

The complaint

Mr G complains that Fairstone Financial Management Limited (Fairstone) delayed in providing all of the information needed to process a pension transfer application. He feels he's suffered a financial loss as a result.

What happened

Mr G previously held a pension with safeguarded benefits with a provider I'll refer to as R. He was intending to transfer the plan to another provider I'll call A. R quoted a transfer value of £91,734.95, which it said was guaranteed until 7 February 2020. Due to the safeguarded benefits involved, Mr G was required to seek financial advice before the transfer could go ahead. He approached Fairstone for that advice, which it subsequently gave him.

Mr G opted to transfer his pension, so Fairstone completed the necessary paperwork. On page one of the 'financial advice confirmation' form (FAC) that Fairstone was required to complete, R said *"before we can process a request which would result in the loss of safeguarded benefits, we'll need you to **complete this form and return it to us with a covering letter on your firm's headed paper**"* (the emphasis in bold is as it's displayed on R's form).

Fairstone signed the FAC on 3 February 2020 and R appears to have received it on or around 5 February 2020. However, Fairstone didn't provide the covering letter that R also asked for. So, the transfer didn't proceed by the deadline due to that omission. And when the pension was eventually transferred on 1 April 2020 (after Fairstone provided the covering letter on or around 17 March 2020) the transfer value had dropped to £85,723.99. Mr G later complained to Fairstone.

In its response Fairstone acknowledged that a covering letter wasn't provided to R. However, it felt the information that was subsequently provided on the covering letter in March 2020 was merely a duplicate of information that had already been given to R on the FAC. And the FAC was provided to R before the expiry date of the guaranteed transfer value. So, as far as Fairstone was concerned, it was entirely R's decision not to process the transfer on the basis of there being no covering letter. It didn't think it should be held responsible for any financial loss Mr G felt he'd suffered.

Mr G complained to our Service. One of our investigators looked into the complaint and, whilst noting the comments that Fairstone had made, he concluded that the instructions concerning information that had to be submitted were pretty clear. Therefore, he felt the failure to comply couldn't have been down to any other party but Fairstone. So, the investigator felt it was Fairstone's responsibility to put things right by running a loss calculation to see what the guaranteed value of £91,734.95 would be worth if that amount had been transferred instead of £85,723.99. If that calculation indicated there had been a loss, then he said that amount should be paid into Mr G's pension. The investigator also recommended that Fairstone pay Mr G compensation of £150 for the distress and inconvenience caused.

Fairstone didn't agree with the investigator and made a number of points in response. Those included that it felt R was more culpable than had been suggested. And whilst Fairstone accepted it didn't meet the February 2020 deadline (and so accepted the recommendation to pay compensation of £150), it didn't feel it should be held 100% responsible for the loss of the guaranteed transfer value. Fairstone also pointed out that even once R had the missing information on or around 17 March 2020, it didn't complete the transfer process until 1 April 2020. So, even if there hadn't been missing information, it felt it wasn't certain the transfer would have gone ahead by the due date. And whilst appearing to accept that R is entitled to ask for a covering letter if it wants one, Fairstone didn't think R had explained why it needed it seeing as there is no regulatory requirement to provide one. It added that if the investigator still felt that it was responsible, it wanted the matter to be referred to an Ombudsman. The investigator considered Fairstone's comments, but they didn't change his opinion overall. So, the matter's been referred to me to decide.

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.

And having done so, I'm intending to reach the same outcome as our investigator for similar reasons. My approach to redress is also largely the same, although I've instructed Fairstone to run the loss calculation from a slightly later date. I've set out the reasons for that within this decision and I've told Fairstone and Mr G about this slight amendment in advance of sending the decision.

Fairstone feels strongly that R should shoulder some of the responsibility for any loss that Mr G may have suffered. Its basis for saying so seems to be that there was no regulatory reason for R to hold things up whilst waiting for additional confirmation from Fairstone on letter headed paper. And even once it had the information, Fairstone's pointed out that it still took R about 15 days to complete the transfer.

I appreciate the points that Fairstone makes here. But whether there is or there isn't a regulatory requirement doesn't really matter. As Fairstone itself concedes, R was entitled to satisfy itself that advice had been given (in order to comply with its regulatory responsibilities) in whatever form it chose to. If it had been a question of R not making things clear, I may well have formed a different opinion. But that's not the case. On the front of its FAC R's instruction clearly stated "***we'll need you to complete this form and return it to us with a covering letter on your firm's headed paper***". So, I think R made it perfectly clear what it needed to receive, and by what date, in order to ensure that the guaranteed transfer value could be honoured. And as Fairstone didn't send all of that information, it follows that I think its omission resulted in the loss of the guaranteed transfer value.

I noted some of Fairstone's other points too, including that once R did receive the confirmation from Fairstone on headed notepaper, it didn't process the transfer straight away. That's my understanding too from the evidence I've seen. But, as I understand the position, providing that R had all of the paperwork it asked for before the expiry date, it agreed to honour the transfer value.

So, the bottom line here is that for whatever reason, Fairstone didn't include all of the information R asked for by the expiry date. That's not in dispute. And the consequence of that was that Mr G missed out on the higher transfer value. So, in those circumstances, I think Fairstone is responsible for any financial loss Mr G might have suffered. However, the time taken for R to complete the transfer is relevant when it comes to working out the extent

of any financial loss Mr G might have suffered, so I've taken that into account when setting out below how Fairstone should put things right.

Putting things right

I need to try to put Mr G back into the position he would have been in – or as close to that position as possible – had Fairstone done what it needed to.

Had things happened as expected, R would have transferred the full value of £91,734.95 to provider A rather than £85,723.99. It took R 15 days to complete the transfer process. So, if R had had everything it needed on or around 5 February 2020 (including the confirmation on letter headed paper along with the other information it received on that day such as the FAC), it seems likely the transfer would have happened on or around 20 February 2020. That's around 41 days before the transfer actually happened.

So, Fairstone should now find out from provider A what the notional value of Mr G's pension would be now had £91,734.95 been transferred (as opposed to the lower value of £85,723.99) on 20 February 2020 and invested in exactly the same funds 41 days earlier than they actually were. It should compare that with the actual value. If the actual value of Mr G's pension is lower at the date of my decision than the notional value, the difference is the loss that Mr G has likely suffered. Fairstone should allow for the impact of charges and any withdrawals or contributions. It should pay the difference into Mr G's pension.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr G as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. If Mr G hasn't yet taken any tax-free cash, 25% of the loss would be tax free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

This matter has clearly been a source of worry and upset for Mr G. So, Fairstone should also pay him £150 compensation to recognise the impact of its actions on Mr G.

Fairstone should provide Mr G with details of its loss calculation in a clear and simple format.

My final decision

I uphold this complaint. Fairstone Financial Management Limited should now take the steps I've set out above under 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 23 March 2023.

Amanda Scott
Ombudsman