DRN-3309470

The complaint

Mr F complained that one of Fairstone Financial Management Limited's advisors misled him into believing that it would continue managing his investments after he'd transferred his pension.

What happened

Mr F held five separate pensions – three were defined benefit pensions with previous employers and two were personal pensions. For simplicity, throughout my decision I will refer to the defined benefit pensions as "work pensions".

In mid-2019 Mr F made enquiries with one of the work pension schemes about transferring his pension benefits. In August Fairstone's advisor completed a 'fact find' document in order to ascertain Mr F's financial position and objectives. And then on 17 October Mr F opened a self-invested personal pension ("SIPP") with another business (who I'll refer to as "B") in order to transfer his three work pensions. He told us the advisor assisted him in opening the SIPP. He also said that while the advisor didn't advise him on the investments, he gave him options and said he'd invested with B. The transfers were completed later in October.

On 12 November Fairstone provided Mr F with a recommendation report for each of the work pensions (so three in total). The recommendation was that Mr F not transfer the work pensions as it wasn't in his best interests to do so.

On 6 December Fairstone provided Mr F with a recommendation report for the personal pensions. The recommendation was that Mr F transfer them to another (separate) SIPP with B. The SIPP was opened on 18 December and transfers were then completed.

So at this point Mr F had two separate SIPPs with B. One was 'execution only' (which B describes as an online platform where customers can instruct their own transfers and choose their own investments) and held the transfers from the work pensions. The other was 'advisor led' (which B describes as an adviser led product designed to be operated and monitored by a financial adviser via its website) and held the transfers from the personal pensions.

Mr F met with the advisor on 4 February 2020. Following the meeting the advisor prepared a recommendation report in respect of the underlying investments for Mr F's SIPP holding the work pensions. He submitted the report to Fairstone's compliance team for approval before sending it to Mr F. However, on 10 March the advisor told Mr F that the compliance team had said that as Fairstone had advised Mr F to not transfer his work pensions it wouldn't give him any advice in respect of the funds he transferred.

The advisor told Mr F he wasn't aware of this policy and had he been he wouldn't have progressed matters this far. He referred the matter to a director, but he confirmed to Mr F on 24 April that Fairstone's position remained the same.

Mr F complained to Fairstone. In its response to the complaint Fairstone outlined the issues Mr F had raised, ie:

- Fairstone agreed to manage his investments, but then said it wouldn't
- he met the advisor to agree an investment strategy but was then “left in limbo” with the funds just sitting in a SIPP
- it took a number of weeks for Fairstone to tell him that it wouldn’t proceed with any advice.

Fairstone said the initial fees it charged were for the advice only, and it wasn’t obliged to provide Mr F with an ongoing service. It nevertheless said the advisor should have made it clear to Mr F from the outset that if it didn’t facilitate the work pension transfers it wouldn’t be able to provide an ongoing service.

Mr F referred his complaint to us. He said the advisor told him that even though the advice was to not transfer his work pensions, if he wanted him to manage the SIPP he would do so. And it was on this basis that he decided to proceed with the transfers. To resolve the matter Mr F wanted Fairstone to refund the fees for the advice. Fairstone confirmed to us that Mr F received assistance from its advisor in respect of the SIPP opened in October 2019. But it said the assistance was only administrative, in the sense of the necessary requirements eg completion of declarations.

What I provisionally decided – and why

I issued a provisional decision which explained why I thought this complaint should be upheld. What I said in my provisional decision is outlined below, and it forms part of my final decision.

Issue to determine

- Mr F wasn’t complaining about the advice he’d been given in respect of the transfers; the complaint was more about the information he was given about Fairstone’s ongoing management of his investments. So the issue for me to determine was whether or not Fairstone treated Mr F fairly in respect of its decision to not provide advice on the underlying investments once the transfer of the work pensions had completed.

- Mr F also felt Fairstone should refund him the money it paid for the advice. I therefore considered that issue too.

Fairstone withdrawing its services

- Mr F said the advisor helped him with the transfer of the work pensions and led him to believe that he would manage Mr F’s investments once the transfers had taken place. I thought it was most likely that the advisor gave Mr F the impression that he would manage the investments going forward. I said that because when Mr F met the advisor in February 2020 he’d already transferred his work pensions and he’d already transferred and reinvested his personal pensions. So there was little else for the two of them to discuss other than investing the funds from the work pension transfers. It was also the case that following the meeting the advisor completed a report in respect of his investment advice.

- I thought the advisor ought to have known that neither he nor Fairstone would be able to give Mr F investment advice once advice had been given to not transfer the work pensions. This was because Fairstone had told us that training was given on this issue in 2018.

- Given the advisor was working on the basis that he'd be managing the investments going forward, I thought it likely that he assisted Mr F in setting up the SIPP with B. And I thought it more likely than not that the assistance was more than just administrative – although I accepted that he didn't actually set the SIPP up; Mr F would have needed to do that.

- Our investigator suggested – and Fairstone agreed – that £250 compensation was fair for the distress and inconvenience suffered by Mr F due to the advisor not properly managing his expectations. Up until Mr F was first told in March 2020 that Fairstone wouldn't provide ongoing advice he had no reason to think anything was wrong – so he wouldn't have suffered any stress or anxiety up to that point. That would really only have come once his expectations had been dashed. I was aware that Mr F incurred costs in flying to meet the advisor in February 2020, but it seemed from an email I'd seen that he sent to the advisor on 22 January 2020 he had other appointments to attend to at the same time. So I wasn't persuaded that it was strictly an unnecessary trip.

- Overall, I thought the compensation suggested by our investigator was fair for the distress and inconvenience caused.

- There was course the issue of losses Mr F might have suffered as a result of him transferring his work pensions. In correspondence with us Mr F said that he wouldn't have transferred the work pensions if he'd known that no-one would manage them going forward. I thought that slightly contradicted an email he sent to Fairstone on 10 March 2020 where he said he instigated the transfers based on advice from Pensionwise, some of the advisor's advice (which he acknowledged was mainly to not transfer), and his wish to protect the capital if anything happened to him.

- I thought believing that the advisor would continue managing the investments was a consideration for Mr F in deciding to transfer his work pensions. However, I wasn't persuaded that it was the critical or "make or break" factor. I said this because Mr F had already made enquiries with one of the work pensions about transferring his pension benefits before Fairstone's advisor became too involved in the transaction; Mr F had already contacted Pensionwise; he opened the SIPP with B four weeks before the advisor gave Mr F his formal advice; and Mr F clearly had a desire to protect his capital. With that in mind, I concluded that Mr F would mostly likely have still transferred even if he'd been aware from the outset of the true situation with respect to the limit of Fairstone's advice.

- I also considered any loss Mr F might have suffered due to how his funds were invested while he was waiting for Fairstone's further advice. I understood the funds were sitting as cash during this period, and I didn't think Mr F acted unreasonably in leaving his funds as cash while he was waiting for further advice from Fairstone as to where they should be invested. But had Fairstone properly managed his expectations in this respect Mr F could have acted differently eg he could have sought investment advice elsewhere and then acted accordingly. I therefore thought it was fair that Fairstone compensate Mr F for any financial loss he suffered as a result of his funds sitting as cash.

Fairstone's fees

- It wasn't my role to comment on or judge whether Fairstone's fees represented value for money in respect of the work it did or how they compared to fees charged by other advisors. In essence, Fairstone could charge what it felt was fair and it was up to consumers to decide whether to accept those charges or to go to another financial advisor.

- The important thing for me in respect of how much a financial business charged for its services or products was how clearly they outlined (a) how much the cost was, and (b) what they would provide for that. In this case, the advisor sent Mr F an email on 22 August 2019 which, amongst other things, said:

    - Fairstone normally treated the advice for each work pension as separate
    - the initial fee for each piece of advice was £2,995; plus a further £1,000 (approx) per pension to complete the transfer – so for three work pensions the total charged would normally be £11,985 [if the transfers completed]
    - personal pension transfers would normally be charged at 3% of the total amount transferred [in addition to the fees for the work pensions]
    - but given that Mr F was a longstanding customer and that there would be some duplication of the work, it proposed charging an initial fee of £8,000 in total – effectively reducing the fees for the advice on the work pensions by £1,000 and waiving the fees in respect of the personal pensions
    - it also proposed charging 0.5% (instead of the normal 1%) for ongoing annual checks and reviews.

- The client agreements for each work pension transfer also set out Fairstone's standard £2,995 fee. And the SIPP application form for the personal pension transfers said the initial advisor charge was zero and the ongoing advisor charge was 0.5%.

- I thought Fairstone sufficiently set out that it would charge Mr F £8,000 for the work it proposed doing ie advising on and facilitating the transfers. And it recognised there would be some duplication of work. I also thought Mr F was aware of the charge. I didn't therefore think there were grounds to make Fairstone refund any of the fees.

- There was an argument that the £8,000 quoted included work in transferring the work pensions and that work wasn't carried out due to Fairstone's later decision. However, I wasn't persuaded this was sufficient ground for me to make Fairstone reduce its fee. This was because the £8,000 quoted was already a reduction on the combined cost of the advice on the work pensions and the advice/transfer on the personal pensions.

Summary

- I concluded that:

    - Fairstone's advisor gave Mr F the wrong impression that he would manage his investments going forward
    - £250 compensation was fair for the distress and inconvenience caused by this
    - there were no grounds for Fairstone to compensate Mr F for any losses he might have suffered as a result of him transferring his work pensions (except for those outlined in the next bullet point) as he would most likely have transferred the pensions anyway
    - there were grounds for Fairstone to compensate Mr F for any losses he might have suffered due to his funds sitting as cash while he was waiting for further advice from Fairstone as to where they should be invested
    - there were no grounds for Fairstone to reimburse any of the fees it charged.

Responses to my provisional decision

Mr F replied and made some points:

- the SIPP he opened in October 2019 was wholly on the advice of the advisor (who was receiving monthly commission from it)
- the discussion he had with Pensionwise was about his final salary; it was the advisor who said he should speak to Pensionwise first
- he'd never heard of B
- he's already taken the lump sum amount
- regarding the flight to meet the advisor, he tried to get other appointments but in the end the journey was just to see the advisor.

Fairstone also made some points:

- it welcomed my conclusion on why its fees shouldn't be refunded
- regarding compensating Mr F for any investment loss he might have suffered, it disagreed with the proposed 'start date' (17 November 2019) for the calculations – it felt the loss should be assessed from when B received the three work pension transfers, not when the SIPP with B was opened.

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 withdrawing its services

The essence of my provisional decision in this respect was that the advisor most likely gave Mr F the impression that he would manage the investments going forward, when he ought to have known that he wouldn't be able to do so. The advisor also most likely assisted Mr F in setting up the SIPP for the work pensions to be transferred into.

In respect of losses Mr F might have suffered due to transferring his work pensions, I note what Mr F has said above about opening the SIPP and talking to Pensionwise. However, overall, I still think it's most likely that he would have transferred the work pensions if he'd known the true position given what he said in the email I've referred to above and his wish to protect the capital if anything happened to him.

In respect of losses Mr F might have suffered due to his funds sitting in cash, apart from the proposed start date (which I comment on below) neither party has provided further comment on the principle that Fairstone should compensate for Mr F for this. I don't therefore make any further comment on this point.

The final issue in this respect is the £250 compensation that's been suggested. This issue is now finely balanced because of what Mr F has said about him not having any other appointments when he travelled to meet the advisor. But having considered the matter further I remain of the view that £250 remains fair. I say this because the meeting was arranged on the basis that Mr F did have other meetings to attend, and the advisor had offered Mr F alternatives – such as meeting halfway – but Mr F chose the flying option as, at that point, it seemed he had other appointments that he could attend.

Fairstone's fees

The essence of my provisional decision in this respect was that I didn't think there were grounds to require Fairstone to refund any of the fees it charged as it had clearly set out how much they were and what service it would provide. Neither party commented on this issue further so there's nothing more for me to consider.

Summary

Having reviewed this matter in light of the responses I've received to my provisional decision, my conclusions remain as outlined above.

Putting things right

My aim is that Mr F should be put as closely as possible into the position he would probably now be in if he'd been told at the outset of the potential limitations in Fairstone's advice.

I think Mr F would have invested differently rather than leave the funds as cash. It's not possible to say precisely what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr F's circumstances and objectives when he invested.

To compensate Mr F fairly, Fairstone must:

- Compare the performance of Mr F's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable. If the fair value is greater than the actual value there is a loss and compensation is payable.

- Fairstone should add interest as set out below.

- If there's a loss, Fairstone should pay into Mr F's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Fairstone is unable to pay the compensation into Mr F's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr F won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr F's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr F is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr F would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Income tax may be payable on any interest paid. If Fairstone deducts income tax from the interest, it should tell Mr F how much has been taken off. Fairstone should give Mr F a tax deduction certificate in respect of interest if Mr F asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

- Fairstone should provide Mr F with clear and understandable calculations in respect of the compensation payable.

Portfolio Name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Mr F's SIPP		For half the investment: FTSE Private	30 days from the date of the first work		8% simple per year from my final

with B that held the funds from his work pension transfers	Still exists and liquid	Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	pension transfer; or, for transfers after that 30 days, 30 days from the date of that transfer	25 May 2020	decision to settlement (if not settled within 28 days of Fairstone receiving Mr F's acceptance)

The 'actual value' means the actual amount payable from the investment at the end date. The 'fair value' is what the investment would have been worth at the end date had it produced a return using the benchmark.

I originally thought the start date should be 17 November 2019 (30 days after the SIPP was opened), as I felt that was a reasonable period of time for Mr F to have sought advice and/or invested the funds had he known that Fairstone wouldn't assist him in this respect. I've now changed the start date as I think Fairstone made a good point in response to my final decision. This is because the point of this redress is to compensate Mr F for any losses he might have suffered as a result of the funds sitting in cash – and they couldn't have sat in cash until the transfer had happened.

I realise that the formula I've outlined for the start date above might be a bit complicated so I'll illustrate what I mean using an example:

- the transfer dates are 1 March, 14 March and 2 April
- the start date for the first two transfers should be 31 March – being 30 days from the date of the first transfer (because it's likely the two funds would be invested together)
- the start date for the third transfer should be 2 May – being 30 days from the date of that transfer (because having already invested the first transfer funds 30 days April is a reasonable period to seek advice and/or invest these funds).

My understanding, however, is that all the work transfers were completed in October 2019 – and if that was the case, the start date would simply be 30 days from the date of the first transfer.

I've chosen 25 May 2020 as the end date as this is one month after Fairstone confirmed it wouldn't provide Mr F with any investment advice, which I think is a reasonable period of time for him to have sought advice and/or invested the funds.

To arrive at the fair value when using the fixed rate bonds as the benchmark, Fairstone should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum that Mr F paid into the investment should be added to the fair value calculation at the point it was actually paid in. Any withdrawal from the portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Fairstone totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

I've chosen this method of compensation because:

- I think based on Mr F's attitude to risk described in the recommendation reports he wanted income with some growth with a small risk to his capital

- the average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital

- the FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds; it's a fair measure for someone who was prepared to take some risk to get a higher return

- I consider that Mr F's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr F into that position. It doesn't mean that Mr F would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr F could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold this complaint in part. I require Fairstone Financial Management Limited to settle the matter as outlined under the Putting things right heading above; and to pay Mr F £250 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 14 March 2022.
Paul Daniel
Ombudsman