DRN-3687063

The complaint

Mr A complains that Fairstone Wealth Management Limited (Fairstone) mismanaged his pension because his funds remained in a cash account rather than being invested. Mr A believes he's suffered a financial loss as a result.

What happened

In November 2016, Mr A met Fairstone to discuss and review his existing defined benefit (DB) pension (with a transfer value of over £1.4 million) and a free-standing pension with a transfer value of around £247,000. According to a pensions report that Fairstone produced dated 17 November 2016, Mr A's objectives were to explore whether he could improve the available options for his wife and children in the event of his death. It noted it was of *"paramount importance"* to Mr A that the value of his pensions was secured for his wife and children. Also, Mr A was concerned about his former employer's financial viability when the time came to pay his pension. And he hoped to take advantage of the higher transfer values available at the time.

According to the 'fact find' that Fairstone carried out, it noted, amongst other things, that Mr A worked in the financial sector and already had a fairly substantial amount invested in stocks and shares (Mr A has since pointed out that wasn't correct and he doesn't know where Fairstone got that information from). Having considered various options and noted that its advice was based solely on the potential transfer of the DB pension, Fairstone recommended Mr A transfer it to a self-invested personal pension (SIPP) with a provider I'll refer to as J. Based on its assessment that Mr A had a 'high' attitude to risk, it set out a proposed asset allocation along with selections regarding specific investment funds. It also made the following comment: "*It is important to note that when constructing a portfolio, we may recommend investments which, on their own, fall into a different risk category to the one you have selected. However, it is the overall risk of the total portfolio which must be consistent with your attitude, rather than each individual investment taken in isolation".*

Mr A accepted Fairstone's advice and decided to transfer his DB pension into a SIPP with J. He paid Fairstone for its initial advice. And the 'active plan' service he signed up to meant that, for an additional fee, Fairstone would carry out regular reviews.

From that point on, contact between Mr A and Fairstone
included the following:

2016

- In early December, Mr A asked Fairstone how long it would take for his DB pension funds to be transferred. He also suggested meeting to discuss where they should be invested.
- On 16 December Mr A asked Fairstone to contact him urgently, as he hadn't heard anything more. Fairstone responded and said the DB scheme was disinvesting the funds to pay the transfer value, which should take 2-3 weeks. It suggested meeting in early January 2017 to run through the asset allocation.
- On 30 December, £1,414,925 was transferred into the SIPP. And once

Fairstone's fee was taken, £1,393,701.12 remained in the cash account.

2017

- Mr A contacted Fairstone in early January to find out what was happening. Fairstone responded the same day confirming the pension funds had been transferred and it asked Mr A if he was free to meet the following week.
- Mr A got in touch with Fairstone a couple of times that month as he said he'd heard nothing from the SIPP provider. Fairstone responded on 25 January and said it had again requested details from J. Mr A responded the following day indicating he hadn't received fund selections from Fairstone. It responded on 31 January with some suggestions about fund allocations.
- On 27 February, Fairstone asked Mr A if he'd had a chance to look over the fund selections it sent to him and if he'd registered on J's platform.
- Mr A responded on 13 March and apologised for not having responded sooner. He said he'd looked at the funds recommended and was "*finding it hard to like them, but struggling to find something more interesting either…help".*
- On 18 April, Fairstone asked Mr A if they could arrange a time to speak about fund allocation.
- It's not clear, what, if any, further contact there was between April and September when Mr A wrote to Fairstone indicating he hadn't heard from it in a while. He said he was confused as, looking at his statement from J, he could see lots of fees, but no income. He asked when interest would be paid. He also said he needed to "*get some proper investments going*" as he didn't feel that Fairstone had been particularly proactive with his investments.
- Fairstone's adviser responded quickly and suggested that he and Mr A should meet up the following week to discuss things. It chased Mr A for a response a few days later. Mr A said he would struggle to meet that week, so he asked Fairstone to send him some firm proposals to consider with a view to meeting to discuss things shortly after.
- Mr A then chased Fairstone in early October as he hadn't heard anything more. Fairstone again suggested meeting up. But Mr A again said it would be helpful to have some firm proposals to consider first. He added that nothing had been done and having proposals in advance would give him something to study, with a view to meeting up to finalise things.
- Around 9 October Fairstone responded and attached an email it had apparently sent to Mr A at the start of the year, in which it included some possible investment options. It also said that it would recommend a slightly different portfolio now and included some fund suggestions – three low risk defensive funds and two global equity funds. It noted the latter, whilst higher risk, would give Mr A the potential for more growth in the long term. On 18 October, Fairstone asked Mr A if he'd considered the portfolio it sent to him. And, a week or so later, it asked Mr A if he'd like to meet up.
- Mr A responded on 20 November suggesting they meet up a few days later. He also said "*rather than equities, can you suggest some other asset classes and relevant funds that you would recommend".* Fairstone responded the following day to confirm it would meet Mr A. It also asked him what sort of assets/funds he'd like to invest in. Mr A said "*I don't know which funds/assets exactly – I need some advice... what other non equity options do you suggest?".*
- The meeting scheduled for a few days later was postponed at Fairstone's

request, so it tried to rearrange it for the following week. Mr A responded on 28 November, asking Fairstone to email him some investment recommendations. The adviser responded the following day saying that it wasn't simply a case of doing that, as they really needed to meet up to discuss things. It's not clear if there was further communication after that and the next email exchange appears to be in early 2018 (as set out below).

2018

- On 8 January, Mr A suggested meeting the following week. It looks like the meeting was pushed back by a day (to 16 January) at Mr A's suggestion. However, the adviser then suggested pushing the meeting date back further.
- It looks like Mr A and Fairstone met up on or around 18 January.
- On 24 January Mr A confirmed he hadn't received the further fund choices Fairstone planned on sending him (as apparently discussed the week before). Fairstone responded on 30 January and asked if it could call Mr A, as it needed to clarify a couple of things.
- On 29 January, Fairstone wrote to Mr A about his annual pension review. It also reminded him that his funds remained in cash.
- It looks like a conversation took place on or around 2 February. And on 20 February Fairstone asked Mr A if he wanted it to transfer some of the assets to the fund they'd looked at. £250,000 was transferred around 22 February. The rest of the fund remained in cash.

  It's unclear what, if anything, happened for the remainder of that year.

2019

In September Fairstone wrote to Mr A to notify him of a change in his financial adviser. The new adviser contacted Mr A around October to offer a financial review.

Mr A complained to Fairstone in December. He said its earlier letter about a change of adviser hadn't addressed the lack of service he'd received up to that point - despite paying ongoing fees.

2020

Fairstone responded in April. It partially upheld Mr A's complaint. It didn't uphold the part of the complaint relating to a lack of investment, largely because the SIPP provider, J, had sent Mr A regular statements regarding the status of his plan. So, Fairstone felt Mr A had sufficient opportunity from 2017 onwards to ask for a review. And, as far as it was concerned, Mr A had declined a review in 2019, so it felt he may have done the same in 2017 and 2018.

That said, it acknowledged its service had, at times, fallen short of the standard expected. Specifically, it acknowledged that:

- There had been no active reviews of Mr A's account since he opted for an active plan arrangement in 2016. This came to light when a new adviser took over the account in 2019.
- As there had been no annual reviews since Mr A transferred his pension to the new plan, it said it would refund the annual fees charged for those years. And it agreed to refund the fee for 2019 too, seeing as a review hadn't taken place that year either (although it felt this was because Mr A had declined a review). In total, Fairstone offered a refund of £8,500, which it said could be paid by bank transfer or into Mr A's pension.

Mr A wasn't happy with Fairstone's response, so he complained to our service. One of our investigators looked into it. She noted that Fairstone advised Mr A to transfer his DB pension into a SIPP and investments which aligned with the agreed investment strategy. Yet, once an initial fee was paid to Fairstone, a significant amount remained in cash. The investigator also noted that:

- There had been some communication between Mr A and Fairstone and a meeting around January 2018, which led to £250,000 being invested.
- Mr A knew the remainder of his investment was in cash. But, despite his knowledge of financial markets, for the purposes of this transaction, he was a retail client and was entitled to expect Fairstone to give him advice – particularly given the fees he'd paid. So, she didn't necessarily agree it was Mr A's responsibility to get in touch with Fairstone. She thought the adviser should have done more to agree a plan of action with him.
- However, she thought Mr A might have done more to mitigate his own losses – particularly when offered a financial review in 2019. So, she thought that any losses incurred after September 2019 due to non-investment of funds should be borne by Mr A. The investigator recommended that Fairstone make good any losses that occurred between December 2016 and September 2019.
- In addition, she agreed with Fairstone that the ongoing fees should be refunded.

Mr A accepted the investigator's assessment, but Fairstone didn't. It made a number of detailed points in response. Those included that given Mr A's experience as an investment professional, it was incumbent on him to seek advice – including from an alternative source, if necessary, to mitigate any potential losses on his fund.

My provisional decision

I sent Mr A and Fairstone my provisional decision on 19 August 2022. I've included the relevant extracts below:

" *Both parties seem to be in broad agreement that Mr A didn't receive the service he was entitled to expect – and had paid for – from Fairstone. And in recognition of this, I'm aware Fairstone offered to refund a total of £8,500 in respect of fees charged.*

Mr A clearly wasn't happy with that offer. He told us that as a minimum all fees should be refunded, equivalent to about £31,000. He's added that, when taking advice to transfer his DB pension into a SIPP, he was led to believe that a return of just 1.1% annually would give him the same benefits as his DB scheme. So, he thought that coupled with the flexibility of having a SIPP seemed like a "very achievable growth target and a sensible decision". Mr A believes that if Fairstone had been more proactive in ensuring his pension was invested, with a "conservative" 1.1% growth, his pension would have been worth about £1,452,082 (instead of £1,379,119). Therefore, Mr A believes Fairstone should pay a minimum fair compensation of about £72,000 to make up what he thinks the difference in value is.

So, clearly, the matter that is still to be resolved is the extent to which Fairstone needs to put things right now. And that's what I'll be focusing on in this decision.

I've given very careful thought to all of the points Fairstone and Mr A have made. And having done so, I have a different view to our investigator.

I completely agree that Mr A was entitled to expect more from Fairstone, especially given the fees he was paying. And, as I've already indicated, to some degree, Fairstone accepts that too. But, for the reasons I'll explain, I'm not persuaded Fairstone is solely responsible for all the losses that Mr A attributes to it. So, I don't think it would be fair and reasonable *to make the compensation award that Mr A seeks. I'll explain why.*

Should Fairstone refund all fees?

Mr A isn't complaining about the suitability of the advice Fairstone gave to transfer his DB pension to a SIPP. But he seems to be saying now that, as Fairstone didn't give him the service he was expecting thereafter, it should refund the initial advice fee it charged amounting to about £21,000.

I've thought about this and I'm not inclined to agree. I say that because, according to Mr A's client agreement with Fairstone, it will deduct an adviser charge to include the cost of things such as its research and analysis; recommendations; and putting those recommendations into action. The charge is calculated as a percentage of the amount invested.

The evidence clearly shows that Fairstone carried out a fairly detailed advice process with Mr A. And, at the end of that process, as expected, Mr A came away with a report and recommendation about whether it was in his best interests to transfer his DB pension.

Fairstone clearly thought it was advisable for Mr A to transfer his DB pension into a SIPP and from what I've seen, it helped Mr A to set up a profile with the SIPP provider, J. As it's also expected to do, it made a number of recommendations about suitable funds for Mr A to invest in, taking account of his attitude to risk.

As I've already indicated above, Mr A didn't complain about that initial advice. In fact, he appears to have been satisfied that Fairstone did exactly what he'd agreed to pay it for. That is, it made a recommendation that was in line with his best interests. While, as discussed below, there were clearly problems concerning the investment of Mr A's funds thereafter, I think Fairstone did carry out the work that would typically warrant an initial advice fee to be charged. So, I don't think it would be fair to say Fairstone should refund its initial advice fee simply because Mr A isn't happy with the way it's handled things since.

Is Fairstone responsible for a potential loss of investment growth?

I fully appreciate Mr A's point that Fairstone had a responsibility to proactively provide him with advice to help him achieve his financial goals. And to some extent, that's no longer in dispute.

But I don't agree that means Fairstone is solely responsible for the fact that Mr A's investments remained in cash for such a long period. And whilst the quality of its service, by its own admission, at times left something to be desired, I think there is some evidence of Fairstone trying to do the right thing as far as Mr A's SIPP was concerned.

First, part and parcel of the advice process was for Fairstone to advise on the recommended funds for Mr A to invest in once he'd transferred the funds from his DB pension. I can see from its pensions (suitability) report that it recommended certain asset classes (types of investment) together with specific funds within those classes. Those recommendations were intended to match Mr A's attitude to risk.

It's not entirely clear to me why Mr A didn't take those recommendations on board, bearing in mind they were made shortly after he and Fairstone had discussed his circumstances; objectives and attitude to risk in some detail. So, I'd expect them to accurately reflect those things. And I need to keep in mind that, had investment choices been made around that time, Mr A's funds could have been invested pretty much straight away. Whilst I can't say that would have guaranteed the investment growth Mr A was led to believe was achievable,it seems more plausible to think that was possible as opposed to funds simply being left in cash.

Similarly, in January 2017, Fairstone sent Mr A other investment options to consider, albeit it looks like it had to be prompted by Mr A. But Mr A responded that he was "finding it hard to like them". So, he asked for Fairstone's help to find something more "interesting". I think there's a world of difference between "finding it hard to like them" and the suggestions being wholly unsuitable. And I've seen nothing to suggest that they were wholly unsuitable. That being the case, even if not ideal for Mr A, I'm satisfied Fairstone gave him another opportunity, fairly early on, to make some investment decisions. But there's no evidence he took on board these suggestions either, despite Fairstone contacting him in April 2017 to ask to agree a time to discuss fund allocation. And I think it would also have been helpful if Fairstone had explained that it was probably better to agree some fund allocations, to get the funds invested in the short-term, even if they needed to be changed later on. There's no suggestion it did so and matters weren't helped by the fact that contact between Mr A and Fairstone apparently became somewhat sporadic after that.

It's also worth noting that Fairstone treated Mr A as a retail client even though he himself worked in the financial sector. Notwithstanding the fact that he was still entitled to receive a good level of service from Fairstone, especially given the fees he'd paid, I think his experience probably meant that Mr A had a greater level of understanding of investments and the implications of his funds remaining in cash. I say that both in terms of his employment being in the financial sector and him apparently already having a fairly substantial amount invested in stocks and shares. That being the case, I'm inclined to agree that Mr A also had a responsibility to mitigate any potential losses. For instance, it seems to me that Mr A could easily have accepted Fairstone's investment recommendations until such time as they were in a position to discuss things further. He had recommendations as part of the advice he'd accepted, which were likely suitable. Even if he later decided to switch to investments that interested him more.

Yet by September 2017, around ten months after options were first proposed, Mr A and Fairstone still hadn't been able to agree on fund choices for his investments. And Mr A himself recognised that he needed to "get some proper investments going". Given the passage of time, I think it was really important that Mr A and Fairstone were able to work together to resolve the issue as soon as possible. And whilst I can see that Fairstone did respond fairly quickly and suggested meeting up to discuss things, Mr A's availability was limited. So, he asked Fairstone to send him some options to consider upfront. I can appreciate why Mr A might have felt that was a better option. But I do think that needs to be considered in the context of the attempts Fairstone had already made to agree investment choices. And, in those circumstances, it doesn't seem unreasonable to me that Fairstone would want to meet Mr A first. I say that in particular because I imagine one of the things it would want to check is that any recommendations it made were still suited to Mr A's risk appetite and objectives and, to save them going round in circles, to try to ensure any recommendations were the sort of investments Mr A was likely to find interesting.

In any event, it seems that Fairstone did send Mr A some options to consider and Mr A responded in November 2017 saying that he wanted Fairstone to recommend investments in different asset classes. So, whilst I appreciate that Mr A may have been looking for something different, I don't think that means Fairstone wasn't actively trying to recommend investments. But, following availability issues on both sides, it looks like it was around January/February 2018 before they eventually met up and some of Mr A's funds were then invested with the rest remaining in cash. That was over a year after Mr A's funds were first transferred from the DB scheme.

The examples I've highlighted above, do show the reasonable efforts Fairstone made to help Mr A make investment choices. And whilst there's no doubt that at other times its contact was sporadic, causing Mr A to chase things up, I can't fairly say that Fairstone was solely responsible for Mr A's funds remaining in cash. So, I'm not intending to say that it needs to put right any potential investment losses that Mr A might have suffered.

But, it’s clear that Fairstone hasn’t carried out the regular reviews that Mr A was entitled to expect. And whilst I can’t say what the outcome of those reviews would have been in terms of any investment choices Mr A may have made, I’m satisfied that Mr A’s paid for a service he didn’t receive. Fairstone has made an offer to pay Mr A £8,500 as a refund of fees. I think that’s reasonable. So, that’s the amount that I’m intending to say Fairstone should pay now as a means of settling this complaint.

That amount should if possible be paid into Mr A’s pension plan. The payment should allow for the effect of charges and any available tax relief. I’ve also thought about whether this amount being paid in, would have affected the investment returns on the SIPP. But I don't think it would, given that so much of the SIPP value was disinvested for a long period.

It shouldn’t be paid into the pension plan if it would conflict with any existing protection or allowance. If a payment into the pension isn’t possible or has protection or allowance implications, it should be paid directly to Mr A as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid. If Mr A hasn’t yet taken any tax-free cash from his plan, 25% of the payment would be tax- free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 40%. So, making a notional deduction of 30% overall from the loss adequately reflects this.

My provisional decision

I’m intending to partially uphold this complaint and direct Fairstone Wealth Management Limited to put things right as I’ve set out above”.

Responses to my provisional decision

Fairstone didn’t respond.

Amongst his comments, Mr A said the following:

- He was “*extremely disappointed and frankly flabbergasted*” at my proposed settlement.
- He said I was putting a lot of emphasis on the fact that he was “*some kind of market professional”* (which he says is untrue) because of his previous work in the financial sector.
- Despite what Fairstone noted in its fact-find report, Mr A disputes that he has a substantial amount invested in stocks and shares. He said he’d never had monies invested in stocks and shares, apart from pension contributions, which weren’t managed by him.
- I’d ignored the fact that a Fairstone adviser had apparently contacted Mr A since leaving Fairstone and said that he’d been unable to look after clients properly whilst working for the company.
- Mr A questioned how my decision was “*punishing Fairstone”* or compensating him for lost pension growth.
- At the very least, Mr A thinks my award should be £15,444.94 in respect of ongoing fees (plus £230 for each further month) and not £8,500 (which Mr A also doesn’t think is a fair or correct compensation figure).

- His circumstances have changed. He was made redundant in 2021 and is currently unemployed and not paying tax. This comment seems to relate to the notional tax deduction of 30% that I referrred to in my provisional decision when setting out my proposed redress.
- Mr A asked me to revise my proposed settlement and questioned how it could be for an amount less than the fees he's paid, given that he's still not receiving advice or contact from Fairstone.

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.

It's not clear why Fairstone referred to Mr A having a substantial amount invested in stocks and shares, when according to Mr A, that's not the case. Especially as the information in a suitability report is generally a note of what's discussed at the time of the advice. But, I have no reason to doubt what Mr A says, so I've reflected this amendment in the background section of my decision.

However, after very careful consideration, neither this, or Mr A's other comments would cause me to change the essence of what I said in my provisional decision. I'll explain why.

Fairstone's suitability report referred to Mr A working in the financial sector. Amongst the information noted are the FCA controlled functions (the permissions to perform certain tasks) that Mr A either held at the time, or had held previously. I can see that for a period of over three years, Mr A apparently worked as an investments adviser.

So, whilst I take Mr A's point that doesn't necessarily make him a '*market professional',* I'm still of the view that Mr A's experience and awareness of investments was probably more extensive than he's suggesting now. I say that in particular because in response to the investment suggestions made by Fairstone, Mr A indicated he was looking for something more "*interesting".* I think that comment in itself tends to suggest that Mr A had a fair amount of knowledge of investments, otherwise it seems more likely he'd be willing to simply accept the suggestions made by Fairstone. And, later on, he told Fairstone that he was looking to invest in asset classes other than equities. Again, I think that tends to add weight to the fact that Mr A knew enough about the different types of assets he might invest in, even if he was looking for Fairstone's help in finding *specific* funds to invest in.

And taking those things together, on balance, it seems more likely that as a former investment adviser (who still worked in the financial sector), Mr A ought to have known the relevance of his funds remaining in cash and the importance of him trying to mitigate his own losses.

Mr A says I'm ignoring the fact that Fairstone's former adviser contacted him to explain the challenges he faced in being able to properly look after its clients. I don't agree it's a question of me ignoring what apparently happened. Rather, it's more the case that I don't think it adds any further weight to what I've said and the conclusions I've already reached. Especially when Fairstone itself has already accepted that it didn't always get things right as far as the service it gave Mr A was concerned. So, I see no reason to comment on this issue further.

Mr A has also challenged my proposed award and thinks it should be increased to £15,444.94, plus ongoing fees of about £230 a month. But I don't agree. As I said in my provisional decision, there have been attempts to agree investments and some contact , albeit fairly sporadic at times, from Fairstone over the years. And that contact included the new adviser getting in touch with Mr A in 2019 shortly after taking over Mr A's account, to offer him a financial review. Mr A clearly didn't agree to a review at that time and Fairstone has gone as far as suggesting he declined it. Whatever the reason a review didn't take place, I think Mr A would have known his investments remained in cash. So, I think that was another opportunity for him to work with Fairstone to agree some investments.

And whilst Mr A made contact with Fairstone a couple of months later to make a complaint, I've seen no evidence he pursued the offer of a financial review. And I don't think there was anything preventing him from also making some investment decisions even if he wanted to pursue a complaint about the service he'd received previously. In these circumstances, especially given the contact from Fairstone in 2019, I can't fairly say that the fact there was no review was down to a shortcoming on Fairstone's part. And for that reason, I'm not going to direct Fairstone to refund any charges made after 2019. Also, even though Fairstone did invite Mr A to take part in a review in 2019, its offer to refund charges included those due for 2019. I'm still of the view that's a fair offer and a reasonable response in the circumstances. So, I'll be directing Fairstone to pay the £8,500 it previously offered.

In terms of the notional tax that I said should be deducted, (to allow for future tax that would otherwise be paid) Mr A's made the point that he was made redundant and is not currently paying tax. I can see why Mr A might think that change in circumstance is relevant. However, the notional tax deduction is intended to reflect the likely rate of income tax payable in retirement, not what it is now. And given that Mr A doesn't appear to have other substantial savings to fund his retirement (meaning he might not otherwise need to draw an income from his pension) it seems likely he'll need to rely on his pension pot, which is fairly sizeable overall. Given the size of his pension pot, and the state pension that he will receive, I think that it's more likely than not that Mr A's income in retirement will put him into the higher rate tax band of 40%. So, again, if a payment into the pension isn't possible, it should be paid directly to Mr A as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid– presumed to be 40%. I'm satisfied that making a notional deduction of 30% overall from the loss adequately reflects this.

Putting things right

Fairstone Wealth Management Limited should put things right as I set out in my provisional decision and as referred to above.

My final decision

I partially uphold this complaint and direct Fairstone Wealth Management Limited to compensate Mr A in the manner I've set out above.

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

Amanda Scott
Ombudsman