

The complaint

Mrs H 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.

Mrs H 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

Mrs H met with SJP in April 2013. Following this meeting, Mrs H went ahead with SJP's advice and invested around £4,000 into an ISA and agreed to make regular monthly contributions of £800. Mrs H also followed SJP's advice to invest around £30,000 into an Investment Bond and also agreed to make regular monthly contributions of £800 into it.

Mrs H complained to SJP in December 2023. In summary, she said she was paying OACs without receiving annual reviews or a level of service that justifies the fee she was paying. For completeness, Mrs H'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 Mrs H has confirmed she doesn't want us to consider it.

SJP considered Mrs H's complaint and offered to repay the OACs for the reviews due in 2018, 2019, 2020, 2021, 2022 and 2023 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 2017. In addition, SJP offered £150 for any distress and inconvenience caused.

In its final response, SJP said:

"In respect of the issue raised regarding the provision of annual reviews, we have looked at the relevant factors, which include:

1. The evidence we have that ongoing advice was provided to Mrs [H], 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 2013. 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."

Mrs H didn't accept SJP's findings and so she referred her complaint to this service for an independent review. She says she expected to be able to speak to and consult the adviser if she needed to and did so on some occasions. She says she only became aware of the fact that, having paid OACs, she should have received a full review each year when she 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 January 2017 are time-barred. In summary it said:

- Mrs H's investments started on 31 May 2013 and the first annual review would have been due around 30 May 2014 (twelve months later).
- It's been more than six years since the review in 2014 was missed and in addition, it's more than three years since Mrs H 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 2015 and 2017 are also too late for the same reasons.

I issued my provisional findings 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 2013 and December 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 Mrs H submitted her complaint to SJP. Therefore, I've had to consider when Mrs H was aware or ought reasonably to have been aware of a cause for complaint.

The crux of this complaint is that Mrs H didn't receive the service she expected having paid the OACs. So, I've considered what Mrs H's expectations would have been around the service she was paying for to determine at what point a cause for complaint ought to have been raised. SJP says it doesn't think Mrs H'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 Mrs H was provided with. These set out the following about the OACs.

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.”

The Investment Bond illustration said:

“How much will the advice cost?

- Our advice is not free. The cost of the initial advice and our services will be £1125.00. 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 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. 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 £25000.00 in a particular year, the cost for that year would be £125.00.**
- 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 documents mentioned above, I think Mrs H ought to have been aware she was paying OACs. 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 Mrs H and her 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.

SJP has provided the suitability letter sent on 23 May 2013, in which the advisor set out the following:

"I strongly recommend that we conduct a review of your circumstances at regular intervals. I will write to you each year to provide you with an annual statement in respect of your investments so that we can arrange for a review. We will also be happy to conduct reviews at your request."

Whilst Mrs H doesn't recall the fees being discussed; I'm satisfied she 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 Mrs H 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 Mrs H may not now recollect exactly what she was told, given the passage of time, but I'm satisfied it's most likely that would have been her expectation at the time.

I've asked SJP for any records of communication between 2013 and 2017, however, it has confirmed no records are available. I appreciate Mrs H says she expected to be able to speak to and consult the adviser if she needed to and did so on some occasions, however I've not seen anything that persuades me there was other communication during that time that could have appeared to be a review. So given what she'd been told, I'm satisfied Mrs H would have expected to have received a review around twelve months after taking out her investments. I'm therefore satisfied Mrs H knew enough by May 2014, when she hadn't received an annual review, to know she hadn't received what she'd been told she'd receive for the fees she'd paid. So, it follows that she 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.

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 Mrs H, but I'm only able to look at complaints where this service has jurisdiction.

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

I'm able to consider any missed annual reviews which are within six years of Mr H raising her complaint to SJP. As such, I can consider any missed reviews that ought to have happened from December 2017 onwards.

SJP's offer

SJP has offered to refund the OACs in relation to the missed annual reviews in 2018, 2019, 2020, 2021, 2022 and 2023 and has added simple interest at a rate of 8% per year to compensate Mrs H. 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 Mrs H. I've not been provided with any evidence that shows Mrs H 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.

Responses to my provisional decision

Mrs H confirmed she received my provisional findings but had no further comments and SJP didn't respond 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 both parties haven't provided any more comments for me to consider, I see no reason to depart from my provisional findings.

Putting things right

SJP should pay, if it hasn't already, Mrs H the offer it made for the missed annual reviews in 2018, 2019, 2020, 2021, 2022 and 2023 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 Mrs H's complaint about any annual reviews missed from December 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 Mrs H to accept or reject my decision before 23 October 2024.

Ben Waites
Ombudsman