

## The complaint

Mr P complains about Fairstone Financial Management Limited's decision to stop providing services to him in relation to his self-invested personal pension ("SIPP") and the way this was dealt with; the charges he paid; and the way a data subject access request was handled.

## What happened

Mr P was a client of Fairstone for some years, receiving financial advice under Fairstone's ActivePlan Plus level of service. In July 2020, he was sent an updated 'Services and Client Agreement' to sign. He didn't sign this and instead asked his adviser at Fairstone about changing to ActivePlan - a lower (and less expensive) level of service.

The adviser explained more about the services offered and said in Mr P's circumstances the ActivePlan Plus would need to continue for them to continue carrying out their service.

In December 2020 Fairstone contacted Mr P as he hadn't signed the services and client agreement. Mr P said he hadn't signed it because he felt the document didn't accurately reflect the service he was receiving, and again asked about changing to ActivePlan. Fairstone then gave Mr P 30 days' notice to terminate his agreement, because he was unhappy with the service proposed, and hadn't signed the client agreement. Fairstone said it couldn't continue providing services for him in those circumstances.

The termination should have been complete by 21 January 2021, but adviser charges were deducted from Mr P's SIPP account until 3 March.

Fairstone refunded £509.24 for two payments that were deducted incorrectly but there remained a dispute about other charges. Mr P complained but Fairstone but didn't think it had done anything wrong. So he brought his complaint to our service.

Our investigator didn't think the complaint should be upheld. She said:

- Fairstone's terms and conditions allowed either party to end the agreement on giving a month's notice in writing and Fairstone's decision to do that was reasonable in the circumstances.
- Fairstone is entitled to decide how to conduct its business. Once a customer is drawing benefits from their pension, Fairstone will only provide the ActivePlan Plus service. Mr P was paying a reduced fee for that level of service and there was no obligation on Fairstone to agree to any other level of service.
- There was no requirement for Fairstone to arrange any additional service, unless Mr P was moving to another adviser, when it would have been required to transfer the relevant files to them. And he was free to manage things himself.
- There was some delay completing the termination and removing Fairstone from the account. But other than that delay Fairstone had not dealt with the termination incorrectly, and wasn't responsible for Mr P not being unable to take his uncrystallised fund pension lump sum ("UFPLS").

- There were some errors with charges being taken after the service should have ended. Fairstone agreed to refund overpayments of £254.62, but a further payment of £64.03 should also be paid.
- The way Fairstone dealt with the subject access request was fair.

Fairstone accepted the investigator's view but Mr P did not. He's raised a number of further points. I won't set them all out in full but the key points include:

- There's nothing in the terms and conditions that says clients in retirement must have the ActivePlan Plus level of agreement. It's unreasonable that he was forced to have a level of service he didn't want, with many activities or services he didn't use, simply because he was taking a lump sum once a year.
- Fairstone charged him a fee in return for a service that included arranging the UFPLS but because he didn't sign that agreement it refused to deal with this, and the delays in implementing that termination delayed him from dealing with it himself. His account was not under his management for 65 days; this was not just "some delays" but a serious delay that had financial consequences for him.
- He's surprised our service wouldn't agree that it's sound practice for clients to have a clear understanding of all charges on their account

### **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.

Fairstone is entitled to decide what services to offer and what to charge for those services. It's not for me to say how it should run its business. But I can consider whether, in providing services, it has complied with any regulatory requirements including the requirement to treat Mr P fairly.

#### *Termination of the agreement*

The arrangement Fairstone has with its clients is set out in two documents:

- A client agreement, which is a general document for all customers that can't be amended; and
- A services and charges agreement, which is specific to the individual customer.

Mr P was unhappy that a services and charges agreement sent to him in December 2019 only refers to charges of £3,000, whereas a clarification sent in July 2020, with full details of all charges, set out different figures; he says these two documents said different things about what the charges would be, and he should have been given clear information about this.

The cancellation rights set out in the terms allow Fairstone to stop providing services at any time:

*"Either party may end our authority to act on your behalf at any time, by giving the other party one month's notice in writing".*

Fairstone provided notice in accordance with this. In doing this, Fairstone was acting in line with the terms that had previously been agreed. The main reason for the decision was the fact that Mr P hadn't signed and returned the updated paperwork and was asking for a different level of service, which Fairstone said it couldn't provide. I'd generally say it's reasonable for a business to decide not to continue offering a service if a client hasn't agreed to the level of service being offered or signed the required documents.

Mr P says he didn't sign the agreement because he hadn't received up to date paperwork, specifically the services and charges agreement. I've considered this carefully, looking at all the correspondence, including the client agreement and the services and charges agreement.

The client agreement didn't give any information about the specific charges that would apply to Mr P, but outlined the typical charges that would generally apply.

The '*What you will pay for our services*' section of the client agreement says specific charges would be outlined in the separate service and charges agreement that would need to be signed and returned;

*"The exact charges will be confirmed in your Services & Charges Agreement which will be agreed before we provide any services to you."*

The 2019 services and charges agreement, which Mr P signed, shows a flat fee of £3,000 was agreed for the ongoing advice charge.

Fairstone provided an updated client agreement in July 2020, but confirmed there was no change to the charges agreement previously signed. So, from this, it's clear the flat fee of £3,000 would still apply for Fairstone's ongoing advice.

Mr P requested a full outline of the charges that apply and was sent further information in a letter on 27 July 2020. This included a table with a summary of charges. This table included investment fund charges and the platform charges, with the overall charges amounting to £4,812.70.

Mr P Asked for this to be updated in the services and charges agreement, but Fairstone reassured him the previous agreement still applied with the £3,000 flat fee. The key point here is that the additional charges were not charges to be paid to Fairstone; these were additional charges such as the platform charge for his SIPP. So I wouldn't expect them to be set out in Fairstone's charges agreement – they were not Fairstone's charges.

Fairstone's agreement accurately reflected the charges Mr P had to pay for its services. So I don't think the paperwork was incorrect or that it wasn't reasonable to ask Mr P to sign it.

The other issue relating to the termination is that Mr P had asked to reduce the service from ActivePlan Plus to ActivePlan. Mr P says he felt he was forced to pay for a service he didn't need and wasn't receiving. Fairstone has explained that once a customer is drawing benefits from their pension, it will only provide the ActivePlan Plus service. As I've explained, it's not my role to tell a business how to provide its services. Fairstone had agreed a reduced fee with Mr P for his service; he was paying less than the usual ActivePlan Plus charges. There was no obligation on Fairstone to agree that. If Mr P didn't want to continue with the service Fairstone was offering, he could have terminated the agreement himself and gone elsewhere.

I agree there's nothing in the terms and conditions that says clients in retirement must have the Active Plan plus level of agreement. And Mr P says he didn't use many activities or services included in it, so he shouldn't have been forced into that level simply because he was taking a lump sum once a year. But it's for Fairstone to decide what level of service to offer a customer. I don't think Mr P was treated unfairly compared to other customers, particularly since Fairstone agreed to reduce the usual fee in his case.

Taking all of this into account, I don't think Fairstone acted unfairly by terminating the agreement in line with the terms agreed previously, in circumstances where an up to date agreement wasn't in place.

Mr P is unhappy with the way Fairstone handled the termination, saying this left him without any service for 65 days. The process did take longer than it should have. But, while that period may have been difficult for him, I don't think there was any obligation on Fairstone to have arranged any additional service. If Mr P had given details of another financial adviser he was moving to, Fairstone would have had to transfer the relevant files to them. But that wasn't the case here. It was for Mr P to decide whether to find another adviser or manage things himself. If he didn't have another adviser in place, he could requested a copy of any investment records, if he didn't already have access to these. Mr P had the notice period to decide what he was going to do next and make the necessary arrangements.

There was some delay with the termination being completed and Fairstone being removed from the account. Mr P says this wasn't merely "some delays" but serious delay that had financial consequences for him. As I've said, Mr P could have made arrangements himself. He had the notice period to decide what to do. Even if a business has got something wrong, it's reasonable to expect a customer to take steps to protect their position. I note also that Mr P was corresponding with the SIPP provider and raised concerns about their delays in the process. Any complaint about their actions would need to be considered separately. I don't think Fairstone was responsible for the fact Mr P couldn't take his UFPLS when he wanted to. He was concerned about possible tax implications due to the delay dealing with this by the end of the tax year, but has confirmed those issues were resolved. So I don't think he's suffered a loss in relation to this.

### *Charges*

The charges are set out in the agreement between Fairstone and Mr P. In his case, a reduced charge of £3,000 had been agreed. But he's calculated that he was charged £3,0754.09.

The termination should have been completed by 21 January 2021 but this didn't happen. Fairstone agreed that two charges of £254.62 taken on 24 January and 24 February respectively were overpayments and refunded these. This left a balance of £3,244.85 and Mr P says this shows he has overpaid by £244.85.

This includes a final deduction of £57.50 which there's a dispute about. Fairstone has said this fee wasn't paid to them by the SIPP provider so it can't refund this. Our investigator contacted the provider about this and it explained how this came about, and confirmed the additional charge of £57.50 was paid to Fairstone. As this was after date when the termination should have been complete, the investigator didn't think Mr P should have to pay this; it was an overpayment caused by the delays which should be refunded to Mr P. Fairstone has now accepted this.

That leaves a sum of £187.35. The £3,000 charge was the annual charge. Based on the 30 days' notice period the termination should have been completed by 21 January 2021, which is 21 days after the year end. The agreement would have been in place until the termination date, so the charges would apply until then. Calculating charges on a daily rate up to then would be fair. However, a small refund of £6.53 is due back to Mr P as he paid £187.53 and the charge should have been £180.82. Added to the sum of £57.50 mentioned above, the total refund due is £64.03.

### *Subject access request*

Mr P has complained about this, in particular the way it was sent to him without any indexing or organisation. Complaints about how personal data is handled can be referred to the Information Commissioner's Office (ICO). But as this related to the services Fairstone was providing, I can consider whether it treated Mr P fairly.

The ICO doesn't require businesses to send data in an indexed format, and Fairstone would not be required to create new information when replying to the request. But I'd expect it to send information in an appropriate way, which was accessible to Mr P. I'm satisfied Fairstone did that.

Mr P has also said he's not received any official receipts. The right of access enables individuals to obtain their personal data. Information can be provided in the form of a transcript of relevant documents or a print-out of the relevant information. As Mr P has confirmed he has print-outs of the receipts, I think Fairstone has acted fairly.

### *Summary*

Taking into account all the circumstances, I don't think Fairstone acted unfairly in terminating the policy other than the fact there was a small overcharge. So (unless it has already done so) Fairstone should refund a total of £64.03 to Mr P.

### **My final decision**

I uphold the complaint and direct Fairstone Financial Management Limited to pay £64.03 to Mr P.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 17 August 2022.

Peter Whiteley  
**Ombudsman**