

The complaint

Mr and Mrs T complain that St. James's Place Wealth Management Plc trading as St. James's Place ("SJP") has charged them both ongoing advice charges ("OACs") despite not receiving annual reviews.

Mr and Mrs T are being represented by a claims management company, however, for ease of reference, I shall refer to Mr and Mrs T only throughout my decision.

What happened

Mr T took out an Investment Bond in March 2013 and Mrs T in August 2013, following them meeting with SJP to discuss their financial planning needs.

Mr and Mrs T complained to SJP in October 2023. In summary, they said she was paying an OAC without receiving annual reviews or a level of service that justifies the fee they were paying.

For completeness, Mr and Mrs T 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 and Mrs T have confirmed they don't want us to consider it.

SJP considered Ms M's complaint and explained that annual reviews took place in June 2018, October 2019, May 2020, January 2021, May 2022 and April 2023. SJP clarified that Mrs T didn't attend the annual review carried out in May 2020 and so it offered to refund the fee she paid for that year. SJP declined to return the fees charged between 2013 and 2017, as it said that, in accordance with its complaint handling procedures, it had only reviewed its records back to October 2017 (six years from when they complained). SJP also offered £150 for any distress and inconvenience caused.

In its final response, SJP said it has considered:

- "1. The evidence we have that ongoing advice was provided to Mr and Mrs [T], 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. 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 2009 for Mr [T] and 2013 for Mrs [T]. 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 and Mrs T didn't accept SJP's findings and so they referred their complaint to this service for an independent review. They say they recall being told by the adviser that they could seek further advice at any time. They also say they only became aware of the fact that, having paid OACs, they should have received a full review each year when they 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 October 2017 are time-barred. In summary it said:

- Mr T received an annual review in July 2014 and Mrs T received further advice on her Investment Bond in December 2014.
- The next annual reviews would have been due on or around March 2015 and August 2015 respectively.
- It's been more than six years since the reviews in 2015 were missed and in addition, it's more than three years since Mr and Mrs T ought reasonably to have known they had cause to complain about the missed review as all of the point of sale documentation explained that they ought to expect reviews.
- It follows that any reviews missed between 2015 and 2018 are too late for the same reasons.

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 March 2013 and October 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 fees being charged from 2013 for the first year would be for the review in 2014 and so forth. There is no question that the events being complained about (not receiving ongoing advice being paid for in 2013 to 2017) happened more than six years before Mr and Mrs T submitted their complaint to SJP. Therefore, I've had to consider when Mr and Mrs T were aware or ought reasonably to have been aware of a cause for complaint.

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

SJP says it doesn't think Mr and Mrs T's complaint around the OACs taken between 2013 and 2017 was raised within three years of when they ought to have been aware of a cause for complaint, as they were told they would have regular reviews and they ought to have been aware they didn't receive these when the reviews in 2015 were missed. SJP has referred to the initial documentation to support its stance.

SJP has provided copies of the point of sale documentation Mr and Mrs T were provided with. These set out the following about the OACs.

The Key Facts documents said:

“Payment for ongoing advice

The charge for ongoing advice is also paid out from the overall charges on your investment. However, if you no longer wish to benefit from our advice, you may ask us to stop advising you and to stop reviewing your investment and the charge for ongoing advice will cease.”

The 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 and Mrs T ought to have been aware they were paying an OAC. However, I don't think the documents were clear on how exactly the OAC would operate and I don't think that they set definitive expectations for the timing of 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 and Mrs T and their advisor.

SJP has provided the suitability letters sent to Mr T on 1 March 2013 and Mrs T on 15 April 2013, however both letters are silent on the reviews Mr and Mrs T could expect.

Whilst I don't think these documents in themselves convey a standard expectation that reviews will take place on an annual basis, I think Mr and Mrs T ought to have expected to have received some regular contact to review their investments. I say this as I'm satisfied they were provided with the documentation at the time which made clear that the fees were for meetings that would take place regularly, irrespective of whether Mr and Mrs T reached out and initiated contact.

SJP says that, further to the annual reviews in 2014, an annual review with Mr and Mrs T didn't take place until June 2018. I've asked SJP if any records are available of contact between Mr and Mrs T and their advisor post 2014, but it has confirmed none are available. I understand Mr and Mrs T recall being told they could contact their adviser at any time, but I've not seen anything that persuades me there was communication during that time that could have appeared to be a review.

I'm not persuaded Mr and Mrs T knew, or ought reasonably to have known, they had cause for complaint when they didn't receive a review in January 2015, as I've explained that the documentation didn't set an expectation that reviews would take place each year. However, I think it's reasonable to say that Mr and Mrs T ought to have been aware that they hadn't received regular reviews sometime before October 2020 (three years prior to them complaining). I say this as they were told they would have regular reviews but didn't receive one until 2018, four years after they'd received their first annual review. As such, I don't think it'd be reasonable to think a review every four years is sufficient to be considered regular. So, it follows that Mr and Mrs T knew – or ought to have known – of cause for complaint more than three years before they complained. In these circumstances, the complaint about the fees they've 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 and Mrs T, but I'm only able to look at complaints where this service has jurisdiction.

Why I can look into the complaint about missed reviews from October 2017 onwards

I'm able to consider any missed annual reviews which are within six years of Mr and Mrs T raising their complaint to SJP. As such, I can consider any missed reviews that ought to have happened from October 2017 onwards.

SJP's offer

SJP has offered to refund the OAC that Mrs T paid for the annual review due in May 2020, as its records show that she didn't attend the annual review that took place that year. SJP has also added simple interest at a rate of 8% per year to compensate Mrs T. I am satisfied this is fair compensation, in the circumstances.

From the evidence provided, I'm satisfied annual reviews took place in June 2018, October 2019, May 2020 (for Mr T only), January 2021, May 2022 and April 2023. So as Mr and Mrs T received the service they'd been told they'd get in return for the fees, it wouldn't be fair or reasonable for me to tell SJP to refund these fees.

Responses to my provisional decision

Mr and Mrs T confirmed that they accept my provisional findings and SJP didn't provide a response by the deadline given.

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 Mr and Mrs T accept my provisional findings, which essentially say the offer SJP made in its final response letter is fair and reasonable, I have no reason to depart from the findings made in provisional decision.

Putting things right

SJP should pay Mrs T the offer it made for the missed annual review in 2020 and add simple interest at a rate of 8% per year to compensate her.

My final decision

My final decision is that the Financial Ombudsman Service can only consider Mr and Mrs T's complaint about any annual reviews missed from October 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 T and Mrs T to accept or reject my decision before 21 October 2024.

Ben Waites
Ombudsman