

The complaint

Mr and Mrs L complain that St. James's Place Wealth Management Plc trading as St. James's Place ("SJP") has charged them ongoing advice charges ("OACs") despite not receiving annual reviews.

Mr and Mrs L are being represented by a claims management company, however, for ease of reference, I shall refer to Mr and Mrs L only throughout my decision.

What happened

Mr and Mrs L met with SJP in September 2014. Following this meeting, Mr and Mrs L each invested into an ISA and a joint Investment Bond in September 2014.

Mr and Mrs L met again with SJP in April 2018. Following this meeting, Mr and Mrs L each invested further into their individual ISAs and also took out a joint Unit Trust in July 2018. Mr and Mrs L surrendered their ISAs in June 2022.

Mr and Mrs L complained to SJP in September 2023. In summary, they said they were paying OACs without receiving annual reviews or a level of service that justifies the fees they were paying.

For completeness, Mr and Mrs L'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 and Mrs L have confirmed they don't want us to consider it.

SJP considered Mr and Mrs L's complaint and offered to repay the ongoing advice fees between 2019 to 2022 as reviews weren't carried out during these years. SJP declined to return the fees charged from 2014 to 2017, as it said that, in accordance with its complaint handling procedures, it had only reviewed its records back to September 2017 (six years before Mr and Mrs L 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 2014. 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 and Mrs L didn't accept SJP's findings and so they referred their complaint to this service for an independent review. Mr and Mrs L say they recall being made aware that they could speak to the adviser at any time if they needed further advice, which they did when they topped up their investments in 2018. They also say they only became aware of the fact that, having paid OACs, they should have received a full review each year when they 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 AOCs taken prior to September 2017 are time-barred. In summary it said:

- Mr and Mrs L's Investment Bond and ISAs started on 10 September 2014 and the first annual review would have been due on or around 10 September 2015.
- It's been more than six years since the review in 2015 was missed and in addition, it's more than three years since Mr and Mrs L ought reasonably have known they had cause to complain about the missed review as all of the point of sale documentation explained that they ought to expect a review.
- It follows that any subsequent reviews missed between 2015 and 2017 are also too late for the same reasons.
- Mr and Mrs L received reviews in October 2017, July 2018 and September 2023.

I issued my provisional decision on the complaint in September 2024 and 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 AOC is its own event, with the fees being charged in advance. So, the fees being charged from 2014 for the first year would be for the review in 2015 and so forth. There is no question that the event being complained about (not receiving ongoing advice being paid for in 2014 to 2017) happened more than six years before Mr and Mrs L submitted their complaint to SJP. Therefore, I've had to consider when Mr and Mrs L were aware or ought reasonably to have been aware of a cause for complaint.

The crux of this complaint is that Mr and Mrs L didn't receive the service they expected having paid the AOCs. So, I've considered what their expectations would have been around the service they were paying for to determine at what point a cause for complaint ought to SJP says it doesn't think Mr and Mrs L's complaint around the AOCs taken between 2014 and 2017 was raised within three years of when they ought to have been aware of a cause for complaint, as they were told they would have regular reviews and they ought to have been aware they didn't receive these when the first review in 2015 was missed. SJP has referred to the initial documentation to support its stance.

SJP has provided copies of the point of sale documentation Mr and Mrs L were provided with. These set out the following about the OACs.

The Investment Bond illustration said:

“How much will the advice cost?

- Our advice is not free.*

The cost of the initial advice and our services will be £1350.00.

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 £30000.00 in a particular year, the cost for that year would be £150.00.

- 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 £630.00.

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 £14000.00 in a particular year, the cost for that year would be £70.00.

- 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 Mr and Mrs L ought to have been aware they 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.

The suitability letter dated 11 September 2014 was silent on the issue of ongoing advice fees and the service that would be provided in return. The only mention of costs referred Mr and Mrs L back to the documents quoted above.

However, Mr and Mrs L were set a new suitability letter on 5 July 2018 following them topping up their existing investments, as well as investing into a joint Unit Trust. The advisor in this letter explained:

“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 contact you annually to arrange a review, or as your financial circumstances dictate, and you will receive an annual statement in respect of your investments.”

Whilst Mr and Mrs L doesn't recall the fees being discussed; I'm satisfied they were 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 they reached out and initiated contact. And the suitability letter sent in July 2018 made it clear that these reviews would be arranged on an annual basis. It's understandable that Mr and Mrs L may not now recollect exactly what they were told, given the passage of time, but I'm satisfied it's most likely that would have been their expectation at the time.

At the time of receiving the 2018 suitability letter, it had been almost five years since they been told they'd receive regular reviews in return for annual fees, but they'd received only one in October 2017 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, other than a review letter sent on 31 October 2017. So given what they'd been told in 2018, I'm satisfied Mr and Mrs L would have expected to have received an annual review each year but had only received one in October 2017 and July 2018.

I'm therefore satisfied Mr and Mrs L knew enough by 5 July 2018, when they were told they could expect annual reviews each year, to know they hadn't received what they'd been told they'd receive for the fees they'd paid. So, it follows that they knew – or ought to have known of a cause for complaint more than three years before they complained. In these circumstances, the complaint about the fees they've 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 Mr and Mrs L, 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 September 2017 onwards

I'm able to consider any missed annual reviews which are within six years of Mr and Mrs L raising their complaint to SJP. As such, I can consider any missed reviews that ought to

have happened from September 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 Mr and Mrs L, as it's not disputed ongoing advice fees were paid individually on each of their investments. 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 in 2019, 2020, 2021 and 2022 and have added simple interest at a rate of 8% per year to compensate Mr and Mrs L. 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 and Mrs L. I've not been provided with any evidence that shows Mr and Mrs L 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 has provided evidence of an annual review taking place in April 2018. I've reviewed the suitability letter sent on 5 July 2018 and can see that Mr and Mrs L were advised to invest into their existing ISAs as well as to invest in a new Unit Trust. As such, I'm satisfied that the review included their ISAs. However, whilst the suitability mentions Mr and Mrs L's Investment Bond, it doesn't appear that a review of this investment was undertaken at the annual review. There is no mention of the underlying funds being reviewed, rather, the suitability letter focuses on Mr and Mrs L's new investment into the Unit Trust and topping up

of their ISAs. As such, I'm not satisfied that a review of their Investment Bond was undertaken, which justifies the OACs they paid in 2017 in relation to their Investment Bond.

I appreciate the OAC was taken prior to when I think the complaint is time barred, however, as Mr and Mrs L's complaint was about both the fees taken and the missed annual reviews, I think I can consider these OACs as they were for the missed annual review due post-September 2017. So I'm minded to say SJP should also refund the OACs paid on their Investment Bond in 2017, plus simple interest at a rate of 8% per year.

SJP has also provided evidence of an annual review taking place in August 2023. I've reviewed the suitability letter sent on 4 September 2023 and can see that Mr and Mrs L's Investment Bond and Unit Trust was discussed. The suitability letter says:

"We discussed your investments and the recent market performance over the last year and how this has affected your plans. You were quite happy about the performance of your plans, considering the current market conditions.

[...]

When discussing your plans, I also completed a review of the funds these are invested in. Whilst you are happy to remain in the Strategic Growth Portfolio (Medium Risk)."

As such, I'm satisfied that an annual review of Mr and Mrs L's Investment Bond and Unit Trust took place in 2023. So as Mr and Mrs L received the service they'd been told they'd get in return for the 2022 fees for their Investment Bond and Unit Trust, it wouldn't be fair or reasonable for me to tell SJP to refund these fees.

I understand Mr and Mrs L surrendered their ISAs in June 2022 and so the OACs paid in 2021 for the ISA's ought to have been included in the offer SJP made in its final response for the annual reviews due in 2022. If this wasn't included, then SJP should adjust its offer to include this specifically for the OACs charged for their ISAs in 2021.

Responses to my provisional decision

Both Mr and Mrs L and SJP accepted my 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 agree with my provisional decision, I see no reason to depart from my those findings.

Putting things right

SJP should pay Mr and Mrs L, if it hasn't already, the offer it made for the missed annual reviews in 2019, 2020, 2021 and 2022 and add simple interest at a rate of 8% per year to compensate them.

In addition, it should also refund the OACs paid on their Investment Bond in 2017 and their ISAs in 2021, plus simple interest at a rate of 8% per year. This is also in addition to the £150 offered for any distress and inconvenience caused.

My final decision

My final decision is that the Financial Ombudsman Service can only consider Mr and Mrs L's complaint about any annual reviews missed from September 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 Mr L and Mrs L to accept or reject my decision before 25 October 2024.

Ben Waites
Ombudsman