

## **The complaint**

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

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

## **What happened**

Ms M met with SJP in December 2016. Following this meeting, Ms M topped up her ISA which she'd previously taken out in April 2013, as well as investing in a Unit Trust.

Ms M complained to SJP in January 2024. In summary, she said she was paying an OAC without receiving annual reviews or a level of service that justifies the fee she was paying. For completeness, Ms M'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 Ms M has confirmed she doesn't want us to consider it.

SJP considered Ms M's complaint and offered to repay the OACs for the reviews due in 2018, 2019, 2020, 2021 and 2022 as reviews weren't carried out during these years. 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 January 2018 (six years before Ms M complained).

In its final response letter, 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."

Ms M didn't accept SJP's findings and so she referred her complaint to this service for an independent review. She says she was aware she could access advice from her adviser when she needed it but didn't become aware that she should have received annual reviews in return for the OACs she was paying until she spoke with 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 January 2018 are time-barred. In summary it said:

- Ms M's Unit Trust started on 14 December 2016 and the first annual review would have been due around December 2017 (twelve months later).
- It's been more than six years since the review in 2017 was missed and in addition, it's more than three years since Ms M ought reasonably to have known she had cause to complain about the missed review as all of the point of sale documentation explained that she ought to expect reviews.
- It follows that any reviews missed between 2014 and 2017 are also too late for the same reasons as Ms M would have been provided with similar documentation when her ISA started in April 2013.
- An annual review did take place on 19 October 2023 and confirmed Ms M is not currently paying for this service as the OACs were turned off on 13 December 2022.

I issued my provisional decision on the complaint in September 2024 and I 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 2013 and January 2018***

*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 Ms M submitted her complaint to SJP. Therefore, I've had to consider when Ms M was aware or ought reasonably to have been aware of a cause for complaint.*

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

*SJP says it doesn't think Ms M's complaint around the OACs taken between 2013 and 2017 was raised within three years of when she ought to have been aware of a cause for complaint, as she was told she would have regular reviews and she ought to have been aware she didn't receive these when the first review in 2014 was missed. SJP has referred to the initial documentation to support its stance.*

*SJP has provided copies of the point of sale documentation Ms M was provided with. These set out the following about the OACs.*

*The Unit Trust illustration said:*

***“How much will the advice cost?”***

*Our advice is not free. The cost of the initial advice and our services will be £2,878.11 which is 4.50% of the investment shown. This cost covers all of our expenses incurred in providing, checking and guaranteeing the suitability of your advice. The remuneration of your Partner's practice 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 ensure it remains appropriate, as set out in the brochure "Welcome to St. James's Place" provided by your Partner. The cost of this each year is 0.50% of your total investment (and so this annual cost will increase if your investment grows).*

***For example, if your investments are worth £64,000.00 in a particular year, the cost for that year would be £320.00.***

*The costs of our initial advice and ongoing advice are paid for and facilitated out of the overall charges levied on your investment, which are explained under "What are*

*the charges?' above."*

The ISA illustration sent in December 2016 said:

***"How much will the advice cost?"***

*Our advice is not free. The cost of the initial advice and our services will be £721.89 which is 4.50% of the investment shown. This cost covers all of our expenses incurred in providing, checking and guaranteeing the suitability of your advice. The remuneration of your Partner's practice 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 ensure it remains appropriate, as set out in the brochure "Welcome to St. James's Place" provided by your Partner. The cost of this each year is 0.50% of your total investment (and so this annual cost will increase if your investment grows).*

***For example, if your investments are worth £16,100.00 in a particular year, the cost for that year would be £80.50.***

*The costs of our initial advice and ongoing advice are paid for and facilitated out of the overall charges levied on your investment, which are explained under 'What are the charges?' above."*

The Key Facts document sent in December 2016 said:

***"Payment for ongoing advice***

*The cost for our ongoing advice is also paid for out of your investment.*

*However, if you no longer wish to benefit from our ongoing advice, you may ask us to stop advising you and to stop reviewing your investment and the charge for ongoing advice will cease.*

*We believe that regular, ongoing advice enables us to ensure that your investment meets your objectives. Our ongoing fees are paid in this way because we firmly believe that it aligns your interests with ours."*

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 Ms M ought to have been aware she 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 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 Ms M and her advisor.*

*SJP has provided the suitability letter sent on 12 December 2016, in which the advisor set out the following:*

*"Ongoing Advice*

*A key element of financial planning is conducting regular reviews of your financial arrangements to ensure the course of action taken today remains appropriate to your personal circumstances in the future as it is likely your objectives and circumstances will change over time.*

*As part of my ongoing service I will continue to review all aspects of your finances. At this meeting you only wished to discuss investment into your SJP Equity ISA and also a Unit Trust feeder."*

*This document also didn't set an expectation that reviews would take place on an annual basis. However, this document, along with those mentioned above, do make it clear that Ms M ought to have expected to have received some regular contact to review her investments. SJP says the first annual review didn't take place until 19 October 2023 (although SJP has only provided a screenshot of a telephone record of the meeting taking place). I've asked SJP if any records are available of contact Ms M and her advisor post taking out her investments, but it has confirmed none are available. I understand Ms M says she knew she could speak to her advisor when she wanted but I think she ought to have expected some contact and 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 Ms M knew, or ought reasonably to have known, she had cause for complaint when she didn't receive a review in 2017, 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 Ms M ought to have been aware that she hadn't received regular reviews sometime before January 2021 (three years prior to her complaining). I say this as she was told she would have regular reviews but didn't receive one until 2023, seven years after she'd taken out her Unit Trust and topped up her ISA. As such, I don't think it'd be reasonable to think a review seven years is sufficient to be considered regular. So, it follows that Ms M knew – or ought to have known – of cause for complaint more than three years before she complained.*

*In these circumstances, the complaint about the fees she's paid between 2013 and 2017 has been raised too late for this service to consider.*

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

*I'm able to consider any missed annual reviews which are within six years of Ms M raising her 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 2018, 2019, 2020, 2021 and 2022 and has added simple interest at a rate of 8% per year to compensate Ms M. 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 Ms M. I've not been provided with any evidence that shows Ms M 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, it suggests an annual review took place in 2023 but it's not clear as to what was discussed with Ms M and whether this would amount to a full review for which the OACs were fairly chargeable. But regardless, by this point, OAC charges had been turned off and so it wouldn't be fair or reasonable for me to tell SJP to refund any further fees.*

### **Responses to my provisional decision**

Ms M has confirmed that she accepts my findings. 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 Ms M accepts my provisional findings and SJP has no further comments, I have no reason to depart from my provisional findings.

### **Putting things right**

SJP should pay, if it hasn't already, Ms M the offer it made for the missed annual reviews in 2018, 2019, 2020, 2021 and 2022 and add simple interest at a rate of 8% per year to compensate her, 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 Ms M's complaint about any annual reviews missed from January 2018 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 Ms M to accept or reject my decision before 22 October 2024.

Ben Waites  
**Ombudsman**