

## The complaint

A solicitors' firm representing Mrs C complains on her behalf about St. James's Place Wealth Management Plc, referred to as 'SJP'.

In summary, it says that Mrs C didn't receive a review of her investments in 2018 so had been wrongly charged for a service that she didn't receive. To put things right, it would like a refund of the relevant fees.

## What happened

SJP didn't uphold the complaint on the basis that it contacted Mrs C in 2018 in response to her instructions to withdraw some funds and to discuss whether her investment was sustainable. It said that it also provided an opportunity to have a formal review, but she didn't take up the offer. So, in the circumstances, it's not obliged to refund the 2018 fees and hasn't done anything wrong by refusing to do so.

SJP also explained that the implementation of the Retail Distribution Review (RDR) on 31 December 2012 – by the industry regulator the Financial Conduct Authority (FCA) – required that firms only take an Ongoing Advice Charge (OAC) if they are providing ongoing advice or service, although there was no requirement for an annual review.

SJP also explained that the FCA introduced additional rules for certain investment businesses on 2 January 2018 which stated that where firms provide periodic assessment of suitability, such a review needs to be provided at least annually.

Notwithstanding the above, SJP went on to confirm that following the initial advice in August 2011, Mrs C received a review in December 2012, August 2013, August 2014, October 2015, February 2016, and May 2017.

Additional formal reviews were held in June 2019, May 2020 – when some of Mrs C's funds were switched to a low-risk fund – and November 2020 and February 2021 when the funds were rebalanced. In February 2022, Mrs C decided to withdraw the last of her investments.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, he made the following key points:

- Mrs C first invested through SJP in August 2011, thereafter she made additional investments. She remained a client of SJP until February 2022, when she withdrew all of her investments.
- Her representative originally complained about the suitability of the advice – in August 2022 – but following a response from SJP didn't refer this part of the complaint to our service.
- The representative remained unhappy about the 2018 review and OAC, so has referred only that part of the complaint to our service.
- Between August 2011 and February 2021 Mrs C had formal reviews every year apart from 2018.
- The suitability reports provided by SJP generally show when the reviews should take

place. Under the heading “Reviews”, they state:

- *“I strongly recommend that we conduct a review of your circumstances at regular intervals. I will write to you each year on the anniversary of your plan to provide you with an annual statement in respect of your investments so that we can arrange for a review.”*
- An official review didn’t take place in 2018. However, based on what SJP said it spoke to Mrs C in January 2018 when she wanted to make a withdrawal. A review was offered in June 2018, but she didn’t take up the offer.
- Having considered the context of Mrs C’s relationship with SJP – and her adviser – it was clear that she had a strong relationship with them, and much of the correspondence supports this.
- In total there were 11 reviews between August 2011 and February 2021 with regular dialogue between Mrs C and SJP.
- Had there been periods of no contact, and incomplete reviews, he might’ve reached a different conclusion in respect of the OAC. In other words, if Mrs C didn’t get what she paid for he’d reach a different conclusion.
- On balance, it seems Mrs C was happy not to have another review, having spoken to the adviser earlier in the year in 2018.
- Given the number of reviews conducted, the strong relationship and why there wasn’t an official review in 2018, he can’t say that SJP behaved unreasonably. Mrs C disagreed with the investigator’s view and asked for an ombudsman’s decision. The representative said Mrs C paid for a review in 2018 which she didn’t receive, as such she should be refunded that fee. The representative didn’t pursue any other issues.

As no agreement had been reached the matter was passed to me for review.

Through our investigator, I sought clarification from SJP regarding what happened in January 2018 when Mrs C called about withdrawing some funds, and whether or not her other investments were considered. In summary, SJP made the following key points:

- In January 2018, the adviser would’ve called to confirm that it was a genuine request, and that all was ok. The adviser would’ve also enquired whether Mrs C wanted a face-to-face meeting.
- When a client wanted to withdraw funds, if they had more than one type of investment, it would recommend which was best to withdraw from. For example, one investment might have withdrawal penalties whilst the other investment didn’t, and there could be tax consequences.
- Whilst this wasn’t an official review, it constituted an ‘ad hoc review’, and Mrs C didn’t respond to the offer of a review in June 2018.
- It’s important to note that no changes were made in 2019, which suggests that the investments were suitable in 2018.

I sought further clarification regarding the amounts that were charged despite no review taking place in 2018. SJP provided the following response:

- The amount equivalent to the OAC for 2018 was £410.66 split as follows:
  - £240.48 for the bond ending in 972.
  - £170.18 for the bond ending in 731.
- The steps taken by SJP constitute an ad hoc review, which is why Mrs C didn’t respond to an offer for a financial review in June 2018.

In early June 2024, I issued my provisional decision, a copy of which is stated below and forms part of my final decision. In the decision I said:

*“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, subject to any further submissions, provisionally I’m going to uphold this complaint.*

*On the face of the evidence, and on balance, I think SJP should refund the relevant charges for the missed review in 2018, notwithstanding Mrs C’s request to withdraw funds and not take up the offer for a review in June 2018.*

*Despite what SJP says about an ‘ad hoc review’ taking place, this isn’t what Mrs C paid for and this isn’t what it agreed to provide. I note it concedes that an official review didn’t take place (which is what Mrs C paid for) therefore this is something that it should refund.*

*Before I explain why this is the case, I think it’s important for me to note I very much recognise Mrs C’s strength of feeling about this matter. Her representative has provided submissions to support the complaint, which I’ve read and considered carefully.*

*My role is to consider the evidence presented by Mrs C’s representative and SJP, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case. In the circumstances, I don’t need any further evidence to make my decision.*

*Provisionally, I uphold this complaint, in summary, for the following reasons:*

- *There’s no dispute that an ‘official’ review didn’t take place in 2018.*
- *I note the Solicitors have no issue with the other reviews that took place, therefore they are not the subject of this complaint.*
- *In January 2018 Mrs C spoke to SJP because she wanted to make a withdrawal. It’s likely her investment(s) were discussed, however I think it’s more likely than not that this was only done for the purposes of the withdrawal.*
- *In response to my recent enquiry SJP explained that the adviser would’ve called up Mrs C and confirmed that it was her making the request and discussed the best investment to withdraw from. However, I’m not persuaded that this amounts to a review.*
- *Despite what SJP now says about an ‘ad-hoc review’ taking place, this evidently didn’t amount to a review of all her investments, otherwise Mrs C wouldn’t have been offered a review in June 2018. Put differently, I think it’s unlikely that SJP would’ve offered a June 2018 review if the (previous) January 2018 discussions were sufficient for the purposes of a review.*
- *I appreciate Mrs C didn’t take up the offer, but that doesn’t mean that SJP was entitled to charge for a service it didn’t provide.*
- *The fact that SJP otherwise provided a review every single year to its credit – and generally had a good relationship with Mrs C – also didn’t excuse it from charging for a service it didn’t provide.*
- *Despite what SJP now says, it’s only with the benefit of hindsight we know that changes weren’t necessary in 2019, but that’s not something that would’ve been known in 2018 without a review. So, I don’t think that justifies its approach either.*

*Because of the above, I can’t safely say that SJP behaved reasonably. So, to put things right I think it is fair that it should refund the fees charged for the 2018 missed review, in this case £410.66, with 8% simple interest from the date of payment to the date of settlement.”*

*I gave the parties an opportunity to respond to my provisional decision and provide any further submissions they wished me to consider before I considered my final decision.*

SJP responded and accepted my provisional decision. In summary, it said:

*"I can confirm that we accept the ombudsman's provisional decision that was reached. We will await confirmation that the case can now be closed and settled in line with the provisional decision. I will then arrange to refund the post RDR ongoing advice charges for 2018 plus interest in line with the provisional decision."*

Mrs C's representative also responded and accepted the provisional decision. It said the provisional decision was acceptable to Mrs C.

### **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.

Having done so, in light of SJP's and Mrs C's acceptance of my provisional decision, my decision to uphold this complaint remains the same, principally for the same reasons as set out in my provisional decision.

In other words, despite being given the time and opportunity to respond to my provisional decision, I'm satisfied that no new material points have been made that persuade me I should change my decision.

On the face of the evidence, and on balance, I still think SJP should refund the relevant charges for the missed review in 2018, notwithstanding Mrs C's request to withdraw funds and not take up the offer for a review in June 2018.

So, to put things right, St. James's Place Wealth Management Plc should refund the relevant fees charged for the 2018 missed review, in this case £410.66, along with 8% simple interest, from the date of payment to the date of settlement.

### **Putting things right**

St. James's Place Wealth Management Plc should refund the relevant fees charged for the 2018 missed review, in this case £410.66, along with 8% simple interest, from the date of payment to the date of settlement.

### **My final decision**

For the reasons set out above, and in my provisional decision, I uphold this complaint.

St. James's Place Wealth Management Plc should pay Mrs C redress as set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 29 July 2024.

Dara Islam  
**Ombudsman**