

The complaint

Dr D complains that despite paying ongoing advice charges since the inception of her St James's Place Wealth Management Plc Retirement Account in 1997 she has only received a service from the adviser since 2021. She feels the charges levied between 1997 and 2021 should be refunded.

Dr D also complains that despite them both starting their plans at the same time and making the same level of contributions, her husband's plan has performed ten per cent better than hers which she would like redressed.

Dr D is represented in this complaint by her husband Mr D, whose own complaint is being dealt with separately.

What happened

Dr D (in her maiden name) was advised to start contributing to a personal pension in 1997 by a representative from J Rothschild Assurance ("JRA"), to supplement her 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.

Dr D commenced monthly contributions in July 1997 of £50 (gross). The application form completed at the time, showed that she had selected her contributions be invested equally in two funds, 50% in the JRA/St James's Place Managed Fund and 50% in the JRA/Schroder Managed Fund.

At the time of the original sale (of the personal pension) an 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 their 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 January 2020 Dr D's current SJP partner (Mr B) took on Dr D and her husband from Mr V their previous SJP partner. Mr B arranged an introductory meeting in January 2021 and a further discussion in September 2021, both followed up in writing, but Dr D didn't wish to take action at that time.

In 2022 Dr D and her husband who is also a teacher, started to think about their future plans. So they sought advice from their current SJP partner Mr B, for advice about drawing on their

personal pensions and future retirement planning. Dr D wanted to increase contributions to her pension, so in December 2022 she was advised to start making additional monthly contributions of £75. And she was considering a withdrawal from her SJP Retirement Account to supplement her income as she reduced her working hours. The May 2023 annual review letter showed that over the past ten years Dr D's Retirement Account had grown on average 5.4% a year, and Mr D's plan by 6.6% a year.

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 received no advice or any other services. So they felt SJP should refund the fees for the period 1997 to 2021 for services they hadn't received. Dr D also complained that her plan had grown around 10 per cent less than her husband's plan, despite them making the same level of contributions for the same time period.

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

Our investigator looked into what had happened and clarified that Mr and Dr D weren't complaining about the service provided by Mr B since he became their adviser, just the charges from the period 1997 to 2021 before he took over. She first 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 on Dr D's behalf. 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 Dr D ought reasonably to have realised she had cause to complain. So the investigator considered that the complaint was within our jurisdiction.

But she didn't think Dr D was due a refund from SJP, as the adviser was permitted to receive the trail commission relating to the initial advice, differentiating this from on-going advice charges ("OACs") which did entitle the consumer to annual investment reviews. And she could see that Dr D and Mr D's plans had been invested differently from the outset which explained why their plans performed differently. She couldn't see SJP had done anything wrong in that respect, so she didn't uphold the complaint.

Mr D on behalf of Dr D still 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 an 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.

Dr D has raised two complaint points, so I'll address them separately here.

On-going advice charges

I understand why Dr D might question why the fees have continued despite having no contact with an adviser until the initial meeting with Mr B 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. 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 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 Dr D's client agreement with the original JRA adviser, or copies of the advice or recommendation to start the pension plan in 1997. I have however seen the application form she signed in June 1997 which shows it was started at the same time as her husband, and the plans basically mirror each other. And while I haven't seen a copy of the illustration provided to Dr D, I have seen the one for her husband, and I think that as the plans were taken out at the same time with the same adviser it's more likely than not Dr D would've been given similar information. Under the heading "*How much will the advice cost?*" the illustration 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 give a figure for the annual costs for the initial and second years and then gives the charge for the ongoing years as "*a variable amount depending on the value of your fund*". The charges would also have been set out in the Key Features booklet which they would have been provided with.

The impact of the RDR on charging is demonstrated in the illustration prepared in December 2022 in respect of the recommended increase in Dr D's contributions. This sets out that the initial advice fee is 4.5% plus an OAC of 0.5%. So in 1997 unlike current arrangements Dr 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 the client should expect an annual review of their investments. And such charges can be refunded if the service hasn't been provided. The "*Ongoing Advice*" section of the recommendation letter the adviser sent Dr P in December 2022 says "*As part of my ongoing service I will continue to contact you annually to arrange a meeting where we will look at your financial goals and objectives...*", which is what the OACs relate to.

But I'm satisfied all of Dr D's contributions to her plan until she commenced the £75 additional monthly contributions in December 2022 were under the pre-RDR arrangement. So they were trail commission in relation to the original advice which SJP was entitled to, and it wasn't required to offer additional services over that period.

Performance of the plan

Dr D didn't challenge the investigator's explanation for the difference in their fund performance, but for completeness I'll address it here.

The application form Dr D completed in 1997 included a section to select the investment choices for the regular contributions into the pension plan. There were ten options to choose from, and any combination was permitted so long as the total added to 100%. Two funds selected were 50% in the St James's Place Managed Fund and 50% in the Schroder Managed Fund.

The illustration relating to her husband's plan which he accepted before proceeding, shows that his investment was split equally into four funds not two: 25% each into the same two funds as Dr D and 25% each into two other funds being the JRA/Scottish Amicable Managed Fund and the JRA/M&G Managed Fund. This took place when Dr and Mr D were being

advised by their original adviser, and I've seen no information to indicate why those funds were selected. But it may be their attitudes to risk differed which influenced the investment choice. I've explained that as she wasn't paying for ongoing advice there was no obligation for SJP to proactively contact Dr D about her plan. But I think she could've sought advice if she wasn't happy with its performance or wanted to review the investment strategy. So while I can see the comparative performance would've been disappointing, I can't say SJP hasn't acted fairly.

I appreciate Dr D is likely to be disappointed, but 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 Dr D to accept or reject my decision before 14 March 2025.

Sarah Milne
Ombudsman