

The complaint

Ms M held the following assets with St. James's Place Wealth Management Plc ('SJP') – a Stocks and Shares Individual Savings Account ('ISA'), a Unit Trust Feeder ('UTF') holding that fed the ISA, a Retirement Account ('RA') and International Investment Bonds ('IIBs'), one of which was held on a joint life basis.

She says SJP did not deliver the Ongoing Advice Service ('OAS') she paid for, and that its failure to assist and advise her in the management of her income withdrawals led to the depletion of the UTF and ISA.

SJP concedes that it cannot evidence provision of annual reviews under the OAS for some of the years of service. It has offered redress (and compensation for the distress and inconvenience the matter caused Ms M) in this regard. However, it disputes the complaint about management of her income withdrawals, and it says there is evidence from 2017 showing she was warned about depletion of capital if she continued with the rate of withdrawals at the time.

What happened

The complaint's background, as summarised by Ms M, includes the following – her mother, her sister and her were existing clients of SJP in 2015, when her mother sadly passed away; in 2017 the SJP partner (the 'first partner') who had advised her (and her family) from the outset retired; a replacement partner was appointed at the time (the 'second partner'), with whom she says she did not feel comfortable, so another partner was appointed in 2018 (the 'third partner'); but, she says, there was never any meaningful financial or wealth planning service from the third partner over the years and there was also little to no engagement from him.

To illustrate her service-related experiences with the third partner, Ms M has referred to the period between 2019 and 2022, when she was abroad. She says despite chasing contact and engagement from him, such contact rarely and only briefly happened during this period; that despite her return to the UK in 2022 she did not hear from him until 2023 (at which point he said he was retiring so a new adviser, under the same firm, would be appointed for her); that a meeting with him was held around June 2023, in order for her to be clear on the state of her assets before meeting the new adviser; and that during this meeting he displayed unawareness of all her SJP assets and income streams, to the extent that she had to inform him about what they were.

With regards to the impact of the income mismanagement she alleges against SJP, Ms M said this in her 2023 complaint – *"As of 2024, when the ISA runs out, I will lose £2000 per month income. At no point was I prepared for this eventuality, as I believed my state pension and personal pension would be in addition to the £3000 per month I currently receive."*

Ms M's RA and ISA were recommended in November and December, respectively, 2013. The former resulted from a transfer of the Aviva pension she previously held. The RA was invested in SJP's Balanced Portfolio, and was based on expected retirement at age 65. The

ISA was invested in its Conservative Portfolio. Initial fees applied to the setting up of both products. Annual Management Charges, Ongoing Advice Charges ('OACs') for the OAS, and fund charges also applied to both products.

In terms of income from the ISA, no immediate plans to make such withdrawals were stated in the first partner's 2013 suitability letter (in which the ISA was recommended). The letter said – *"We discussed the time horizon over which you are investing. You intend to use your investment[to [sic] generate a lump sum to maintain lifestyle in 10 years' time."*

The inheritance she received from her late mother's estate in 2015 substantially increased Ms M's wealth. By this year she also had a single life IIB (with a value of around £44,000) in place with SJP. The first partner's suitability letter to her of February 2015 recommended the setting up of and investment (of around £15,000) in the UTF, an additional investment (of £15,000) in the ISA, and the setting up of the joint life IIB. The joint life IIB was to be held with her sister, into which a significant amount (over a quarter of a million pounds) that they inherited together from their late mother was invested. The letter also said – *"You intend to use your investment to generate an income starting in 1 years and to use any surplus funds to maintain lifestyle."*

In 2016 Ms M invested additional inheritance capital (£100,000) into the UTF, on the first partner's recommendation. With regards to income management, his October 2016 suitability letter said –

"While your primary investment objective at this stage is capital growth, we also discussed how you intend to draw an income of £500.00 per month from this plan, starting on October 2017. An income will be required at this point because you are in the process of reducing your working hours and will be requiring income to maintain your current life style."

If growth achieved after charges is lower than the level of withdrawals being taken, the value of the original capital of the investment will be eroded."

The letter also recommended investment of £30,000 in the single life IIB, with the following relevant explanations –

"... you have already set aside capital for future ISA years and you wish to spread your investment into your existing International Investment Bond for tax efficient growth and future income."

"While your primary investment objective at this stage is capital growth, we also discussed how you intend to draw an income of £100.00 per month from this plan, starting on October 2017. An income will be required at this point because because [sic] you are in the process of reducing your working hours and will be requiring income to maintain your current life style."

If growth achieved after charges is lower than the level of withdrawals being taken, the value of the original capital of the investment will be eroded."

and related to both recommendations –

"An emergency fund of £50,000.00 is held in accessible cash accounts. The emergency fund held exceeds my recommended minimum of three months expenditure."

In a separate October 2016 suitability letter, a lump sum contribution of £3,600 into the RA was confirmed.

There is no available evidence of a review between the parties in 2017. However, there is a copy of email correspondence in late 2017 briefly conducted between Ms M and the second partner, and it included the following –

- With regards to income, she explained to the partner that as she wound down her self-employed activities she would need to increase her income from investments. In this respect, she asked for information confirming her investment income streams.
- The partner confirmed monthly income from her ISA and the two IIBs. He also recommended two lump sum withdrawals from her single life IIB (one, £2,880, for a contribution into the RA, and the other, £14,000, to use as her emergency funds).

There is also common ground, agreed by both parties, that in a September 2017 contact between Ms M and the second partner she was informed/warned that she would run out of money for income if she continued to withdraw income at the level it was being withdrawn at the time. Whilst accepting that this happened, Ms M has made the following submissions –

“... I accept that I was informed about my finances ... in the following manner “If you carry on like this your money will run out.” Due distressing personal circumstances at the time (dealing with my mother’s probate and property sale) I wasn’t able to cope with what he said (or rather how he said it) and suggested we end the meeting. I don’t understand why there was no follow-up after the delivery of that information.”

“I was assigned to [the third partner], who never once mentioned my finances in the same way ... This makes me wonder about the handover process (whatever that is) was it negligent in some way? Otherwise surely the first thing that [he] would have addressed was the situation that [the second partner] described to me.”

“... [he] never had any discussions around a wealth management plan, nor any review of my investments and how they might sustain me financially into my retirement. Neither did he explain to me that the way my money was invested (and income paid) would lead to my money running out. Had this been made clear to me there is no doubt I would have been open to my finances being reconfigured to protect my capital without completely draining my resources.”

SJP has confirmed that it cannot evidence any annual reviews taking place between 2018 and 2022, and Ms M has confirmed that no reviews or OAS was provided during this period.

Around late 2023 a new adviser was appointed, by the third partner’s firm, to service Ms M’s account. There is evidence of correspondence and contact between her and the new adviser, including a wealth valuation report issued to her in August 2023, a review in September 2023, a summary of the review emailed to her on 19 September 2023 (covering her circumstances and suitability of her invested assets) and the resulting financial planning report of 2 October 2023 that was also issued to her. Ms M has been complimentary, in her submissions, about the new adviser, and confirmed that he has provided her with “... *clear explanation and overview of [her] finances, detailed reviews and comprehensive retirement planning*”.

On the matter of income management, the detailed financial planning report includes a section dedicated to a cash flow analysis on how income will be generated for Ms M from 2023 and until she reached age 100. Based on the analysis, and as she stated in her complaint, the income from her ISA was due to be used up in 2024.

However, the rest of the analysis shows that income from her state pension and the two IIBs will cater for all of her total expenses and will provide her with annual surplus/disposal

income (after deduction of all annual total expenses) in the range of around £13,000 (in 2025) to around £1,600 (in 2040); that thereafter there will no longer be surplus annual income for her, and income from the joint life IIB will end in 2041; but there will never be a deficit because drawings from her significant cash deposit holdings between 2041 and 2043 will supplement her state pension and IIB income, income related to her RA between 2043 and 2049 will then supplement the same, and income from her state pension and single life IIB will then continue to provide her with all she needs to cover her total expenses thereafter.

There is correspondence between Ms M and the new adviser in October 2023 related to this analysis, and in which she appears to have enquired into what the analysis would look like with an increased need for income and with the prospect of investing new capital from the sale of her home/downsizing (to release investable capital of around £150,000).

On 11 October 2023 the adviser sent her new analysis reports to address these scenarios. His covering email summarised that the increased income, on its own, would be sustainable for 20 years before there is a deficit, with the solution to the deficit relying on a specific minimum level of unpredictable investment performance; and that with the prospect of the new capital investment the increased income would be sustainable for 27 years, before another specific minimum level of investment performance will be needed to avoid a deficit thereafter.

One of our investigators looked into the complaint and began by considering our jurisdiction to do so. He noted that only SJP's OAS to Ms M from 2017 onwards is captured within the six years time limit for complaints, based on her 2023 complaint, and that, for reasons he explained, this is the only time limit that applies. With regards to merit, he concluded that SJP had failed to provide the OAS and annual reviews that were due to Ms M between 2017 and 2022. He set out how it should redress this (based on the OAC she paid during the same period) and he agreed with SJP's offer of £250 compensation for the distress and inconvenience caused to her.

However, the investigator referred to the second partner's warning to Ms M in 2017 about depletion of her capital if she continued to take income as she was doing at the time. He also noted the visibility she had of her assets' valuations and of the amounts of her withdrawals over the years. For these reasons, he concluded that even without the missing annual reviews she would still have been aware that her withdrawals were depleting her capital.

He concluded his view with an observation about any possible ongoing issues about non-delivery of the OAS *after* Ms M's 2023 complaint, and he suggested to SJP that it take a pragmatic approach towards resolving any such issues.

SJP referred to the aforementioned 2017 correspondence as evidence of some contact between the parties in that year, but it also seems to have accepted the investigator's finding about non-delivery of the OAS between 2017 and 2022.

Ms M considered the £250 award to be insufficient, and she disagreed with the finding on her complaint about the depletion of her ISA/UTF. She gave reasons for her disagreement, parts of which are quoted above, and stressed the breakdown of SJP's service in the matter, whereby, she says, it applied no due diligence to and follow-up on the matter after raising it in 2017. She briefly explained the financial, personal and health related impacts her experiences in the matter have caused, and she asked for a review by an Ombudsman.

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.

Jurisdiction

The regulator's Handbook contains the rules on the time limits for complaints. They are set out in the Dispute Resolution ('DISP') section of the Handbook. DISP 2.8.2 R says –

“The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication; or

(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 ...”

In other words, we cannot consider a complaint referred more than six years after the complaint event or, if later, more than three years after the complainant knew or ought reasonably to have known there was cause for complaint.

A late complaint can be considered if exceptional circumstances caused its delay. The regulator's guidance on what constitutes exceptional circumstances refers to a high threshold and, for example, to instances in which a complainant is incapable of referring a complaint in time. No such circumstances have been mentioned by Ms M, so I have not considered this aspect any further.

As the investigator found, her September 2023 complaint covers events in her case – with regards to the OAS and income management aspects of her complaint – over the preceding six years, beginning in September 2017. The OAS began in 2013, so parts of that ongoing service are therefore outside the six years time limit period (September 2017 to September 2023) for the complaint.

It is evident from her experiences in the review and new advice activities conducted between her and the first partner, after 2013 and in the years up to 2016, that Ms M would have been aware of her entitlements under the OAS and of her entitlement to annual reviews.

As I said in the background above, there is no evidence of a review of her account in 2017. SJP appears to concede the same, even though it refers to some contact with her in September that year, and it accepts that no reviews can be evidenced between 2018 and 2022. Given her previous experiences, Ms M either knew or ought reasonably to have known of cause for her complaint about the OAS as early as 2017 or 2018 when she did not receive the annual review(s) she knew she was entitled to. If the three years time limit is applied in this respect, it expires in either 2020 or 2021. These remain within the six years time limit period for the complaint, they do not happen *later* than that period, so the three years time limit does not apply.

The only time limit that applies to Ms M's case is the six years time limit, and it covers only the events and/or omissions in the period noted above. Her RA and ISA were recommended in November and December 2013, both carried entitlement to the OAS and annual reviews and the covering letter for SJP's 2016 UTF and IIB recommendations also refer to an associated OAS entitlement, so a review of these assets around November/December 2017 would have been due.

The six years time limit period for Ms M's September 2023 complaint covers this undelivered 2017 OAS/annual review and those conceded by SJP between 2018 and 2022.

Merit

As I mentioned above, there does not appear to be any dispute over the non-delivery of the OAS and annual reviews Ms M was entitled to between 2017 and 2022. SJP accepts it cannot evidence any annual reviews during this period, and I have not seen any such evidence. The conclusion that reasonably follows is that no annual reviews – which were the main component of the OAS – were delivered to Ms M's account between 2017 and 2022. I have considered the 2017 contacts SJP has referred to, but it is quite clear that they fall short of an annual review of her assets under the OAS, and it does not seem that SJP seeks to argue otherwise.

It also does not seem that Ms M disputes evidence of the detailed review of her assets that took place in 2023. Indeed, her compliment towards her new adviser appears to begin with reference to his work in the 2023 review.

Therefore, and for the above reasons, I conclude there is common ground on, and a clear basis for, upholding, as I do, Ms M's complaint about SJP's failure to deliver the OAS she paid for and was entitled to between 2017 and 2022. I will deal with redress (and compensation for distress and inconvenience) in the next section.

The other part of the complaint is about management of Ms M's income withdrawals.

In summary, I give due weight to the undisputed fact that she was informed and warned about depleting her capital (seemingly with regards to the ISA/UTF) in 2017; and I agree with her point that there is a wrongdoing in SJP's failure to follow-up on the warning; but, like the investigator, I too find that her awareness of the matter in 2017 was key; SJP's wrongdoing remains within the remit of my finding about its failure to deliver the OAS over the aforementioned period; and, on balance, I am not persuaded that there is ground for any additional or separate finding (or any additional or separate redress) on the matter.

Had there been an annual review in 2017, or in 2018, I consider it inconceivable that the warning would not have been subjected to further consideration and discussion. It probably would have been. However, in the circumstances of the case, I have not found grounds to conclude that any such consideration or discussion would have made a difference to the income withdrawals.

Ms M already knew about the problem in 2017, when she was warned about it. I acknowledge she was entitled to a review-based discussion on it, but other than reducing her income withdrawals or retaining them as they were (and sustaining them with help from her cash deposit holdings), the only other thing to consider would probably have been how her invested assets could be managed in a way that mitigated the threat of the ISA/UTF being depleted. It strikes me that this would probably have led, ultimately, to considerations about investment performance, which were unlikely to be guaranteed.

I do not consider that I need to address the option of using Ms M's cash deposit holdings to sustain her income withdrawals, because this is not the focus of her complaint. As presented in her submissions, that focus is on the management of income generated by her invested assets to meet her income needs.

Despite her awareness of the warning and problem, it appears that Ms M did not subsequently reduce her income withdrawals in or around 2017, and did not seek to do so at the time. In this context, I cannot see how a review discussion would have made a difference. I cannot see how it would have added any more to the warning to prompt her to reduce her income withdrawals, where the warning itself had not achieved that. Instead, it seems more likely (than not) that a review in

2017 or 2018 would have concentrated on how to manage her invested assets to meet her income needs – as was broadly the case in the 2023 review.

The above is in no way a criticism of Ms M. I am aware of her personal and professional circumstances at the relevant times, and I have chosen not to detail them in this decision to avoid compromising her anonymity. However, I acknowledge that those circumstances explain the levels of income she needed over the relevant times. I do not say or suggest that her withdrawals were unreasonable. Furthermore, her assets were hers to deal with as she saw fit, so I observe and respect this too.

However, the point to note is that whilst SJP's failure to follow-up the 2017 warning in the reviews it failed to deliver thereafter was wrong, its failure was part of the wider OAS failure that has already been upheld. In the circumstances of Ms M's case, I have not found ground on which to treat it separately. For the reasons given above, I also have not found ground to conclude that follow-up on the warning, in a review, would have made a difference to the level of income withdrawals.

As to whether (or not) such follow-up could have made a difference to the management of her invested assets, I consider, on balance, that it could have made a difference to the recommended *approach* towards the management of those assets. However, in the absence of evidence that she would have had a guaranteed and/or predictable outcome, I have no basis to say what, if any, tangible investment performance difference, in terms of sustaining her required income, could have been achieved.

For all the reasons given above, I uphold Ms M's complaint only for SJP's failure to deliver its OAS to her account from 2017 to 2022.

Putting things right

fair compensation

SJP partly upheld Ms M's complaint and made the following offers to her –

"Given the lack of service you have received, I have partly upheld your complaint and would like to offer a payment equivalent to the OAC deducted from 2018 to 2022, together with simple interest calculated at 8% per annum."

"In addition, I have included a payment for £250 to reflect the distress and inconvenience caused as a result of you having to bring this matter to our attention. This amount is in line with what I believe the Financial Ombudsman Service would expect us to offer in regard to any trouble & upset that may have been caused."

The investigator's redress proposal reflected SJP's redress offer, but, as explained above, he extended it to include 2017.

Based on my findings above, I too conclude that fair compensation to Ms M must be based on a refund of the OACs deducted from her account between 2017 and 2022. This is based on the non-delivery of annual reviews in 2017, 2018, 2019, 2020, 2021 and 2022, so I expect calculation of the refund to be based on all the OACs deducted for the undelivered annual reviews – the reason being that they were deducted for annual reviews that were not performed.

The investigator was persuaded by the circumstances of Ms M's case to agree with SJP's use of 8% simple interest as a way to cater for, as close as possible, any lost performance or returns on the deducted OACs that are to be refunded. In another case, depending on the circumstances, a different approach could be considered for this purpose (for example, using, as a benchmark, performance of the portfolio(s) from which fees were deducted), but in the circumstances of the

present case I agree that using 8% simple interest per year is a broadly fair and reasonable approach, so I will do that in my orders below.

I share the investigator's observation about any possible ongoing issues about non-delivery of the OAS *after* Ms M's 2023 complaint, and I also suggest to SJP that it take a pragmatic approach towards resolving any such issues in line with the way in which this decision has been determined.

Our service's guidance on how we approach awards for trouble, distress and inconvenience can be found on our website, at the following link – <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience>.

Under this guidance, awards up to £300 can be considered where a firm's wrongdoing has caused a complainant some distress, inconvenience and disappointment.

In another case, depending on the circumstances, the idea of a complainant experiencing the non-delivery of an OAS s/he paid for, and experiencing this over six years, could lead me into different considerations. Considerations that might fall into a different band of awards. However, in the present case, I consider this band of awards to be appropriate because it is clear from Ms M's submissions that the main cause of her trouble and distress is the income management issue. I have not upheld that issue, so I do not find a basis to make an award on it.

Nevertheless, the impact of the undelivered OAS and the trouble she has experienced in having to complain about it should be recognised. I appreciate there is a form of mitigation in the matter, by way of the positive experience she appears to have had with her new SJP adviser since 2023, but I consider that her experience prior to that would still have caused her some distress and inconvenience. On these grounds, I am satisfied that an award of £250 is fair compensation for the trouble and inconvenience she has been caused.

what must SJP do?

To compensate Ms M fairly, SJP must:

- Calculate and refund to her all the OACs deducted from her account for the purpose of the undelivered OAS/annual reviews in 2017, 2018, 2019, 2020, 2021 and 2022. The total of all the refunds is 'A'.
- Calculate interest at the rate of 8% simple per year on each deducted OAC from the date of deduction to the date of settlement. The total of all the interest is 'B'.
- Pay A + B ('the compensation') to Ms M.
- Pay Ms M £250 for trouble and inconvenience.
- Provide the details of the calculation to Ms M in a clear and simple format.

Income tax may be payable on any interest paid. If SJP deducts income tax from the interest it should tell Ms M how much has been taken off. It should give her a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

My final decision

I uphold Ms M's complaint on the grounds set out above. I order St. James's Place Wealth Management Plc to calculate and pay her redress and compensation, as I also set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 5 August 2025.

Roy Kuku
Ombudsman