

The complaint

Mrs M complains that St. James's Place Wealth Management Plc trading as St. James's Place ("SJP") that she's been paying ongoing advice charges ("OACs") despite not receiving annual reviews.

Mrs M is being represented by a claims management company, however, for ease of reference, I shall refer to Mrs M only throughout my decision.

What happened

Mrs M met with SJP in September 2013. Following this meeting, Mrs M invested into an ISA and a Unit Trust in September 2013. Fees for ongoing advice were charged from the inception of her investments. Mrs M's Unit Trust closed in March 2015 and she encashed her ISA in February 2023.

Mrs M complained to SJP in November 2023. In summary, she said she was paying OACs without receiving annual reviews or a level of service that justifies the fees she was paying. For completeness, Mrs M's complaint to SJP also included a complaint that the advice given had been unsuitable. But SJP didn't uphold this element of the complaint and Mrs M has confirmed she doesn't want us to consider it.

SJP considered Mrs M's complaint and offered to repay the ongoing advice fees for 2018, 2020 and 2021 as reviews weren't carried out during these years. SJP declined to return the fees charged from 2013 to 2017, as it said that, in accordance with its complaint handling procedures, it had only reviewed its records back to November 2017 (six years before Mrs M complained).

In its final response, SJP said:

"In considering the complaint we have looked at the relevant factors, which include:

- 1. The evidence we have that ongoing advice was provided to your client, for example documents produced as part of reviewing the suitability of the products recommended to them, and communications regarding the purpose and outcomes of the ongoing service provided. For example, as a minimum all our clients receive our Services Cost and Disclosure Document (SCDD) which sets out the nature of the ongoing service we will provide, the charges for the ongoing service, and how a client can exit the ongoing service.*
- 2. Alongside this evidence, we have also considered the regulatory requirements that applied to providing ongoing advice since they became a client in 2013. Prior to 2018 this included a requirement to regularly review the performance of products, and from 2018 also a specific requirement to provide an annual review of the suitability of certain products. Our client communications referred to above set out the nature of the ongoing service provided in line with the relevant regulatory requirements."*

Mrs M didn't accept SJP's findings and so she referred his complaint to this service for an independent review. Mrs M says she did see her adviser from time to time and knew they were available for any further top ups or advice if she needed. She says she only became aware of the fact that, having paid OACs, she should have received a full review each year when he spoke to a claims management company.

Following the referral to our service, SJP has provided further reasoning as to why it believes any complaint about OACs taken prior to November 2017 are time-barred. In summary it said:

- Mrs M's investments started in September 2013 and the first annual review would have been due on or around September 2014 (twelve months later).
- It's been more than six years since the review in 2014 was missed and in addition, it's more than three years since Mrs M ought reasonably have known she had cause to complain about the missed review as all of the point of sale documentation explained that she ought to expect a review.
- It follows that any subsequent reviews missed between 2014 and 2017 are also too late for the same reasons.
- It also confirmed that an annual review took place in 2022, as well as 2019.

I issued a provisional decision on the complaint in September 2024 and I include a copy below:

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.

Why I can't look into the complaint about the fees paid between September 2013 and November 2017

Our service isn't free to consider every complaint that is brought to us. I can only consider complaints which satisfy the dispute resolution (DISP) rules in the regulator, the Financial Conduct Authority's ("FCA") handbook. DISP 2.8.2 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 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 limit [...] was as a result of exceptional circumstances.

[...]

(5) the respondent has consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2R or DISP 2.8.7R have expired”

The rules don't say that a complainant needs to know exactly what has gone wrong to bring a complaint – only that they need to have a reasonable awareness that something might have gone wrong.

If a complaint is brought outside of these time limits we'd only be able to consider the complaint 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 incapacitation.

Each OAC is its own event, with the fees being charged in advance. So, the fees being charged from 2013 for the first year would be for the review in 2014 and so forth. There is no question that the event being complained about (not receiving ongoing advice being paid for in 2013 to 2017) happened more than six years before Mrs M submitted her complaint to SJP. Therefore, I've had to consider when Mrs M was aware or ought reasonably to have been aware of a cause for complaint.

The crux of this complaint is that Mrs M didn't receive the service she expected having paid the OACs. So, I've considered what Mrs M's expectations would have been around the service she was paying for to determine at what point a cause for complaint ought to have become apparent.

SJP says it doesn't think Mrs M's complaint around the OACs taken between 2013 and 2017 was raised within three years of when Mrs M ought to have been aware of a cause for complaint as she was told she would have regular reviews and she ought to have been aware she didn't receive these when the first review in 2014 was missed. SJP has referred to the initial documentation to support its stance.

SJP has provided copies of the point of sale documentation Mrs M was provided with. These set out the following about the OACs.

The Unit Trust illustration said:

“How much will the advice cost?”

- Our advice is not free. The cost of the initial advice and our services will be £1506.60. This cost covers all of our expenses incurred in providing, checking and guaranteeing your advice. The remuneration of your Partner is only one element of this cost, from which they meet their own business expenses. 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's Place" brochure provided by your Partner. The fee for this is 0.5% 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. For example, if your investments are worth £33480.00 in a particular year, the cost for that year would be £167.40.*
- These amounts are paid out of the deductions shown and are included in the illustrations above. They depend on the size of the contribution, the term of the plan and the value of your fund.”*

The ISA illustration said:

“How much will the advice cost?”

- *Our advice is not free. The cost of the initial advice and our services will be £518.40. This cost covers all of our expenses incurred in providing, checking and guaranteeing your advice. The remuneration of your Partner is only one element of this cost, from which they meet their own business expenses. 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's Place" brochure provided by your Partner. The fee for this is 0.5% 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. For example, if your investments are worth £11520.00 in a particular year, the cost for that year would be £57.60.*
- *These amounts are paid out of the deductions shown and are included in the illustrations above. They depend on the size of the contribution, the term of the plan and the value of your fund.”*

SJP's welcome brochure said:

“We aim to deliver on our commitment to you by:

- *Providing personal face-to-face financial advice from an experienced St. James's Place Partner*
- *Giving you the opportunity to review your financial affairs regularly”,*

[...]

“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.”

Having considered the documents mentioned above, I think Mrs M ought to have been aware she was paying OACs. However, I don't think the documents are clear on how exactly the OACs would operate and I don't think that it set definitive expectations for the timing of reviews. The document set an expectation that reviews should be “regular”. Whilst I don't think the document conveys a standard expectation that reviews will take place on an annual basis, I've weighed this against the comments made in the suitability letter.

SJP has provided the suitability letter sent on 3 September 2013, in which the advisor set out the following:

“[...] you will get annual face to face reviews to discuss your investments and can come into the office at any time should you wish to discuss your funds if you[r] attitude to risk had changed or your fee this level of risk no longer suits you.”

[...]

I recommend you have regular annual reviews with myself to check your investments and the funds within them to check they meet your circumstances, needs, objectives and attitude to risk both now and the foreseeable future.”

Whilst Mrs M doesn't recall the fees being discussed; I'm satisfied she was provided with the documentation at the time. And I'm satisfied that documentation was clear that the fees were for meetings that would take place regularly, irrespective of whether Mrs M reached out and

initiated contact. And the suitability letter made it clear that these reviews would be arranged on an annual basis – with the option to speak in person. It's understandable that Mrs M may not now recollect exactly what she was told, given the passage of time, but I'm satisfied it's most likely that would have been her expectation at the time.

SJP has provided telephone records to show an annual review took place on 31 January 2022. It had been over eight years since she'd been told she'd receive "regular annual reviews" in return for annual fees, but she'd received none and there's nothing that persuades me there was other communication during that time that could have appeared to be a review. I've asked SJP for any records of communication between 2013 and this meeting, however, it has confirmed no records are available. So given what she'd been told, I'm satisfied Mrs M would have expected to have received at least eight reviews by the time she had her first review in 2022.

I'm therefore satisfied Mrs M knew enough by September 2014, when she hadn't received an annual review, to know she hadn't received what she'd been told she'd receive for the fees she'd paid. So, it follows that she knew – or ought to have known – of cause for complaint more than three years before she complained. In these circumstances, the complaint about the fees she's paid between 2013 and 2017 has been raised too late for this service to consider.

I'm able to consider a complaint if I'm satisfied the failure to comply with the time limits was because of exceptional circumstances. I haven't been provided with any such circumstances and I'm not persuaded there are any that apply here.

I appreciate this will come as a disappointment to Mrs M, but I'm only able to look at complaints where this service has jurisdiction.

Why I can look into the complaint about the fees paid from November 2017 onwards

I'm able to consider any missed annual reviews which are within six years of Mrs M raising her complaint to SJP. As such, I can consider any missed reviews that ought to have happened from November 2017 onwards.

SJP's offer

From 31 December 2012, the FCA's Conduct of Business Sourcebook (COBS) 6.1A.22R has said;

"A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:

(1) the adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:

(a) the firm has disclosed that service along with the adviser charge;
and

(b) the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the retail client to give any reason; or

(2) the adviser charge relates to a retail investment product for which an instruction from the retail client for regular payments is in place and the firm has disclosed that no ongoing personal recommendations or service will be provided."

The FCA also produced a factsheet on adviser charging which, amongst other things, said:

“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.”

I'm satisfied that COBS and the FCA factsheet are clear that SJP ought to have been providing a service for Mrs M from November 2017, as it's not disputed ongoing advice fees were paid. Mrs M's Unit Trust closed prior to November 2017 and so I wouldn't expect SJP to have provided any ongoing service in relation to that investment. Ongoing advice couldn't have just been offered or been available only if needed, an actual service needed to be provided. As the fees were taken as annual percentages, I'd expect to see SJP had provided personal recommendations or services for that individual client in each year that the fee was taken.

SJP has offered to refund the OACs in relation to the missed annual reviews for her ISA in 2018, 2020 and 2021 and have added simple interest at a rate of 8% per year to compensate Mrs M. I am satisfied this is fair compensation, in the circumstances.

SJP additionally offered £150 to compensate for any distress or inconvenience that had been caused to Mrs M. I've not been provided with any evidence that shows Mrs M has suffered any distress or inconvenience that would persuade me to make a higher award. As such, for these years, SJP doesn't need to do anything further.

SJP says annual reviews for Mrs M's ISA took place in 2019 and 2022. SJP has provided a follow up letter sent to Mrs M in November 2019 summarising the points discussed in relation to her ISA during a meeting which was held in the previous week. As such, I'm satisfied that a review of Mrs M's ISA did take place in 2019. Furthermore, SJP has provided a contact record from January 2022 in which SJP explains that it held an annual review with Mrs M in which she confirmed she was happy with the performance of her ISA. As such, I'm also satisfied an annual review took place in 2022. So as Mrs M received the service she'd been told she'd get in return for the 2018 and 2021 fees, it wouldn't be fair or reasonable for me to tell SJP to refund these fees.

I understand Mrs M encashed her ISA in February 2023 and so she didn't receive a review in 2023. However, I understand she would have been paying a monthly fee from January 2022 (when she had her last annual review) for the review due in 2023. As such, I think Mrs M should also receive a refund of an OAC's paid between January 2022 and when she surrendered her ISA in February 2023.

Responses to my provisional decision

Mrs M accepted my provisional findings but SJP didn't. It said the annual review that took place in January 2022 (the last annual review received by Mrs M) fell with the OAC charged for the year ending in November 2022. It said that over a five-year period it had offered to refund three of those years (2018, 2020 and 2021) and reviews took place in two of those years (2019 and 2022). Therefore, it didn't think it would be fair to ask it to refund the OACs charged between January 2022 and when Mrs M surrendered her ISA in February 2023.

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.

SJP has confirmed that the charging year for OACs ended in November each year. As such, I think it would only be fair for Mrs M to receive a refund of any OACs charged after November 2022 up until she surrendered her ISA in February 2023. I appreciate that SJP says it has offered to refund three out of five years' worth of OACs, however, if Mrs M has paid any OACs after the charging year ended in November 2022, I don't think it would be fair for SJP to keep these charges if she then didn't receive an annual review in 2023. Even this was due to her surrendering her ISA in early 2023.

Putting things right

SJP should pay Mrs M, if it hasn't already, the offer it made for the missed annual reviews in 2018, 2020 and 2021 and add simple interest at a rate of 8% per year to compensate her, as well as pay the £150 for any distress and inconvenience caused.

SJP should also refund Mrs M for any OACs paid after the OAC charging year ended in November 2022 until she surrendered her ISA in February 2023 and add simple interest at a rate of 8% per year to compensate her.

My final decision

My final decision is that the Financial Ombudsman Service can only consider Mrs M's complaint about any annual reviews missed between December 2017 onwards and that St. James's Place Wealth Management Plc should pay the offer as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 25 October 2024.

Ben Waites
Ombudsman