this – this simply reflects the informal nature of our Service. Instead, I will address what I consider the key points of Ms T's complaint.

### **Ms T's complaint about events that occurred before June 2016**

SJP has not consented to our Service considering events that occurred outside of the time limits that apply.

The regulator has set rules for this service about when we can look at complaints, the Dispute Resolution (DISP) rules. We have no discretion and can only operate within these rules. We can't consider every complaint that's referred to us; it depends on what the rules say.

The relevant rules which outline when complaints need to be raised are set down by the regulator, and can be found in DISP 2.8.2R:

*“The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

- (1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication; or*
- (2) more than:*
  - (a) six years after the event complained of; or (if later)*
  - (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

*unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;*

*unless:*

- (3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances...”*

This means that unless there are exceptional circumstances, we are not able to consider a complaint made about events that took place more than six years before Ms T complained in June 2022 or, if later, any complaint made more than three years from the date on which Ms T knew or ought to have become aware she had cause to complain.

As part of her complaint, Ms T says SJP were wrong to accept her ex-husband's instructions about her RA, including in respect of investment and enabling him to have access to her finances and in particular to her online account. These events took place more than six years before Ms T complained in June 2022. It is agreed that in the summer of 2015, Ms T instructed SJP not to share information on her finances with her husband. SJP have referred to not having had contact with her ex-husband from a significantly earlier date.

As these events complained about occurred more than six years before Ms T's complaint in June 2022, I have gone on to consider whether Ms T complained within three years from when she knew or ought reasonably to have become aware she had cause to complain about SJP. In other words, I have thought about when I think Ms T knew or ought reasonably to have been aware she had cause to complain about SJP allowing her ex-husband access to her accounts and provide instructions on them.

Based on everything I have seen I think Ms T knew of her cause for complaint against SJP by 23 August 2015 at the latest. This is the date she sent the following email to SJP:

*“I am writing to request that you do not provide my husband with any information with respect to my pension. Please acknowledge receipt of this email.”*

I note this email was followed by a meeting between SJP and Ms T in September 2015.

Given the circumstances here it's likely Ms T had some knowledge that her ex-husband was providing instructions on how her funds ought to be invested, and was accessing information and instructing SJP over some time prior to this date. I have seen reference to her attendance at some meetings in the years prior to 23 August 2015 and communications that were provided. But I think it's right to use 23 August 2015 as the relevant date here, given the circumstances. And I have taken into account the likelihood that the divorce proceedings will have brought some of Ms T's knowledge into sharper focus and ought reasonably to have enabled her to understand that her husband (as was) had been enabled to act on her

behalf and that she did not think this was right, so something had gone wrong in the service provided by SJP.

I note that when it comes to knowledge and the application of our time limits, consumers don't need to fully understand what has happened, or what they can do about it, for the time limit to start running. They just need to know enough for it to be reasonable for them to do something.

In 2022, Ms T told SJP and our Service that she has repeatedly told SJP of her concerns about SJP "*facilitating and empowering*" her ex-husband's financial abuse of her for over seven years (in other words since 2015). So it appears Ms T accepts her knowledge of her complaint since 2015.

In reaching my thinking on this I have also taken account of emails from Ms T to SJP in 2017 that demonstrate Ms T's historic knowledge her ex-husband had influenced investment choices, (this was said to reflect his financial experience), and had managed various of her accounts and the way contributions were dealt with.

Having balanced everything carefully, I conclude that Ms T knew or ought to have known from August 2015 of this part of her complaint about SJP, and so she was required to complain to SJP within three years. The three-year period elapsed in August 2018.

This means that unless Ms T complained within the time limits or there are exceptional circumstances, this part of Ms T's complaint has been made too late and we cannot consider it further.

I have seen that Ms T comments to us and SJP in 2022 suggest that she considers she had complained to SJP, through her repeated her concerns about SJP "*facilitating and empowering*" her ex-husband's financial abuse of her for over seven years.

In the DISP rules, a complaint is defined as:

*"any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service... which (a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience..."*

Whilst I understand Ms T's frustration, there is insufficient evidence of any complaint including an oral complaint being made to SJP prior to 2022 about her ex-husband's involvement with SJP pertaining to her financial arrangements.

I have reviewed the historic information provided, which includes meeting notes since 2015, and significant quantities of communications, including emails between Ms T, SJP and L between 2017 and 2023. I have seen no record of Ms T raising any dissatisfaction with SJP about it allowing Ms T's ex-husband access to her online wealth account, its communications with her ex-husband or his involvement with the management of her RA.

Whilst I acknowledge Ms T says she raised her concern with SJP, I don't consider there is enough to say a complaint was made such as satisfies the criteria set out in DISP. I can find no record of a complaint, or an expression of dissatisfaction about any of these issues in the large volume of emails provided by both parties. I do not think the references I have identified in some of Ms T's emails about her ex-husband's prior involvement amount to a complaint, or expression of dissatisfaction about SJP's conduct. Similarly, I do not think they allege a loss, distress or inconvenience. So, I don't think SJP failed to identify, record or address a complaint prior to the complaint they replied to that was referred to this Service.

The emails prior to her 2022 complaint do not indicate Ms T was unhappy with the service she had received from SJP, nor express any dis-satisfaction that a complaint had not been considered. She continued to seek its input and support. In March 2021, Ms T said she had no intention of moving her pension plan, which does not seem consistent with the suggestion that she repeatedly complained about the service she had received from SJP.

So, in the absence of a complaint being made within time, Ms T's complaints about these events were referred too late.

I have gone on to consider whether the failure to refer this complaint in time was the result of exceptional circumstances. The DISP rules say "*an example of exceptional circumstances might be where the complainant has been or is incapacitated.*" This is not an exhaustive example, but I have quoted it to show the bar for exceptional circumstances is a high one.

I have considered carefully whether the delay in referring Ms T's complaint was the result of exceptional circumstances, and particularly taken account of what Ms T has told us of the abuse she experienced. Ms T has said looking back through her records was triggering and stressful, emotionally and psychologically. Ms T has said it has taken her a lot of time, courage and emotional energy to submit her complaint and the process has been upsetting and stressful. I have no doubt this is true and I have been sorry to hear of Ms T's experiences.

However I don't consider this means the delay in referring her complaint to us was the result of exceptional circumstances. It is clear Ms T was able to make detailed enquiries about her ex-husband's involvement in her account from late 2015 onwards and comment on this to SJP, as well as provide instructions for any ongoing access and contact to cease. As such I don't think there's enough to say that Ms T was not able to complain prior to June 2022, due to exceptional circumstances.

Ms T asked me to consider requiring SJP to undertake a calculation to see if its actions prior to June 2016 caused her a financial loss. I am not able to consider a complaint about this time and so I am not requiring SJP to do this.

### **Ms T's complaint about the service she received from June 2016 onwards**

#### The ongoing service provided since June 2016

We are able to consider a complaint about events that happened in the six years prior to the complaint made in June 2022. There have been a number of matters which have been stressed. Overall I don't think SJP treated Ms T unfairly or failed to do things it ought to have been expected to do in respect of the service provided from June 2016 onwards, save in respect of certain fees taken from 2020.

Ms T, and her new adviser, complained that once SJP was made aware of the abuse Ms T has suffered, SJP should have treated her as a vulnerable client and should have been offered the option of having a relative or friend present when discussing her pension arrangements.

Whilst I understand that some clients who have had similar experiences to those of Ms T can benefit from the presence of a friend or family member at such financial meetings, other clients may feel differently based on their experiences. I haven't seen anything that makes me think Ms T asked for anyone to accompany her and I think it is unlikely that SJP would have refused such a request in the circumstances. I don't consider SJP did anything wrong for failing to offer this option unprompted here, nor that it was unreasonable or unfair of them

not to offer it to her when they had not been told this was something she would like or might benefit from.

Ms T told us she is unhappy about emailing SJP on 2 November 2016 to express concern her ex-husband had accessed information on her pension again. She was told at the time there was no indication he had accessed her information. There is nothing that makes me think SJP did anything wrong here.

Ms T has complained she never received advice from SJP. I don't think that's quite accurate. For the reasons explained above, I am only looking at the service provided in the six years prior to her complaint in June 2022 (so from June 2016). Based on what I have seen, I think SJP did provide an ongoing advice service to Ms T for some years.

SJP completed work for Ms T in respect of her pension and finances as part of her divorce, including throughout 2016 and 2017. In January and November 2017, SJP outlined its ongoing advice charge, early withdrawal charge and its commitment to meet with Ms T at least once a year. There were and continued to be ongoing meetings and communications. For example SJP's adviser met Ms T at her home in October 2017, and there was a further meeting in November 2019. I have seen a significant number of emails indicating SJP was providing ongoing advice and work for Ms T on her pension and finances. So whilst Ms T complains SJP did not provide a service and simply continued with the investments put in place by her ex-husband, I do not think this accurately reflects what happened. For further examples I have seen that on 9 November 2017, SJP set out recommendations about Ms T's pension arrangements, and SJP also assisted Ms T in obtaining Fixed Protection 2016 against the Lifetime Allowance in January 2018.

Having considered everything provided, I don't think it would be right to conclude SJP treated Ms T unfairly or failed to provide a reasonable level of service from June 2016 until the end of 2019. I do not, therefore, think it would be reasonable for SJP to be required to refund Ms T with its ongoing advice related charges from this period.

SJP has explained it charged one fee for the advice and service provided. This changed following what was known as the Retail Distribution Review in 2012. After this it was no longer allowed for renewal (or trail) commission to be paid from new investments – but existing arrangements were allowed to continue. The regulator, the Financial Conduct Authority, said at that time that it hoped this would help ensure more transparency on the charges consumers paid to, and the services they received from, their financial advisors.

SJP has provided a breakdown of the charges applied from 2020 until 15 September 2022. The charges applied during this period on contributions made prior to 1 January 2013 totalled £3,072.12. SJP said it was not obliged to offer a refund of these charges, but I do not have to decide this given SJP has already offered to refund these charges.

SJP calculated the ongoing advice charge applied to contributions made after 1 January 2013 from 2020 until 15 September 2022 to total £4,301.45. I would have recommended SJP refund its ongoing advice charges (applied for contributions made from 1 January 2013) applied from 2020 until 15 September 2022 had SJP not already offered to do so, as I do not think it provided the level of service set out in its communications with Ms T. As SJP has already identified, I would normally have required SJP to add interest on this refund, but the refund of charges it has offered on contributions made before 1 January 2013 far exceed the interest. So, overall, I think SJP's offer to refund £7,333.58 is fair.

SJP offered to waive charges due to be applied to Ms T's fund if she transferred her policy to another provider beyond August 2023. I note Ms T has provided an email which says all early withdrawal charges would cease to be applicable by August 2023. My understanding is

Ms T began, and may have completed, her transfer at the time of writing this decision. I have not been made aware of any exit charges applied to her transfer and so I make no award here.

### Letters of Authority

It appears SJP took several weeks to respond to L's letters and LOA sent between 2020 and 2022. As I explained earlier, I am only able to consider SJP's actions until the date of its final response in September 2022. Having done so, I agree with our Investigator it seems Ms T was put to some inconvenience by SJP's delays, and I agree its offer of £400 compensation is fair here. Ms T will clearly have experienced distress and inconvenience. Charges were applied and some of SJP's service could have been better, and Ms T was required to revisit historic events as a consequence of failures by SJP which will have caused her additional distress unnecessarily.

I note SJP offered an additional £150 compensation for the delay in responding to Ms T's complaint. So, whilst I recognise my decision is likely to disappoint Ms T, I think SJP's total offer of compensation is £550, on top of the sum to be refunded and the undertaking not to apply a transfer charge, fairly recognises what went wrong here and the distress and inconvenience this matter caused.

### **My final decision**

For the reasons explained, I am upholding Ms T's complaint about St. James's Place Wealth Management Plc in part. St. James's Place Wealth Management Plc's offer to refund £7,883.58 of charges and pay Ms T £550 compensation is fair. I would expect this to happen within 28 days of SJP being informed of Ms T's acceptance of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 5 March 2024.

Victoria Blackwood  
**Ombudsman**