

The complaint

Mr W complains he entered into an agreement with St. James's Place Wealth Management Plc (SJP) in December 2016 whereby he started paying an annual fee and SJP agreed to provide reviews, but these didn't always take place.

What happened

Mr W says he met with an SJP partner in September 2016. Following these meetings, he invested into a retirement account on 7 December 2016. He also entered into an agreement with SJP whereby he agreed to pay annual fees and SJP agreed to provide reviews.

His representative complained to SJP on 15 January 2024 that these reviews hadn't happened as they should have so Mr W hadn't received what he should have in return for the fees he'd paid.

For completeness, Mr W'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 W's representative has confirmed it doesn't want us to consider it.

SJP said the following reviews had been carried out:

- June 2019.
- June 2020.
- August 2020.
- March 2021.
- April 2022.
- July 2023.

In relation to fees for review meetings due before 2018, SJP said the specific requirement to provide an annual review had only been introduced in 2018 and before that the requirement had been to regularly review the performance of products.

Mr W's representative brought his complaint to this service. SJP clarified that it thinks the complaint in relation to the fee paid for a 2017 review was made too late. And that all the other reviews had happened, just not always with exact gaps of one year. For example, it said the review due in December 2018 had just happened a bit late – in June 2019.

This issue was passed to me for a decision. I issued a provisional decision saying I was planning to decide Mr W's complaint is one this service can consider and that the complaint in relation to the reviews due in 2017 and 2023 should be upheld. But that Mr W's complaint about reviews due between 2018 and 2022 shouldn't be upheld.

SJP and Mr W's representative both replied to say they accept my provisional decision. I've reconsidered all the evidence that's been provided. Having done so, my decision is the same as my provisional decision for the same reasons. I've therefore repeated my provisional findings below.

Why I can look into the complaint about the fee paid for a review due in 2017

I've considered all the evidence that's been provided. Having done so, I'm satisfied Mr W's complaint about the fees he paid for a review meeting due in 2017 is one this service can consider.

This service can't look at all complaints. Our ability to consider complaints is set out in Chapter 2 (DISP 2) of the Financial Conduct Authority's Handbook of Rules and Guidance.

DISP 2.8.2R says that unless the business complained about consents:

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 limits...was as a result of exceptional circumstances.

SJP hasn't consented to us considering this part of the complaint.

As set out, it seems the agreement was entered into in December 2016, meaning a review would normally have been due in December 2017. The complaint was referred to SJP on 15 January 2024. This means this part of the complaint is outside the first part of the time limit – i.e. it was made more than six years after the events complained about.

The issue for me to decide is therefore whether this part of the complaint was also made outside the second part of the time limit – i.e. whether it was made more than three years after Mr W knew, or ought reasonably to have known, he had cause for complaint. Because the complaint was made on 15 January 2024, the question becomes whether he knew, or ought reasonably to have known, he had cause for complaint before 15 January 2021.

An investigator asked Mr W for his recollections from the time about what he was told about the fees and what he was expecting to receive. His representative said he remembers being told he could contact SJP at any time if he needed follow up advice. It said he'd told it he did have reviews "*in the later years but he didn't realise before the reviews commenced that he was paying for an annual review by paying his annual fees*".

I've looked at the documentation Mr W was given at the time to see what this set out he should expect.

The key facts he was given included the following:

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 0.25% of your investment each year, plus 3% of each regular contribution made after the initial advice has been paid for.

The key features document he was given said:

We will also provide you with ongoing advice to review your investment and ongoing contribution levels, if applicable, to ensure they remain appropriate, as set out in the brochure Welcome to St. James’s Place provided by your Partner. The cost of this each year is 0.25% 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.

And a document called “key facts about our services and costs” 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.

SJP has also provided a copy of the suitability letter it sent to Mr W on 15 November 2016. This read:

As part of my ongoing service I will contact you on a regular basis to arrange a review, or as your circumstances dictate.

Whilst these documents did talk about “ongoing advice” and say reviews would be arranged on “a regular basis”, none of them were clear exactly how the ongoing service would operate, including how often. And I can’t see that this was clarified in any later communications.

Following the review that was carried out in June 2020, Mr W was issued a suitability report – dated 23 June 2020 – which read:

Ongoing Advice

A key element of financial planning is conducting regular reviews of your financial arrangements to ensure they continue to meet your changing circumstances and objectives over time. Therefore, I will meet with you annually, and if needed more regularly, to review your personal circumstances and financial arrangements as part of my ongoing advice...

The Need for Regular Reviews

The decision regarding whether to continue with Drawdown should be reviewed on a regular basis to ensure it remains suitable to any changes in your circumstances and objectives. As a minimum, I recommend we conduct an annual review of your Drawdown arrangement...

Ongoing Advice Charge

When funds held within the St. James's Place Retirement Account are crystallised the ongoing advice charge will increase from 0.25% per annum to 0.50% per annum...

When your Drawdown funds have been reinvested into Managed Funds portfolio from the Money Market fund, the ongoing advice charge will increase 0.33% per annum.

So, whilst this letter set out that reviews would be annual moving forward, I don't think it was made clear to Mr W that the reviews up until that point should have been annual too. The advice following the June 2020 review was for Mr W to begin drawdown. Given this change to what he was doing and the fact the suitability report explained "*The decision regarding whether to continue with Drawdown should be reviewed on a regular basis...As a minimum, I recommend we conduct an annual review of your Drawdown arrangement*". And as the ongoing advice fee was increasing, I think it was reasonable for Mr W to not understand that he should have been receiving annual reviews before that point and to have thought the fact he would moving forward was because he was going to be doing something different. So, for these reasons I don't think the 23 June 2020 suitability report would have given Mr W cause for complaint.

Mr W had had a review before that 23 June 2020 suitability report – in June 2019. And so, I think it would have been reasonable for Mr W to have considered that he'd been receiving "*regular*" review meetings up until that point.

I'm therefore not persuaded Mr W knew, or ought reasonably to have known, he had cause for complaint about the missed 2017 review before 15 January 2020. And so, I'm satisfied I can consider his complaint about this.

Whether the fees that were paid should be refunded

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The fee for the review due in 2017

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 W in 2017, as it's not disputed an ongoing advice fee was paid in 2016 for a review in 2017. Ongoing advice couldn't have just been offered or been available only if needed, an actual service needed to be provided. As the fee was taken as an annual percentage, I'd expect to see SJP had provided personal recommendations or services for that individual client in each year that the fee was taken.

On this basis, as no review took place during 2017, I can't fairly or reasonably conclude that Mr W received the service he paid for in 2016. And so SJP should refund the fee Mr W paid in 2016, together with interest of 8% simple per year from the date the fee was paid to the date the compensation is paid (less any income tax due).

The fee for the review due in 2018

SJP has accepted that no review took place in 2018, however it's said that a review was carried out in June 2019 which was only just over six months after the 2018 review was due. It said:

we do not believe [this] is unreasonable when we consider the number of reviews held overall for this client.

I've carefully considered the documentation for the June 2019 review, and I'm satisfied an annual review was carried out then. The question that remains therefore is whether it was reasonable for this to have happened seven months after it was due.

Whilst reviews should have been carried out annually – as I've explained above – this isn't an exact science and sometimes they end up happening earlier or later. This could be, for example, because of the availability of either the adviser or consumer, or because it made sense to tie the review in with a financial event the consumer was planning or other advice they were requesting.

I've carefully considered Mr W's review history and I can see that after the first review the reviews were broadly once a year – sometimes with a smaller gap. Taking everything into account, I'm satisfied that the delay in the 2018 review was reasonable and therefore it wouldn't be fair or reasonable for me to tell SJP to refund the fee that was paid in 2017 for a 2018 review.

The fees for the reviews due between 2019 and 2022

It seems reviews took place between 2019 and 2022. I've been provided with a variety of documentation supporting this including meeting notes and suitability reports. I've carefully considered this documentation and I'm satisfied the reviews that were due in these years were carried out. As Mr W received the service he'd been told he'd get in return for those fees, it wouldn't be fair or reasonable for me to tell SJP to refund the fees that were paid between 2018 and 2021 for these reviews.

The fee for the review due in 2023

SJP initially said that there'd been a review in July 2023. However, when it provided the documentation to support this, the annual review meeting entry for 4 July 2023 simply said:

Client messaged on the 23rd October 2023 confirming he will be transferring out from SJP.

When the investigator asked SJP about this, it said that Mr W's adviser had left it to move to another firm and this had been explained to Mr W – along with his adviser options – on 4 July 2023. It said the next contact it'd had with Mr W had been on 23 October 2023 when he confirmed he'd decided to leave SJP.

I'm therefore satisfied that no review took place between April 2022 and Mr W leaving SJP in October 2023. On this basis, as no review took place during 2023, I can't fairly or reasonably conclude that Mr W received the service he paid for in 2022. And so SJP should refund the fee Mr W paid in 2022, together with interest of 8% simple per year from the date it was paid to the date the compensation is paid (less any income tax due).

Putting things right

As set out above, as no reviews took place in 2017 or 2023, SJP should refund the fees charged in 2016 and 2022 and add simple interest at a rate of 8% per year from the date the fees were charged to the date compensation is paid (less any income tax due).

My final decision

My decision is that the Financial Ombudsman Service can consider Mr W's complaint and that the complaint in relation to the reviews due in 2017 and 2023 should be upheld and St. James's Place Wealth Management Plc should refund the fees charged in 2016 and 2022 for the missed 2017 and 2023 reviews and add simple interest at a rate of 8% per year from the date the fees were charged to the date compensation is paid (less any income tax due). But that Mr W's complaint about reviews due between 2018 and 2022 shouldn't be upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 31 October 2024.

Laura Parker
Ombudsman