

The complaint

Mr D as the trustee of the D Trust complains that St. James's Place Wealth Management Plc ("SJP") has unfairly charged ongoing advice charges ("OACs") on investments held with it.

What happened

Mr D held three Investment Bonds in trust with SJP.

Following a breakdown in a relationship between Mr D and his SJP advisor between 2022 and 2023, SJP wrote to Mr D in June 2023 explaining it had ended its advice services with him and he would no longer be required to pay OACs.

Mr D complained to SJP as he felt it had unfairly charged OACs on all his investments, despite it not providing any financial advice from 2022 onwards.

SJP considered Mr D's complaint but didn't uphold it. In summary, it said:

- In March 2023 an annual suitability review was offered to Mr D but he declined to accept the review.
- In June 2023 another review was offered to him but he once again declined, indicating that he was investigating a complaint process via a claims management firm and looking to leave SJP for another provider.
- On 16 June 2023, SJP issued notification that it was no longer prepared to work with Mr D and declared options on its advice fees and charges.
- On 20 June 2023 SJP sent a letter sent to him to end its advice service with him.
- SJP said it was unable to give Mr D financial advice and explained how he could manage his investments via its administration centre for any transactions he wished to make and provided different telephone numbers to assist with that process.

Mr D didn't accept SJP's response and so he referred his complaint to this service for an independent review.

One of our investigators contacted SJP for more information and it confirmed that it had provided Mr D with an annual review in 2022 but it turned off OACs being charged on his investments on 30 June 2023 when it stopped providing its advisory service to him.

The investigator considered this new information and felt the complaint should be upheld. In summary, they said:

- There is evidence that SJP attempted frequent contact with Mr D and offered to hold an annual suitability review with him in March and June 2023, but these were declined.
- Regardless, our service would still not consider it appropriate for SJP to continue taking the monthly OACs without an annual review taking place.
- SJP should refund the OACs charged for services not received between 20 June 2022 and 30 June 2023.

- They'd seen no evidence that OACs had been applied to Mr D's investments after 30 June 2023.

SJP accepted the investigator's findings, but Mr D didn't. He said he had concerns that OACs were being charged beyond 30 June 2023 as he received a letter dated 30 January 2024 which indicated he was still being charged these.

As Mr D remained unhappy, the complaint has been passed 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.

The crux of Mr D's complaint is that he's been unfairly charged OACs from 2022 onwards as he didn't receive an annual review on his investments. SJP has explained that it provided Mr D with an annual review on his investments in 2022 but accepts that it didn't provide him with one in 2023. However, SJP says it turned off OACs on 30 June 2023 following it ending its advisory services with him.

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 D, as it's not disputed ongoing advice fees were paid his Investment Bonds. Ongoing advice couldn't have just been offered or been available only if needed, an actual service needed to be provided. As the fees are 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.

Looking at the information provided by SJP, I can see that Mr D met with SJP on 18 May 2022 to discuss his investments. An email dated that day from SJP explains that it had reviewed all of Mr D's investments and I understand a follow up review was held on 20 June 2022. As such, I'm satisfied Mr D received an annual review in 2022 and SJP doesn't need to refund any OACs charged in relation to this review.

Turning to the expected review in 2023, SJP has accepted that it didn't provide Mr D with this and so it follows that SJP should refund any OACs charged in relation to the missed review.

SJP says it turned off OACs being charged on his investments on 30 June 2023, but I've not seen any confirmation of this. Mr D believes he was charged OACs after this date. He has provided a copy of a letter he received from SJP dated 30 January 2024 which suggests he was still being charged OACs. SJP has explained that this letter was generated in error as one of its systems was not updated to reflect that OACs had been turned off and the letter was generated from the information held on that system. I've also not seen any evidence of statements to determine whether OACs were charged after this date.

Whilst it's not clear whether OACs were turned off, I'm satisfied SJP shouldn't have charged OACs on any of Mr D's investments after 30 June 2023. So I will address this uncertainty in the putting things right section below.

Putting things right

It's not disputed that SJP failed to provide Mr D with an annual review in 2023 and so SJP should do the following:

- Refund Mr D as the trustee of the D Trust any OACs paid on the three Investment Bonds in relation to review Mr D expected to receive in 2023, plus 8% simple interest from the date the OACs were charged until the date of settlement.
- The same redress should be applied if any additional OACs were taken after 20 June 2023.
- I understand SJP says it didn't take any additional OACs after this date, but to demonstrate this, SJP should also provide Mr D as the trustee of the D Trust with a breakdown of the charges applied on the three Investment Bonds for the period in question, that has a sufficient level of detail to show the fees have not been taken. For instance, a statement of charges could be helpful - especially if its detailed enough that when read side by side with a statement for a year when the OAC was taken, it is clear that it wasn't during the time in question.

My final decision

My final decision is that I uphold this complaint and 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 D as trustee of the D Trust to accept or reject my decision before 20 January 2025.

Ben Waites
Ombudsman