

The complaint

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

What happened

Mr R first met with SJP in 2009 and then again in January 2010. Following these meetings, Mr R invested into an ISA which commenced in 2010 and was subsequently redeemed in February 2013 (a small balance remained). Mr R's ISA was taken out prior to the implementation of the Retail Distribution Review ("RDR"), which in December 2012 introduced changes to the way in which advisers were paid – moving away from commission-based payments to fees such as OACs. Therefore, Mr R wasn't charged OACs on his ISA until he topped it up in 2018. Mr R fully surrendered his ISA in 2021.

Mr R also took out a Retirement Account which commenced in 2011 (prior to RDR). SJP says Mr R made further contributions to his Retirement Account in 2013, 2014, 2016 and 2018 and so he would have started to pay OACs from 2013 onwards.

Mr R also met with SJP in June 2018 and following this Mr R took out an International Regular Investment Bond which commenced in July 2018 (post RDR).

Mr R complained to SJP in June 2023. 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 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 R has confirmed he doesn't want us to consider it.

SJP considered Mr R's complaint and explained that an annual review didn't take place in 2022 and offered to refund the OACs paid for this review. SJP said it had provided Mr R with the ongoing advice services that were required by the Financial Conduct Authority rules since January 2010, except for this review.

SJP also offered £150 for any distress and inconvenience caused.

In its final response, SJP said:

"In considering the complaint we have looked at the relevant factors, which include:

- 1. The evidence we have that ongoing advice was provided to your client, 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 2010. 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 R didn't accept SJP's findings and so he referred his complaint to this service for an independent review. Mr R 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 some reviews so he understood that this was part of the service being provided by his adviser. However, he 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 raised some jurisdiction concerns. In summary it said:

- As Mr R's ISA and Retirement Account originally commenced prior to 31 December 2012, there was no separate charge for on-going advice and no commitment to provide on-going advice.
- Although SJP continued to make a small annual payment to the Partner, most of their fee was paid when the plans commenced. This payment was made by SJP and is factored into the OAC it deducts from the plans. As such, there is no separate deduction taken from the plan in relation to fees paid to the Partner.
- However, as a result of ongoing reviews, further contributions were made into Mr R's Retirement Account in 2013, 2014, 2016 and 2018. SJP's investigation considered whether or not reviews had taken place from 2018 onwards and concluded that the only year a review did not take place was in 2022.
- The additional sum invested into Mr R's Retirement Account was made on 18 June 2013 and so the first annual review would have been due on or around 18 June 2014 (12 months later).
- Having reviewed its files, SJP said the first review did take place in 2014, and as a result of this a further contribution was made into the Retirement Account on 25 June 2014.
- However, the next review was then due in June 2015 and it couldn't see that a review took place.
- 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 R ought reasonably to have known he had cause to complain about the missed review as all of the point of sale documentation that he ought to expect a review.
- It follows that any subsequent reviews missed between 2014 and 2017 are also too late for the same reasons.
- Mr R had ample opportunity to raise the issue around the lack of review in 2015, having made further contributions to his Retirement Account on five separate occasions over the period 2014 to 2018.

I issued a provisional decision on the complaint in October 2024. 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 June 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.

I understand that Mr R only started to be charged OACs on his ISA and his International Regular Investment Bond within six years of raising his complaint. As such, I'm able to consider these OACs. However, Mr R began being charged OACs on his Retirement Account prior to the six-year timeframe for his raising his complaint. So I will explain why we can't consider all of the OACs or any missed reviews associated with his Retirement Account.

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 June 2017) happened more than six years before Mr R submitted his

complaint to SJP. Therefore, I've had to consider when Mr R was aware or ought reasonably to have been aware of a cause for complaint.

The crux of this complaint is that Mr R 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 R's complaint around the OACs taken between 2014 and June 2017 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 R 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."

Having considered the documents mentioned above, I think Mr R 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 R 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.

The earliest suitability letter SJP has provided in relation to Mr R's Retirement Account is from March 2014, following his further contribution. In this, his 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 R 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 R 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 R 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.

I understand that Mr R made a further contribution to his Retirement Account in 2014, 2016 and 2018. SJP says Mr R didn't have an annual review due in June 2015. Given that he was told he'd receive "regular review meetings" which would be arranged "each year on the anniversary of [his] plan" in return for annual fees, I'm satisfied he ought to have been aware that he hadn't received the service he'd expect when the review in June 2015 was missed.

I've not been provided with anything to suggest there was other communication in 2015 that could have appeared to be a review. As such, I'm satisfied Mr R 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 2013 and June 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 R, 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 June 2017 onwards

I'm able to consider any missed annual reviews which are within six years of Mr R raising his complaint to SJP. As such, I can consider any missed reviews that ought to have happened from June 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 R, as it's not disputed ongoing advice fees were paid individually on his 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.

SJP has offered to refund the OACs that Mr R paid for the annual review due in 2022, as this didn't take place. SJP has also added simple interest at a rate of 8% per year to compensate Mr 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 R. I've not been provided with any evidence that shows Mr R 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.

SJP has provided copies of financial review documents dated 2019 and 2021, suitability letters sent to Mr R in November 2019 and July 2021, as well as internal notes from December 2023. Having reviewed these I'm satisfied that a review of Mr R's Retirement Account took place in 2018 (as recorded in the financial review document dated 2019), in 2019 (as recorded in the suitability letter dated November 2019) and in 2023 (as recorded in the internal notes dated December 2023). However, I've not been provided with any evidence to show an annual review of Mr R's Retirement Account took place in 2017 and so I think SJP should refund him for any OACs he contributed towards this missed review.

In terms of Mr R's ISA and International Regular Investment Bond, I've not been provided with any evidence to show that SJP reviewed these investments on an annual basis since he made his contribution to his ISA in 2018 and when his Bond commenced in 2018. So I'm currently minded to ask SJP to refund Mr R any OAC's he's paid in relation to his ISA and Bond from 2018 onwards

Responses to my provisional decision

Mr R accepted my provisional findings.

SJP didn't accept my findings in part. It provided evidence of a review letter sent on 25 July 2019 to show that a review of Mr R's ISA, Retirement Account and International Regular Investment Bond took place in 2019. It also provided evidence of a review email dated 3 February 2021 which demonstrated that a review of Mr R's ISA took place in 2021.

So the complaint has been passed back to me to decide.

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 provided further evidence to show that a review of all of his investments took place in 2019 and that his ISA was reviewed in 2021. As such, I'm now persuaded that some further reviews did take place. However, I've still not seen any evidence to show a review of Mr R's ISA took place in 2020, 2022 and when he complained in June 2023.

I've not seen any evidence to show a review of his International Regular Investment Bond took place in 2020, 2021, 2022 and when he complained in June 2023.

SJP has provided evidence to show a review of Mr R's Retirement account took place in 2018 (as recorded in the financial review document dated 2019), in 2019 (as recorded in the suitability letter dated November 2019), in 2021 (as recorded in the suitability letter dated 22 July 2021) and in 2023 (as recorded in the internal notes dated December 2023). However, I'm also still not persuaded a review of Mr R's Retirement Account took place in 2017, as well as in 2020 and 2022 as expected. I appreciate I missed I failed to comment on the missed review in 2020 and so my decision will include this in the compensation below.

Putting things right

It's not clear if SJP's original offer made in its final response for the missed annual review in 2022 covered all three of Mr R's investments. If it did include a refund of all AOCs paid towards all three of his investments (and if it has already been paid) SJP can deduct this from the compensation listed below. SJP can also deduct the £150 for the distress and inconvenience caused if this has already been paid in the original offer.

To put things right, SJP should refund Mr R the following:

- Any OACs paid in relation to his ISA for the annual reviews which were due but didn't take place in 2020, 2022 and 2023.
- Any OACs paid in relation to his International Regular Investment Bond for the annual reviews were due but didn't take place in 2020, 2021, 2022 and 2023.
- Any OACs paid in relation into his Retirement Account for the annual reviews were due but didn't take place in 2017, 2020 and 2022.
- Add simple interest at a rate of 8% per year to compensate him.
- Plus £150 for the distress and inconvenience caused.

My final decision

My final decision is that the Financial Ombudsman Service can only consider Mr R's complaint about any annual reviews missed from June 2017 onwards and that St. James's Place Wealth Management Plc should pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or

reject my decision before 19 November 2024.

Ben Waites
Ombudsman