

## The complaint

Mr H is unhappy with an ongoing advice fee he has been paying to Direct Wealth Management Limited (Direct Wealth).

## What happened

At the end of 2020 Mr H approached Direct Wealth for advice in respect of his pension provision. In February 2021 Direct Wealth issued Mr H with a suitability report. The report recommended Mr H transfer a number of pensions he held into a Personal Pension Plan (PPP) with Firm A.

At section 5 of the suitability report - "Charges and Remuneration" - an initial advice fee is detailed along with an ongoing adviser fee which will be charged monthly. It states that details of what the ongoing fee covers is within the Client Agreement.

I've been provided with a copy of Direct Wealth's terms and conditions, and client agreement which sets out what will be provided for the ongoing advice fee.

The policy with Firm A was set up in July 2021. In July 2022 Direct Wealth attempted to contact Mr H but he was not responsive. They issued a letter in October 2022 which let Mr H know it was time for him to contact them for an annual review. It set out:

*"If we don't hear from you we will then provide a brief summary of your pension as well as giving you the opportunity to provide us with an update of your current situation that may impact on your holding with your pension provider."*

No further contact was made with Mr H until September 2023 when Direct Wealth called Mr H. He responded to their call by asking for the ongoing advice fee to be cancelled and the adviser to be removed from his PPP. Mr H raised a complaint with Direct Wealth about the fee in December 2023 – he said that he had not received the service he had been paying for.

Direct Wealth responded to Mr H informally to explain that they had tried to get in touch with him but were unable to do so. Mr H was unhappy, so eight weeks after he made his complaint against Direct Wealth he referred it to this service for consideration. An investigator reviewed the complaint. She didn't uphold it, she explained she was satisfied that Direct Wealth had tried to contact Mr H.

Mr H did not agree and asked for an ombudsman to review his complaint. I issued my provisional decision within which I explained my reasoning for upholding Mr H's complaint. I said:

*"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 am upholding Mr H's complaint as I think Direct Wealth need to do more."*

*When considering what is fair and reasonable, I take into account relevant laws and regulations as well as the regulator's rules, guidance and standards. Where appropriate I also consider what was good industry practice at the time.*

*What the regulator had said?*

*As a regulated firm, Direct Wealth had many rules and principles that they needed to adhere to when providing advice to Mr H. Many of these were found in the regulators handbook under the Conduct of Business Sourcebook (COBS) and Principles for Businesses (PRIN).*

*The most relevant rule to this complaint is;*

*COBS 6.1A.22*

*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 regulator also produced guidance in the form of an FCA factsheet (For investment advisers - Setting out what we require from advisers on how they charge their clients). The factsheet said;*

*“Ongoing adviser charges*

*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've been provided with the client agreement issued to Mr H. Regarding ongoing advice fees it says:*

*“We offer an ongoing service designed to provide periodic reviews (at least annually) to ensure that recommended products remain relevant to your circumstances, . . . .”*

*“The ongoing annual advice will cover:*

- *Assessment of personal circumstances*
- *Review of goals & Objectives*
- *Review of investment performance & Holdings*
- *Valuations and investment commentary*
- *Reassessment of Risk profile & asset allocation*
- *Fund Switching and rebalancing if appropriate*

*A report from the firm outlining the above and the fees that have been paid within the preceding 12 months.”*

*As can be seen from the above bullet points, this agreement sets out several clear services that Direct Wealth would provide to Mr H in return for the ongoing advice fees. So, I have considered whether Direct Wealth delivered the services they promised to Mr H in their agreement with him.*

*Direct Wealth attempted to contact Mr H in 2022 to provide him with an annual review, I have been provided with evidence of telephone attempts made to the number Mr H provided. And a copy of correspondence issued to him in October 2022 which asked him to get in touch – or Direct Wealth would provide a review without his input. Whilst I appreciate that Direct Wealth attempted to contact Mr H, I don't think they provided Mr H with the services he'd agreed to. I'll explain why.*

*Direct Wealth's agreement is worded in such a way that suggests a review will be completed – not simply offered. I also take the view that I'd only expect Direct Wealth to take the ongoing charge for a service being given, and not simply just offered. I say that because the rules say the charge must be in respect of an ongoing service – so the service must actually be provided if the charge is going to be made.*

*I've thought about the services Direct Wealth said they would provide to Mr H in their client agreement, but I've not seen any evidence that his investment performance and holdings were reviewed. And because Mr H was never spoken to there was no opportunity for his personal circumstances, goals and objectives to be reviewed.*

*I asked Direct Wealth to provide me with a copy of the annual reviews from 2022 and 2023 but they only provided me with the annual review letter dated October 2022 which just asked Mr H to contact them for a review. So, a report was never sent to Mr H outlining these things or the annual fees that had been charged either at the first or second anniversary of the policy being set up with Firm A.*

*Therefore, I have to conclude that Direct Wealth didn't provide Mr H with the ongoing service he's paid for, despite Direct Wealth accepting the fees from his PPP.*

### **Summary**

*I've considered the specific rules and guidance from the time, which set out that Direct Wealth were required to set out the services they would provide Mr H for the ongoing fee they were receiving. I've considered the agreement which set out the services Direct Wealth ought to have provided and for the reasons set out above I don't think Mr H was provided with the service he had paid for.*

*And so, I don't think it's fair or reasonable for Direct Wealth to have taken their ongoing fee from his PPP. Therefore, I am going to ask Direct Wealth to refund all the ongoing advice fees.”*

Mr H responded to my provisional decision to express how he felt let down by Direct Wealth – he didn't provide any additional information for me to consider.

Direct Wealth responded to my provisional decision. They said that Mr H wanted the ongoing service and he was informed he could cancel it at any time, but didn't. They agreed that the fees for the second year – 2022-2023 should be refunded. And they agree that their contact in October 2022 didn't provide a review of Mr H's investments.

However, Direct Wealth argue that they tried all they could to contact Mr H in late 2022 to carry out the annual review. They asked what this service thinks they should have done in addition.

### **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 am upholding Mr H's complaint as I think Direct Wealth need to do more.

When considering what is fair and reasonable, I take into account relevant laws and regulations as well as the regulator's rules, guidance and standards. Where appropriate I also consider what was good industry practice at the time.

I am upholding Mr H's complaint for the same reasoning set out within my provisional decision.

I appreciate that Mr H may have selected the ongoing advice at the outset and there was an option available for him to cancel. However, I don't agree that means that Direct Wealth can charge him an ongoing fee for a service that they are not providing to him. Their terms set out clearly that a review will be provided at least annually. Direct Wealth have confirmed that no review of Mr H's investments took place. Not even a review to check the investment's remained suitable for him based on no change in circumstances.

During the time that Direct Wealth were deducting fees from Mr H's PPP two annual review dates passed with no review being carried out. And no letter was issued to Mr H to set out the fees he had been charged at any point.

Direct Wealth have asked this service what further steps they could have taken. Direct Wealth's agreement is worded in such a way that suggests a review will be completed – not simply offered. And, the regulator's guidance sets out:

*“You must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to.”*

So, it is for Direct Wealth to ensure they have systems in place to ensure they are adhering to the terms of the service they are charging for. In the circumstances of Mr H's complaint, I'm satisfied Direct Wealth did not provide Mr H with the things they said they would. And so I don't think it is fair or reasonable for them to have charged him the fees.

### **Putting things right**

My intention is to put Mr H back into, as close as possible, the position he would have been in but for Direct Wealth's mistake. So, that means putting Mr H's pension fund into the position it would have been in had the fees not been taken. The pension would have been

higher by the value of the fees and any investment returns that the fees would have gone on to benefit from.

Direct Wealth must calculate the loss in value of Mr H's pension due to the deduction of the fees taken in 2022 and 2023. To be clear, this will mean calculating the lost investment returns on each fee, based on the actual investment strategy of Mr H's pension, from the date the fees came out to the date that Direct Wealth are told that Mr H accepts my final decision.

If information about Mr H's investment isn't forthcoming, Direct Wealth should use this benchmark – FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return index) to calculate the lost investment returns on each fee. I've chosen this method because the FTSE UK Private Investors Income Total Return Index is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It is reasonable proxy for the type of return that could have been achieved over the period in question.

When Direct Wealth have calculated this total loss to Mr H's PPP (from the fees that should not have been paid, and the lost investment returns from those amounts) it should, if possible, pay that total loss amount into Mr H's PPP. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the PPP if it would conflict with any existing protection or allowance.

If a payment into the PPP isn't possible or has protection or allowance implications, it should be paid directly to Mr H as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr H has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.

If payment of compensation is not made within 28 days of Direct Wealth receiving Mr H's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Direct Wealth deducts income tax from the interest, it should tell Mr H how much has been taken off. Direct Wealth should give Mr H a tax deduction certificate in respect of interest if Mr H asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

### **My final decision**

I'm upholding Mr H's complaint and direct Direct Wealth Management Limited to redress M H as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 August 2024.

Cassie Lauder  
**Ombudsman**