

The complaint

Mrs B complains about Fairstone Financial Management Limited's advice in connection with Mrs B's desire to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). She says Fairstone's advice and service was deficient, causing her stress and a financial loss.

Mrs B's husband has helped her to bring this complaint. But, for ease of reading I will refer to his comments and input as being Mrs B's.

What happened

In 2020 Mrs B contacted Fairstone as she was interested in transferring the benefits from her former employer's DB scheme to a SIPP, which she intended to leave as a legacy for her children and grandchildren.

Fairstone gathered information about Mrs B's and her husband's circumstances and also information about the benefits available from her DB scheme. Amongst other things Fairstone recorded that:

- Mrs B was 55 years old, married and working, she had no financial liabilities.
- She and her husband collectively had savings of £198,639 along with a pensions pot of £433,520.
- She felt she would be in a "*comfortable position*" at retirement and had no need for an income from her DB scheme funds.
- The DB scheme had a cash equivalent transfer value ('CETV') of £71,460.
- It would pay a guaranteed pension for life of £4,335 at age 60 or a reduced income of £3,144 together with tax-free cash ('TFC') of £20,964.
- Mrs B's preference was to reinvest her CETV and leave this as a legacy for her adult children and grandchildren.

Fairstone produced a pension transfer recommendation report. The report is dated 31 July 2020 but Fairstone sent it to Mrs B on 3 August 2020. Fairstone recommended that Mrs B should not transfer out of her DB scheme. Instead it said she should take the benefits from it at normal retirement age and reinvest her annual pension from it at that point. Fairstone noted that, in order to buy a product from an insurer that would provide equivalent benefits to her DB scheme could cost her £210,624.

After receiving the report Mrs B contacted the DB scheme administrators. They confirmed that Mrs B's pension entitlement was enhanced with a "special allowance" between age 60 and 67. That would be taken away once Mrs B reached age 67 and her yearly pension would reduce to around £2,500 a year.

Mrs B contacted Fairstone pointing out its error with the annual pension entitlement. She also told it that under a heading of "*options available to you*" Fairstone had recorded that Mrs B had the option of taking TFC of £71,460, rather than the £20,964 which was the correct figure. She asked Fairstone to amend its report to use the correct figures. She noted that if she'd relied on Fairstone's analysis of the DB scheme benefits then she would have

suffered a loss of around £122,000, because of the reduction of her pension at age 67. Fairstone said it would deal with Mrs B's communication as a complaint. It later told her that it wouldn't sign the DB scheme administrators form asking Fairstone to declare it had given her financial advice to allow the DB transfer to go ahead. Fairstone said Mrs B should approach another advising firm.

Fairstone sent a complaint response in September 2020. It said it wasn't upholding the complaint. Amongst other things Fairstone said:

- The scheme administrators hadn't told it about the special allowance which is why Fairstone hadn't made an adjustment for it.
- The reference to TFC of £71,460 was a typing error and that on four other occasions it quoted the correct figure in its report.
- Once Fairstone realised its report contained errors it should have amended it but it didn't do so. But it said a revised report wouldn't have caused it to change its recommendation.
- Mrs B had not suffered a loss of £122,000.
- Fairstone had refused to sign the DB scheme's "*Declaration of Regulated Independent Advice*" because it hadn't provided the information about the receiving scheme the declaration asked it to confirm.

Mrs B continued to correspond with Fairstone until January 2021. Amongst other things she said:

- Her timing for the DB transfer was carefully planned as gilt rates were very low making the CETV high and the market was depressed making it an ideal time to invest.
- Fairstone's adviser had initially recommended the transfer but Fairstone changed this during its compliance process.
- The £122,000 referred to was a loss of expectation and not an actual financial loss.
- Her objective was to use the DB fund to secure a legacy for her children and grandchildren. If she and her husband died without transferring the funds then those would be lost.
- Fairstone had made "*horrendous failures*" including: inaccurate reports; refusal to acknowledge or to correct the mistakes; failure to acknowledge or process the complaint.
- It was "*stretching it*" to say that reference to £72,000 in TFC was a typo.
- Fairstone's factual errors made its report unfit for purpose.
- Fairstone's advice hadn't been in line with her strategy or best interests.

Fairstone said it stood by its complaint response of September 2020. But it added that as a gesture of goodwill it would suggest that it did not bill Mrs B its fee for providing advice.

Mrs B referred her complaint to our service. One of our investigators partly upheld the complaint. He thought Fairstone should have taken into account the reduction in yearly pension entitlement from the scheme when the special allowance stopped. And he said that Fairstone should have withdrawn or amended its report to reflect that once it became aware of the mistake. But he felt that, even if Fairstone had done that, the pension transfer was unlikely to have gone ahead.

That was because he felt Fairstone still would have recommended that Mrs B remain in the DB scheme. He said Fairstone wouldn't transact pension transfers on what's known as an insistent client basis. And that was a decision it was entitled to come to. He also noted that the declaration the DB scheme administrators had asked Fairstone to sign included not only

that Fairstone had given regulated transfer advice but also that it had carried out due diligence on the receiving scheme. But as Fairstone had made a recommendation not to transfer it hadn't carried out an assessment of the receiving scheme. Our investigator thought that it wouldn't be fair to expect Fairstone to sign a declaration saying it had done something it hadn't. But, in order to address Mrs B's distress and inconvenience as a result of Fairstone's mistakes the investigator recommended it pay her £250 compensation.

Mrs B didn't agree with our investigator's assessment of her complaint. Amongst other things she said:

- Fairstone's "*negligence and incompetence*" had caused her months of stress as well as a financial loss of around £10,000 compared to what she would have received by investing in her preferred SIPP.
- Fairstone had told her it wouldn't change its recommendation before it had adjusted its calculations.
- Its initial recommendation, before it sent her its report, had been to transfer out of the DB scheme. But the report it sent her contained errors.
- Fairstone refused to correct its mistakes.
- Both Fairstone's report and our investigator's assessment compared the benefits of the DB scheme against an annuity. But Mrs B had no intention of buying an annuity. Instead she intended to transfer to a named SIPP which matched her attitude to risk. So the comparison to an annuity made the report unfit for purpose.
- Fairstone was aware of Mrs B's preferred SIPP and risk profile. So its decision not to sign the DB scheme's adviser declaration appeared a deliberate act to avoid the issue.
- Mrs B had engaged Fairstone to enable the transfer to go ahead; so it should be up to it to make that happen.

The investigator wasn't persuaded to change his opinion; so the complaint was referred to me to make a final decision.

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.

Both Mrs B and Fairstone have made many points in bringing the complaint and replying to it. I've carefully considered everything on file. But in this decision I don't intend to address each and every issue or point raised. Instead I will focus on the issues I see as being at the heart of Mrs B's complaint and the reasons for my decision.

When considering what is fair and reasonable, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, I've decided to partly uphold the complaint for broadly the same reasons given by our investigator.

The regulator's position

The regulator, the Financial Conduct Authority ('FCA'), says in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it's unsuitable. So, Fairstone should have only considered recommending a transfer if it could clearly demonstrate that the transfer was in Mrs B's best interests (COBS 19.1.6).

Fairstone's recommendation report

There's no doubt that Fairstone's recommendation report contained errors. It clearly didn't identify at an early stage, regardless that there was enough information from the DB scheme for it to do so, that the special allowance was only payable until Mrs B reached her state pension age of 67. So, once she reached that milestone, the DB scheme yearly pension would drop from around £4,335 to around £2,500. And clearly that significant reduction would affect the cashflow models and assumptions which informed Fairstone's advice. So, what Fairstone should have done – as soon as it learned of its mistakes – was to issue an amended report which corrected its errors. I can understand how disappointed Mrs B might have felt that it didn't do so. But Fairstone has confirmed that if it had done so it wouldn't have made a difference to its recommendation.

That might seem puzzling to Mrs B, and she might have thought if the figures were wrong then so was Fairstone's recommendation. And I note she's said that Fairstone had come to that conclusion before it had amended its figures. But I don't find it surprising that Fairstone's overall conclusion was that it wasn't in Mrs B's best interests to transfer out of the DB scheme, even after applying the reduced yearly pension from age 67.

Mrs B has been clear that she wanted to transfer out of the scheme and reinvest it in order to provide a legacy for her children and grandchildren. But, as I've said above, the regulator's position is that the starting point for Fairstone would be to consider that a transfer was *not* in her best interests. So it could only reasonably make a recommendation to transfer if it could clearly demonstrate that such a transfer was in Mrs B's best interests. And, in giving that advice, the priority for Fairstone was to make a recommendation concerning Mrs B's retirement provisions. That's because a pension is primarily designed to provide income in retirement. So I don't think it was unreasonable for Fairstone to prioritise Mrs B's income in retirement over potentially higher death benefits for her loved ones.

Regardless, that Fairstone made a mistake as to the level of Mrs B's yearly pension once she turned 67, the reduced sum was guaranteed and it escalated. It was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. Mrs B said she didn't intend to take an income from the DB scheme funds and that she had a comfortable position because of her other savings and investments. That might have been the case but a more suitable solution for her might have been to ringfence some of the money she held in her other investments, and use that as a legacy for her family. That would not require her to give up the guaranteed index-linked and increasing benefits from the DB scheme.

As Mrs B is aware, relying on investment performance carries with it the risks that fluctuations in the market can deplete investments significantly. And while those same fluctuations can also make positive investment returns especially for an experienced investor like Mrs B - her DB scheme benefits were secure and virtually entirely risk free. So, after age 67 and the removal of the special allowance, her benefit income from the DB scheme wouldn't ever reduce again regardless of the markets. And even at the post age 67 reduced rate, I think it was reasonable for Fairstone to have considered that DB scheme income to be more beneficial to Mrs B for her retirement provisions and therefore in her best interests, compared to the possibility of higher death benefits.

Mrs B's said that Fairstone's recommendation was not in line with her financial strategy. And, as an experienced investor, she believes that the DB fund, if invested in her preferred SIPP, could outperform the benefits from the DB scheme. That might be the case. But Fairstone's role wasn't simply to transact what Mrs B wanted it to do. It had to look beyond what Mrs B wanted and make a determination of what it believed was in her best interests.

And, regardless of its initial mistakes, it's evident Fairstone believed that Mrs B's chosen path, which was to give up a guaranteed income in retirement for the opportunity to leave a higher legacy to her family, wasn't in her best interests in terms of her income in retirement.

I'm aware Mrs B timed her transfer request to match an occasion when the markets were favourable to such a transfer. But, while the markets might have produced a better return for a DB transfer than at other points, once transferred the benefits were lost forever. And if those same markets then crashed and severely depleted the benefits available from it Mrs B might never recover those funds. That wasn't something that could happen if Mrs B remained in her DB scheme. So I think it was reasonable for Fairstone not to recommend Mrs B transfer out of her DB scheme, even though this wasn't in line with her preferred strategy.

Fairstone's report also contained another error, when it referred to the TFC sum available as being the full CETV of £71,460. But I don't think this error influenced Fairstone's advice or recommendation. Fairstone had correctly referred to the TFC level as being around £21,000 on four other occasions within its report. So I'm satisfied that Fairstone's error here was little more than a typing or *cut and paste* error - it copied the wrong figure. And I've seen nothing that convinces me this was the TFC figure it used when considering whether or not to recommend a transfer out of the DB scheme.

Overall, I'm satisfied that it was fair and reasonable for Fairstone to recommend Mrs B remain in her DB scheme, and it was not obliged to transact the business on an 'insistent client' basis.

Should Fairstone have signed the "Declaration of Regulated Independent Advice"

Section 48 of the Pension Schemes Act 2015 sets out certain steps which must take place before a DB transfer can go ahead. In particular it says the trustees or managers of the DB scheme must (where the CETV is over £30,000) ensure that the DB scheme member – in this case Mrs B – has received appropriate independent advice. This is known as the statutory advice requirement. The regulator sets out in COBS how that requirement should be applied. Amongst other things it says the advising firm (in this case Fairstone) should provide confirmation that it has provided advice, regardless of whether that advice was to go ahead with the transfer or not. So the fact that Fairstone recommended that Mrs B did not transfer out of the DB scheme shouldn't have prevented it from providing confirmation of the statutory advice requirement.

But, in this case the declaration the DB scheme trustees required Fairstone's adviser to sign said, amongst other things:

"I have carried out appropriate due diligence on the receiving scheme..."

But, unless and until Fairstone had made a recommendation as to how Mrs B's funds should be invested in a receiving scheme, Fairstone was not under any obligation to carry out the "due diligence" the DB scheme trustees' wanted. Neither the regulator's rules nor the underlying legislation required Fairstone to carry out that due diligence at this point. And Fairstone clearly hadn't done that. So I can understand why Fairstone wasn't happy to sign to confirm it had done something it hadn't actually done. In fact, if Fairstone had signed the declaration that would have been untruthful. And, as the DB scheme trustees were asking for Fairstone to confirm it had done something that it was under no obligation to have done, I don't think it acted unfairly by declining to sign the declaration that the trustees presented it with.

The impact on Mrs B

I've thought about what's likely to have happened if Fairstone had amended its recommendation report immediately on learning of its mistakes, or if it had not made those mistakes in the first place. Having done so, I don't think Mrs B would have been in a materially different position.

That's because it's clear to me that Fairstone considered that transferring out of the DB scheme was not in Mrs B's best interests. As such its recommendation would always have been for her not to transfer out of the scheme. And in those circumstances I don't think it would have carried out the due diligence on a receiving scheme that the DB scheme trustees insisted on. It follows that, even without its mistakes Fairstone wouldn't have been in a position where it could fairly and reasonably sign the DB trustees required declaration. So Mrs B would always have had to look elsewhere to another advising firm in order to complete the DB transfer. Therefore, I'm not persuaded that the main reason the transfer didn't go ahead was because of Fairstone's mistakes.

That said, I can understand that Fairstone's errors were a source of distress and inconvenience to Mrs B. But, it's notable that she identified those errors almost immediately after receiving Fairstone's report. She acted quickly to point them out to Fairstone. So it's not the case that she was ever likely to rely on that report in terms of what she believed her future DB pension income would be. And as such there was no real loss of expectation to her, as she knew Fairstone's figures were wrong.

Further, Fairstone advised Mrs B at the beginning of September 2020 that in order to go ahead with the transfer she would need to approach another advising firm. As I've said above I think that was always likely to happen even without Fairstone's mistakes.

I note that, at the time our investigator provided his assessment of the complaint Mrs B still hadn't approached another advising firm. I don't think anything Fairstone did or didn't do stopped her from doing that. And regardless of its mistakes it wasn't ever likely to be in a position to sign the trustees desired declaration. So I don't think Fairstone is responsible for any financial loss. However, given Fairstone's undoubted errors were clearly a source of distress and inconvenience for Mrs B I think it's fair that it pays her £250 compensation.

My final decision

For the reasons given above I partly uphold this complaint. I require Fairstone Financial Management Limited to pay Mrs B £250 compensation to address her distress and inconvenience as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 12 October 2022.

Joe Scott
Ombudsman