

The complaint

Mr D complains that despite paying ongoing advice charges since the inception of his St James's Place Wealth Management Plc Retirement Account in 1997 he received no service from the adviser until 2021. He feels the charges levied between 1997 and 2021 should be refunded.

What happened

In 1997 Mr D was advised to start contributing to a personal pension by a representative from J Rothschild Assurance ("JRA"), to supplement his teacher's pension.

JRA later became known as St James's Place, and consists of the adviser network of partners, St James's Place Wealth Management Plc (which I'll refer to as "SJP"), and also the provider arm which administers the pension plans.

Mr D commenced monthly pension contributions in July 1997 of £50 (gross). The illustration provided to him at the time of the advice explained his contributions would be invested equally in four funds.

At the time of the original sale (of the personal pension) a financial adviser was entitled to receive commission from the product provider, redirected from the fees the investor paid for the product, often referred to as "*trail commission*". But these fees didn't require the adviser to offer annual investment reviews or ongoing advice. And the consumer didn't directly pay the trail commission, it was paid to the adviser by the product provider.

In 2012 the Retail Distribution Review ("RDR") changed the way financial firms were paid for their services. Advisers could charge clients for the work they carried out but could no longer receive commission from product providers. Existing trail commission arrangements were permitted to continue, unless the consumer requested they stop.

In 2020 Mr D's current SJP partner (Mr B) took on Mr D and his wife from Mr V their previous SJP partner. Mr B arranged an introductory meeting in January 2021, then a further discussion in September 2021, both followed up in writing, but Mr D didn't want to take action at that time.

In 2022 Mr D and his wife Dr D who is also a teacher, started to think about their future plans. So they sought advice from Mr B about drawing on their personal pensions, and future retirement planning. In October 2022 to supplement his retirement income Mr D was advised to increase his monthly pension contributions of £75, and retirement planning discussions also took place in May 2023.

In February 2024 Mr D complained to SJP on behalf of himself and his wife, having discovered that since inception in 1997 they had been paying charges of 0.5% of the policy value yet had no contact from an adviser. So they felt SJP should refund the fees for the period 1997 to 2021 for services they hadn't received.

As SJP didn't respond to the complaint in a timely way, Mr D referred the complaints to this service in April 2024, requesting a refund of the fees they had paid for financial advice which hadn't been provided.

Our investigator looked into what had happened and clarified that Mr D wasn't unhappy with the service provided by Mr B since 2022, just the charges from the period 1997 to 2021 prior to him taking over. In the first instance she considered whether we could look into a complaint about something which happened so long ago, as the policy sale in 1997 was more than six years before Mr D complained. SJP wasn't able to provide statement information for the period prior to Mr B becoming their adviser, so the investigator couldn't identify an earlier point when Mr D ought reasonably to have realised he had cause to complain. So the investigator concluded that the complaint was within our jurisdiction.

But she didn't think Mr D was due a refund of the charges, as SJP was permitted to receive the trail commission relating to the initial advice, differentiating this from on-going advice charges ("OACs") which would entitle a consumer to annual investment reviews. So she didn't uphold the complaint.

Mr D didn't accept this, as he didn't think it was fair for SJP to be paid for a service it hadn't provided over a period of many years, when they'd had no contact from the adviser.

So he asked an ombudsman to review the complaint.

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 understand why Mr D might question why the fees have continued despite not having any contact with an adviser until Mr B took over in 2021. But I agree with the investigator that SJP was entitled to receive trail commission since 1997, despite not providing ongoing services or advice to Mr D. Let me explain why.

Financial advice is not free. Prior to the implementation of the RDR in 2012 which effectively banned them, commission payments were the mechanism by which advisers were paid for their services. The charge wasn't paid directly by the customer but paid on their behalf to the adviser by the product provider. This usually took the form of a larger initial payment followed by smaller "trail" payments built into the overall cost of the plan. This was generally explained in the documentation at the time.

I've not seen the client agreement Mr D had with the original JRA adviser, or copies of the advice or recommendation to start the pension plan in 1997. But I have seen the application form which Mr D signed, and the illustration provided by JRA in June 1997.

Under the heading "*How much will the advice cost?*" it explains "*For arranging this plan and providing ongoing servicing throughout its term J Rothschild Assurance will provide your adviser's practice with direct remuneration*". It goes on to set out that the annual cost for the initial year will be £232.56, the second year £241.66 and for the ongoing years "*a variable amount depending on the value of your fund*". It also says that the charges are explained further in the Key Features booklet Mr D had been provided with.

The impact of the RDR on charging is demonstrated in the illustration from October 2022 in respect of the recommended increase in Mr D's contributions. This sets out that the initial advice fee is 4.5% plus an OAC of 0.5%. But in 1997 Mr D didn't pay an advice fee direct to

the adviser, it was spread out over the life of the product by way of commission payments, which related back to the original advice, they didn't cover any ongoing services.

OACs are different from pre-RDR trail commission as they are charged on the basis that as a minimum the client should expect an annual review of their investments. And the consumer might be entitled to a refund of such charges if the service hasn't been provided.

But I'm satisfied all of Mr D's contributions to his plan until he commenced the £75 additional monthly contributions in October 2022 were under the pre-RDR arrangement. So SJP was entitled to receive those payments in relation to the original advice and wasn't required to offer additional services over that period.

So while I appreciate Mr D is likely to be disappointed, I don't uphold this complaint or require St James's Place Wealth Management Plc to do anything more.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 March 2025.

Sarah Milne
Ombudsman