

## The complaint

Mr B complains that St. James's Place Wealth Management Plc (SJP) charged him for providing ongoing advice about his stakeholder pension plan (SPP) incorrectly.

## What happened

On 3 August 2023, I issued a provisional decision about this complaint. In it, I set out the background to this complaint as follows:

"In October 2022, it emerged SJP had applied an Ongoing Advice Charge (OAC) on Mr B's SPP incorrectly. As Mr B was unhappy with what had happened, SJP issued a complaint final response on 5 December 2022. It also wrote to him again on 11 January 2023. There was a lot of correspondence between Mr B and SJP, so I've summarised SJP's responses to Mr B:

- Mr B was employed as an adviser for SJP from 2015 until December 2017. His SPP was known as a "Retirement Account" (RA).
- The RA was set up on a self-advised basis, as an SJP partner, with the funds held within the RA held in its 'Balanced Portfolio'. The RA carried an OAC of 0.25%.
- Before leaving his employment with SJP, Mr B met with another of its employees, who I'll refer to as X. Mr B and X discussed transferring the management of the accounts of Mr B's clients to X. There was no request or agreement for X or any other SJP employee to take over servicing Mr B's RA.
- After Mr B left his employment with SJP, X was erroneously listed as the servicing partner for Mr B's RA. This meant an OAC was deducted from Mr B's plan. SJP said the OAC was applied to off-set a loan SJP gave Mr B whilst he was employed to purchase his client base. The OAC was not paid to X or any other employee to facilitate ongoing advice about how the funds invested in Mr B's RA were managed.
- In November 2021, SJP realised X was listed incorrectly as the RA's servicing partner, but X was not removed as the servicing partner until December 2021, when SJP reduced the OAC from 1.25% to 1%. For this, SJP initially offered Mr B £200 compensation.
- Mr B was concerned his funds were unmonitored and no longer balanced in line with his medium risk appetite. But SJP said the balance of funds held within Mr B's portfolio remained medium risk, despite Mr B's concerns. SJP noted Mr B had accessed his online wealth account 88 times since 2017. SJP said X told it Mr B confirmed his choice of funds with the "intention of a strategy of not making any changes."
- It would be almost impossible to quantify any potential loss as a result of Mr B not receiving ongoing advice – there was no guarantee of how Mr B may have invested differently.

- SJP would refund the OACs applied on 7 November 2019, 3 November 2020 and 2 November 2021, with interest at 8% simple per annum, as a gesture of goodwill. It calculated the total to be refunded as £384.86.

Mr B didn't accept SJP's offer of £200 compensation. In various emails to SJP, before and after the emails summarised above, Mr B made the following points:

- SJP was in breach of the regulator's rules by failing to disclose he would be charged an OAC after he left SJP's employment.
- Mr B said SJP hadn't provided a breakdown of how it calculated its OAC, which he calculated to be around £4,000. And if that £4,000 had not been charged incorrectly, his pension fund would have grown by an additional £50,000. Mr B added the matter has caused him a significant amount of stress and inconvenience to resolve.
- Mr B remained concerned about the risk profile of his investments and asked for a comparison of his fund's performance with SJP's current Balanced Portfolio since October 2015 in various formats.
- Mr B wanted a breakdown of the investment management charges and had not received a copy of his annual wealth statement as of 31 December 2022.
- Whilst he was previously an industry professional, SJP should have provided ongoing advice to him because it charged him an OAC. If advice had been provided, Mr B's fund would have been worth more than it was whilst left unmonitored.

Unhappy with SJP's response to his complaint, Mr B referred his complaint to our Service to review. After revising its offer of compensation several times, SJP offered Mr B a refund of OACs and compensation of £750 for the distress and inconvenience caused. SJP then made a final offer on 10 March 2023. It offered Mr B the following:

- The total OACs paid from the RA's inception in 2015 until the OAC was turned off in December 2021 along with interest at 8% simple from the date each charge was taken until the date of its offer. The charges totalled £3,374.41. The charges plus interest totalled £4,158.35.
- It offered £700 compensation for the distress and inconvenience caused to Mr B. This brought SJP's total offer of compensation to £4,858.35.

Mr B didn't accept SJP's revised offer. He thought the total charged for OACs plus interest was more than SJP offered, and he was prepared to accept £5,000 for this. He also wanted compensation for lost investment growth, which he estimated to be £43,159. Mr B said he wasn't aware his fund wasn't being monitored and, if it had been monitored, his fund could have achieved annual growth of 5% a year. Mr B said he did not have the knowledge or experience to switch his funds to adjust the risk profile of his investments, and wanted to transfer his funds to another pension provider.

One of our Investigators reviewed Mr B's complaint and said SJP had offered to refund £4,620.22 of charges and interest, which he thought was fair. Our Investigator said this put Mr B back in the position he would have been in had the charges not been taken. Our Investigator thought Mr B could have asked SJP for advice if he wanted it, given he was monitoring his RA regularly.

In response, Mr B said he periodically checked the value of his investments, he did not have the skill or knowledge to re-balance his investments to match a risk profile. He said this

should have been done by SJP. Mr B noted SJP offered to pay him £4,858.35 on 10 March 2023, not £4,620.22 as our Investigator said. Mr B was prepared to accept £4,858.35 in settlement of his complaint about the OACs paid. However, Mr B wanted SJP to compensate him for its failure to provide investment advice and re-balance his profile in line with his risk profile. So, this has come to me for a decision.”

My provisional decision went on to say what I thought SJP should do to put things right for Mr B. SJP had nothing to add in response to my provisional decision. Mr B reiterated his belief that SJP breached his contract with it and failed to comply with FCA regulations. He does not believe SJP’s offer to refund the charges plus interest at 8% simple per annum puts him back in the position he would have been in had SJP complied with FCA regulations. Mr B said, in summary, that SJP charged him for advice so should compensate him for potential investment losses – if he received this, he accepted he would not receive a refund of the ongoing advice charges applied to his account. Mr B added he did not think SJP’s offer of £750 compensation for the distress and inconvenience this matter has caused him was reasonable, bearing in mind the time he has spent on his complaint.

### **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, I’m not persuaded to depart from the findings in my provisional decision. I’ll reiterate these below.

Mr B has complained that the OAC was applied to his account when it should not have been. SJP has refunded the charges Mr B didn’t want to pay. If he did want advice about his pension, this would have involved him paying the OAC he has complained about. And if I concluded Mr B wanted ongoing advice, which he would have paid the OAC for, I could consider whether SJP met its obligations to provide ongoing advice and, if it did not, whether this caused Mr B a loss. I do not think it is logical to claim a refund of the OACs and ask SJP to put Mr B in the position he might have been in had he received ongoing advice, as that would put Mr B in a better position than he would have been in otherwise. Mr B accepted this in response to my provisional decision, saying he would accept SJP offering him what he thinks his pension fund would have been worth if he had received ongoing advice without a refund of the OACs applied.

I have considered whether I think Mr B would have opted to pay the OAC if he had been made aware of it, so that he could receive ongoing advice about his RA. Having done so, I do not think the evidence suggests Mr B wanted ongoing advice when he left SJP. There’s no evidence Mr B requested or was promised ongoing advice. In response to my provisional decision, Mr B reiterated his belief that SJP breached the regulator’s rules, and should have provided him with ongoing advice. But as I said in my provisional decision, his original complaint was that he should not have been charged an ongoing advice charge, which I think shows he did not want to pay for receiving ongoing advice about how his funds should be invested. So, I remain of the view it is unlikely Mr B wanted to receive ongoing advice, SJP should put him back in the position he would have been in had the OAC not been applied.

I note Mr B has said he thinks SJP’s delays in handling his complaint have resulted in additional losses and he’s unhappy with the balance of his fund. But I’ve seen nothing to suggest he asked for advice from SJP about how his fund was managed or was prevented from moving his RA to another provider if he did not want advice from SJP. So, I don’t think SJP is obliged to offer compensation for this aspect of Mr B’s complaint.

As SJP has already offered to refund the OAC from its inception, it is unnecessary to consider whether the OAC was applied correctly. But I have thought about whether its offer to refund the OAC plus interest at 8% simple returns Mr B to the position he would have been in had the OAC not been applied. I've noted SJP made several errors in calculating the OACs applied before its offer of 10 March 2023 to refund £3,374.41 of OACs applied. I've seen no evidence to support this figure being incorrect.

Our normal approach would be to ask SJP to rework Mr B's RA as if the OACs had not been applied. I note Mr B has complained about the returns his RA achieved – he thinks they could have achieved returns of 5% per annum if SJP had been monitoring and rebalancing his funds. So, I think it is unlikely the value of the OACs paid would have grown by more than 8% per annum if they had remained invested in Mr B's RA. So, asking SJP to rework Mr B's RA as if the OACs had not been applied may leave him in a worse position than its offer of 10 March 2023. So, I think SJP's offer of 10 March 2023 to refund the OACs plus interest at 8% simple (minus tax at 20% on the interest), totalling £4,158.35, is fair.

It's not in dispute that SJP's actions have caused Mr B some distress and inconvenience. For this, SJP offered £700 compensation on 10 March 2023. But as I noted in the background to this decision, SJP offered Mr B £750 compensation on 3 March 2023 for the distress and inconvenience caused. I've considered the higher offer, as I think this is fairer to Mr B – it has already been communicated to him and SJP offered no reason why its offer on 10 March 2023 was £50 lower than its offer on 3 March 2023. I note Mr B said he didn't think this offer was fair, given the hours he has spent on the complaint and his usual hourly rate. But we don't usually consider someone's hourly rate. Instead, I have considered the overall impact SJP's error had on Mr B and I remain of the view £750 fairly recognises that SJP made repeated errors and that Mr B had to spend a considerable amount resolving the error with SJP over several months.

### **My final decision**

St. James's Place Wealth Management Plc has made an offer to pay Mr B £4,158.35 and £750 compensation for the distress and inconvenience it caused. I think this offer is fair in all of the circumstances. So, my decision is St. James's Place Wealth Management Plc should pay Mr B £4,908.35.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 October 2023.

Victoria Blackwood  
**Ombudsman**