

## **The complaint**

Mr M complains that Hansells Solicitors failed to deliver the promised periodic reviews of his pension policy to assess the impact of some changes to his circumstances and adjust his portfolio accordingly. He says Hansells has failed to care for him as a client and he wants a refund of the charges for services not provided.

## **What happened**

I set out the background and circumstances leading up to this complaint in my provisional decision of 13 May 2025. I've attached a copy of the relevant extracts from my provisional decision here, which forms part of my final decision.

*Copy of my provisional decision*

## **What happened**

In 2017, Hansells advised Mr M to transfer his defined benefit (DB) occupational pension scheme benefits to a personal pension arrangement and invest in three managed investment funds. At the same time, Mr M agreed via a client agreement to an ongoing review service from Hansells at an additional cost of 0.5% a year – a service level described as 'Periodic.'

In June 2022, Mr M complained to Hansells about the suitability of the pension transfer advice given to him in 2017 as well as the ongoing service and lack of periodic reviews.

In April 2023, Mr M's complaint was ultimately upheld by the Financial Ombudsman Service and Hansells agreed to carry out a loss calculation to determine if Mr M had suffered a loss as a result of the unsuitable advice he received. And on 29 December 2023, Hansells wrote to Mr M informing him that he had not suffered a loss and so no redress was due to him.

In February 2024, Mr M complained to Hansells. He said that he disagreed with the no loss outcome, he raised some questions about the loss calculation and said that his complaint about the ongoing advice fees hadn't been answered.

In April 2024, Hansells issued its final response to the complaint. In relation to the ongoing advice charges, it said that Mr M agreed to its 'Periodic' ongoing service option and it set out what this service offered as described in its 'Financial Planning Service' document referred to in the client agreement Mr M signed at the time. It said that it wrote to Mr M in March 2020 providing an update on his investments and it said here that it was happy to discuss his planning and investments, and he should get in touch – but it said it received no response. In any event, it said that the loss calculation carried out following the upheld mis-sale complaint was done in accordance with the FCA handbook guidance, which meant that the ongoing advice charges were already taken into account. So, it said there was no basis on which it should refund these fees even if there were failings in the service provided, which it didn't accept anyway.

After referring his complaint to us, one of our investigators considered the matter and they

concluded Mr M's complaint about the ongoing advice charges should be upheld. They said Hansells failed to provide the ongoing service it agreed it would offer. And in any event, they said in taking an annual fee from Mr M, it wasn't reasonable to provide suitability reviews less frequently than annually. They also pointed to the later COBS rule in 2018 which required investment firms to undertake reviews annually where an annual fee was charged. They said Hansells should compensate Mr M for the annual fees he paid up to 31 July 2020 when it transferred its business and the responsibility for ongoing advice to another firm.

Hansells didn't respond. So, because things could not be resolved informally, the matter has been passed to me for a decision.

### **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.

I've taken into account relevant law and regulations, regulatory rules, guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time. And where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

#### The applicable rules, regulations and requirements

As a regulated firm, Hansells had many rules and principles that they needed to adhere to when providing advice to Mr M. These can be found in the Financial Conduct Authority (FCA) handbook under the Conduct of Business Sourcebook (COBS) and Principles for Businesses (PRIN).

The following are most relevant to this complaint and provide useful context for my assessment of Hansells' actions here.

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.

In 2014, the FCA produced guidance in the form of a 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.'

While the factsheet wasn't published until late 2014, it didn't mark a change to the rules firms like Hansells were already expected to follow. In my view, it re-enforced or reminded firms of the standards already in place when providing on-going advice services.

COBS 9A.3.9 (from 3 January 2018 arising from MiFID II): Investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually.

Having considered all of this and the evidence in this case, while I agree with the investigator's findings that Hansells did not provide the ongoing service it agreed to provide to Mr M, there's nothing more it needs to do to put things right. I'll explain why.

In 2017, Mr M agreed to pay an annual fee of 0.5% to receive an ongoing advice service from Hansells following its advice that he transfer his DB pension benefits to a personal pension arrangement. Mr M chose Hansells' 'Periodic' review service. This was described in Hansells' 'Financial Planning Service' document as follows:

'This service is appropriate when you do not need an annual meeting but you do wish for your investments to be monitored and you do wish to have access to administrative support and assistance when required.

- Pro active contact and advice if investments should be changed.
- A periodic review meeting (at least every 3 years) and update on changes to your situation and plans for the short, medium and long term.
- A report to update on your planning and to ensure that it is on track which will include any relevant advice.
- Full administrative support.
- Availability of adviser and support team.
- Additional advice when it is required which will be chargeable.

Additional meetings and planning or advice will be chargeable.'

While Hansells clearly set out the services it agreed to provide in return for its ongoing fee, like the investigator, I don't think it did provide them. Firstly, on the basis of the agreement it had with Mr M, I would have expected it to have carried out at least one suitability review meeting with him between 2017 and the end of July 2020 when it transferred its business, and so passed the responsibility for ongoing advice to another firm. Mr M says that he was promised a periodic review but it wasn't offered or delivered. And I have not seen any evidence to show that Hansells did carry this out.

I can see the investigator referred to handwritten adviser notes dated 16 March (with no year recorded) which contained details about Mr M's personal and financial situation and objectives. So, it's possible this related to a suitability review meeting. But based on what's recorded here, I think this is the adviser's notes from the original advice meeting in March 2017 and not notes from a subsequent review meeting.

The only evidence Hansells has referred to is a letter it wrote to Mr M on 16 March 2020, so around three years after the advice to transfer. This referred to his investments and that one portfolio had fallen by 10% or more and it provided some general stock market commentary.

But in my view this letter coincidentally corresponded with the third anniversary of Hansells' advice to Mr M rather than as part of its agreement under the above ongoing service. I say this because the letter was written in response to the Covid 19 pandemic and the resulting impact this had on stock markets around the World. In my view the messaging is typical of the more general communication many investment firms were sending out around this time to reassure their clients telling them not to panic, that normal market conditions would likely return and to focus on long term objectives of investing. And in any event, this was not an invitation to Mr M to carry out a suitability review of his investments. At the end of the letter, it did say Hansells was 'happy to discuss your planning and your investments with you and, if you would like to do so, please do make contact.' But I don't think this was a clear invitation to a review meeting or a reasonable attempt to offer the periodic review meeting service Hansells agreed to provide.

So, with no other evidence provided to show that Hansells made any other proactive contact with Mr M between March 2017 and July 2020 or otherwise provided him with any other substantive related services as part of the agreement referred to above during this time, I don't think Hansells provided Mr M with the agreed on-going service he paid for.

Ordinarily, if Mr M had only complained about the ongoing advice charges, my findings would lead me to instruct Hansells to refund the fees he paid. But in this case, Mr M has previously also complained about the suitability of the pension transfer advice he received. And the outcome of that complaint resulted in Hansells carrying out a loss calculation to determine if Mr M had suffered a loss as a result of the unsuitable advice he received. And on 29 December 2023, Hansells informed Mr M that he had not suffered a loss and so no redress was due to him.

Crucially here, and as Hansells has highlighted, that loss calculation already took account of the ongoing advice charges. The guidance set out in the FCA's handbook about how the loss calculation should be carried out is clear on this point. And given the calculation was carried out by a skilled person and Hansells has said it was in line with the FCA guidance, I've no reason to doubt the calculation was carried out correctly. The calculation already effectively takes into account that if Mr M had been given suitable advice – that is, he should retain his DB pension scheme benefits – he would not have paid ongoing advice charges.

The result of the calculation was that Mr M had not in fact lost out, so there was no compensation due. But regardless, there is no separate refund now due.

I understand Mr M will be disappointed by this. But I'm satisfied Hansells has already carried out what is fairly and reasonably required of it to put things right here.

I've also considered whether it is fair to award compensation for the distress and inconvenience this matter has caused Mr M. But I agree with the investigator here. Dealing with a complaint inevitably causes a degree of inconvenience.

And if Mr M was concerned about the suitability of his investments because of a significant change in his circumstances or he no longer wanted to take the same level of risk with his pension monies, he could have contacted Hansells to discuss things. So, I don't think an award for distress and inconvenience is warranted here.

*End of provisional decision*

## **Responses to my provisional decision**

Hansells didn't reply to my provisional decision.

Mr M said he was disappointed with my decision. In summary, he said he's not satisfied with my finding that Hansells did not provide the on-going service he paid for, yet I've not concluded the complaint in his favour. He says his view remains the same – Hansells breached the agreed contract by not providing the services he paid for, so he should get a refund of the charges taken from his pension pot.

## **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've decided to not uphold this complaint for the same reasons I gave in my provisional decision.

As I said in my provisional decision, I understand Mr M's disappointment with my decision. But what's important in this case is that Mr M has previously made a complaint about the suitability of the pension transfer advice he received, which was upheld and a loss calculation carried out. And that loss calculation already takes into account the ongoing advice charges – the FCA's guidance to firms on carrying out the calculation is clear on this point. So, I'm satisfied that this matter has already been fairly and reasonably dealt with and that no separate refund is due to Mr M.

## **My final decision**

I've decided to not uphold this complaint, so I make no award in Mr M's favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 June 2025.

Paul Featherstone  
**Ombudsman**