DRN-3744706

The complaint

Mr W complains that Fairstone Financial Management Limited provided him with poor advice about his pensions and investments, causing him a financial loss. He says he was advised to transfer an Individual Savings Account (ISA) and a Collective Investment Account (CIA) held with a company I'll refer to as 'OM' and his Personal Pension Plan with a company I'll refer to as 'A' to another company, that I'll refer to as 'N,' without his knowledge.

What happened

On 3 May 2023, I issued a provisional decision on this complaint. In it, I set out the background to this complaint as follows:

" In June 2019, Mr W met with one of Fairstone's advisers, who I'll refer to as 'B'. Fairstone's Fact Find showed Mr W was 61 years old, was not currently working and taking some income from a workplace pension and his personal savings. Whilst Mr W wasn't currently working, the Fact Find also recorded Mr W as planning to retire at 66. Mr W had around £28,000 in personal savings accounts, and held the following products:

- A CIA with OM, valued at around £3,100. Fairstone said it provided a return of 2.17% against a target of 3.84% for Mr W's risk profile – so this fund had underperformed. Fairstone estimated Mr W paid around 2.4% of the value of his CIA in ongoing fees.

- An ISA with OM, valued at around £50,950 which provided a return of 1.84% and had underperformed against inflation and Mr W's benchmark in the long-term. Fairstone said the total annual charge for the ISA was 2.25% of the fund value.

- A personal pension with A with a value of around £129,000. Fairstone said Mr W's personal pension with A provided an annual return of 7.37% and outperformed the target for a Cautious Balanced fund. Mr W incurred no ongoing advice fee for the pension with A – it charged only a 0.47% investment fund charge.

The Fact Find said it would *"review existing pension at [A] as client would like servicing on his plan, he selected active plan with 1% ongoing fee."* It went on to say *"He would like to use his CIA funds to invest into his ISA to use some of his allowance then transfer the ISA to Nucleus invested in 50/50 Vanguard & Brewin. With 1% ongoing fee… [Mr W] would like to add servicing to his pension using Active plan+ noving [sic] to N as detailed above, also with 1% ongoing fee."*

Fairstone's adviser decided the pension with A did not "continue to fulfil' Mr W's objectives, so it recommended his pension be transferred to a platform provided by N.
Fairstone gave more information about its advice in its 'pre-retirement planning recommendation report', Fairstone said Mr W wanted to review his pensions and investments "with the view of organising these to form a joined up and easy to administer portfolio" and Mr W felt pension flexibility in retirement would be beneficial. It went on to say:

> *"You do not currently pay for an ongoing service from myself in respect of your pension and wish to build this in going forward. You wish this to be facilitated via your*

> *investments as you do not wish to pay for this separately. You currently pay an adviser service to me to manage your investments with Old Mutual Wealth (OMW), I am recommending a consolidated joined up overall strategy and my recommendations with regards to these investments with OMW is contained within a separate report."*

Fairstone recommended Mr W transfer his pension with A to N because it was *"not aligned to [his] current attitude to risk"*. The report said its adviser fee would be increased 0.47% per year after the transfer. B considered adding his adviser fee to Mr W's existing pension, but the existing pension wouldn't allow Mr W to access a full flexible drawdown or the flexibility Mr W 'required'. It added the service from A was "poor".

In its 'Services & Charges Agreement', signed by Mr W on 14 August 2019, Fairstone set out its charge for providing advice to Mr W as a new client. It said its initial charge for its advice would be 3% of the transfer value of Mr W's existing plans, which is £5,499.48. Fairstone acknowledged the higher fees would increase the charges Mr W would pay, but ongoing advice *"will hopefully improve the performance of your fund and minimise losses by ensuring the fund is risk appropriate."* Fairstone also recommend Mr W invest into two different plans invested in different portfolios that were both set up less than a year before Fairstone gave its advice, so it couldn't offer a performance comparison with Mr W's existing pension and fund choices. The pension suitability report said Mr W's existing plan with A allowed income drawdown and fund switching, and had 200 alternative funds available.

In its 'investment planning recommendation report', Fairstone said Mr W's wanted to build up financial security and use the adviser's help with regular reviews of his investments. Fairstone recommended Mr W sold the funds held within his CIA and invested them into an ISA held with N because one of Mr W's objectives was to "invest in the most tax-efficient manner". Fairstone acknowledged Mr W was unlikely to incur any Capital Gains Tax liability at present.

Fairstone also recommended Mr W transfer his OM ISA to an ISA held with N as it was better suited to Mr W's objectives and would reduce the costs paid for the ISA. Fairstone recommended Mr W split the funds held in his ISA into two funds. Again, the funds recommended were set up less than one year Fairstone gave its advice so it couldn't provide a suitable comparison between the new funds and Mr W's existing ISA. The overall annual cost of the funds recommended was 1.88% of the fund value, including an ongoing advice fee. It estimated this was less than the 2.64% charge, including an ongoing advice fee, for Mr W's existing funds with OM. Fairstone would also charge an initial advice charge of 3% of the fund value (£1,618.96).

Mr W signed Fairstone's documents to say he accepted its recommendations and the transfers went ahead. Fairstone prepared another 'Annual Review Report' for Mr W on 17 August 2020. The report said B spoke to Mr W by phone on 14 May 2020. Having been updated on Mr W's current situation, B said the arrangements it had in place for him were performing as expected and remained aligned to the objectives agreed with Mr W. It listed Mr W's holdings with N:

- Pension 1 valued at approximately £64,100
- Pension 2 valued at approximately £63,200
- ISA 1 valued at approximately £26,400

- ISA 2 valued at approximately £26,200

Fairstone told this service that Mr W's pensions and ISAs each sat in two separate wrappers, as each pension and ISA was invested into different funds. The annual report listed the costs applied to Mr W's pensions and ISAs, which included £1,612.53 as a 'one-off fee' for 'ongoing/initial servicing costs' and £113.17 for ongoing fees for platform charges, fund charges and ongoing advice costs.

In 2021, Mr W met with a new financial adviser. Having done so, he complained to Fairstone about its advice given in 2019. Mr M said he had difficulty reading and wasn't aware he'd been advised to transfer his pensions and investments elsewhere. He was concerned he was paying higher charges than before and wasn't aware he'd been charged £3,000 for the advice to transfer his pension.

In its final response to Mr W's complaint, Fairstone said it was apparent from Mr W's records that he had a long relationship with B and it didn't consider Mr W's 'vulnerability' to be relevant. Fairstone said its "advice can only be judged on its suitability you received [sic] at the time in and around August 2019" and it had no reason to call that advice into question. Fairstone noted Mr W signed declarations that he had read and agreed with the recommendations B had made and had signed its document listing the charges for its advice.

Unhappy with this response, Mr W referred his complaint to our Service. He said he cannot use computers and had received a lot of paperwork through the post but has difficulty reading. Mr W said he'd attended Fairstone's offices twice and it wasn't explained what he was signing for. When asked by one of our Investigators, Mr W couldn't recall signing any document to agree to charges and was unclear on what charges were applied to his pension and investments.

One of our Investigators reviewed Mr W's complaint and thought it should be upheld. Our Investigator didn't think Fairstone's advice to transfer the pension from A to N was suitable, as the pension could have been rebalanced in line with Mr W's attitude to risk without the transfer. Our Investigator also thought Fairstone didn't do enough to explore other options than transferring the CIA into an ISA with N. So, our Investigator recommended Fairstone take steps to compensate Mr W if he'd suffered a loss after following Fairstone's advice to transfer his pension. He also recommended Fairstone pay Mr W £200 compensation for the inconvenience caused. Fairstone didn't say if it agreed with our Investigator's opinion, so this has come to me for a decision."

I then set out why I thought this complaint should be upheld, and what I thought Fairstone should do to put things right. Neither Fairstone nor Mr W responded to my provisional 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.

As neither party to this complaint responded to my provisional decision, I see no reason to say anything different from the reasons I gave before for upholding Mr W's complaint or change my recommendation about what Fairstone should do to put things right. I'll repeat my reasons here.

Mr W has complained Fairstone recommended he transfer his CIA, ISA and pensions to N without his knowledge in addition to the increased costs involved in the transfer. Fairstone argued Mr W confirmed he had read and agreed to Fairstone's August 2019 report and charges agreement by signing to say he had done so – but I treat this with caution given Mr W has said, in his own words, that he doesn't read or write very well. But regardless of whether Mr W understood the recommendations Fairstone made, Fairstone still had to provide suitable advice to Mr W. I'll deal with Fairstone's advice regarding Mr W's CIA and ISA first.

Mr W's CIA and ISA with OM

Fairstone said Mr W's CIA and ISA were underperforming compared to the appropriate risk benchmarks and there was an anticipated cost-saving in moving the ISAs.

Based on what I've seen, remaining with OM would have involved higher costs and the funds were not performing as hoped. Mr W was already paying an ongoing advice fee, and I don't think it was unreasonable for this to continue once Mr W transferred his ISAs. From what I've seen, it doesn't seem unreasonable that Mr W wanted ongoing advice to check his investments remained suitable for him. Unlike our Investigator, I don't think there's anything unreasonable about Fairstone's advice to transfer the CIA into an ISA and switch to a cheaper provider – and the ongoing saving of around £400 on annual charges and potential for growth would offset the £1,618.96 of transferring the OM investments to N.

It's not clear that there's any benefit from the CIA and ISA being transferred into two separate ISAs, but I've not seen any evidence to show having two ISAs with N instead of one has caused Mr W a financial loss. So, at the moment, I think Fairstone's advice here was suitable. And even if there were any failings in Fairstone making Mr W aware of its recommendations and the implications of those, I think, on balance, Mr W would have accepted its recommendation to move his CIA and ISA into two ISAs with N because of the possible lower costs and greater returns on his investments.

Mr W's pension with A

Mr W's pension with A was, according to Fairstone, performing well and Mr W was happy with it. The Fact Find says Mr W wanted servicing to be added to his pension. It's unclear why Mr W would want that – and I think it's unlikely this was Mr W's desired objective – it certainly isn't a valid investment objective that should have guided Fairstone's recommendation. I note the Fact Find wasn't signed by Mr W, so there's no evidence to suggest he was made aware of the Fact Find's contents.

Fairstone said Mr W would benefit from transferring his pension from A to N as A offered less flexibility. But A offered Mr W flexible drawdown and 200 alternative funds. So, it's unclear why these features didn't offer sufficient flexibility or why N offered greater flexibility that would benefit Mr W. I say this particularly as Fairstone said Mr W required flexibility but has provided no reasons to support its claim.

According to the information I've seen, Mr W's projected income needs would be mostly covered by his state pension once he reached 66. He didn't have any dependants and had around £50,000 held in ISAs and from the details available. So, it seems to me that Mr W's dependence on his pension for his income needs was minimal. But I think being able to make ad hoc withdrawals from the pension would likely be useful, if he needs extra money any year or if he had any unforeseen expenses. The pension suitability report said the pension with A already allowed income drawdowns. So, it seems to me that Mr W's pension with A already met his needs. And if he was looking for better performance, he could have completed an internal fund switch.

Fairstone said Mr W would benefit from easier administration – but Mr W only had one pension with A and Fairstone’s recommendation would split the pension into two separate plans. So, I think this made it harder to compare performance and charges in comparison to the pension with A. Overall, I don’t think there’s enough evidence to show there was a convincing reason for Mr W to transfer his pension from A into two policies with N. So I think the advice to transfer was unsuitable. I’ll explain what I think Fairstone should do to put thing right below.

Putting things right – Mr W’s pension

Fair compensation

My aim is that Mr W should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr W would have remained with his previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr W's circumstances and objectives when he invested.

What must Fairstone do?

To compensate Mr W fairly, Fairstone must:

- Compare the performance of Mr W's pension with the notional value if it had remained with the previous provider, A. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- Fairstone should also add any interest set out below to the compensation payable.

- Fairstone should pay into Mr W's pension plan to increase its value by the total 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 total amount into Mr W'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 total amount 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 W won’t be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age. For example, if Mr W is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr W would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

- Pay to Mr W £200 for the trouble and upset caused by the unsuitable advice given, if it has not already done so.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Nucleus Fairstone Passive 4	Still in existence and liquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date ceased to be held	Not applicable
Nucleus Fairstone Brewin 4	Still in existence and liquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date ceased to be held	Not applicable

Actual value

This means the actual amount paid from the investment at the end date.

Notional Value

This is the value of Mr W's investment had it remained with A until the end date. Fairstone should request that the previous provider calculate this value.

Any withdrawal from the Mr W's personal pension with A should be deducted from the notional 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 notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Fairstone will need to determine a fair value for Mr W's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr W wanted Capital growth and was willing to accept some investment risk.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- 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 would be a fair measure for someone who was prepared to take some risk to get a higher return.

Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr W's circumstances and risk attitude.

My final decision

For the reasons explained above, I require Fairstone Financial Management Limited to put things right by doing what I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision 7 August 2023.

Victoria Blackwood
Ombudsman