

The complaint

Mr I complains about St. James's Place Wealth Management Plc (SJP). He's unhappy that his investments with SJP went down in value and thinks they failed in their duty of care towards him.

What happened

Mr I was an advisory client of SJP and in 2020 he spoke to his advisor as he was concerned about the market conditions at the time. He decided that he wanted to lower his risk exposure and moved his holdings into two corporate bond funds.

He complained to SJP in 2022, he was unhappy that his portfolio had lost money as it was invested in the lowest risk products. He thought SJP should have been monitoring his investments and should have contacted him when his holdings started to decline in value as he'd been promised ongoing reviews.

SJP looked into his concerns but didn't uphold the complaint. They explained that their advisor hadn't offered any guarantees around performance and had advised Mr I to invest in a different product, but Mr I had chosen to invest in two funds he had previous experience of. They also noted that their advisor had meetings with Mr I in 2021 and 2022 where he'd recommended a change in the portfolio but Mr I had declined to take up the advice.

Mr I didn't accept their findings and asked for our help. The matter was considered by one of our investigators who didn't uphold it. He noted that the value of Mr I's portfolio had taken a sharp downturn in 2022, but didn't think it was unreasonable that SJP hadn't made Mr I immediately aware of the fall in value as they didn't have an obligation to monitor the portfolio on a day-to-day basis.

Mr I didn't agree with the investigator and explained that he'd trusted SJP to deliver a service but they'd misrepresented what the fund would do. They'd also advised him the investment was the safest, but it lost money and they'd never informed him. The investigator wasn't persuaded to change his opinion so the complaint has been passed to me to make a decision.

I recently issued a provisional decision where I said:

"The 2020 recommendation

I've firstly considered the decision to switch investments in 2020. The suitability letter from the time notes that Mr I had a medium attitude to risk (ATR) and due to the uncertainty caused by the ongoing pandemic, he wanted to reduce his exposure to the markets by changing his portfolio. When Mr I complained to SJP he said that he'd wanted his holdings to be in low-risk investments as he was concerned about losing money. With this in mind I've considered the advice SJP gave him.

The advisor recommended a switch to the Immediate Income Portfolio, specifically into the Corporate Bond and International Corporate Bond Funds. The advisor has said that the

decision to invest in just two funds was Mr I's decision but I can't see this reflected in the suitability letter. However, I find this plausible as the suitability letter notes a discussion around the importance of diversification and Mr I's previous statements shows investments in the Corporate Bond Fund.

I've considered if Mr I was made aware of the possibility that he could lose money. There is a contradiction between his testimony and the testimony of the advisor. On one hand Mr I has said that at the time he wanted no risk and wouldn't have invested in anything volatile, but the advisor has said that he made Mr I aware of this possibility.

I think Mr I ought to have been aware of the possibility of the funds losing value. The suitability letter doesn't contain details of any warnings that were given but confirmed that further details of the funds could be found in the "Guide to Understanding Risk and Reward" document which explained that the funds were subject to bond risks which was defined as:

"This fund holds bonds issued by companies and governments. There is a chance that some of the companies or governments that issued these bonds will fail to make interest or capital payments, or other investors may believe the security of the government or company has declined, both of which would reduce the value of your investments. The values of bonds are also sensitive to changes in interest rates; for example, an increase in interest rates will usually cause a fall in the value of an investment in bonds."

Mr I has also provided evidence which shows he was provided with the key investor information documents for both funds which gave warnings that they were not risk free. The key risks were listed as:

"The risk category above indicates how much the price of the fund has gone up and down in the past. It does not necessarily provide a good indicator of future risk. Even funds in the lowest risk category are not risk-free.

This fund is in category 3 because it predominantly invests in bonds issued by companies. The values of these bonds go up and down over time. The price of a fund that predominantly invests in bonds will typically move by less than that of a fund that invests mainly in company shares.

The risk category of the fund is not fixed and may well change over time.

Key risks to understand for this fund are:

- The fund can hold bonds issued by companies and governments. These typically make up most of the fund's assets. There is a chance that some of the companies or governments that issued these bonds will fail to make interest or capital payments, which would reduce the value of your investments. The values of bonds are also sensitive to changes in interest rates; for example, an increase in interest rates will usually cause a fall in the value of an investment in bonds.*
- This fund makes significant use of derivatives. Whilst it is not anticipated that this will significantly alter the fund's risk profile, the use of derivatives could result in the fund being leveraged and the potential for large fluctuations in its value. Leverage occurs when the use of derivatives means that the fund could be exposed to a greater loss than the initial investment. There is a chance that leverage could: impair the fund's liquidity, cause it to sell holdings at unfavourable times, or otherwise cause the fund not to achieve its intended objectives. In addition, derivatives are bought from other institutions; if one of these institutions fails to meet its obligations when they fall due, this could impact the value of the fund."*

Taking everything into account, I'm not persuaded the recommendation was unsuitable for Mr I's circumstances at the time. The two funds were rated as being lower-medium risk but didn't carry a capital guarantee. There was a chance that losses could be suffered but they carried less risk than Mr I's previous holdings so met his stated objective of lowering his exposure to the markets. So, both funds were below his stated ATR, met his requirement to reduce his exposure to the markets and I can't see that SJP guaranteed that they wouldn't suffer losses. Therefore, I won't be asking them to do anything in respect of this area of the complaint.

I've then considered if SJP had an obligation to monitor Mr I's investments and notify him if of any falls in value. The information I've been provided with shows that Mr I was receiving ongoing advice from SJP, this means they would meet with him regularly to discuss if his investments were still suitable for his circumstances. I've been provided with a copy of the generic terms of the arrangement, and I can't see anywhere where SJP agreed to monitor Mr I's investments and contact him if they fell in value. There was also no requirement from the regulator to notify clients of losses of this size. Taking all this into consideration, I don't think I can fairly ask SJP to anything about this aspect of Mr I's complaint.

Ongoing advice charges

Mr I has provided evidence which shows that the adviser specifically said "You will receive an annual statement in respect of your investments and as part of my ongoing service I will review your affairs with yourself every six months".

Despite asking SJP for details of any meetings that took place, I haven't been provided with any evidence. Therefore, I'm not satisfied that Mr I received the meetings he was promised. Given that he was paying an ongoing advice charge (OAC) for these services, I don't think it is fair that he was charged for reviews that didn't take place.

I appreciate Mr I has only mentioned missed reviews from 2020 onwards but this service's inquisitorial remit allows me to consider complaints holistically, so I'm satisfied the OACs going back to when Mr I first became a client of SJP could potentially fall under our remit.

That being said, I must abide by certain rules set by the regulator. Our service operates under rules set by the regulator known as the DISP rules – these include time limits on bringing complaints to our service. At 2.8.2R, the rules say we cannot consider a complaint if it's made more than:

- *six years from the date of the event complained of, or, if later*
- *three years from the date the complainant became aware, or ought reasonably to have become aware, of cause for complaint*

If a complaint is made after these time limits have passed, we can't consider it unless:

- *there's a written acknowledgement or some other evidence of an earlier complaint, made in time; or*
- *the business complained about agrees we can look at it (SJP have not confirmed that this is the case); or*
- *there are exceptional circumstances that explain why the complaint couldn't have been made in time.*

So, in order to consider this part of Mr I's complaint, I must first determine which aspects

have been made within time or not.

Each ongoing advice charge (OAC) is its own event, with the fees being charged in advance. What this means in practice is that the fee being charged from 2013 for the first year would be for the review in 2014 and so on. The first fee was charged more than six years ago so I've considered when Mr I ought reasonably to have been aware he had cause to complain about not receiving his reviews.

Mr I should have been aware SJP agreed to meet with him twice a year to review his affairs. I don't think it's unreasonable to suggest that he ought to have been aware of cause for complaint when the reviews didn't take place as promised. Therefore, any complaint about fees paid more than six years before Mr I made his complaint has been made too late. He made his complaint to SJP on 27 June 2022 which means any complaint about missed reviews prior to June 2016 has been made too late. I haven't seen that any exceptional circumstances apply which would mean that I can disregard this time limit.

But, due to the first part of the rule, I am satisfied that we can consider any complaint regarding fees paid for missed annual reviews which are within six years of Mr I raising his complaint to SJP i.e. any missed reviews from June 2016 onwards.

I've then considered SJP's obligations to Mr I under the regulator's rules. 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 I from 2013. 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.

The only meetings that have been evidenced are the ones that took place in 2020 and 2022. I've seen a suitability letter issued after the 2020 meeting and Mr I said that the advisor came to see him in 2022 and told him that his portfolio had lost around £5,000.

Therefore, I'm of the opinion that the following reviews didn't take place as no evidence has been provided to show that they happened (for ease of reading I've set out that he should have received a meeting in the first and second halves of each year):

- *H2 2016, H1 and H2 2017, H1 and H2 2018, H1 and H2 2019, H2 2020, H1 and H2 2021*

I propose SJP should refund Mr I the OACs he paid for the reviews that didn't take place, they should also add simple interest at a rate of 8% per year. Mr I has also mentioned the distress and inconvenience he has suffered due to the lack of reviews, so I think it is fair that SJP also compensates him with £150 in order to put things right."

Responses to my provisional decision

Mr I didn't accept my findings. He reiterated that SJP, in his opinion, had completely ignored the duty of care they had towards him. He thought they'd taken payment for a service which they hadn't delivered, they hadn't monitored his account or given him regular visits.

SJP noted my comments but said that they didn't think that lack of service fell within the scope of this complaint. They asked for the opportunity to consider this area as a separate complaint.

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.

Having reconsidered everything, I see no reason to depart from my provisional findings and I will now explain why.

I appreciate Mr I's disappointment with my findings. But I'm satisfied that my provisional decision explained why I thought SJP didn't have to monitor his investments and contact him if the value fell. As he's provided no further submissions around this point, I'm not persuaded that I should change my opinion.

I note SJP's request to consider the lack of service as a separate complaint, but I don't think that is necessary. I've issued my findings on this point, so I don't think it would be fair on Mr I to wait further for an answer to this aspect of his complaint.

I appreciate SJP thinks that Mr I's complaint was solely to do with the performance of his investments, but I don't think this is the case. In his submissions to us, Mr I raised points around the absence of his advisor and the lack of contact he'd experienced from SJP.

This service has an inquisitorial remit which means we're able to consider what we think is relevant to a complaint, even if it hasn't been specifically raised by the complainant, in order to reach a fair and reasonable outcome. Given what Mr I raised about the lack of contact from SJP, I think the lack of the ongoing reviews which he was paying for, is relevant to his complaint.

SJP haven't provided any further evidence of review meetings that were held with Mr I, despite our repeated requests. Therefore, I see no reason to depart from my provisional

findings that this complaint should be partially upheld, and I've set out below how they should put things right.

Putting things right

SJP should refund Mr I for the review meetings he paid for but were never held. I'm of the opinion that the following reviews didn't take place as no evidence has been provided to show that they happened (for ease of reading I've set out that he should have received a meeting in the first and second halves of each year):

- H2 2016, H1 and H2 2017, H1 and H2 2018, H1 and H2 2019, H2 2020, H1 and H2 2021

SJP should refund Mr I the OACs he paid for the reviews that didn't take place, they should also add simple interest at a rate of 8% per year to date of settlement. For any year where only one meeting took place then they should refund Mr I half that year's OAC. Where no meetings were held, then they should refund Mr I the full OAC for that year.

Mr I has also explained the distress and inconvenience he has suffered due to the lack of reviews. I take the point he has made, so I think it is fair that SJP also compensates him with £150 in order to put things right.

My final decision

For the reasons I've given above, my decision is that this complaint should be partially upheld. St. James's Place Wealth Management Plc should put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 9 January 2025.

Marc Purnell
Ombudsman