

The complaint

Mr C received advice from a representative of St. James's Place Wealth Management Plc ('SJP') in 2014, which resulted in him transferring an existing self-invested personal pension ('SIPP') to a SIPP with SJP. He also transferred an existing ISA to a new ISA with SJP. Mr C has complained about SJP's failure to provide him with ongoing financial advice thereafter, which he says has led to lost investment growth.

What happened

Mr and Mrs C started meeting with 'Mr S', who worked for a business that was a representative of SJP, in January 2014 to discuss their general finances and retirement needs.

Although Mr and Mrs C dealt with the representative of SJP, I'll mostly refer to SJP throughout for ease of reference.

SJP met with Mr C (and Mrs C) in 2014 on several occasions and considered their financial circumstances and objectives. It noted that Mr C wanted to ensure he was maximising his ISA allowance and he also wanted to address his retirement and inheritance tax ('IHT') planning. SJP recorded that Mr C had significant cash savings and the majority of this was earmarked for a house build. Mr C had an existing SIPP and had experience of investing in equities through this. A fact find completed in January 2014 notes that Mr C described himself as having an 'upper medium' attitude to risk and had bought a few direct equities on the recommendation of friends.

Following a further meeting, it was noted that Mr C was unhappy with the performance of his SIPP and the management of a commercial property he held in it. Mr C explained that it appeared that substantial pension contributions and rental income hadn't been invested and had sat in cash.

On 2 April 2014 SJP recommended that Mr C transfer the assets held in his existing SIPP to a new SIPP administered by Curtis Banks. The existing cash and investments (amounting to just under £300,000) would be held within an SJP Trustee Retirement Plan within the new SIPP, and the commercial property would be directly held in the SIPP. SJP recommended that Mr C redirect his current pension contributions to the new SIPP to be invested in the Trustee Retirement Plan. SJP confirmed that Mr C had a medium attitude to risk and that it recommended he invest the funds in the Deferred Income Portfolio, which met with his risk appetite.

An illustration dated 11 April 2014 produced by SJP showed that the initial advice would cost Mr C £13,428.50 and he would pay 0.25% of the fund value as an ongoing advice charge ('OAC'), which formed part of an overall management charge of 1.25%.

On 8 April 2014 SJP recommended that Mr C open an SJP ISA. It noted that Mr C wanted to use his full ISA allowance to invest in a high level of equities to achieve capital growth over the next 15 years plus. SJP recommended Mr C transfer the balance of an existing cash ISA to an SJP ISA and make a further contribution of £11,520. SJP assessed Mr C's attitude to

risk as 'medium' and recommended that Mr C invest his ISA in the Deferred Income Portfolio. An illustration produced by SJP showed that the initial advice would cost Mr C £675 and he would pay 0.5% of the fund value as an ongoing advice charge ('OAC'), and annual charges of 1.5%.

A fact-find from February 2015 noted that Mr C wished to arrange the transfer of another existing ISA to his SJP ISA for consolidation purposes and to achieve further growth. SJP recorded that Mr C's attitude to risk remained the same.

The transfer of his existing ISA to the SJP ISA went ahead in March 2015, with investment in the Deferred Income Portfolio.

An additional fact-find was completed in March 2019 and Mr C met with SJP in July 2019, where SJP discussed his meeting with another adviser and acknowledged that a more structured review process was required going forwards. The letter sent to Mr C in August 2019 following this meeting set out that Mr C's IHT planning would initially be the focus, as well as private medical insurance. The letter also mentioned an upcoming meeting with the Private Client team.

A fact-find was completed in April 2020 and Mr C told SJP he'd arranged a rent payment holiday with the tenant renting the property held in his SIPP. During this conversation, SJP informed Mr C that he had a large cash balance in the SIPP bank account and he should use it to make a contribution to the Trustee Investment Account ('TIA') within his SIPP (formerly known as the Trustee Retirement Plan). The fact-find recorded that Mr C held a further ISA and some other investments, including £10,000 in crypto and £5,000 in an Enterprise Investment Scheme ('EIS').

SJP wrote to Mr C on 27 April 2020 to confirm the recommendation that Mr C should make a contribution of £20,000 from his SIPP to the TIA and that this should be invested in the Deferred Income Portfolio. SJP said this should be considered a continuation of the original recommendation made in 2014. It noted that Mr C's objectives and attitude to risk hadn't changed since then.

In early 2021, Mr C indicated to SJP that he wanted to take more risk with his SIPP funds and was interested in switching to the Strategic Growth Portfolio as it had more exposure to global equities. Mr S was in contact with Mr C about this over the coming months and provided information about the portfolio but during this time, Mr S found that the Deferred Income Portfolio was outperforming the Strategic Growth Portfolio. So, he asked Mr C whether he still wanted to go ahead with the switch. Mr S said Mr C didn't respond to this.

In September 2022, Mr S tells us that he wrote to Mr and Mrs C to explain that he was stepping away from the business and the servicing of their pensions and investments had been transferred to another adviser I'll call 'Mr M', who was also a representative of SJP.

In December 2023, Mr S wrote to Mr and Mrs C following a catch up over the phone with Mr C. The letter said they'd discussed that the move to Mr M hadn't worked out and the servicing of their pensions and investments was now back with Mr S. The letter also noted that Mr and Mrs C had agreed to meet in the new year for a review. Mr S acknowledged Mr C's concerns about the management of a property in his SIPP and his desire to sell the property as a result.

Mr S explained that in the upcoming review he wanted to look at Mr and Mrs C's investment options but noted that their annual return after fees in the last five years had almost been 6% which fit with the target for a medium-risk portfolio. Mr S noted however that Mr C was aiming for higher growth, and was open to increasing the risk for potential higher returns. He

said Mr C could potentially reinvest the funds received following the sale of the property through a discretionary fund manager and take a higher risk approach.

Mr and Mrs C ultimately made a complaint to Mr S in February 2024. They understood he had moved away from SJP a few years ago and during that time they'd had no contact or ongoing advice/management of their pensions. They said in fact the investments they'd been advised to make had remained the same since the first advice they'd received. They felt that the returns made on their investments (around 4% per year before fees) were below expectations and market averages and that the fees they incurred were excessive compared with the performance, management and advice received. They believed SJP's lack of ongoing advice and management could have collectively cost them up to £500,000 in lost growth. Mr C thought this was particularly the case for himself, given he had a higher attitude to risk. They requested a refund of the OACs and compensation for lost investment growth as a result of the reviews not being carried out.

Mr C also made a complaint about the way a property investment held in the SIPP had been managed by Curtis Banks which had originally been recommended by SJP.

The adviser in question, Mr S, provided a response to this, explaining that while he'd told Mr and Mrs C he was stepping back from the business in September 2022 he'd explained that Mr and Mrs C had been transferred to another adviser (also a representative of SJP). Mr S said he'd provided Mr C with that adviser's details. Mr S commented that he believed his relationship with Mr and Mrs C had broken down; he'd tried to arrange a review and carry out a fund switch in 2021 for Mr C but Mr C had been engaging with a new firm of advisers at that time and was looking to move away from SJP. Mr S said that reviews had been carried out since 2015 but some, whilst offered, were either not taken up or cancelled.

Mr S also said that Mr C had experienced growth of 4.9% per year since inception after fees and Mrs C had experienced growth of 5.3% per year over the same period.

SJP wasn't able to provide a final response within eight weeks of the complaint having been made so Mr and Mrs C both referred their complaints to the Financial Ombudsman Service.

Mr C added that he didn't think the initial advice was suitable as the recommended portfolio didn't fit his risk appetite or take account of his experience with investing. Mr C said SJP was aware he was also setting up an investment account with a different provider to carry out his own investments.

Whilst it hadn't provided a formal response to the complaint, SJP said it didn't think we could consider the reviews prior to February 2018. This was because any concerns Mr C raised about the lack of reviews before this time were made too late under the Regulator's Dispute Resolution ('DISP') rules.

Our Investigator ultimately accepted that the complaint about the reviews prior to February 2018 had been made too late and couldn't be considered.

The Investigator believed that the advice Mr C received in 2014 was suitable for a medium-risk investor and she wasn't persuaded that any review after this date would've resulted in a change to Mr C's risk profile, leading to a fund switch taking place. However, she hadn't seen evidence to persuade her that annual reviews had been carried out on the TIA or the ISA in line with the service agreement since February 2018. The Investigator noted that SJP said it had difficulty arranging reviews with Mr C, but if that had been the case it ought to have switched off the OAC going forwards. She recommended that SJP should carry out a loss assessment on the TIA and ISA based on the OACs having not been taken since 2018 and that it should pay Mr C £250 for the distress and inconvenience caused.

SJP didn't agree. It said Mr C had received reviews in 2019, 2020, 2021, 2022 and 2023, though it acknowledged there wasn't any evidence to show reviews had been carried out in 2018. SJP thought that £150 was a fair sum to compensate Mr C for the missed reviews.

After reviewing the evidence, the Investigator accepted that some reviews had been carried out. But she maintained that the OACs should be refunded in the manner specified in her earlier view for 2018, 2021 and 2022 for the SIPP and for 2018, 2020, 2021 and 2022 for the ISA. She also maintained that £250 was fair compensation in the circumstances.

SJP appears to have accepted this and wrote to Mr C outlining its offer, which amounted to £10,640.24 (including interest less tax) plus £250 for the distress and inconvenience caused. However, it later acknowledged this had been sent in error as it hadn't received confirmation that Mr C accepted the Investigator's view.

Mr C ultimately didn't accept the Investigator's view, saying that SJP had misrepresented the number of reviews actually carried out. He pointed to a lack of reports and the fact that his investments hadn't changed since the outset. Mr C also maintained that the portfolio recommended had never been suitable for him, and provided numerous fact-sheets for funds that he considered aligned more closely with his attitude to risk, which had out-performed the Deferred Income Portfolio.

Mr C also didn't think that reviews prior to February 2018 should be time-barred given that, as members of the public, they wouldn't be aware of what constituted a review. They believed that SJP was actively managing their pensions based on market changes as well as discussions.

Mr C later added that SJP was trying to charge him fees to leave but he shouldn't have to pay these given the service he'd been provided with.

SJP told us that Mr C encashed his ISA in 2021 so there was no OAC in 2022 to refund. It also provided evidence of contact in 2021 where SJP had sought to implement a change to the TIA investment but Mr C hadn't responded.

The Investigator told Mr C that he'd need to raise any concerns about fees that could be charged if he moved his assets away from SJP with SJP in the first instance.

As the Investigator wasn't persuaded to change their view the complaint was referred to me to make a decision.

I issued a provisional decision on 11 July 2025, upholding the complaint in part. I explained that the complaint about the reviews prior to February 2018 were time-barred. While I agreed with the Investigator's view in general, I explained that I thought SJP had only provided a review of Mr C's TIA in 2020 and 2021. And SJP hadn't provide any reviews of his ISA. So, I thought SJP should refund the OACs paid in each year since 2018 except for those charged for the reviews that took place in 2020 and 2021. I also maintained that £250 was fair compensation for the distress and inconvenience caused.

SJP largely accepted my provisional decision, though it provided what it considered was evidence of a review having taken place in 2024. Mr C didn't accept it and made the following points:

- Mr C's attitude to risk was 'upper medium', not 'medium', which he considered equated to a risk rating of 'four' on a scale of one-five. SJP placed him in a 'medium'

risk fund which meant his pension was invested incorrectly from the outset. This hasn't been given sufficient consideration.

- The failure to provide reviews and realign his investments to his risk appetite has led to financial loss. Mr C has provided examples of cases where an Ombudsman has made favourable decisions on this point, noting the marked difference in the investment approach for a medium versus upper-medium risk investor.
- Mr C had a higher risk appetite and had more investment experience than Mrs C yet their pensions had been invested in the same way.
- The adviser was aware of Mr C's risk appetite as he had numerous discussions with him about his cryptocurrency and investment in EIS. Mr C provided screenshots of 'whatsapp' messages to support this.
- SJP said that the investment had grown by 6% but it was actually 4%.
- Mr C doesn't share Mr S's view that the advisory relationship had broken down – they live locally and continue to share messages. The messages provided demonstrate this.
- 2020 and 2021 was a period of great personal financial change and this isn't reflected in the reviews received, showing that SJP was only paying lip service to the reviews to retain the fees.
- It is also unclear whether separate reviews were undertaken in 2020 and 2021 or whether it was a continuation of the same one.
- Mr C still does not consider what SJP provided met the conditions of a review – Mr S told him in December 2024 that a review usually took over an hour and he didn't do this because of the time it would take.
- Mr C notes that I have awarded interest on the ISA investment loss but doesn't understand why this wouldn't also be awarded for the pension investment loss.
- The £250 compensation recommended does not adequately compensate Mr C for the lack of service provided or the size of the investment loss he incurred.
- Mr C added that it should be confirmed that OACs should not be charged for 2024/2025. The 'review' that took place in December 2024 was not a review – they simply agreed to meet Mr S face-to-face to provide feedback.

I informed SJP that I did not consider a review had taken place in 2024 and thought that the OACs ought to have been switched off following the complaint being made. SJP accepted this.

What I've decided – and why

Jurisdiction

In my provisional decision, I explained that I couldn't consider the complaint about the OACs Mr C paid for reviews due between April 2014 and February 2018 due to the time limits set out in the Financial Conduct Authority's DISP rules. Mr C did not comment on this so I've repeated my findings on this issue.

Why I can't look into the complaint about OACs paid for reviews due between April 2014 and February 2018

Our Service isn't free to consider every complaint that is brought to us. We are bound by the DISP rules, set out in the Financial Conduct Authority's Handbook which can be found online.

DISP 2.8.2R says that, where a business doesn't consent, I can't consider a complaint made more than six years after the event complained of, or if later, more than three years after the

complainant was aware, or ought reasonably to have been aware, of their cause for complaint.

The rules don't say that Mr C needs to know exactly what's gone wrong to bring a complaint – only that he needs to have a reasonable awareness something might have gone wrong.

If a complaint is brought outside of the time limits set out in the rules, we'd only be able to consider it 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 being incapacitated.

Each missed review is its own 'event', with the OACs being charged in advance. So, the fees charged in April 2014 would be for the first year, up to April 2015 including the review due in April 2015, and so forth. There is no question that the missed reviews up to April 2017 occurred more than six years before Mr C made his complaint to SJP in February 2024.

As such, I've had to consider the second part of the rule; whether Mr C became aware or ought reasonably to have become aware of a cause for this complaint more than three years before he made his complaint to SJP in February 2024.

SJP has said that Mr C understood that he had signed up for ongoing advice based on his suitability letters and the various product documents he was given in 2014. And he would've known that he hadn't received a review. So, it says the three-year rule doesn't extend the time allowed for under the six-year part of the rules.

The Welcome Brochure states:

"...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."

The Supplementary Information Document, which includes the ISA terms and conditions, say:

3.3 Advice costs

Our advice is not free. The details of the charges we make for our advice and how it is paid for are set out below...

...We will also provide you with ongoing advice to review your investment and ongoing contribution levels, if applicable, to ensure they remain appropriate, as set out in the brochure Welcome to St. James's Place provided by your Partner. The cost of this each year is 0.5% of your total investment (and so this annual cost will increase if your investment grows), plus 3% of each regular contribution made after the initial advice has been paid for. For example, if your investments are worth £100,000 in a particular year, the cost for that year would be £500 plus an additional £300 if regular contributions of £10,000 are made in that year. If you decide to stop making regular investments, we will stop collecting the remaining initial advice charge instalments (if any) until you decide to restart your investments. If you decide not to make any further investments, then no further initial advice charge is payable.

The costs of our initial advice and ongoing advice are paid for and facilitated out of the overall charges levied on your investment, which are described in the Key Investor

Information Document for each fund under 'Charges for this Fund'. The details of the advice costs are set out in the illustration we will provide to you.

If you no longer wish to benefit from our advice, you may ask us to stop advising you and reviewing your investments, and the charge for ongoing advice will cease. We believe that regular, ongoing advice enables us to ensure that your investment continues to meet your objectives. Our ongoing charges are structured in this way because we firmly believe that this aligns your interests with ours."

The Key Facts document for Mr C's Trustee Retirement Plan stated:

"...We will also provide you with ongoing advice to review your investment and ensure it remains appropriate, as set out in the 'Welcome to St. James Place' brochure provided by your partner. The fee for this is 0.25% of your investment each year. It is paid for by deduction from the value of your investment and so will increase as your investment grows..."

The letter sent to Mr C on 2 April 2014 setting out the Trustee Retirement Plan recommendation states:

"Future Contact

[Mr S's business] firmly believes it is prudent to regularly review a portfolio. The aim of such a review would be to ensure that both the funds and asset allocation model meet with your stated objectives and assessed risk profile on an ongoing basis, and rebalance the portfolio if necessary. You agreed that you would require this and we will review your financial situation with you annually."

This was repeated in the letter sent to Mr C on 8 April 2024 in which SJP recommended he transfer his ISA to SJP.

Having considered the evidence provided, I think Mr C ought to have been aware that he was paying an OAC for both the Trustee Retirement Plan in the SIPP and the ISA, although I think it could've been clearer that this paid for the cost of annual reviews. The documents do state reviews would be 'regular' and that he'd receive 'ongoing advice'. And the suitability letters specifically say Mr C should expect to hear from the SJP adviser annually to review his financial situation and ensure that the investments within his Trustee Retirement Plan and the ISA continued to meet his objectives and risk profile.

Overall, I think after receiving the suitability letters in 2014 Mr C ought reasonably to have known to expect annual contact from the SJP adviser with the purpose of arranging a review. So, when he didn't receive a review, or contact to arrange one, by April 2015, April 2016 and April 2017, he ought reasonably to have known he had cause for the complaint he's making now.

Mr C has said that as a lay person, he wouldn't have known what constituted a review. He says prior to 2019 SJP was periodically in touch, particularly around Christmas time when SJP would send them a hamper. SJP would call to confirm receipt and they would have a general catch-up, which would often include discussing his investment ideas. But I think the adviser set out clearly what the reviews would involve and what they aimed to achieve. Specifically, that the review would be based upon an assessment of Mr C's objectives and risk profile on an ongoing basis. While Mr C says a general discussion of his investment ideas and objectives would often take place, I'm not persuaded that he would've reasonably considered that a review had taken place, specific to his ISA and Trustee Retirement Plan.

And of course, I have to bear in mind that Mr C's complaint here is that the reviews *did not* take place.

Based on what I've seen, I think Mr C ought reasonably to have understood that reviews of his ISA and Trustee Retirement Plan hadn't taken place in 2015, 2016 and 2017. And I haven't been provided with sufficient evidence to show Mr C thought he was receiving the reviews he was paying for and thus wouldn't have had reasonable cause for his complaint.

For this reason, Mr C's complaint to SJP about the lack of reviews during this period was made out of time. The rules say I can consider a complaint that's been made too late, if I'm satisfied the failure to comply with the time limits is due to exceptional circumstances. But I've seen nothing to suggest this is the case here.

Why I can look into the complaint about the OACs paid for reviews from February 2018 onwards

I'm able to consider Mr C's complaint about any missed annual reviews within six years of him raising a complaint with SJP in February 2024. As such, I can consider any missed reviews from February 2018 onwards.

The merits of the complaint

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm still upholding the complaint in part, as per my provisional decision. So, I've largely repeated my provisional findings below. However, as Mr C has made some additional points I'll address these where appropriate.

There is a broad consensus between SJP and Mr C that a number of reviews that Mr C had paid for were not carried out by SJP and that Mr C is due compensation as a result. So, I don't intend to look at each review due since February 2018; instead, I'm focusing on the reviews that the parties are in disagreement about whether or not they took place.

Mr C has made some representations about what a review should look like and included a definition, although he hasn't said where he took this from. He also said in response to my provisional decision that Mr S informed him that a review would usually take over an hour and that reviews of this nature hadn't been provided.

The FCA issued a factsheet in 2014 called 'For investment advisers - Setting out what we require from advisers on how they charge their clients'. This said:

'Ongoing adviser charges

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.'

This did not set out what a review in return for an ongoing advice fee should include. Instead, it makes it clear that if a consumer is paying for an ongoing service, the business had to clearly confirm the details of the service being provided for that fee.

From 3 January 2018, following the introduction of MiFID II, the Conduct of Business Sourcebook ('COBS') included further obligations on investment firms:

"COBS 9A.3.8EU

Investment firms providing a periodic assessment of the suitability of the recommendations provided pursuant to Article 54(12) shall disclose all of the following:

- a) *the frequency and extent of the periodic suitability assessment and where relevant, the conditions that trigger that assessment;*
- b) *the extent to which the information previously collected will be subject to reassessment; and*
- c) *the way in which an updated recommendation will be communicated to the client.*

COBS 9A.3.9EU

Investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually. The frequency of this assessment shall be increased depending on the risk profile of the client and the type of financial instruments recommended."

While this added extra requirements, it did not set out what a review should look like or include. Again, it was left to the business providing the service to set out what service it would provide in return for an ongoing fee, although this had to be provided at least annually.

In light of this, it is appropriate to look towards the documents provided by SJP which explained the service being provided in return for the OAC.

In the covering letter to each recommendation letter, SJP said:

"Future Contact

[Mr S's business] firmly believes it is prudent to regularly review a portfolio. The aim of such a review would be to ensure that both the funds and asset allocation model meet with your stated objectives and assessed risk profile on an ongoing basis, and rebalance the portfolio if necessary. You agreed that you would require this and we will review your financial situation with you annually."

In addition to this, SJP's documents said that during the review meetings, Mr C's investments and personal circumstances would be reviewed, to ensure the investments remained appropriate and continued to meet his objectives.

So, overall, I think that in return for the OAC SJP would review, initially on an annual basis, whether the investments in the TIA in Mr C's SIPP and ISA remained suitable for him based on his objectives and attitude to risk. Additionally, in respect of the ISA, SJP would review the contributions made to it. While this may have been considered to be good practice, I wouldn't necessarily expect to see a formal written suitability letter once the review had taken place if no changes were to be made to the arrangements.

I've taken account of what Mr C has said about Mr S telling him how long a review would usually take. But I still think consideration of whether or not a review of the TIA/ISA investments took place should be based on the service SJP promised within the documents provided when the relationship was established. It should also be noted that when addressing the complaint, Mr S asserted that some reviews were provided and others were not taken up despite being offered.

For clarity, following my provisional decision, I think that SJP and Mr C now both agree that no reviews were carried out on the ISA investments after February 2018. And they also agree that reviews were not carried out on the TIA investments in 2018, 2019, 2022, 2023 and 2024. Mr C, however, disputes that reviews were separately provided in 2020 and 2021. And he's asked for clarity that OACs are not charged in 2024/2025.

2020

Mr C has queried the period in which the review should take place. As I explained when I addressed jurisdiction, the OACs are charged in advance. So, the fees charged in April 2014 would be for the first year, up to April 2015 including the review due in April 2015, and so forth. So, in the circumstances of Mr C's case, the review should take place each year around April. So, the 2020 review should've taken place by April 2020 and the 2021 review by April 2021. However, the reviews taking place would always be subject to the parties' schedules and other circumstances that could get in the way of the meeting. So, the time between each review may not be exactly 12 months, it could be a bit more or a bit less.

I can see that Mr C and SJP were in touch in 2020 regarding Mr C's SIPP. Mr C had agreed a rent holiday with the tenant of his commercial property due to the pandemic and SJP noted a significant cash sum had accumulated within the SIPP cash account. Mr C has sent us screenshots of whatsapp messages and the messages exchanged in April 2020 show that SJP thought Mr C should move £20,000 into his TIA and the adviser believed Mr C should also invest the funds in the same portfolio. Mr C acknowledged this. I appreciate that Mr C mentioned to SJP in that exchange that he'd made investments totalling £4,000 in some American stocks, but I don't think that means he was prepared to invest his pension funds in the same way. He also didn't challenge SJP's recommendation, saying "fine, whatever you think".

On 27 April 2020 SJP sent a suitability report confirming the recommendation to make a contribution of £20,000 to the TIA. The letter said that SJP had discussed Mr C's retirement objectives with him and these had remained as established in 2014. It also noted that his attitude to risk remained as medium and that as a result, SJP recommended that he continue to invest in the Deferred Income Portfolio. As such, I think that SJP did review Mr C's attitude to risk and consider whether the investments in his TIA remained suitable for him.

Mr C says that he isn't aware of any suitability report being produced, but I can see that a copy of the letter was emailed to him on 29 April 2020 and he responded querying the charges. I can also see that the performance of the Deferred Income Portfolio was discussed further by email on 30 April 2020. If the information contained within the letter was incorrect, particularly Mr C's attitude to risk, I would've expected Mr C to have raised this with SJP at the time so that it could be rectified.

In light of the above, I remain satisfied that a review of the TIA investments took place in 2020, so I don't think that SJP should refund the OAC charged on the TIA in 2020.

2021

I've been provided with several email chains from 2021 between Mr C and SJP. The first email I've seen is from January 2021 and it refers to a conversation with SJP in which Mr C had expressed a desire to switch the portfolio his TIA was invested in from the Deferred Income Portfolio to the Strategic Growth Portfolio. SJP attached the portfolio factsheet and asked Mr C to respond if he had any queries and SJP would look to action the switch the following week.

Mr C responded, asking about the fees this would involve and said he was exploring other options away from SJP. He also provided links to the funds he was invested in through his other ISA.

In February 2021, SJP provided comments on the providers Mr C had mentioned, citing a potential lack of diversification. SJP also said that the type of investment management Mr C was after could be provided through SJP's Private Clients team. A call was suggested to go through things in more detail. In an email dated 18 February 2021, SJP mentioned that Mr C should consider moving out of the TIA to a Discretionary Portfolio Manager, who could tailor the investments to his needs.

It appears that Mr C had a call with SJP in late February 2021 to discuss his business sale, but SJP noted that Mr C hadn't responded to his request for a meeting so that it could do a full fact-find and action his fund switch. Mr C made a further query about SJP's charging structure and what would happen if he encashed his investments. And following this on 31 March 2021, Mr C emailed to say he wanted to move his SJP pension into something more aggressive.

I can see that SJP sent Mr C an email on 7 April 2021, reattaching the factsheet for the Strategic Growth Portfolio. SJP said this was a more aggressive portfolio because it had a lower holding in UK equities and fixed interest holdings and a greater exposure to global equities with a focus on growth. SJP asked Mr C to reply so the switch could be actioned. SJP chased Mr C for a response on 19 April 2021.

I've seen a file note dated 13 May 2021 recording that the adviser could see the Deferred Income Portfolio had been doing better than the Strategic Growth Portfolio recently so SJP hadn't pushed Mr C for a reply. However, on 15 June 2021, SJP emailed Mr C saying that it hadn't heard back from him about the fund switch, although it explained that the Deferred Income Portfolio compared favourably due to the market recovery. SJP said if Mr C wanted to action the switch he should get back in touch.

Mr C has provided some whatsapp messages from this time period and I note that on 15 June 2021, Mr S messaged Mr C to ask whether he was receiving Mr S's emails as he'd sent a couple and hadn't heard back. Mr C responded that he hadn't received any emails from Mr S in ages. Mr S responded, saying he'd emailed on 7 April 2021 about the portfolio switch and a chaser on 19 April 2021. He said he'd just sent another now, which was the email I've referred to above on 15 June 2021. Mr C confirmed receipt of the email Mr S had just sent him but said he hadn't received the others. Mr S replied saying he'd resent the others to him. It doesn't appear that Mr C responded to this – he next got in touch with Mr S in September 2021 about a charitable cause.

Having considered this all again carefully, I still think that a review of Mr C's TIA investments was attempted by April 2021. The evidence I've seen demonstrates that SJP considered Mr C's request for a more aggressive portfolio and recommended a suitable alternative that met with his desire to invest in a higher proportion of global equities. However, this couldn't be actioned at the time because Mr C didn't confirm that he wanted this to go ahead. It

appears that Mr C didn't receive the emails in April 2021; it isn't clear why the emails weren't received as SJP was using the same email address and Mr C had been responding to emails sent earlier that year. Furthermore, Mr C confirmed receipt of the email sent to him in June 2021 after Mr S reached out to him over whatsapp. By this point though, it seems the Deferred Income Portfolio compared favourably to the Strategic Growth Portfolio so that may be why Mr C didn't pursue things further at the time. However, I'm satisfied that SJP did take the necessary steps to complete a review in 2021, which resulted in it recommending a fund switch, but Mr C ultimately chose not to go ahead.

As such, I'm not still not recommending that the OAC taken from the TIA should be refunded for this year.

2024/2025

As I have already explained to SJP, I do not consider that the December 2024 meeting constituted a review of Mr C's TIA and I would have expected the OACs to be switched off following the complaint made in February 2024. This is because Mr C was clearly unhappy with the service provided and expressed that he wished to transfer away from SJP.

I understand that Mr C's pension investments have remained with SJP whilst the complaint has been ongoing and because he has raised new concerns about the exit fees that apply. So, the fees have been continued to be taken. However, SJP should understand that my recommendation in respect of the OACs to be refunded since 2018 includes those charged up until the date of my final decision.

Summary

In summary, based on the evidence I've seen, I still think that Mr C only received (or would have received) the reviews he had paid for in respect of the TIA in 2020 and 2021 after February 2018. And he didn't receive any of the reviews he paid for in respect of the ISA. I haven't seen evidence to persuade me that SJP made an offer to carry out the reviews to Mr C in these years and that he declined them. As such, I think it is reasonable for SJP to compensate Mr C for the reviews he paid for but didn't receive after February 2018.

Suitability of the original advice

In response to my provisional decision, Mr C has made it clear that his main concern over and above the lack of the reviews is the original advice he received, which has led to investment losses. Mr C says his attitude to risk was 'upper medium', not 'medium' and there is a distinct difference in the investment approach for these risk profiles (as evidenced by the example Ombudsman decisions). He believes that SJP made a mistake by recommending he invest in the Deferred Income Fund, which was suitable for a medium-risk investor, not an 'upper-medium' investor.

I've considered this again carefully but I still haven't seen sufficient evidence to persuade me that SJP's original recommendation for the investment of his TIA and ISA funds was unsuitable.

I've reviewed the fact-find completed in early 2014. Mr C has referred to his experience of investing, and in particular his experience of investing in cryptocurrencies and an EIS. But the fact-find from 2014 only noted that Mr C held over £1million in cash between personal and business bank accounts, stocks and shares worth around £16,000 and around £23,000 in ISAs. His SIPP also held a high proportion of cash – though I note this was partly why Mr C had approached SJP, because he had found cash generated from his commercial property wasn't being invested.

A note within the fact-find says that EIS was discussed with Mr C for tax savings and it was recorded that Mr C was 'very switched on to this'. So, it does seem that Mr C held an interest in making EIS investments at the time but hadn't yet made any investments of that nature. However, even if Mr C had an interest in alternative investments at that time, it doesn't evidence that he was willing to risk his pension in such investments, or that SJP thought that would be a suitable approach.

In the retirement planning section of the fact-find, the attitude to risk for pre-retirement funding was noted to be 'medium'. However, in the 'Investment & Regular Savings Planning' section, it is noted that Mr C would describe himself as having an 'upper medium' attitude to risk. It further notes that Mr C understood that markets move up and down and that over the longer term the returns are potentially greater than cash. It was recorded that Mr C had bought a few direct equities but these had just been small purchases on recommendations from friends. Whilst this was recorded in the Investment & Regular Savings Planning section of the fact-find, I think Mr C was likely describing his approach to investment overall, as his SIPP investments were also mentioned here.

The suitability report dated 2 April 2014 covering the recommendation for the TIA stated:

"Part 4 – Attitude to Risk and Fund Selection

We discussed your attitude to investment risk and capacity for loss in conjunction with the St. James's Place brochure entitled 'Understanding the balance between risk and reward'. This brochure explains investment risk in detail together with information about the risk ratings and special risk factors relating to our funds and I left it with you for future reference. We discussed the various different types of assets, for example cash, bonds, equities, property and alternative investments, and you are aware of the risks associated with each. We agreed that you are best described as having some previous experience of investing in equities via your Aviva Wrap SIPP...

Taking everything into account:

You confirmed you are a Medium Risk investor on our risk spectrum. You want your capital to keep pace with inflation and are investing for at least five years. You are comfortable with most of your capital being invested in equities and property, some of it overseas. You realise that there may be significant falls in the value of your investments, and that accepting this risk gives you the potential to achieve better long-term returns.

Because you are investing over a long time horizon, it is reasonable to expect that larger fluctuations in the value of your investments in the short term may be evened out over that longer timeframe. Accordingly, investments slightly higher on the risk scale might be more appropriate for this investment than would be the case if you were investing for a shorter period of time."

This information was repeated in the suitability report issued on 8 April 2014 in respect of the ISA recommendation.

Although Mr C may have considered his risk appetite overall to be upper-medium, ultimately it was the adviser's job to assess Mr C's attitude to risk based on a number of factors including his experience and his capacity for loss. And I think the suitability report issued both in respect of the TIA and the ISA clearly stated that Mr C's attitude to risk had been assessed as 'medium'. If Mr C didn't think that reflected the risk he was willing to take with his pension and ISA investments then I think he needed to make that clear to the adviser so that changes could be made. Ultimately, I haven't seen enough evidence to persuade me that a mistake was made with the initial attitude to risk assessment.

Turning to the recommended portfolio, in 2014, the Deferred Income Portfolio had an asset allocation of over 70% in equities, with 55% in UK equities. And in my view, with such significant weighting in favour of equities, I think this portfolio was suitable for Mr C's medium attitude to risk. And Mr C did not express any concern over the concentration of UK equities at the time.

I appreciate that portfolios with a greater concentration of international equities which would also be considered to be medium-risk have performed better than the Deferred Income Portfolio. But that doesn't mean that the Deferred Income Portfolio was unsuitable for Mr C. My consideration of this is limited to whether the specific portfolio Mr C invested in was suitable for his needs as a medium risk investor, and I'm satisfied that it was.

I have read the Ombudsman decisions that Mr C has provided me with to support his appeal. While I understand the point Mr C is seeking to demonstrate here, the facts of those cases are different and my decision is based on the particular circumstances of his complaint. And for the reasons given above, I don't think the advice he received in 2014 was unsuitable.

Fair compensation

Mr C says that the failure of SJP to review his TIA or ISA investments means that a refund of OACs isn't sufficient, and instead he should be compensated for lost investment growth because he's remained invested in the same fund since the original advice. But in 2020, SJP carried out an assessment of Mr C's circumstances and attitude to risk and concluded that the Deferred Income Portfolio remained suitable for his needs. As I've said above, this portfolio was suitable for an investor with a medium attitude to risk – Mr C accepted this at the time and I haven't seen anything to persuade me that this assessment was incorrect. So, I don't think a different view would've been taken in 2018 and 2019 had those reviews gone ahead.

I'm also mindful that in 2021 Mr C expressed that he wanted to take a more aggressive approach with his TIA and this resulted in SJP recommending an alternative portfolio to him. This had around 73% investment in equities with 35% in North American equities. However, as I've said above, this didn't go ahead. So, I think it's clear that SJP was open to switching his portfolio based on his needs at the time of the review.

I appreciate that remaining invested in the same portfolio over the duration of Mr C's relationship with SJP may appear concerning. But it should be understood that the assets held within the Deferred Income Portfolio would've been adjusted and rebalanced over time based on the mandate of the investment managers. For example, in July 2022, the Deferred Income Portfolio fact-sheet shows that the allocation of UK equities had reduced to around 29% and other global equities accounted for around 38% of the remaining assets. And, as I've said above, SJP did try to action a switch in 2021.

Mr C has said that the balance of equities changing within the Deferred Income Fund is purely luck or coincidence. But I think it was a feature of the approach to investment that Mr C signed up to with SJP. The portfolios would be rebalanced based upon an ongoing analysis of the market, meaning that funds within portfolios might be replaced or the weighting towards them might be adjusted.

Overall, I remain of the view that fair compensation in this complaint is for Mr C's TIA to be restored to the position it would've been in if, after February 2018, the OACs were not taken from it, except for the years in which the 2020 and 2021 reviews were carried out. The redress calculation below is based on my understanding that the SIPP and TIA remain open

with SJP. Based on the responses received to my provisional decision, it appears that this remains the case.

SJP has told us that Mr C's ISA was encashed in 2021, so the compensation I've recommended here is based on this information – and Mr C hasn't said otherwise. I therefore think fair compensation is for SJP to calculate the value of the ISA on the date it was encashed in 2021 if OACs hadn't been taken after February 2018. This should be compared with the actual value when it was encashed and Mr C should be paid the difference plus interest at a rate of 8% simple from the date of encashment to the date of my final decision.

Mr C has queried why I have awarded interest on his ISA loss but not his TIA loss. Mr C's ISA was encashed in 2021, so a loss assessment comparing the value of the ISA with the value it would have attained if OACs hadn't been charged can only be carried out until the date it was encashed. But Mr C has been deprived of the use of those extra funds since the day the ISA was encashed, so it is reasonable to add 8% to that loss amount to compensate him for this. It wouldn't be reasonable in the circumstances to also pay interest on the pension loss as it would compensate Mr C twice for the same loss. The OACs were deducted directly from Mr C's investments not his bank account, and as the TIA is still open with SJP, fair compensation in these circumstances is to carry out a loss assessment on the TIA investment if the OACs hadn't been charged to date.

I also think that SJP should pay Mr C £250 for the distress and inconvenience caused as a result of the lack of reviews. I think that this would've caused Mr C concern that his ISA and SIPP investments hadn't been adequately managed during this time, and it has evidently led him to believe that his retirement provisions may now be lower as a result.

I've considered Mr C's point that the compensation isn't high enough because it doesn't reflect the loss he has suffered. But Mr C will be compensated for the lost investment growth for his ISA and his pension will be restored to the position it would've been in had he not paid OACs over the years I've specified. The compensation I have awarded in addition to this is to reflect the actual distress and inconvenience caused to him by the failure to provide the reviews – it isn't awarded to punish SJP for failings or mirror the size of any loss. I maintain satisfied that £250 is a fair award in the circumstances.

For clarity, I am not considering Mr C's concerns about the potential charges SJP will apply for moving his pension as this needs to be addressed by SJP in the first instance as a new complaint.

Putting things right

My aim is to put Mr C as close as possible to the position he would probably now be in if he hadn't paid OACs from the investments held in his TIA and ISA since February 2018 to date. However, it would be fair and reasonable to exclude the OACs which covered the reviews he had/would have had for the TIA in 2020 and 2021 from the calculation below as I'm satisfied that Mr C received the service he paid for during those years.

For the TIA, SJP should:

- Carry out a loss assessment by comparing the actual value of Mr C's TIA within his SIPP with the value it would have been (the fair value) if OACs hadn't been deducted for the reviews due in 2018, 2019, 2022, 2023, 2024 and 2025 as at the date of my final decision.

- If the fair value is greater than the actual value Mr C has experienced a loss and this is the compensation amount.
- The compensation amount should be paid into Mr C's SIPP if possible. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the SIPP if it would conflict with any existing protection or allowance.
- If a payment into the SIPP isn't possible or has protection or allowance implications, it should be paid directly to Mr C as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.
- If Mr C has a remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.
- Provide the details of the calculation to Mr C in a clear, simple format.
- The compensation resulting from this loss assessment must be paid to Mr C or into his SIPP within 28 days of the date SJP receives notification of Mr C's acceptance of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation isn't paid within 28 days of SJP being notified of Mr C's acceptance of my final decision.

For the ISA, SJP should:

- Carry out a loss assessment by comparing the actual value of Mr C's ISA on the date it was encashed with the value it would have been (the fair value) if OACs hadn't been deducted for the reviews due in 2018, 2019, 2020 and 2021 on the same date.
- If the fair value is greater than the actual value Mr C has experienced a loss and this is the compensation amount.
- The compensation amount should be paid to Mr C directly, together with interest at a gross rate of 8% simple from the date of encashment to the date of my final decision.
- Provide the details of the calculation to Mr C in a clear, simple format.
- The compensation resulting from this loss assessment must be paid to Mr C within 28 days of the date SJP receives notification of Mr C's acceptance of my final decision. Interest must be added to the compensation resulting from this loss assessment at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation isn't paid within 28 days of SJP being notified of Mr C's acceptance of my final decision.

SJP should also pay Mr C £250 for the distress and inconvenience caused by the failure to provide the reviews he paid for.

My final decision

For the reasons set out above, I'm upholding Mr C's complaint against St. James's Place Wealth Management Plc and require it to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 August 2025.

Hannah Wise
Ombudsman