

The complaint

Mr A complains that St. James's Place Wealth Management Plc trading as St. James's Place ("SJP") has charged him ongoing advice charges ("OACs") despite not receiving annual reviews.

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

What happened

Mr A met with SJP in September 2016. Following this meeting, Mr A invested into an ISA which commenced on 14 September 2016.

Mr A complained to SJP in January 2024. In summary, he said he was paying OACs without receiving annual reviews or a level of service that justifies the fee he was paying.

For completeness, Mr A'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 Mr A has confirmed he doesn't want us to consider it.

SJP considered Mr A's complaint and offered to repay the OACs for reviews due in 2019, 2021 and 2023, as these didn't take place. SJP declined to return the fees charged from 2016 to 2018, as it said that, in accordance with its complaint handling procedures, it had only reviewed its records back to January 2018 (six years from when Mr A 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 2016. 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."

Mr A didn't accept SJP's findings and so he referred his complaint to this service for an independent review. He says he recalls seeing his adviser regularly but was unaware exactly how often that was. He also says he was aware that the OACs he paid were to cover the cost of reviews and was satisfied with how often he met with the adviser but was unaware that he should have received more frequent reviews.

Following the referral to our service, SJP has provided further reasoning as to why it believes any complaint about AOCs taken prior to January 2018 are time-barred. In summary it said:

- Mr A's ISA started in September 2016 and the first annual review would have been due on or around September 2017 (twelve months later).
- It's been more than six years since the review in 2017 was missed and in addition, it's more than three years since Mr A ought reasonably to have known he had cause to complain about the missed review as all of the point of sale documentation explained that he ought to expect reviews.
- It follows that any subsequent reviews missed prior to 2018 are also too late for the same reasons.
- Mr A had an annual review in 2022 only.

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 missed reviews from 2016 to January 2018

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 AOC is its own event, with the fees being charged in advance. So, the fee being charged from 2016 for the first year would be for the review in 2017 and so forth. There is no question that the event being complained about (not receiving ongoing advice being paid for in 2016 to January 2018) happened more than six years before Mr A submitted his complaint to SJP. Therefore, I've had to consider when Mr A was aware or ought reasonably to have been aware of a cause for complaint.

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

SJP says it doesn't think Mr A's complaint around the AOCs taken between 2016 and 2017 was raised within three years of when he ought to have been aware of a cause for complaint, as he was told he would have regular reviews and so he ought to have been aware he didn't receive these when the first review in 2017 was missed. SJP has referred to the initial documentation to support its stance.

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

The 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."

The ISA Illustration document said:

"How much will the advice cost?"

Our advice is not free. The cost of the initial advice and our services will be £721.89 which is 4.50% of the investment shown. This cost covers all of our expenses incurred in providing, checking and guaranteeing the suitability of your advice. The remuneration of your Partner's practice 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 brochure "Welcome to St. James's Place" provided by your Partner. The cost of this each year is 0.50% of your total investment (and so this annual cost will increase if your investment grows).

For example, if your investments are worth £16,100.00 in a particular year, the cost for that year would be £80.50.

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 explained under 'What are the charges?' above."

Having considered the documents mentioned above, I think Mr A ought to have been aware that he was paying OACs. However, I don't think the documents were clear on how exactly the OACs would operate and I don't think that they set definitive expectations for the timing of the reviews. The documents set an expectation that reviews should be "regular".

However, the impression given by the documents is that the meaning of "regular" is to be set with reference to a discussion between Mr A and his advisor. Whilst I don't think these documents in themselves convey a standard expectation that reviews will take place on an annual basis, I've weighed these against the comments made in the suitability letter.

In the suitability letter sent on 20 September 2016, the advisor set out the following:

"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 personal circumstances in the future as it is likely your objectives and circumstances will change over time.

As part of my ongoing service I will ensure that you receive annual statements in relation to your St. James's Place investments and I will endeavour to contact you on a regular basis to review your circumstances and to ensure that your financial planning needs are still being met."

Again, this document explained that regular reviews would take place but it didn't set the expectation that these would occur annually.

Whilst I don't think these documents in themselves convey a standard expectation that reviews will take place on an annual basis, I think Mr A ought to have expected to have received some regular contact to review his investment. I say this as I'm satisfied he was provided with the documentation at the time which made clear that the fees were for meetings that would take place regularly, irrespective of whether Mr A reached out and initiated contact.

SJP says that an annual review with Mr A didn't take place until November 2022. I've asked SJP if any records are available of contact between Mr A and his advisor prior to this, but it has confirmed none are available. I understand Mr A says he recalls seeing his adviser regularly, but I've not seen anything that persuades me there was communication during that time that could have appeared to be a review.

I'm not persuaded Mr A, or ought reasonably to have known, he had cause for complaint when he didn't receive a review in September 2017, as I've explained that the documentation didn't set an expectation that reviews would take place each year. However, I think it's reasonable to say that Mr A ought to have been aware that they hadn't received

regular reviews sometime before January 2021 (three years prior to him complaining). I say this as he was told he would have regular reviews but didn't receive one until 2022, six years after he'd taken out his ISA. As such, I don't think it'd be reasonable to think a review every six years is sufficient to be considered regular.

So, it follows that Mr A – or ought to have known – of cause for complaint more than three years before he complained. In these circumstances, the complaint about any missed reviews due between 2016 and January 2018 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 Mr A, but I'm only able to look at complaints where this service has jurisdiction.

Why I can look into the complaint about the missed reviews from January 2018 Onwards

I'm able to consider any missed annual reviews which are within six years of Mr A raising his complaint to SJP. As such, I can consider any missed reviews that ought to have happened from January 2018 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 Mr A from January 2018, as it's not disputed ongoing advice fees were paid. 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 due in 2019, 2021 and 2023 and has added simple interest at a rate of 8% per year to compensate Mr A. 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 Mr A. I've not been provided with any evidence that shows Mr A 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.

From the evidence provided, I'm satisfied an annual review took place in 2022. I say this as SJP has provided a copy of contact note showing an annual review took place in November 2022, so as Mr A received the service he'd been told he'd get in return for the 2019 fees, it wouldn't be fair or reasonable for me to tell SJP to refund these fees.

I've asked SJP to provide evidence of an annual review taking place in 2018 but it hasn't been able to provide this. So I'm not currently satisfied that a review took place in 2018 as it should have, and so Mr A had paid OACs in the previous year despite without receiving the service he'd been told he would get. I appreciate the fees for the annual review were taken prior to January 2018, however, as Mr A has complained about both the OACs and missed reviews, I'm satisfied I can consider any fees paid in anticipation for the missed annual review due in 2018.

Responses to my provisional decision

Both Mr A and SJP accepted my provisional findings.

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.

As both parties accept my provisional decision, I find no reason to depart from those findings.

Putting things right

SJP should pay Mr A, if it hasn't already, the offer it made for the missed annual reviews in 2019, 2021 and 2023 and add simple interest at a rate of 8% per year to compensate him, as well as pay the £150 for any distress and inconvenience caused.

In addition to this, SJP should refund Mr A for any OACs charged for the missed review due in 2018 and add simple interest at a rate of 8% per year to compensate him.

My final decision

My final decision is that the Financial Ombudsman Service can only consider Mr A's complaint about any annual reviews missed between January 2018 onwards and that St. James's Place Wealth Management Plc should pay him compensation as set out above.

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

Ben Waites
Ombudsman