

The complaint

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

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

What happened

Mr N took out an ISA in April 2014, following him meeting with SJP to discuss his financial planning needs. Mr N later took out a Retirement Account in May 2022.

Mr N complained to SJP in January 2024. In summary, he said he was paying OACs without receiving annual reviews or a level of service that justifies the fee he was paying.

For completeness, Mr N'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 N has confirmed he doesn't want us to consider it.

SJP considered Mr N's complaint and explained that annual reviews didn't take place in 2018, 2020 and 2021 and offered to refund the OACs paid for these reviews. 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 from when he 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 [N], 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 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 N didn't accept SJP's findings and so he referred his complaint to this service for an independent review. Mr N says he knew he had the adviser available to him should he need ongoing advice or support and could approach them at any time for this. He also says he did have contact with the adviser which he assumed to be what he was paying his OACs for. Mr N says he only became aware of the fact that, having paid OACs, he should have received a full review each year when he 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 N's ISA commenced in April 2014 and so the next annual review would have been due on or around April 2015.
- 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 N ought reasonably to have known he had cause to complain about the missed review as all of the point of sale documentation explained that he ought to expect reviews.
- It follows that any reviews missed between 2014 and 2018 are too late for the same reasons.
- It also confirmed that an annual review took place in July 2017 in which Mr N increased his monthly ISA contributions.

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 2014 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 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 2018) happened more than six years before Mr N submitted his complaint to SJP. Therefore, I've had to consider when Mr N was aware or ought reasonably to have been aware of a cause for complaint.

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

SJP says it doesn't think Mr N's complaint around the OACs taken between 2014 and 2018 was raised within three years of when he ought to have been aware of a cause for complaint, as he was told he would have regular reviews and he ought to have been aware he didn't receive these when the 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 N was provided with. These set out the following about the OACs.

The Key Facts documents said:

“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.”

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."

The ISA illustration said:

"How much will the advice cost?"

- *Our advice is not free. The cost of the initial advice and our services will be £324.00. This is 4.5% of the amount you invest in the first three years.*

[...]

We will also provide you with ongoing advice to review your investment and ongoing contribution levels to 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, plus 3% of each regular contribution made after the initial advice has been paid for."

Having considered the documents mentioned above, I think Mr N ought to have been aware he 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 Mr N and his advisor. Whilst I don't think the documents convey a standard expectation that reviews will take place on an annual basis, I've weighed this against the comments made in the suitability letter.

SJP has provided the suitability letter sent on 17 March 2014, in which the advisor set out the following:

"Reviews

I strongly recommend that we conduct a review of your circumstances at regular intervals. I will write to you each year on the anniversary of your plan to provide you with an annual statement in respect of your investments so that we can arrange for a review."

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

SJP has provided contact notes from Mr N's previous adviser which show that the first

annual review for his took place in July 2017. It had been three years since he'd been told he'd receive regular annual reviews in return for annual fees and there's nothing that persuades me there was other communication during that time that could have appeared to be a review. So given what he'd been told, I'm satisfied Mr N would have expected to have received at two reviews by the time he had his first review.

I'm therefore satisfied Mr N knew enough by April 2015, when he hadn't received an annual review, to know he hadn't received what he'd been told he'd receive for the fees he'd paid. So, it follows that he knew – or ought to have known – of cause for complaint more than three years before he complained. In these circumstances, the complaint about the fees he'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 N, 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 January 2018 onwards

I'm able to consider any missed annual reviews which are within six years of Mr N raising his complaint to SJP. As such, I can consider any missed reviews that ought to have happened from January 2018 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 N from January 2018, 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 that Mr N paid for the annual reviews due in 2018, 2020 and 2021, as these didn't take place. SJP has also added simple interest at a rate of 8% per year to compensate Mr N. I am satisfied this is fair compensation, in the circumstances. I understand SJP believes annual reviews took place in 2019 and 2023 and so I asked SJP to provide evidence to show such reviews took place for both Mr N's ISA and Retirement Account.

SJP has provided a telephone record from April 2019 showing it spoke to Mr N about his ISA. SJP has also provided a copy of the wealth account and performance chart for his ISA which it says it sent following the call. Whilst it's not clear exactly what was discussed on the call, I think it more likely than not that a review of Mr N's ISA took place. However, I've not seen anything to suggest Mr N received an annual review in regards to his Retirement Account in 2019. So I'm not currently satisfied that a review took place in 2019 as it should have, and so Mr N had paid OACs in the previous year despite not receiving the service he'd been told he would get. As such, I'm currently minded to say SJP should refund him any OACs paid in relation to the missed review of his Retirement Account in 2019.

SJP has provided a copy of a suitability report sent to Mr N in November 2023. In the report, SJP explains why Mr N's ISA and Retirement Account remain suitable and so I'm satisfied a review took place in 2023. So as Mr N received the service he'd been told he'd get in return for the OACs paid 2022, it wouldn't be fair or reasonable for me to tell SJP to refund these fees.

SJP additionally offered £150 to compensate for any distress or inconvenience that had been caused to Mr N. I've not been provided with any evidence that shows Mr N 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

Mr N accepted my provisional decision but SJP didn't. It provided evidence of a welcome letter sent to Mr N in May 2022 which showed his Retirement Account didn't commence until 12 May 2022. As such, no review was missed in 2019 and SJP asked me to reconsider my findings.

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.

SJP has shown Mr N's Retirement Account didn't commence until 2022 and so I'm satisfied that no review was due in 2019. So it follows that no refund is due in relation to his Retirement Account in 2019.

Putting things right

If it hasn't already, SJP should pay Mr N the offer it made for the annual reviews due in 2018, 2020 and 2021 and add simple interest at a rate of 8% per year to compensate him.

SJP should also pay the £150 compensation offered for any distress and inconvenience caused to Mr N.

My final decision

My final decision is that the Financial Ombudsman Service can only consider Mr N'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 Mr N to accept or reject my decision before 28 October 2024.

Ben Waites
Ombudsman