

The complaint

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

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

What happened

Mr and Mrs R met with SJP in January 2014. Following this meeting, Mr and Mrs R invested into an Investment Bond together as well as in individual ISAs.

Mr and Mrs R complained to SJP in November 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.

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

SJP considered Mr and Mrs R's complaint and offered to repay the OACs for the reviews due in 2018, 2019 and 2021 as reviews weren't carried out during these years. SJP declined to return the fees charged between 2014 and 2017, as it said that, in accordance with its complaint handling procedures, it had only reviewed its records back to January 2018. SJP also offered £150 for any distress and inconvenience caused.

In its final response letter, 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 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 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 and Mrs R didn't accept SJP's findings and so they referred their complaint to this service for an independent review.

Mr and Mrs R say they knew the adviser was available to them for ongoing advice and support and recall having some contact with the adviser from time to time, which they thought was the appropriate level of service. They say 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 January 2018 are time-barred. In summary it said:

- Mr and Mrs R's investments commenced in January 2014 and the first annual review would have been due around January 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 and Mrs R 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.
- SJP says first documented review took place on 16 June 2020.

I issued a provisional decision 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 January 2014 and November 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 2014 for the first year would be for the review in 2015 and so forth. There is no question that the events being complained about (not receiving ongoing advice being paid for in 2014 to 2017) happened more than six years before Mr and Mrs R submitted their complaint to SJP. Therefore, I've had to consider when Mr and Mrs R were aware or ought reasonably to have been aware of a cause for complaint.

The crux of this complaint is that Mr and Mrs R didn't receive the service they expected having paid the OACs. So, I've considered what Mr and Mrs R's expectations would have been around the service they were paying for to determine at what point a cause for SJP says it doesn't think Mr and Mrs R's complaint around the OACs taken between 2014 and January 2018 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 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 and Mrs R were provided with. These set out the following about the OACs.

The ISA illustrations sent in January 2014 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 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 £6750.00. 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 £150000.00 in a particular year, the cost for that year would be £750.00.*
- 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.”*

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 Mr and Mrs R 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 R and their advisor.

SJP has provided the suitability letter sent on 16 January 2014, however the letter was silent on the reviews Mr and Mrs R 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 R 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 R reached out and initiated contact.

SJP says the first annual review didn't take place until 16 June 2020 and has provided a copy of the follow up letter it sent Mr and Mrs R. I understand Mr and Mrs R recall having some contact with the adviser from time to time, but I've not seen anything that persuades me there was communication prior to the review in June 2020 that could have appeared to be a review.

I'm not persuaded Mr and Mrs R 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 R ought to have been aware that they hadn't received regular reviews sometime before November 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 June 2020, over six years after they'd taken out their investments. As such, I don't think it'd be reasonable to think a review every six years is sufficient to be considered regular.

So, it follows that Mr and Mrs R 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 she'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 and Mrs R, 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 November 2017 onwards

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

SJP's offer

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 and Mrs R from November 2017, as it's not disputed ongoing advice fees were paid. 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.

SJP has offered to refund the OACs in relation to reviews due in 2018, 2019 and 2021 and have added simple interest at a rate of 8% per year to compensate Mr and Mrs R. 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 and Mrs R. I've not been provided with any evidence that shows they have 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.

SJP has provided evidence to show that annual reviews took place in 2020, 2022 and 2023. This includes a follow up to an annual review letter sent on 1 July 2020. However, the letter is addressed to Mr R only and only refers to Mr R's investment. As such, I'm not satisfied Mrs R received an annual review on her ISA in 2020 and so she's paid OACs in the previous year without receiving the service she'd been told she would get.

SJP has also provided screenshots of contact notes it had with Mr and Mrs R. These show that an annual review took place with both Mr and Mrs R on 17 June 2022 and 19 September 2023. So as Mr and Mrs R received the service they'd been told they'd get in return for the 2021 and 2022 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 R accepted my decision. SJP also accepted the decision but also added that it had reviewed Mrs R's ISA and located the post review letter which doesn't make any reference to her ISA having been reviewed in 2022. As such, it offered to also refund the OACs for Mrs R's ISA for the annual review due in 2022.

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 R and SJP accepted my provisional decision, I find no reason to depart from my provisional findings, except that I've considered SJP's additional offer which I think is fair and reasonable considering Mrs R didn't receive an annual review as expected in 2022 for her ISA.

Putting things right

SJP should pay Mr and Mrs R, if it hasn't already, the offer it made for the missed annual reviews in 2018, 2019 and 2021 and add simple interest at a rate of 8% per year to compensate them, as well as pay the £150 for any distress and inconvenience caused.

In addition to this, SJP should refund Mrs R only for any OACs charged for the missed review due in 2020 and 2022 for her ISA 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 R's complaint about any annual reviews missed from November 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 R and Mr R to accept or reject my decision before 28 October 2024.

Ben Waites
Ombudsman