DRN-5596284

The complaint

Mr W complains that St. James's Place Wealth Management PLC (SJPWM) failed to review his pension for over 20 years.

What happened

In May 1996 SJPWM recommended that Mr W open an Executive Retirement Plan with it to accept regular pension contributions.

SJPWM says it sent Mr W a letter explaining its recommendation a long with an illustration document.

In November 2024 Mr W emailed SJPWM to raise a complaint. He said it had recently come to his attention that SJPWM had been charging him for annual reviews. However, Mr W said he hadn't received, or even been offered, any annual reviews on his pension for over 20 years. He asked that SJPWM refund these charges.

SJPWM responded to Mr W's complaint. In summary it said that Mr W's plan commenced in 1996 when he was sent a key features and illustration document outlining the charges. It said while it made a small annual payment to Mr W's adviser, the payment is factored into the annual management charge of the plan. As such, there is no separate deduction of fees paid to the adviser.

It went on to say in 2012 the regulator introduced new rules which required an adviser to provide ongoing advice in return for an agreed fee. But as Mr W's investments commenced in 1996, there had been no separate charge applied to his plan for ongoing advice.

Mr W wasn't satisfied with SJPWM's response so he brought his complaint to our Service.

Our Investigator looked into things and concluded that the payment to SJPWM was a commission payment and was clearly set out in the documentation provided to Mr W. He said there was no agreement in the documentation to suggest Mr W was paying a fee to receive ongoing reviews of the suitability of the pension. And so, SJPWM weren't obliged to provide Mr W with ongoing reviews.

Mr W disagreed with our investigator. He said the illustration showed SJPWM had committed to providing 'ongoing servicing' which has been paid for but not received. He said the ongoing service was that the plan would be reviewed and kept on track. But Mr W says SJPWM hasn't delivered its service and hasn't been in contact in over 20 years to provide the 'ongoing service' he's paid for.

As no agreement could be reached, this complaint has been passed to me for a decision.

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.

In deciding this complaint I've taken into account any relevant law and regulations, regulator's rules, guidance and standards, codes of practice and what I consider to have been good industry practice at the relevant time.

To help me make a determination here I've looked at the agreement Mr W entered into with SJPWM at the point of sale in 1996 as well as Mr W's testimony, to consider whether SJPWM committed to providing Mr W with annual reviews or ongoing advice.

The suitability letter from May 1996 doesn't mention anything about annual reviews or ongoing advice. It states the reason SJPWM made the recommendation to open Mr W's pension was because it was a tax-efficient means of him saving for his retirement.

I've seen nothing in the letter to suggest SJPWM gave Mr W the impression that he should be entitled to annual reviews from SJPWM's adviser. Nor did it suggest he was going to be paying a fee to enable SJPWM's adviser to give him ongoing advice.

The illustration SJPWM say accompanied the application in 1996 had a section entitled 'How much will the advice cost?'.

This said:

- *"For arranging this plan and providing ongoing servicing throughout its term, J Rothschild Assurance will provide your adviser's practice with direct remuneration and administration services. These have been valued at £465.00 in the first year, £483.00 in the second year, followed by a variable amount depending on the value of your fund. For example, if the value of your fund grows at 9% per annum then the amounts would be £18 in the third year and £221.04 in the final year.*
- *Each increase in contribution will give rise to an increase in the value of direct remuneration and administrative services no greater than proportionate to the increase in contribution. If contributions increase as illustrated then the additional value in the final year will be £277.76*
- *These amounts are paid out of the deductions shown and are included in the illustrations above. They depend on the size of contribution, the term of the plan and the value of your fund."*

There is no mention in the illustration of a separate charge for annual reviews or ongoing advice.

It might be helpful to point out here that SJPWM weren't the pension provider. SJPWM are the advisory arm of St. James's Place. So, the charge paid from Mr W's pension was paid by a separate entity – initially J. Rothchild Assurance which later became SJP UK Plc - the pension provider. And it was the pension provider who committed to "*provide your* [Mr W's] *adviser's practice with direct remuneration and administration services*."

Arrangements such as these whereby a product provider would pay a financial advisor commission on an ongoing basis was known as trail commission. It wasn't uncommon prior to 2013 for these arrangements to be in place. It was often funded, as it appears to have been in this case, by the product provider passing on some of the charges it collected to the advisor. However, having no advisor, or trail commission not being paid, wouldn't automatically mean the pension provider would deduct less charges - the same charges would simply be retained by the provider.

From what I've seen, the charges and commission were disclosed to Mr W at the time SJPWM advised him to open a pension and contribute into it. On that basis, SJPWM was entitled to the commission payments it received.

On 31 December 2012, the regulator, the Financial Conduct Authority (FCA) introduced the Retail Distribution Review (RDR) rules. These rules required retail investment advisors to charge an explicit fee for their services, rather than receive commission generated from product recommendations.

Sometimes, it was specifically agreed that trail commission would entitle a consumer to further services, such as regular reviews and/or further advice. Whether or not an ongoing service was provided for the payment of commission was dependant on the agreement between the adviser and their client. So, I've considered whether, as part of receiving the trail commission, SJPWM agreed to provide Mr W with annual reviews.

The commitment made in relation to the ongoing commission payment appears in the documentation to be that SJPWM would be providing '*ongoing servicing*' throughout the term of the pension.

I think it's important to note here that the RDR aimed, amongst other things, to increase the transparency and fairness of adviser fees and the services provided in return for those fees. That's because, it wasn't always clear what service was being provided for the fees being charged. As it is with this case, terms like 'ongoing servicing' often weren't clearly defined.

But the RDR marked a change for future contracts and didn't require businesses to go back to existing policies and clarify the terms. So, it wouldn't be fair to now define the term 'ongoing servicing' (which is quite broad) and hold SJPWM to account for it.

I've considered that it's Mr W's testimony that SJPWM's adviser told him an element of the fee collected would pay the adviser to review Mr W's pension and make sure it 'kept on track'. Something which SJPWM seem to disagree with, stating they had no contractual agreement to provide ongoing reviews.

Where evidence is conflicting, I base my decisions on what more likely than not happened on the balance of probabilities, using the evidence available to me.

I've not seen evidence from the point of sale that corroborates Mr W's testimony. I say that because the recommendation letter and illustration make no mention of holding regular reviews funded by the commission payments. And I've seen no evidence in any of the documentation that SJPWM would provide annual reviews with Mr W due to the commission being received either.

If SJPWM's adviser had committed to providing annual reviews at the point of sale, I'd have expected to see some reference to that in the documents produced at the time. And if it wasn't, I'd have expected Mr W to have raised that with the adviser at the time. I also think that if Mr W was expecting annual reviews because of what his adviser had told him, he would have raised his concerns with SJPWM sooner, rather than waiting over 28 years before making a complaint.

The advice was given 28 years before the complaint was made, and memories fade over time. Therefore, I add more weight to the documentary evidence supplied from the time of the sale in 1996. And on balance, I think it's more likely that no commitment was made by the adviser to provide annual reviews in return for the trail commission payments.

In conclusion, I'm satisfied that Mr W didn't pay SJPWM for annual reviews, so it wouldn't be reasonable for me to ask them to refund any payments it received.

My final decision

For the reasons I've given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 July 2025.

Timothy Wilkes
Ombudsman