

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 charge ("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 April 2014. Following this meeting, Mr W invested into an ISA as well as Retirement Account.

Mr W complained to SJP in September 2023. In summary, he said he was paying OACs without receiving annual reviews or a level of service that justifies the fee he was paying. 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 has confirmed he doesn't want us to consider it.

SJP considered Mr W's complaint and offered to repay the OACs for the reviews due in 2019, 2020 and 2021, as reviews weren't carried out during these years. SJP declined to return the fees charged from 2014 to 2018, as it said that, in accordance with its complaint handling procedures, it had only reviewed its records back to 2017 (six years before he complained). SJP also offered £150 for any distress and inconvenience caused. In its final response, SJP said:

"In considering your 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. Mr W says he knew the adviser was accessible to him but wasn't clear on what he was paying his fees for. He thought this was for ongoing advice as and when needed. He says he only became aware of the fact that, having paid OACs, he should have received a full review each year when he spoke to a claims management company.

Following the referral to our service, SJP has provided further reasoning as to why it believes any complaint about OACs taken prior to 2017 are time-barred. In summary it said:

- Mr W's ISA started on 6 May 2014 and his Retirement Account started on 1 May 2014 and the first annual review would have been due on or around 1 May 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 2017 are also too late for the same reasons.
- SJP has since confirmed that an annual review took place in June 2015 as well as in January 2018, when Mr W increased his regular contributions into his Retirement Account by £70 per month.

I issued my provisional decision on the complaint in September 2024 and include a copy below:

What I've provisionally 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 the fees paid between April 2014 and September 2017

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. 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 the event being complained about (not receiving ongoing advice being paid for in 2014 to 2017) 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 around the OACs taken between 2014 and 2017 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 ISA Illustration document said:

“How much will the advice cost?

- Our advice is not free. The cost of the initial advice and our services will be £243.00. This is 4.5% of the amount you invest in the first three 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 0.5% 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 £5400.00 in a particular year, the cost for that year would be £27.00, plus an additional £54.00 if regular contributions of £1800.00 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.”

Having considered the document above, I think Mr W ought to have been aware that he was paying an OAC. However, I don't think it was clear on how exactly the OAC would operate and I don't think that it set a definitive expectation for the timing of the reviews.

I understand that SJP would have provided Mr W with a Welcome Brochure and although SJP hasn't provided a copy of this, I have previously seen a copy of this document and I'm aware it set an expectation that reviews should be “regular”. However, the impression given by the Welcome Brochure 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 suitability letter sent on 15 April 2014, the advisor set out the following:

“Reviews

I strongly recommend that we conduct a review of your circumstances at regular intervals. I will write to you each year on the anniversary of your plan to provide you with an annual statement in respect of your investment so that we can arrange for a review.”

Whilst Mr W doesn't recall the fees being discussed; I'm satisfied he was provided with the documentation at the time. And I'm satisfied that documentation was clear that the fees were for meetings that would take place regularly, irrespective of whether Mr W reached out and initiated contact. And the suitability letter made it clear that these reviews would be arranged on an annual basis. It's understandable that Mr W may not now recollect exactly what he was told, given the passage of time, but I'm satisfied it's most likely that would have been his expectation at the time.

SJP has provided a subsequent suitability letter showing an annual review took place in June 2015. This explained that the advisor's recommendation was to invest £2,500 as a one-off lump sum payment into Mr W's existing Retirement Account. As such, I don't agree with SJP's findings that Mr W ought to have been aware of his cause for complaint in 2015. I say this as he had been told he would receive regular annual reviews and he received one in 2015, albeit later than anticipated and one that didn't include a review of his ISA.

I do, however, think Mr W ought to have been aware for his cause for complaint when he didn't receive an annual review as anticipated in 2016 and I understand he didn't receive a further review of any of his investments until 2018. I've asked SJP for any records of communication between 2015 and this meeting, however, it has confirmed no records are available. So given what he'd been told, I'm satisfied Mr W would have expected to have received at least two reviews by the time he had his next review in 2018.

I'm therefore satisfied Mr W knew enough by May 2016, when he hadn't received an annual review, to know he hadn't received what he'd been told he'd receive for the fees he'd paid. So, it follows that he knew – or ought to have known – of cause for complaint more than three years before he complained. In these circumstances, the complaint about the fees he's paid between 2014 and 2017 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 the fees paid from September 2017 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 September 2017 onwards.

SJP's offer

SJP has offered to refund the OACs in relation to the missed annual reviews in 2019, 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 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.

From the evidence provided, I'm satisfied annual review took place in January 2018. However, this was only in relation to Mr W's Retirement Account and I'm not persuaded a review of his ISA took place that year.

So as Mr W received the service he'd been told he'd get in return for the 2017 fee in relation to his Retirement Account, it wouldn't be fair or reasonable for me to tell SJP to refund the fee paid in relation to his Retirement Account. However, he should also receive a refund for the OACs paid in 2017 in relation to his ISA, for the missed review due in 2018.

Responses to my provisional decision

Both Mr W and SJP accepted my provisional findings.

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.

As both parties accept, I see no reason to depart from my provisional findings.

Putting things right

SJP should pay Mr W the offer it made for the missed annual reviews in 2018 (for his ISA only), 2019, 2020 and 2021 and add simple interest at a rate of 8% per year to compensate him, as well as pay the £150 for any distress and inconvenience caused.

My final decision

My final decision is that the Financial Ombudsman Service can only consider Mr W's complaint about any annual reviews missed from September 2017 onwards and that St.

James's Place Wealth Management Plc should pay the offer as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 October 2024.

Ben Waites
Ombudsman