

The complaint

Mrs M complains that information provided to her by Fairstone Financial Management Limited ("Fairstone") about her pension savings was incorrect.

What happened

I issued a provisional decision on this complaint last month. In that decision I explained why I thought the complaint should be upheld and what Fairstone needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

Mrs M holds pension savings with a firm I will call T. Fairstone has provided Mrs M with advice and support on those pension savings, and funds held in an ISA since March 2021. At the start of their relationship Fairstone advised Mrs M to transfer her pension savings to T, and has since advised her on the investment of her monies.

In September 2023 Mrs M got in touch with Fairstone when she was considering the purchase of a property abroad. She asked Fairstone for information about the money she would be able to withdraw free of income tax from her ISA, and from her pension in the form of a pension commencement lump sum ("PCLS" – more generally known as tax free cash.) Fairstone gave Mrs M details of the ISA balances held by her and her husband, and the amounts of PCLS that they had available. Fairstone said that Mrs M's PCLS amounted to around £53,000.

Fairstone had based its advice on information that was provided by T. But it later transpired that information was incorrect. Mrs M had taken all her PCLS entitlement in 2018 before she started her relationship with Fairstone. And when her pension savings had been transferred to T in 2021, T had incorrectly noted them on its records as being in accrual rather than in drawdown.

Mrs M says that she paid a deposit on her new property abroad and committed to other expenditure such as furniture and legal costs. She asked Fairstone to complete the withdrawal of her PCLS and ISA monies to help fund the purchase of the new property. But then T told Fairstone of the mistake, and Mrs M was told that she didn't have any entitlement to a further PCLS. Mrs M says that she needed to cancel the proposed property purchase and has said that her losses as a result amount to around £25,000. She complained to both T and Fairstone about what had happened.

Fairstone told Mrs M that it wasn't responsible for the incorrect information – it said it had simply relayed what it had been shown on the reporting it received from T. So it said it thought that it was T's responsibility to pay any compensation that might be due to Mrs M. Unhappy with that response Mrs M brought her complaint to us.

There are two regulated firms involved in the matters that form this complaint – T and Fairstone. But in this decision I am only dealing with the actions of Fairstone. So, other than commenting on factual matters, I am making no findings of fault against T.

It seems clear, and T accepts, that the information it held on its systems following the transfer of Mrs M's pension savings in 2021 had not been updated correctly. T was told by the previous provider that it was receiving crystallised funds but it failed to note that information in its records. But I have also seen that Fairstone was aware that Mrs M was transferring crystallised funds. That was the instruction that it provided to T when the transfer was first requested. So I would expect Fairstone's records to show there was a discrepancy between the information T was reporting, and the true position of Mrs M's pension savings.

I don't know how much information Mrs M was given in 2018 when she took her PCLS. So I cannot be sure how well it was explained to her that she would have no further entitlement to a PCLS from her remaining pension savings. I don't therefore think it was unreasonable for Mrs M to rely on the advice she was given by Fairstone about the availability of an additional PCLS withdrawal from her pension savings.

The information that Fairstone gave to Mrs M was clear – that she would be able to take a PCLS of around £53,000 to support her property purchase. There were no caveats to that advice. So I don't think it was unreasonable for Mrs M to proceed with her property search without first completing the withdrawal of the PCLS. As Mrs M quite correctly points out, once monies are withdrawn from a pension they cannot be easily replaced. It seems to me that it was sensible to ensure the funds were actually needed before any withdrawal request was started.

So to summarise, I am persuaded that it was reasonable for Mrs M to rely on the information given to her by Fairstone about the availability of an additional PCLS payment. I appreciate that information was based on the incorrect reporting by T. But I am not persuaded that it was reasonable for Fairstone to not have identified, either at the time of Mrs M's request or in the two years before, that T hadn't correctly recorded the crystallised nature of the transferred pension savings. I think the information Fairstone held, from its initial discussions with Mrs M in 2021, should have made it aware that no further PCLS was available to Mrs M.

So what I now need to consider is to what extent the incorrect information that Fairstone gave to Mrs M has caused her to lose out. So I've looked carefully at those items that Mrs M has said have caused her loss, and considered whether those should form part of the compensation that I am directing Fairstone to pay her.

I am satisfied that Mrs M was unable to proceed with the purchase of her overseas property once it became apparent that no PCLS was available to her. I have considered that there were other funding options that Fairstone suggested, and in particular the use of some premium bonds that Mrs M held. But the use of the premium bonds was something that Fairstone suggested initially and was rejected by Mrs M in favour of using the PCLS. Fairstone says that it understands Mrs M had plans for an alternative use for those funds. So I'm not persuaded that Mrs M could have financed her property purchase by other means. The loss of the PCLS meant that Mrs M would experience a significant reduction in the money available to her (or a significant reduction in her overall pension savings if she instead took a taxable income payment of the same net value).

Mrs M asked Fairstone for its advice on the available PCLS in her pension towards the end of September. It was only after that information was provided that she committed to the purchase of the new property, using the identified funds from her pension and ISA to bridge the difference in price from the property she had sold. So I think it fair to conclude that Mrs M should be compensated for the deposit she paid for the property, and subsequently forfeited. I am also satisfied that Mrs M incurred

legal costs relating to the proposed purchase before the error was identified around 13 November. They too should be refunded.

Mrs M says that she committed to the purchase of some new furniture for the property she was buying. She has said that she managed to reduce her commitments to that purchase, but some items were being made to measure so couldn't be cancelled. She has provided us with a copy of the sales agreement. I have looked carefully at that invoice, and can only see one item that is described as being made to measure – some curtains for the lounge. I'm currently minded that the remainder of the furniture might be able to be utilised in any overseas property that Mrs M buys in the future.

Fairstone was aware of the date that Mrs M needed the pension monies in order to complete her property purchase (the remaining funds from Mrs M's ISA had already been released). But it seems that it wasn't able to complete the withdrawal in time. So Mrs M used some other savings that she was able to release on a short-term basis to send abroad in order for the purchase to be fully funded. But later that day Fairstone identified the PCLS problem, and so Mrs M needed to cancel the purchase and return the funds she had transferred overseas. Doing that caused her to suffer a loss due to the different exchange rates that were applied. I think that loss should also be refunded to Mrs M.

There is little doubt that Fairstone's error will have caused distress and inconvenience to Mrs M. She would have spent time choosing and negotiating the purchase of a new property based on the budget she thought she had available. And there is the obvious disappointment of being unable to proceed with that purchase. So, I think Fairstone should pay some additional compensation to Mrs M for her distress and inconvenience.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Fairstone hasn't provided us with anything further. And Mrs M has said that she doesn't have anything to add to my provisional findings.

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 I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mrs M and by Fairstone. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Given that neither party has provided me with any new evidence or further comments I see no reason to alter the conclusions I reached in my provisional decision. It therefore follows

that I think it was reasonable for Mrs M to rely on the information given to her by Fairstone about the availability of an additional PCLS payment. And, had Fairstone not provided incorrect information to Mrs M, she would not have committed to the purchase of the new overseas property. So, as I set out in my provisional decision and repeat below for clarity, I think Fairstone should pay compensation to Mrs M for the irrecoverable costs that she incurred and the distress and inconvenience she has suffered.

Putting things right

I think that, had Fairstone not provided incorrect information to Mrs M, she would not have committed to the purchase of the new overseas property. So I think Fairstone should pay compensation to Mrs M for the irrecoverable costs that she incurred. Specifically, Fairstone should pay the following to Mrs M;

- € 6,600 in respect of the retained deposit for the failed property purchase.
- € 4,660.92 for committed legal expenses for the failed property purchase.
- € 340 for the made to measure curtains.
- £ 3,511.36 for the exchange rate differences.
- £ 750 for the distress and inconvenience caused to Mrs M.

Where payments are designated in Euros they should be made to Mrs M either in that currency, or converted to Sterling at the rate applicable on the date that Fairstone is notified of Mrs M's acceptance of this decision. If the compensation isn't paid within 28 days of that acceptance being notified Fairstone should add simple interest to the compensation at a rate of 8% per annum from the date Mrs M's acceptance was notified to the date of settlement. HM Revenue & Customs requires Fairstone to take off tax from this interest. Fairstone must give Mrs M a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold Mrs M's complaint and direct Fairstone Financial Management Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 8 November 2024.

Paul Reilly
Ombudsman