

The complaint

Mr W complains about advice he received from St. James's Place Wealth Management Plc (SJP) in 2017 to transfer an ISA and open a new pension. He also complains that since then, SJP have failed to provide the ongoing service it ought to have done.

What happened

In July 2017 SJP recommended that Mr W transfer £50,000 from a cash ISA he held with another provider to an SJP stocks and shares ISA. It charged a 4.5% initial advice fee and Mr W agreed to an ongoing advice charge of 0.5% of the fund's value each year in return for annual reviews of his investment.

In August 2017 SJP recommended that Mr W open a new pension with it and invest £400 a month net of tax relief. Mr W also agreed to an ongoing advice charge of 0.5% of the fund's value each year in return for annual reviews of his investment.

On 20 May 2024 Mr W complained to SJP. In summary his complaint was:

- The suitability letter he received regarding his ISA transfer in 2017 said there were no charges for the transfer, which was misleading. He said he would have seen better returns without all of SJP's charges which he asked to be refunded.
- He was advised to open a new pension with SJP in 2017 but ought to have been advised to continue with his existing pension.
- His existing pension was left dormant and had seen no growth.
- He hasn't received the correct level of ongoing service since 2017. Had he done so, SJP would have noticed he'd technically over-funded his pension in 2022 when he had to stop work due to illness.

SJP didn't respond to Mr W's complaint within eight weeks. So, he brought his complaint to our Service.

SJP sent us documentation from the time of the sales in 2017 as well as contact notes and letters it had sent to Mr W in subsequent years.

Our investigator looked into things. In summary he said he was satisfied the charges for transferring the ISA were disclosed at the time of the sale. He also didn't think SJP had the required permissions to advise on Mr W's existing pension and thought that setting up a new pension with SJP was suitable.

Our investigator went on to consider the ongoing service Mr W had received. He said that there was evidence Mr W had declined reviews of his investments in 2018 and 2019. But thought SJP ought to have considered turning the charges off after 2019. He thought the charges should be refunded to Mr W alongside missed investment returns. He also said if Mr W could evidence that he'd suffered a tax charge for overfunding his pension, SJP should pay the tax charge plus interest.

Mr W disagreed with our investigator's opinion on the case. In summary he said:

- The alleged telephone calls with SJP were hearsay and not followed up in writing.
- He's a lay person and relied on the advice given by SJP who had a duty of care to make sure he understood things.
- The review meetings of 2018 and 2019 may have been declined however SJP didn't explain why they were necessary. Because of the lack of contact from SJP, no ongoing advice about the investments was given. Also, when his health problems prevented him from working, that wasn't picked up.

Mr W went on to say in later correspondence that he only ever read and understood the overview letter of the ISA which misled him into thinking there was no charge. He said he also can't understand why he was told to keep his existing pension where it was and wondered if SJP had actually considered and discounted this, asking to see evidence.

Mr W said he was never told of the importance of regular reviews and didn't want to waste his adviser's time.

SJP also disagreed with part of our investigator's opinion. It said a review had been conducted in 2022, so it didn't think it was fair to refund the charges from that year. SJP supplied documentation it said evidenced the review taking place.

I sent SJP and Mr W my provisional decision for this complaint. I've copied the relevant parts below which form part of my final decision.

My Provisional decision.

In my provisional decision I said;

My jurisdiction to consider this complaint

I know this will come as a great disappointment to Mr W, especially as our investigator already gave his opinion on the merits of his complaint. But for reasons I'll now explain, this service doesn't have authority to look into all of his complaint against SJP.

We're not able to look into every complaint brought to us. The rules we must follow are set out in the Dispute Resolution Section (DISP) rules within the Financial Conduct Authority's (FCA) handbook. We're entirely bound by these rules and cannot disregard them.

Before we can consider the substance of a complaint brought to us, we first need to be satisfied that the complaint has been brought to us within the timescales set out in DISP.

The relevant rule that applies here says:

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

(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 they had cause for complaint unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R...was as a result of exceptional circumstances..."

We can only look at cases that fall outside of this time period if the business consents to us doing so or if there are exceptional circumstances that prevented the complaint from being made sooner. In this case SJP hasn't consented to us looking into things.

Parts of Mr W's complaint relate to the advice, or lack of advice, he was given in 2017. Specifically, Mr W complains that SJP failed to disclose its initial advice fee for his ISA transfer in 2017, and he says it also failed to advise him to invest in his existing pension scheme when he started contributions into his SJP pension scheme in 2017. He also says SJP failed to advise him on investments in his existing scheme, meaning it was left in a cash account.

When considering the six-year rule in DISP there can be no doubt that these events complained of happened more than six years before Mr W complained to SJP on 20 May 2024. So, under that part of the rule, Mr W's complaints have been made too late.

Therefore, I've had to consider when Mr W became aware, or ought reasonably to have become aware of a cause for complaint. And whether that was before 20 May 2021 (three years before he complained). I've separately considered both the ISA and pension below.

Pension

The crux of Mr W's complaint is that SJP failed to offer him the choice of investing in his existing pension which had better charges. In addition, Mr W says that his existing pension has been left dormant in a cash fund and hasn't grown since 2017.

Part of Mr W's complaint regarding his pension advice in 2017 is that it hasn't grown in value. So, I've considered when that ought to have been apparent to Mr W. That's because that knowledge would have given Mr W the same cause for complaint that he has now. If Mr W ought reasonably to have a cause for complaint before 20 May 2021 – three years before he complained – then he's made his complaint too late.

Mr W has sent copies of parts of his annual statements of his existing scheme. It shows the following values:

- 1 May 2018 - £70,568.15
- 1 May 2019 - £70,496.64
- 1 May 2020 - £70,422.68
- 1 May 2021 - £70,346.96

Mr W's pension had therefore decreased by a small amount each year since 2018.

Mr W's cause for complaint is that the value of this pension hasn't grown. And he blames SJP for that because he says it failed to advise him on this pension in 2017. But that's information that Mr W has known, or ought to have known having been in possession of annual statements demonstrating the fact, since before 20 May 2021. So, Mr W ought reasonably to have had cause for complaint about SJP's failure to advise him on his existing pension more than three years before he made his complaint.

Therefore, Mr W's complaint regarding his existing pension has been made too late and I can't consider its merits.

ISA

The crux of Mr W's complaint is that part of SJP's suitability letter said there would be no charge for the ISA transfer, which was misleading.

The part of the suitability letter which Mr W complains about says;

The Immediate Costs of Moving Your Existing Plan

There are no immediate costs, such as an exit or transfer penalty, which will be incurred as a result of transferring this plan.

Mr W has a cause for complaint because he feels this statement is misleading causing him to think there was no cost at all in transferring his ISA. So, I've therefore thought about whether Mr W only recently became aware of this statement being potentially misleading, or whether he knew, or ought reasonably to have known sooner that there might be costs involved in transferring his ISA.

Below the above statement, the suitability report went on to record the 'potential disadvantages of replacing your [Mr W's] existing plan'. The report highlighted a disadvantage as 'A new Initial Charge will be applied'.

The suitability letter also recorded that in addition to the report, Mr W's adviser provided him with various other documents, including a supplementary information document, illustration and client agreement.

SJP provided a copy of the supplementary information document it says it gave to Mr W which detailed the terms and conditions of his ISA. Of relevance, the document said;

"1.3 What is the initial charge?

When you make a one-off or regular investment, we deduct an initial charge of 5% from the amount invested...

...

7.2 Advice costs

Our advice is not free. If you decide to invest a lump sum, the cost of the initial advice and service will be 4.5% of the amount invested....

The specific amounts of the advice charges are set out in the personalised illustration that we will provide and discuss with you."

The personalised illustration SJP say was provided said:

"How much will the advice cost?

Our advice is not free. The cost of the initial advice and our services will be £2,250.00 which is 4.5% of the investment shown. The cost covers all of our expenses in providing, checking and guaranteeing the suitability of your advice..."

SJP provided a copy of its client agreement which Mr W signed in July 2017. Under the section 'Adviser charges' it said:

"Our advice is not free. The cost for our advice will be paid for out of your investments. Details of the charges we make for our advice and how it is paid for are set out in the Key facts about our services and costs document you receive. The advice charges will also be discussed with you and the specific amount charged will be provided on the personalised illustration you receive each time you make an investment."

The declaration SJP asked Mr W to sign included four bullet points. One of which said:

“ I understand that the advice I receive is not free and I agree to the payment of the advice charges from my investment as referred to above.”

Having reviewed all the documentation here from the time of the sale in 2017, I'm satisfied that if Mr W was under the impression the transfer of his ISA was 'free' because of the statement made in the suitability letter, there were several other pieces of information given to Mr W at the time of the advice which ought to have made it clear to Mr W there was a charge for the transfer. This conflicting information would have given Mr W a cause for complaint that the first statement was potentially misleading. I say that because it ought reasonably to have been clear to Mr W that he would pay an initial advice charge for his ISA investment.

Mr W says the suitability report is the only document he read and understood. However, the rules I must follow mean I need to consider that Mr W ought reasonably to have had a cause for complaint. And in this case, I'm satisfied Mr W was in possession of all the information he needed in 2017 to have cause for complaint.

As Mr W made his complaint regarding the ISA more than six years after its sale and more than three years since he ought reasonably to have had cause for complaint, he's made his complaint too late.

The rules in DISP say that I can set aside the time limits if, in my view, the failure to comply with them was due to exceptional circumstances. The example of an exceptional circumstance that is given in the rules is where the complainant has been, or is, incapacitated. That is an indication of the type of circumstance that might lead to time limits being missed.

However, I've seen no evidence that Mr W was prevented from bringing his complaint sooner. So, I'm satisfied no exceptional circumstances were present, causing Mr W to be unable to bring his complaint within the required time period.

Mr W also complained about the ongoing service he received from SJP. When opening the ISA and pension Mr W agreed to a service from SJP to have his products reviewed annually. And each annual review due is a new 'event' over which I have jurisdiction.

Mr W complained to SJP in May 2024 but as Mr W's reviews were due around July each year on the anniversary of his plans (from July 2018 onwards), I have the jurisdiction to consider all of the reviews that were due. I'll now consider the merits of that part of Mr W's complaint.

What I've provisionally 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.

Mr W had an agreement with SJP to provide an ongoing service on his ISA and pension. In the suitability letters it gave to Mr W in 2017 it described this as;

“Ongoing Advice

A key element of financial planning is conducting regular reviews of your financial arrangements to ensure the course of action taken today remains appropriate to your circumstances in the future as it is likely your objectives and circumstances will

change over time.

As part of my ongoing service I will review your needs annually and we agreed to continue our regular contact going forward.”

Mr W says that SJP failed to deliver this service since 2017.

When considering what is fair and reasonable, I take into account relevant laws and regulations as well as the regulator’s rules, guidance and standards. Where appropriate I also consider what was good industry practice at the time of the advice.

In February 2025 the FCA set out its findings from a recent review of whether financial advisers were delivering the ongoing advice service that consumers had paid for.

Of relevance to this complaint, it said that where a firm had been ready, willing and able to provide suitability reviews, but a client had consciously declined the service in any given year, it considered it less likely that redress would be paid. However, the FCA went on to say that where a client had declined a service over a number of years, firms should discuss with the client whether continuing the service was still in the clients’ best interests.

In Mr W’s complaint SJP have provided a ‘client transaction record’ noting various pieces of contact SJP say they had with Mr W.

The first record was dated 23 January 2018 and under ‘reason for contact’ it said ‘[SJP] telephoned to offer review’. The note recorded under the ‘action taken’ said:

“Offered review meeting – [Mr W] said he’d just received report for first year of investing with SJP and all was as [SJP’s adviser] had said so he’s happy with everything at the moment so doesn’t feel review appt necessary.”

The next record was dated 17 January 2019 and under ‘reason for contact’ it said ‘[SJP] called to offer review’. The note recorded under ‘action taken’ said:

“[Mr W] is happy with everything as it stands, and will continue paying in to RA as present levels, although he cannot afford to commit anything further at this stage. He has misplaced PPCC and needed to know numbers for tax return. Duplicate ordered and posted out to him.”

In response to our investigator’s opinion, Mr W seemed to acknowledge that he may have declined the 2018 and 2019 reviews. And I think the notes, seemingly written at the time, persuade me that, on balance, a review was at least offered in these years.

Mr W says he didn’t want to waste the adviser’s time and didn’t understand how important the reviews were. But I don’t think that changes the fact that it appears SJP were willing to conduct the reviews, but Mr W consciously declined.

As the FCA suggested in its recent findings, I think Mr W repeatedly declining the reviews ought to have caused SJP to consider whether continuing with the ongoing service was in his best interests. And considering he hadn’t used the service since it had commenced, I think it’s reasonable to conclude SJP ought to have switched off the ongoing advice from February 2019 following its contact from Mr W in January 2019. Therefore, my starting point is for SJP to refund all the charges since that date.

In response to our investigator’s view, SJP said it had provided an ongoing review service to Mr W in 2022, so it didn’t think it was fair to refund the fee for that year. SJP provided

documentation it says evidences a review was conducted.

But I disagree that the required service was provided in 2022. I'll explain why.

SJP provided a letter and updated 'confidential financial review' document from December 2022. The financial review document notes:

"Update Dec 2022 Happy with present arrangements and fund selection but will review in New Year."

The letter, dated 29 December 2022 said, amongst other things;

"As agreed, selecting your investments is one part of the process of wealth management, but as time passes it is equally important to monitor them and make changes where appropriate.

We conducted a brief assessment of your existing portfolio and whilst we agreed to make no immediate changes, I will be in touch in January to arrange a face to face meeting and we can then review fully.

At this point, given that changes may well have occurred in your life since our last full round of advice, I think it would be sensible to review your overall financial protection arrangements and I look forward to discussing your requirements when we next meet."

Having reviewed the contents of the documents I'm not satisfied it evidences that Mr W had the annual review he was entitled to. The letter clearly indicated that only a 'brief assessment' had been made resulting in no recommendations and it had been arranged for Mr W to meet with his adviser in the new year to 'review fully' his investments.

It doesn't appear to me that either Mr W or his adviser had treated this meeting as his annual review. This is also backed up by the 'client transaction record' kept by Mr W's SJP adviser which noted under the date of 29 December 2022;

"Called to discuss Dad's trust arrangements and also offered a review for 2023

Not in the best of health at moment but agreed to contact in new year"

On balance, I'm not persuaded SJP provided Mr W with a review in December 2022. The evidence suggests to me that both SJP's adviser and Mr W agreed to review things in early 2023 – which SJP have already accepted didn't occur.

In summary, it would have been in Mr W's best interests for SJP to have switched off the ongoing advice charges from February 2019 when it became clear it was a service Mr W wasn't using or benefitting from. But even if it hadn't, SJP still didn't provide the service it ought to have done in the subsequent years up until the complaint was made. So, a fair and reasonable outcome is for SJP to refund the ongoing advice charges it's taken from Mr W since February 2019 for a service not delivered.

I've also considered the 'end date' of when the ongoing advice charges should be refunded to. I note that Mr W complained in May 2024, before a review was due. SJP also say Mr W re-engaged with its ongoing service in July 2024. But as I've concluded that the ongoing advice charge should have been turned off in February 2019, I think it's fair to conclude SJP need to refund the fees up until May 2024 when the complaint was made. If Mr W has since re-engaged in the service, then SJP are entitled to start charging for its services once again.

Overfunding of the pension

Our investigator has recently been in contact with Mr W regarding his pension contributions in 2022 to see if he's received a tax charge for overfunding his pension in 2022. Mr W has confirmed that he hasn't received a tax charge and there likely isn't a loss as he'd be able to use a carry-forward allowance. But Mr W had raised this issue to highlight the lack of service he'd received from SJP.

As Mr W has accepted he hasn't suffered a loss, I don't intend to comment on this point further.

The responses to my provisional decision

SJP accepted my provisional decision.

Mr W says he doesn't accept my provisional decision. But he hasn't provided any new evidence or submissions for me to consider.

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.

I've also re-considered the findings I made in my provisional decision.

As neither side have provided any new evidence or submissions for me to consider, I see no reason to depart from the findings I already made in my provisional decision. So, for the reasons I've given in my provisional decision, I partly uphold this complaint.

I'll set out below what SJP must do to put things right.

Putting things right

If the ongoing advice charge had been switched off in February 2019 then the pension and ISA would be higher by the value of those charges and any investment returns that those charges would have gone on to benefit from.

Therefore;

- SJP must pay the difference between what the plan is worth now and what it would have been worth on the date of my final decision, had the charges not been deducted between February 2019 and May 2024.
- To do this, SJP need to work out the actual growth Mr W's plans have received from the date each charge was taken to the date of settlement.
- SJP should take account of any withdrawals or additions to the investments when carrying out these calculations to ensure the values it is using reflect the actual growth the charge would have received, had it not been deducted.
- For the pension, SJP should pay redress into Mr W's pension, to increase its value by the amount of compensation. The payment should allow for the effect of charges and any available tax relief. SJP shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If SJP are unable to pay the compensation into Mr W's pension plan, it should pay that amount directly to him. But had it been possible to pay into the plan, it would

have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.

This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr W won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age.

It's reasonable to assume that Mr W is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr W would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Compensation relating to the ISA can be paid directly to Mr W. This amount should not have a notional deduction for tax, as the investment would have been tax-free.
- SJP must provide the details of the calculation to Mr W in a clear, simple format.
- SJP's actions have caused Mr W a level of distress and inconvenience above what you might reasonably expect from day-to-day life. He's had to raise his concerns with SJP and didn't receive a response to his complaint. SJP must therefore pay Mr W £250 for the distress and inconvenience caused.

SJP must pay the compensation within 28 calendar days of the date on which we tell it Mr W accepts my final decision. If SJP fails to pay the compensation by this date, it should pay 8% simple interest per year on the loss, for the period following the deadline to the date of settlement.

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

My final decision

My final decision is that I partially uphold this complaint and St. James's Place Wealth Management Plc must put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 March 2026.

Timothy Wilkes
Ombudsman