

The complaint

Mr W complains that St. James's Place Wealth Management Plc trading as St. James's Place ("SJP") has charged him ongoing advice charges ("OACs") despite not receiving annual reviews.

Mr W is being represented by a claims management company, however, for ease of reference, I shall refer to Mr W only throughout my decision.

What happened

Mr W met with SJP in September 2014. Following this meeting, Mr W invested into a Retirement Plan in October 2014.

Mr W complained to SJP in January 2024. In summary, he said he was paying OACs without receiving annual reviews or a level of service that justifies the fee he was paying.

SJP considered Mr W's complaint and offered to repay the ongoing advice fees for the annual reviews due in 2020 and 2021 as reviews weren't carried out during these years. SJP declined to return the fees charged from 2014 to 2017, as it said that, in accordance with its complaint handling procedures, it had only reviewed its records back to January 2018. And it didn't offer to refund the fee paid in 2018 as it said a review was carried out in 2019.

In its final response, SJP said:

"In considering the complaint we have looked at the relevant factors, which include:

- 1. The evidence we have that ongoing advice was provided to your client, for example documents produced as part of reviewing the suitability of the products recommended to them, and communications regarding the purpose and outcomes of the ongoing service provided. For example, as a minimum all our clients receive our Services Cost and Disclosure Document (SCDD) which sets out the nature of the ongoing service we will provide, the charges for the ongoing service, and how a client can exit the ongoing service.*
- 2. Alongside this evidence, we have also considered the regulatory requirements that applied to providing ongoing advice since they became a client in 2014. Prior to 2018 this included a requirement to regularly review the performance of products, and from 2018 also a specific requirement to provide an annual review of the suitability of certain products. Our client communications referred to above set out the nature of the ongoing service provided in line with the relevant regulatory requirements."*

Mr W didn't accept SJP's findings and so he referred his complaint to this service for an independent review. He says he recalls being told he could have advice whenever he needed it. Mr W also says there may have been one or two meetings but only now does he realise that he was paying a fee every year but not receiving a full review.

Following the referral to our service, SJP has provided further reasoning as to why it believes any complaint about OACs taken prior to January 2018 are time-barred. In

summary it said:

- Mr W's Retirement Plan started on 28 October 2014 and the first annual review would have been due on or around 28 October 2015 (twelve months later).
- It's been more than six years since the review in 2015 was missed and in addition, it's more than three years since Mr W ought reasonably to have known he had cause to complain about the missed review as all of the point of sale documentation explained that he ought to expect reviews. It follows that any subsequent reviews missed between 2015 and January 2018 are also too late for the same reasons.
- Mr W had an annual review in 2017, 2018 as well as in 2019.

I issued a provisional decision in August 2024, explaining why I felt our service could only consider any missed annual reviews from January 2018 onwards (six years before Mr W complained). I also explained that in addition to the offer SJP made in the final response, I felt SJP should refund Mr W the OAC for the annual review due in 2018. I explained that any complaint about missed reviews prior to this date has been made too late because Mr W was, or ought to have been, aware that he didn't receive annual review before the three years deadline for raising his complaint had elapsed.

Mr W didn't respond to my provisional decision by the deadline provided. SJP did and explained that it had provided evidence to show Mr W had received annual reviews in 2018, 2019, 2022 and 2023. I wrote to both parties again to explain that, in light of this evidence, I felt SJP's offer made in the final response letter was fair and reasonable and intended to issue a final decision explaining this. Mr W and SJP both agreed with my further findings and had no further comments to provide.

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.

Why I can't look into the complaint about any missed reviews in 2015 and 2016

Our service isn't free to consider every complaint that is brought to us. I can only consider complaints which satisfy the dispute resolution (DISP) rules in the regulator, the Financial Conduct Authority's ("FCA") handbook. DISP 2.8.2 says:

"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 limit [...] was as a result of exceptional circumstances.

[...]

(5) the respondent has consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2R or DISP 2.8.7R have expired”

The rules don't say that a complainant needs to know exactly what has gone wrong to bring a complaint – only that they need to have a reasonable awareness that something might have gone wrong.

If a complaint is brought outside of these time limits we'd only be able to consider the complaint if SJP has consented – which it hasn't – or if the complaint was brought late due to exceptional circumstances. The FCA gives an example of exceptional circumstances as incapacitation.

Each OAC is its own event, with the fees being charged in advance. As is each annual review missed. So, the fee being charged from 2014 for the first year would be for the review in 2015 and so forth. There is no question that some of the events being complained, namely, not receiving ongoing advice in 2015 and 2016 (not including the annual review due in 2017 as SJP has clarified this took place) happened more than six years before Mr W submitted his complaint to SJP. Therefore, I've had to consider when Mr W was aware or ought reasonably to have been aware of a cause for complaint.

The crux of this complaint is that Mr W didn't receive the service he expected having paid the OACs. So, I've considered what Mr W's expectations would have been around the service he was paying for to determine at what point a cause for complaint ought to have become apparent.

SJP says it doesn't think Mr W's complaint was raised within three years of when he ought to have been aware of a cause for complaint, as he was told he would have regular reviews and so he ought to have been aware he didn't receive these when the first review in 2015 was missed. SJP has referred to the initial documentation to support its stance. SJP has provided copies of the point of sale documentation Mr W was provided with. These set out the following about the OACs.

The Retirement Plan illustration said:

“How much will the advice cost?”

- *Our advice is not free.*

The cost of the initial advice and our services will be £2700.00.

This is 4.5% of the amount you invest in the first five years. This cost covers all of our expenses incurred in providing, checking and guaranteeing your advice. The remuneration of your Partner is only one element of this cost, from which they meet their own business expenses. We will also provide you with ongoing advice to review your investment and ongoing contribution levels to ensure it remains appropriate, as set out in the "Welcome to St. James's Place" brochure provided by your Partner. The fee for this is 0.25% of your investment each year, plus 3% of each regular contribution made after the initial advice has been paid for. It is paid for by deduction from the value of your investment and so will increase as your investment grows.

For example, if your investments are worth £36000.00 in a particular year, the cost for that year would be £90.00, plus an additional £360.00 if regular contributions of £12000.00 are made in that year.

- *These amounts are paid out of the deductions shown and are included in the illustrations above. They depend on the size of the contribution, the term of the plan and the value of your fund.*

SJP's Welcome Brochure said:

"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."

Having considered the documents mentioned above, I think Mr W ought to have been aware that he was paying OACs. However, I don't think the documents were clear on how exactly the OACs would operate, and I don't think that they set definitive expectations for the timing of the reviews. The documents set an expectation that reviews should be "regular".

However, the impression given by the documents is that the meaning of "regular" is to be set with reference to a discussion between Mr W and his advisor. Whilst I don't think these documents in themselves convey a standard expectation that reviews will take place on an annual basis, I've weighed these against the comments made in the suitability letter.

In the original suitability letter sent on 30 September 2014, the advisor set out the following:

"I explained that we should therefore review your funding levels on an ongoing basis to increase your contributions in the future when affordable."

Again, I don't think this statement set a clear expectation for when Mr W could expect to receive such reviews. The suitability letter simply refers to reviewing Mr W's funding levels on an ongoing basis and as far as I'm aware, Mr W didn't look to increase his funding levels until 2017.

None of the documentation provided to Mr W explicitly states that the ongoing advice charge should be in return for a review at least once a year and I understand Mr W had no need to seek further advice until he had an annual review in 2017. However, following Mr W's annual review held on 21 December 2017, SJP sent him a suitability letter which explained that he ought to be having a review each year. The suitability letter explained:

“As part of my ongoing service, I will contact you to arrange a review meeting every year, after which I will contact you regarding any action I deem appropriate.”

I think that it was at this point that Mr W would have had awareness that he should expect to have regular reviews with his advisor on an annual basis. As such, he ought to have to have complained about the missed reviews in 2015 and 2016 within three years of receiving the 2017 suitability letter. In these circumstances, the complaint about these missed reviews and the respective fees he’s paid in 2014 and 2015 has been raised too late for this service to consider.

I’m able to consider a complaint if I’m satisfied the failure to comply with the time limits was because of exceptional circumstances. I haven’t been provided with any such circumstances and I’m not persuaded there are any that apply here.

I appreciate this will come as a disappointment to Mr W, but I’m only able to look at complaints where this service has jurisdiction.

Why I can look into the complaint about any missed reviews from January 2018 onwards

I’m able to consider any missed annual reviews which are within six years of Mr W raising his complaint to SJP. As such, I can consider any missed reviews that ought to have happened from January 2018 onwards.

SJP’s offer

SJP has offered to refund the OACs in relation to the missed annual reviews in 2020 and 2021 and have added simple interest at a rate of 8% per year to compensate Mr W. I am satisfied this is fair compensation, in the circumstances.

SJP has provided copies of the suitability letters it sent Mr W following it conducting annual reviews with Mr W in December 2018, December 2019, July 2022 and August 2023. These show that a full review of Mr W’s Retirement Plan was conducted and as he received the service he’d been told he’d get in return for the fees, it wouldn’t be fair or reasonable for me to tell SJP to refund these fees.

SJP additionally offered £150 to compensate for any distress or inconvenience that had been caused to Mr W. I’ve not been provided with any evidence that shows Mr W has suffered any distress or inconvenience that would persuade me to make a higher award. As such, for these years, SJP doesn’t need to do anything further.

My final decision

My final decision is that our service can’t consider Mr W’s complaint about the missed reviews in 2015 and 2016, but that our service can consider any missed reviews due from January 2018 onwards. So, if it hasn’t already, St. James’s Place Wealth Management Plc should pay the offer it made for the reviews missed in 2020 and 2021, as well as the £150 for any distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 21 October 2024.

Ben Waites
Ombudsman

