DRN-4882709

The complaint

Mr M complains that St. James's Place Wealth Management Plc (SJPWM) failed to provide him with annual reviews and ongoing advice since 2005 despite him paying a fee for such a service.

What happened

In March 2005 SJPWM recommended that Mr M switch one of his two existing pension schemes into an SJP personal pension. It recommended that he left his second pension scheme where it was.

SJPWM say it produced a suitability report, illustration and key facts document to accompany its recommendation.

Later, around July 2005, Mr M decided to switch his second pension to SJP, despite SJPWM's recommendation not to. Further documents were produced including further illustrations and a 'reasons why not' letter which was signed by Mr M in August 2005.

In 2022 Mr M met with a new adviser from SJPWM to switch a further pension into his SJP pension. He signed a client agreement with SJPWM on 8 September 2022.

In late 2023 Mr M complained to SJPWM that between 2005 and 2022 he'd had no contact from his SJPWM adviser. He said he hadn't received any annual reviews, nor had he received any ongoing advice.

SJPWM responded to Mr M's complaint. In summary it said that in 2012 the regulator introduced new rules which required an adviser to provide ongoing advice in return for an agreed fee. But as Mr M's investments commenced in 2005, there had been no separate charge applied to his plan for ongoing advice. Therefore, there was no contractual obligation for SJPWM to provide it.

It went on to say that when Mr M switched a further pension into his plan in 2022, he started to pay a separate ongoing advice charge for which he has subsequently received annual reviews of his plan. SJPWM acknowledged it had taken too long to respond to Mr M's complaint and offered £100 by way of an apology for that delay. SJPWM later increased this offer to £150.

Mr M disagreed with SJPWM's response. He said whilst the cost of servicing his plan wasn't separately broken down within the charges applied, he was aware from discussions with his adviser that 0.25% of the charges applied related to ongoing advice. He pointed to the wording in the illustration which said, "*For arranging this plan and providing ongoing servicing throughout its term, we will provide your adviser's practice with direct remuneration and administration services".* Mr M said the wording in the illustration shows that SJP paid his adviser to provide him with ongoing advice.

SJPWM didn't change its opinion on Mr M's complaint. So, Mr M brought his complaint to our Service.

Our investigator concluded that Mr M hadn't been paying SJPWM for ongoing advice or annual reviews. She noted that the Retail Distribution Review (RDR) in late 2012 sought to increase the transparency and fairness of adviser fees and the services provided in return for those fees. However, it didn't require firms to go back and clarify existing terms as the changes only affected new products from 2013 onwards. So, she didn't think SJPWM needed to have provided Mr M with annual reviews or ongoing advice.

Mr M disagreed with our investigator. In summary he said that an ongoing advice fee was included in the pre-RDR fee structure, it just wasn't separated out. And that just because RDR didn't require firms to go back and clarify the terms, didn't mean he wasn't entitled to redress for the fees he was charged. He also noted that his original SJPWM adviser had 'sold' him to another adviser who had subsequently 'sold' him again to his current adviser. He said this indicated there was an income stream for more than just administrative services and must have included an element of ongoing advice.

As no agreement could be reached, the complaint has been passed to me for a decision.

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 think the central questions here are whether SJPWM were entitled to receive the payments it did from Mr M's pension, and whether SJPWM were obliged, in return for those payments, to provide Mr M with annual reviews or ongoing advice.

In deciding this complaint I've taken into account any relevant law and regulations, regulator's rules, guidance and standards, codes of practice and what I consider to have been good industry practice at the relevant time.

To help me make a determination here I've looked at the agreements Mr M entered into with SJPWM at the point of sale in 2005 to consider whether SJPWM committed to providing Mr M with annual reviews or ongoing advice.

The suitability report from March 2005 doesn't mention anything about annual reviews or ongoing advice. It states the reason SJPWM made the recommendation to move his pension was because Mr M was attracted to SJP's approach to investment management, which was described as being centred around SJP providing five managed funds, with different external fund managers being monitored by SJP's Investment Committee. The later suitability letter was also silent on annual reviews or ongoing advice.

I've seen nothing to suggest SJPWM gave Mr M the impression in the suitability reports that he should be entitled to annual reviews from SJPWM's adviser. Nor did they suggest he was going to be paying a fee to enable SJPWM's adviser to give him ongoing advice.

Regarding charges, the March 2005 suitability report said:

> "*Although there are no initial charges on the PPIP* [Personal Pension] *there is an early encashment charge of 6% on the value of contributions paid in the year before encashment, reducing to 1% in year six and zero thereafter. In addition, there is an annual management charge of 1.25% pa and the additional cost of managing and maintaining the investments is 0.20% - 0.8% pa plus VAT (dependant on fund choice). All of the charges are set out in the Key features Booklet and the illustration.*"

The illustration SJPWM produced in March 2005 had a section entitled '*How much will the* *advice cost?*'. This said:

- *"For arranging this plan and providing ongoing servicing throughout its term, we will provide your adviser's practice with direct remuneration and administration services. These have been valued at £1947.14 in the first year, followed by a variable amount depending on the value of your fund. For example, if the value of your fund grows at 7% a year then the amounts would be £110.12 in the second year and £318.71 in the final year.*
- *These amounts are paid out of the deductions shown and are included in the illustrations above. They depend on the size of the contributions and value of your fund."*

The only deductions shown on the illustration are for the Annual Management charge, described as being 1.25% and the external fund management charges which varied between 0.25% and 0.8% depending on the fund. There is no mention in the illustration of a separate charge for annual reviews or ongoing advice.

Further illustrations were produced in June 2005 for the later transfer. The wording was the same but with different monetary figures as the amount transferred was different.

SJPWM have also supplied a key facts template from the time of the advice which says:

> *"Paying by commission (or product charges). If you buy a financial product, we will normally receive commission on the sale from the product provider. Although you pay nothing up front, that does not mean our service is free. You still pay us indirectly through product charges. Product charges pay for the product provider's own costs and any commission. These charges reduce the amount left for investment. If you buy direct, the product charges could be the same as when buying through an adviser, or they could be higher or lower. We will tell you how much the commission will be before you complete an investment, but you may ask for this information earlier."*

It might be helpful to point out here that SJPWM weren't the pension provider. SJPWM are the advisory arm of St. James's Place. So, the 1.25% annual management charge was being paid to a separate St. James's Place entity – the pension provider. And it was the pension provider who committed to *"provide your* [Mr M's] *adviser's practice with direct remuneration and administration services."*

Arrangements such as these whereby a product provider would pay a financial advisor commission on an ongoing basis was known as trail commission. It wasn't uncommon prior to 2013 for these arrangements to be in place. It was often funded, as it appears to have been in this case, by the product provider passing on some of the charges it collected to the advisor. However, having no advisor, or trail commission not being paid, wouldn't automatically mean the pension provider would deduct less charges - the same charges would simply be retained by the provider.

From what I've seen, the charges and commission were disclosed to Mr M at the time SJPWM advised him to switch his pensions. On that basis, SJPWM was entitled to the commission payments it received.

On 31 December 2012, the regulator, the Financial Conduct Authority (FCA) introduced the Retail Distribution Review (RDR) rules. These rules required retail investment advisors to charge an explicit fee for their services, rather than receive commission generated from product recommendations.

Sometimes, it was specifically agreed that trail commission would entitle a consumer to further services, such as regular reviews and/or further advice. Whether or not an ongoing service was provided for the payment of commission was dependant on the agreement between the adviser and their client. So, I've considered whether, as part of receiving the trail commission, SJPWM agreed to provide Mr M with annual reviews and ongoing advice.

The commitment made in relation to the ongoing commission payment appears in the documentation to be that SJPWM would be providing *'ongoing servicing'* throughout the term of the pension.

I think it's important to note here that the RDR aimed, amongst other things, to increase the transparency and fairness of adviser fees and the services provided in return for those fees. That's because, it wasn't always clear what service was being provided for the fees being charged. As it is with this case, terms like 'ongoing servicing' often weren't clearly defined.

But the RDR marked a change for future contracts and didn't require businesses to go back to existing policies and clarify the terms. So, it wouldn't be fair to now define the term 'ongoing servicing' (which is quite broad) and hold SJPWM to account for it.

I've considered that it's Mr M's testimony that SJPWM's adviser told him an element of the fee collected would pay the adviser for ongoing advice. Something which SJPWM seem to disagree with, stating they had no contractual agreement to provide ongoing advice.

Where evidence is conflicting, I base my decisions on what more likely than not happened on the balance of probabilities, using the evidence available to me.

I've not seen evidence from the point of sale that corroborates Mr M's testimony. I say that because the suitability letters, illustrations and key facts documents make no mention of holding regular reviews funded by the commission payments. And I've seen no evidence in any of the documentation that SJPWM would provide further advice to Mr M due to the commission being received either.

If SJPWM's adviser had committed to providing annual reviews and ongoing advice at the point of sale, I'd have expected to see some reference to that in the documents produced at the time. And if it wasn't, I'd have expected Mr M to have raised that with the adviser at the time. I also think that if Mr M was expecting ongoing advice or annual reviews because of what his adviser had told him, he would have raised his concerns with SJPWM sooner, rather than waiting 18 years.

The advice was given 18 years before the complaint was made, and memories fade over time. Therefore, I add more weight to the evidence supplied from the time of the sale in 2005. And on balance, I think it's more likely that no commitment was made by the adviser to provide annual reviews or ongoing advice in return for the trail commission payments.

I've also considered whether Mr M paid any other charge which would have meant he was entitled to annual reviews or ongoing advice. However, the suitability letters, illustrations and key facts documents don't record any details of any other charge that could be considered as an ongoing advice charge. I'm therefore satisfied that until 2022 when Mr M entered into a new agreement with SJPWM, it only received commission payments relating to the sale of the product.

In conclusion, I'm satisfied that Mr M didn't pay SJPWM for annual reviews or ongoing advice, so it wouldn't be reasonable for me to ask them to refund any payments it received.

SJPWM said it took too long to send Mr M its final response letter and address his concerns.

It offered £150 as an apology for that. Complaint handling isn't an activity over which our Service has jurisdiction. So, I won't comment on that further but if Mr M now wants to accept it, he should contact SJPWM direct.

My final decision

For the reasons I've given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 December 2024.

Timothy Wilkes
Ombudsman