

The complaint

Mr W complains he entered into an agreement with St. James's Place Wealth Management Plc (SJP) in November/December 2015 whereby he started paying an annual fee and SJP agreed to provide reviews, but these didn't take place.

What happened

Mr W says he met with an SJP partner in September and October 2015. Following these meetings, he invested into an investment bond and ISA in November 2015 and December 2015 respectively. He also entered into agreements with SJP whereby he agreed to pay annual fees and SJP agreed to provide reviews.

His representative complained to SJP on 22 August 2023 that these reviews hadn't happened as they should have so Mr W hadn't received anything in return for the fees he'd paid.

For completeness, Mr W's complaint to SJP also included a complaint that the advice given had been unsuitable. But SJP didn't uphold this element of the complaint and Mr W's representative has confirmed it doesn't want us to consider it.

SJP offered to repay the ongoing advice fees for review meetings that should have happened between 2019 and 2023 inclusive as it accepted reviews weren't carried out in return for these fees and should have been. It didn't agree to return the fees charged for review meetings due before 2019.

In relation to fees for review meetings due before 2019, SJP said the specific requirement to provide an annual review had only been introduced in 2018 and before that the requirement had been to regularly review the performance of products.

Mr W's representative brought his complaint to this service. SJP clarified that:

- It has evidence of reviews taking place in 2016 and 2018.
- It thinks the complaint in relation to fees paid for a 2017 review was made too late.

Mr W's representative confirmed the only remaining issue is the fees that were paid in 2016 for a review in 2017. This issue was passed to me for a decision. I issued a provisional decision saying I was planning to decide the complaint about the fees Mr W paid for a review meeting due in 2017 is one this service can consider and that it should be upheld. And that SJP should also pay the offer it made for the reviews missed between 2019 and 2023 inclusive – if it hasn't already.

Mr W's representative confirmed he agrees with my provisional decision. SJP replied to say it doesn't. I've read and considered its response in full. In summary it said:

- It thinks the facts in this complaint are similar to another one that was decided to be out of our jurisdiction.

- The suitability letter sent to Mr W referenced the ongoing advice fees and said Mr W would receive annual statements and be contacted on a regular basis to arrange a review.
- The key facts and illustration documents were clear that the ongoing advice charges would be annual so it would be reasonable for a customer to assume that a review would be held each year.
- Having had a review in 2016 it would have been reasonable for Mr W to have expected another review in 2017.

I've considered all the evidence that's been provided. Having done so, I'm still satisfied the complaint about the fees Mr W paid for a review meeting due in 2017 is one this service can consider and that it should be upheld. I've therefore repeated my provisional findings below with additional commentary to address the points SJP made in response to my provisional decision.

Why I can look into the complaint about the fees paid for a review due in 2017

This service can't look at all complaints. Our ability to consider complaints is set out in Chapter 2 (DISP 2) of the Financial Conduct Authority's Handbook of Rules and Guidance.

DISP 2.8.2R says that unless the business complained about consents:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service...

(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...was as a result of exceptional circumstances.

SJP hasn't consented to us considering this part of the complaint.

As set out, it seems the agreements were entered into in November and December 2015, meaning a review would normally have been due in November/December 2017. The complaint was referred to SJP on 22 August 2023. There's therefore an argument that the complaint about the fees paid for a review in 2017 was made within six years of the events complained about and so was made within the time limit. However, SJP has shown the 2016 review did happen – on 12 August 2016. So, there's also an argument that the 2017 review was due on 12 August 2017 – more than six years before the complaint was made.

I don't believe I need to make a finding on which date is relevant as the date of the events complained about. I say this because even if I'm satisfied it's 12 August 2017, and so the complaint was made than six years after the events complained about, I'm still satisfied the complaint is one we can consider.

I say this because even when the complaint was made outside the first part of the time limit, I still need to go on to consider whether it was also made outside the second part of the time limit – i.e. whether it was made more than three years after Mr W knew, or ought reasonably to have known, he had cause for complaint. Because the complaint was made on 22 August 2023, the question becomes whether he knew, or ought reasonably to have known, he had cause for complaint before 22 August 2020.

An investigator asked Mr W for his recollections from the time about what he was told about the fees and what he was expecting to receive. He said he remembers being told he could contact SJP at any time if he needed follow up advice and thought this was what the fees were for – *“to provide service and advice should it be required”*.

I've looked at the documentation Mr W was given at the time to see what this set out he should expect.

The key facts he was given for both investments included the following (I've quoted the ISA wording but the investment bond wording was broadly the same):

We will also provide you with ongoing advice to review your investment and ensure it remains appropriate, as set out in the brochure “Welcome to St James Place” provided by your Partner. The cost of this each year is 0.50% of your total investment (and so this annual cost will increase if your investment grows).

And a document called “key facts about our services and costs” said:

We will also provide you with ongoing advice to review your investment and ongoing contribution levels, if applicable, to ensure it remains appropriate as set out in the “Welcome to St. James Place” brochure provided by your Partner. The cost of this each year is 0.5% (0.25% for pre-retirement pension advice) of your total investment and so this annual cost will increase if your investment grows, plus 3% of each regular contribution made after the initial advice has been paid for.

SJP has provided a brochure that it says would have been sent to Mr W. This read:

We aim to deliver on our commitment to you by:

- *Providing personal face-to-face financial advice from an experienced St James's Place Partner.*
- *Giving you the opportunity to review your financial affairs regularly...*

Your Partner will also discuss the level of ongoing service you would like. Primarily this will involve holding regular review meetings, either face-to-face or via the telephone, to discuss your investments and personal circumstances, thus ensuring that whatever decisions you have made remain appropriate and continue to meet your objectives...

Whatever the frequency of the regular contact with your Partner, you should feel free to contact them at any time to discuss any aspect of your investment.

And it's also provided a copy of the suitability letter it sent to Mr W on 30 October 2015. This read:

You will receive an annual statement in respect of your investments. I will contact you on a regular basis to arrange a review, or as your financial circumstances dictate.

Whilst these documents did talk about “ongoing advice” and say there’d be “regular review meetings”, none of them were clear exactly how the ongoing service would operate, including how often. And I can’t see that this was clarified in any later communications. For example, notes from review meetings carried out on 12 August 2016 and 4 July 2018 read, “I will offer to review these areas with you at our periodic review meetings”. And the letters that followed those meetings – dated 13 September 2016 and 24 July 2018 – said “As part of my ongoing service I will contact you on a regular basis to arrange a review, or as your financial circumstances dictate” and “As part of my ongoing service I will honour our service level agreement to offer a strategic financial planning review periodically” respectively.

So, there’s nothing in the documentation that would have led Mr W to expect to receive annual reviews. I can’t comment on other complaints, but what’s key for me in this complaint, is the fact that Mr W did have review meetings in 2016 and 2018. The documentation set out that Mr W would receive “regular review meetings”. By 22 August 2020 he’d had two review meetings in under five years. And so, I think it would have been reasonable for Mr W to have considered that he’d been receiving regular review meetings.

I note SJP’s comment that Mr W should have realised that the fact the fees were annual meant the review meetings also should have been annual. But based on the documentation that he had at the time, I’m not persuaded he ought reasonably to have realised this. I also note its comment that having had a review in 2016, he should have been expecting one in 2017. But given “regular” wasn’t defined, I also don’t agree with this.

I’m therefore not persuaded Mr W knew, or ought reasonably to have known, he had cause for complaint about the missed 2017 review before 22 August 2020. And so, I’m still satisfied I can consider his complaint about this.

Whether the fees that were paid should be refunded

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

The fees for the reviews due in 2016 and 2018

I’ve been provided with the notes from “Confidential Financial Review” meetings on 12 August 2016 and 4 July 2018 including follow up letters dated 13 September 2016 and 24 July 2018. As Mr W received the service he’d been told he’d get in return for the 2015 and 2017 fees, it wouldn’t be fair or reasonable for me to tell SJP to refund these fees.

The fees for the review due in 2017

From 31 December 2012, the FCA’s Conduct of Business Sourcebook (COBS) 6.1A.22R has said;

A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:

- (1) the adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:*

- (a) the firm has disclosed that service along with the adviser charge; and*
 - (b) the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the retail client to give any reason; or*
- (2) the adviser charge relates to a retail investment product for which an instruction from the retail client for regular payments is in place and the firm has disclosed that no ongoing personal recommendations or service will be provided.*

The FCA also produced a factsheet on adviser charging which, amongst other things, said:

Ongoing charges should only be levied where a consumer is paying for ongoing service, such as a performance review of their investments, or where the product is a regular payment one. If you are providing an ongoing service, you should clearly confirm the details of the ongoing service, any associated charges and how the client can cancel it. This can be written or orally disclosed. You must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to.

I'm satisfied that COBS and the FCA factsheet are clear that SJP ought to have been providing a service for Mr W in 2017, as it's not disputed ongoing advice fees were paid in 2016. Ongoing advice couldn't have just been offered or been available only if needed, an actual service needed to be provided. As the fees were taken as annual percentages, I'd expect to see SJP had provided personal recommendations or services for that individual client in each year that the fee was taken.

On this basis, as no review took place during 2017, I can't fairly or reasonably conclude that Mr W received the service he paid for in 2016. And so SJP should compensate Mr W for this.

The fees for reviews due between 2019 and 2023

SJP offered to refund the fees for these meetings (paid between 2018 and 2022) to Mr W, together with interest calculated at 8% simple per annum (less any income tax payable). It also offered to pay £150 for any distress and inconvenience Mr W had been caused. I'm satisfied this is a fair and reasonable way to put things right in relation to these fees.

Putting things right

SJP should refund the fees Mr W paid in 2016, together with interest of 8% simple per year from the date each fee was paid to the date the compensation is paid (less any income tax). It should also pay the offer it made to Mr W – if it hasn't already – for the fees paid for reviews missed between 2019 and 2023.

My final decision

My final decision is that the Financial Ombudsman Service can consider Mr W's complaint and that it should be upheld. For the reasons I've set out above, St. James's Place Wealth Management Plc should refund the fees charged in 2016 for the missed 2017 review and

add simple interest at a rate of 8% per year from the date each fee was charged to the date compensation is paid. If it hasn't already, it should also pay the offer it made for the reviews missed between 2019 and 2023 inclusive.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 September 2024.

Laura Parker
Ombudsman