

## The complaint

Mr W complains that St James's Place Wealth Management PLC (SJP) wrongfully received payments from his pension. He says he would like all the payments returned, with interest. Mr W also complains that the statements he received weren't clear and, as he had to cash in his pension to stop the payments, he was subjected to additional income tax.

## What happened

Mr W says in 2007 he made the decision to switch a personal pension he held to an SJP Retirement Account. He says he met with an adviser from SJP, Mr N, who completed all the necessary paperwork.

Mr W says Mr N assured him that the transfer wouldn't come at any cost to him.

In 2009 Mr W complained to SJP. He said the fund value of his plan had fallen by around £10,000 from when the pension was switched in 2007. Mr W said the point of the move to SJP was to stop the pension losing money and questioned why SJP hadn't recommended moving the pension to a cash fund with his existing provider.

In response to the 2009 complaint, SJP said that Mr W met with its adviser Mr N in 2006 and 2007. In 2007 SJP recommended the pension switch, but no guarantees had been given relating to the performance of the investments. They said details of the recommendation were set out in a suitability letter which was signed by Mr W. And it said a copy of the suitability report was provided to Mr W with the complaint response.

Mr W says he met with SJP in 2018 to discuss deferring his retirement age. Following the meeting there was an exchange of correspondence between Mr W and Mr N in which Mr W asked about a 0.25% fee which was being paid to Mr N. He asked how much had been paid to Mr N between 2008 and 2017. He noted that his annual statements had not shown the deductions for that fee.

Mr W complained to SJP in September 2023 which he later clarified in April 2024. Mr W says his complaint can be explained under four headings:

- Overcharges for ongoing advice and relationship with Mr N. Services neither sought nor provided.
- Initial transfer fee £511 wrongfully charged, and never agreed.
- Plan arrangement fee £2247.45 wrongfully charged, and never agreed.
- Annual retirement statements were not transparent about the charges.

SJP responded to Mr W's communications. It explained that the suitability report and illustrations, which explained all of the fees, were sent to Mr W in 2007 and again as part of their complaints process in 2009. They said Mr W took his complaint to the Financial Ombudsman Service in 2009 but later withdrew it. SJP went on to say that they were unable to change the format of its annual statements, but Mr W could request additional information from its administration centre if he needed to.

In June 2024 SJP sent a final response letter to the complaint which said Mr W's plan was not subject to an ongoing advice fee. It explained that most of Mr N's fee was paid by SJP upfront, but it still continued to make a small annual payment. The payment was made by SJP and is factored into the annual management charge deducted from Mr W's plan and so no separate deduction from Mr W's plan was made.

SJP recognised the amount of time it had taken to provide its final response to Mr W and offered £100 by way of an apology for the delay.

Mr W remained unhappy with SJP's response and so brought his complaint to our service. He also noted that he'd since cashed in his entire pension to stop SJP from deducting any further fees. Mr W asked that SJP pay him the higher income tax he'd paid as a result of encashing his entire pension.

Our investigator said most of Mr W's complaint had been made too late. He explained that the complaint stemmed from the advice in 2007 which was more than six years ago. And Mr W had said it was in 2018 that he became concerned about the fees SJP had charged, which was more than three years before he complained. He also said the fees were disclosed in the suitability letter and illustration from the outset and were also a factor in the 2009 complaint which Mr W referred to this Service. So, our investigator concluded the complaints about any fees were made too late.

Mr W's complaint that he'd paid more income tax having had to cash in his pension was the only issue our investigator considered. However, he concluded that the decision to withdraw the funds was made by Mr W who could have transferred his pension to a different provider instead of incurring the additional tax bill. So, he didn't uphold the complaint.

### **Why we can't look into all of Mr W's complaint points**

Mr W raised several different complaint points to SJP. He says our investigator generalised his complaints which he had specifically worded under four headings. In keeping with the role of our service to resolve complaints quickly with minimum formality, I'm satisfied our investigator considered all of the issues in providing his assessment.

I will, however, cover the issues Mr W has raised, under the headings he's used. But I trust Mr W will not take the fact that my findings focus on what I consider to be the central issues as a discourtesy.

I appreciate this will be very disappointing for Mr W but for the same reasons as our investigator I've decided that most of Mr W's complaints have been brought to our Service too late. So, we aren't able to look into those aspects of his complaint further. I'll explain why.

We're not able to look into every complaint brought to us. The rules we must follow are set out in the Dispute Resolution (DISP) rules within the Financial Conduct Authority's (FCA) handbook. We are entirely bound by these rules and can't 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 is DISP 2.8.2, which says that;

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

*(1) More than six months after the date on which the respondent sent the*

*complainant its final response letter, redress determination or summary resolution communication.*

*(2) more than:*

*(a) six years after the event complained of; or (if later)*

*(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

*unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;*

*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 into complaints made outside of this time period if the business consents to us doing so. In this case SJP hasn't consented to us looking into things.

I've first considered Mr W's complaint point regarding the initial transfer fee of £511. However, I agree with our investigator that this fee was recorded and disclosed to Mr W in the suitability report which SJP say was shared with Mr W at the point of advice in 2007 and again in 2009 during the complaint he made.

Mr W says the suitability report is fabricated. He disputes that he signed it and is suspicious over the dates of the letters and signatures as well as the fact pages and paragraphs aren't numbered.

Where the evidence is disputed, or there are conflicts, I have made my decision based on the balance of probabilities. In other words, I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to have happened.

I appreciate Mr W may not recall receiving the suitability letter or signing it. However, that isn't surprising considering the advice happened 16 years prior to his complaint in 2023. A suitability letter and illustration were a standard and required document used in the advice process so, it would be unusual if one wasn't produced and supplied at the time.

I don't add any weight to the pages or paragraphs not being numbered as they weren't required to be, and the document is consistent with others I've seen from SJP. It's held on SJP's records for Mr W's plan, and I see no issue with when it was dated or purportedly signed by Mr W. I've also considered the complaint response in 2009 which recorded that a copy had been given to Mr W. And I've seen no evidence that Mr W disputed its authenticity at that point, which was only 2 years after the advice.

Considering all of the above, I'm more persuaded that on balance, the suitability report and illustration were likely produced and shared with Mr W at the time of the advice and again in 2009. The disputed fee which Mr W has complained about was included in the suitability report.

In 2009 Mr W was unhappy with the advice he'd been given to switch providers in 2007, so much so that he complained to SJP. The initial transfer fee wasn't specifically mentioned in his complaint. But, I think Mr W would have been aware of the fee at that time and if he

thought he shouldn't have paid it, as he does now, he ought to have had cause for complaint at that time.

Mr W didn't complain within 3 years of being aware of the payment of the fee. Therefore, the complaint point regarding the initial transfer fee was made too late.

I've then gone on to consider the remaining points Mr W raised. This includes payments made to Mr N which included both a plan arrangement payment of £2247.45 and the ongoing payments of 0.25%. Also, that the details of these payments weren't included in the statements sent to Mr W. I consider the event being complained about here was the agreement, for Mr N to be paid for his work in relation to Mr W's plan. That disputed agreement started in 2007, so more than six years before Mr M complained in September 2023. Mr W had also been receiving statements relating to his plan since that date.

The fee paid to Mr N was set out in the illustration SJP provided dated 31 October 2007. Mr W has disputed receiving this illustration and points out that it post-dated the suitability report which was dated 30 August 2007. He says this demonstrates it wasn't possible for the illustration to have been supplied at the same time as the suitability report.

I'm minded to agree with Mr W that the illustration on file couldn't have been included in the suitability report as it post-dates the report. However, that doesn't automatically mean Mr W wasn't sent the illustration on file or an earlier version. But even if I was to accept that Mr W didn't ever see or receive the illustration on file or an earlier version, it's his testimony that he first became aware of the 0.25% payment in 2018. And I've seen evidence that he questioned it at the time in a letter he sent SJP in August 2018. In that letter Mr W also said his annual statements didn't show the deductions of fees to Mr N.

The evidence available to me shows that Mr W was aware in 2018 of payments being made to Mr N and those payments not showing in his annual statements. So, he ought reasonably to have had cause for complaint in 2018 if he didn't think Mr N should have been paid any payments in relation to his pension, as he says now. He would have also had cause for complaint that the fees weren't showing in his annual statement.

I've considered whether the letter Mr W sent in 2018 was a complaint as defined by the FCA. However, I'm satisfied Mr W's query relating to the payment wasn't a complaint as it wasn't an expression of dissatisfaction and didn't allege a financial loss.

Mr W didn't make his complaint within three years of 2018. Therefore, Mr W's complaint points regarding the plan agreement payment, 0.25% ongoing payments and the details contained in his annual statements were made too late.

I can only consider these complaint points if there were exceptional circumstances preventing Mr W from bringing his complaint to our Service sooner. The bar for this is high and would need to be something that meant Mr W was not able to do so, for instance through serious ill health or incapacitation. And I've seen no evidence that was the case here.

### **What I've decided about the part of Mr W's complaint that we can help with – and why**

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

When bringing his complaint to our Service Mr W explained that he felt he had to cash in his pension to stop SJP from paying any fees to Mr N. And Mr W therefore was subjected to paying a higher income tax deduction from his pension payment than if he had withdrawn his

funds over a longer period or in a different way.

In order to uphold that complaint, I'd need to be satisfied that it was SJP who had caused Mr W to incur additional tax through some error or actions it had taken. However, I can't say that's the case here. SJP didn't advise Mr W to withdraw his entire fund. Nor did it cause him to do so.

I appreciate his reasons for doing so, but Mr W chose to withdraw his entire fund himself. Other options were available to him to mitigate his tax position if he was unhappy with the service provided by SJP, for example, transferring his funds to another provider.

I therefore can't say SJP were responsible for the additional income tax Mr W has paid and so I don't uphold that aspect of Mr W's complaint.

SJP took several months to send Mr W its final response letter and address his concerns. It offered £100 as an apology for that. Complaint handling isn't an activity over which our Service has jurisdiction. So, I won't comment on that further but if Mr W now wants to accept it, he should contact SJP direct.

### **My final decision**

For the reasons I've given, part of Mr W's complaint has been made too late. For the complaint I can consider, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 December 2024.

Timothy Wilkes  
**Ombudsman**