

The complaint

Mr P and Miss S complains that St. James's Place Wealth Management Plc trading as St. James's Place ("SJP") has charged them an ongoing advice charges ("OACs") despite not receiving annual reviews.

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

What happened

Mr P and Miss S met with SJP in November 2013. Following this meeting, they each invested into Unit Trusts and ISAs. The Unit Trust were both surrendered in April 2014. Mr P encashed his ISA in September 2019, whereas Miss S encashed her ISA fully in January 2016.

Mr P and Miss S complained to SJP in December 2023. In summary, they said they were paying OACs without receiving annual reviews or a level of service that justifies the fee they were paying.

SJP considered Mr P and Miss S's complaint but explained that it had had regular contact with them prior to them surrendering their investments. SJP said that, in accordance with its complaint handling procedures, it had only reviewed its records back to December 2017. In its final response letter, 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 clients, 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."*

Mr P and Miss S didn't accept SJP's findings and so they referred their complaint to this service for an independent review. Mr P and Miss S provided comments as to their recollections from the sale. They said they did have some reviews in 2018 and 2019 but also had other contact with the adviser at different times. They were aware that the advisory service was available when needed. They also added that, as they had some reviews and contact, they only became aware that they ought to have received a full review every year when they 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 December 2017 are time-barred. In summary it said:

- Mr P and Miss S's investments started on December 2013 and the first annual review would have been due around December 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 Mr P and Miss S 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 2014 and 2017 are also too late for the same reasons.
- It clarified that annual reviews did take place in 2018 and 2019.

I issued a 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 September 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 Mr P and Miss S submitted their complaint to SJP. Therefore, I've had to consider when Mr P and Miss S were aware or ought reasonably to have been aware of a cause for complaint.

The crux of this complaint is that Mr P and Miss S didn't receive the service they expected having paid the OACs. So, I've considered what Mr P and Miss S's 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 P and Miss S'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 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 Mr P and Miss S were provided with. These set out the following about the OACs.

The Key Facts document said:

"We will also provide you with ongoing advice to review your investment and ongoing contribution levels, if applicable, to ensure it remains appropriate as set out in the "Welcome to St. James's Place" brochure provided by your Partner. The cost of this each year is 0.5% (0.25% for pre-retirement pension advice) of your total investment and so this annual cost will increase if your investment grows, plus 3% of each regular contribution made after the initial advice has been paid for.

[...]

Payment for ongoing advice

The cost for our ongoing advice is also paid for and facilitated out of the overall charges levied on 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.”

The ISA illustrations said:

“How much will the advice cost?

- Our advice is not free. The cost of the initial advice and our services will be £518.40. 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 £11520.00 in a particular year, the cost for that year would be £57.60.*
- 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.”*

Similarly, the Unit Trust illustrations said:

“How much will the advice cost?

- Our advice is not free. The cost of the initial advice and our services will be £269.10. 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 £5980.00 in a particular year, the cost for that year would be £29.90.*
- 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 Mr P and Miss S ought to have been aware they was paying OACs. However, I don’t think the documents are clear on how exactly the OACs would operate and I don’t think that it set definitive expectations for the timing of reviews. The document set an expectation that reviews should be “regular”. Whilst I

don't think the document conveys a standard expectation that reviews will take place on an annual basis, I've weighed this against the comments made in the suitability letter.

The suitability letter sent in November 2013 was silent on the issue of ongoing advice fees and the service that would be provided in return.

Whilst this document didn't set an expectation that reviews would take place on an annual basis, I'm satisfied that the other documents made clear that Mr P and Miss S ought to have expected to have received some regular contact to review their investments.

SJP says the first annual review didn't take place until 2018. I've asked SJP if any records are available of contact Mr P and Miss S and with their advisor post taking out their investments, but it has confirmed none are available. I understand Mr P and Miss S says they knew she could speak to their advisor when they wanted but I think they 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 Mr P and Miss S knew, or ought reasonably to have known, they had cause for complaint when they didn't receive a review in 2014, 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 P and Miss S ought to have been aware that they hadn't received regular reviews sometime before December 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, five years after taking out their investments.

So, it follows that they 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 P and Miss S, 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 December 2018 onwards

I'm able to consider any missed annual reviews which are within six years of Mr P and Miss S raising their complaint to SJP. As such, I can consider any missed reviews that ought to have happened from December 2018 onwards.

From 31 December 2012, the FCA's Conduct of Business Sourcebook (COBS) 6.1A.22R has said;

"A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:

(1) the adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:

(a) the firm has disclosed that service along with the adviser charge;
and

(b) the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the retail client to give any reason; or

(2) the adviser charge relates to a retail investment product for which an instruction from the retail client for regular payments is in place and the firm has disclosed that no ongoing personal recommendations or service will be provided.”

The FCA also produced a factsheet on adviser charging which, amongst other things, said:

“Ongoing charges should only be levied where a consumer is paying for ongoing service, such as a performance review of their investments, or where the product is a regular payment one. If you are providing an ongoing service, you should clearly confirm the details of the ongoing service, any associated charges and how the client can cancel it. This can be written or orally disclosed. You must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to.”

I’m satisfied that COBS and the FCA factsheet are clear that SJP ought to have been providing a service for Mr P and Miss S from December 2018, as it’s not disputed ongoing advice fees were paid. Mr P and Miss E had already closed their Unit Trusts prior to December 2018 and Miss E had also surrendered her ISA by this point. As such, I wouldn’t expect annual reviews to have taken in place in relation to these investments.

Ongoing advice couldn’t have just been offered or been available only if needed, an actual service needed to be provided. As the fees were taken as annual percentages, I’d expect to see SJP had provided personal recommendations or services for that individual client in each year that the fee was taken.

From the evidence provided, I’m satisfied an annual review took place in 2018 in relation to Mr P’s ISA. SJP had provided a contact record showing Mr P’s ISA was discussed in October 2018 and a suitability letter was sent in January 2019 explaining what had been discussed in relation to Mr P topping up his existing ISA. So as Mr P received the service he’d been told he’d get in return for the 2017 OACs paid, it wouldn’t be fair or reasonable for me to tell SJP to refund these fees.

However, I understand Mr P encashed his ISA in September 2019 and I’ve not been provided with any evidence to show Mr P received an annual review following his review in October 2018. As such, I’m not persuaded Mr P received the service he’d been told he’d get in return for the 2018 OACs paid. So I’m minded to say SJP should refund him any OACs charged between his last review in October 2018 up until he surrendered his ISA in September 2019 and add simple interest at a rate of 8% per year to compensate Mr P for being deprived the use of these funds.

Responses to my provisional decision

SJP accepted my provisional findings. Mr P and Miss S didn’t respond by the deadline given.

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 SJP agreed with my provisional decision and Mr P and Miss S didn’t provide any further comments for me to consider, I see no reason to depart from my provisional findings.

Putting things right

For the reasons I've set out above, SJP should refund the OACs charged for the missed annual review for Mr P's ISA only in 2019 and add simple interest at a rate of 8% per year from the day each OAC was charged from (from the date of his last annual review in October 2018 to surrendering the ISA in September 2019) up to the date of settlement.

My final decision

My final decision is that the Financial Ombudsman Service can only consider Mr P and Miss S's complaint about any annual reviews missed from December 2018 onwards and St. James's Place Wealth Management Plc should pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Miss S to accept or reject my decision before 28 October 2024.

Ben Waites
Ombudsman