

The complaint

Mr J complains that Fairstone Financial Management Limited (Fairstone) unfairly charged him an annual fee despite not providing the service the charge related to.

What happened

Mr J had been receiving financial advice from Fairstone since around 2015. Part of his service agreement was that he'd receive annual reviews of his investments.

In March 2022, Fairstone prepared a 'fact-find' document in relation to the forthcoming annual review, which was due in April 2022. It noted Mr J wanted to discuss the possibility of withdrawing his remaining tax-free cash and documented various details about Mr J and his personal circumstances.

Following discussion, Fairstone sent Mr J a recommendation report in June 2022, noting its recommendation for Mr J to take tax free cash from his pension. It asked him to sign to say whether he accepted its recommendation. Mr J did so later that month.

Mr J later complained to Fairstone about issues to do with him accessing his tax-free cash. Fairstone responded to that complaint on 29 September 2022 and it was later the focus of a separate response from this Service as Mr J also complained to us. It seems that, in line with Fairstone's standard approach whilst a complaint is ongoing, there was no direct contact thereafter from the adviser who'd been involved in arranging the tax-free cash and with whom Mr J had had regular contact over a number of years. However, Fairstone said that its advisers were still available to Mr J in the event that he had any questions or needed help.

According to Fairstone's notes, another adviser contacted Mr J on 14 April 2023 to introduce himself. He asked if it was possible to meet Mr J, but Mr J indicated he preferred to wait until he'd received a response to his ongoing complaint from this Service. The adviser explained that the annual review could still go ahead, but Mr J again indicated that he preferred to wait. It was apparently agreed that Mr J would contact the adviser once other matters had progressed.

There's another entry in Fairstone's contact notes for 25 May 2023. It says that the adviser returned Mr J's call (it's not completely clear what prompted the call) and they agreed to speak again on 26 May 2023.

Following a further conversation on 26 May 2023, the adviser noted that he'd arranged a meeting with Mr J on 16 June 2023 to "introduce" himself.

The adviser updated the contact notes following the meeting on 16 June 2023. He referred to it as an "initial" meeting with Mr J, and said he'd updated the 'fact find' and asked Mr J to sign an updated terms of service agreement. He also indicated he'd left an updated pension plan valuation with Mr J. Other notes that the adviser made said "*meeting went well and it was agree (sic) to complete the annual review and once this had been completed we can revisit the OAC*" (which I've taken to mean the ongoing advice charges).

Mr J says that during the introductory meeting, the adviser suddenly produced a “*your review*” working document, which he skimmed through given that most of the information about Mr J’s pension was held on the pension provider’s portal. He said it was only when he reviewed the document properly after the meeting, he realised he’d been charged the annual fee.

Fairstone then sent Mr J an “*annual review*” report covering the period from 9 April 2023. The cover letter was dated 21 June 2023 – five or so days after the introductory meeting with Mr J. Amongst the information noted, Fairstone said that Mr J’s circumstances hadn’t changed since the previous review in 2022. It noted it had charged him an annual fee of £2,792.05.

Mr J then raised concerns directly with the adviser. He said, amongst other things, that it was “*disconcerting*” to note that the adviser’s report was dated from 9 April 2023, over two months before he’d even met Mr J. He said this suggested it had been prepared in advance without any input from him. In any event, Mr J said it wasn’t correct to say his circumstances hadn’t changed in the previous 12 months. He mentioned that in other correspondence he’d referred to his concerns about a working document entitled “*your review*”, being produced during a meeting primarily arranged to allow the adviser to introduce himself to Mr J. Especially when Mr J had already made it clear to the adviser that he’d meet him on the understanding that they’d explore the potential for reduced fees, (as I understand things, Mr J was exploring other options for his pension) but he was under no obligation to take things forward. Mr J felt the meeting in June 2023 had been arranged under “*false pretences*”.

The adviser wrote to Mr J on 26 June 2023. He thanked him for sparing the time to meet him on 16 June 2023 and hoped he found the meeting “*interesting and informative*”. He acknowledged that there were issues that needed to be resolved but hoped that these could at least be put to one side for the next 12 months. He added that, as discussed at the meeting, Fairstone was in the process of preparing its annual review of Mr J’s pension, which he expected to be sent to Mr J shortly (as I’ve noted above, Fairstone had already sent Mr J its annual review document by the time of the adviser’s correspondence). The adviser suggested that once Mr J had received the annual review document, he’d welcome the opportunity to visit him again, so they could try to secure a working relationship.

Mr J’s initial complaint to this Service about issues to do with the tax-free cash was resolved around August 2023.

Mr J complained again to Fairstone. In a response dated 26 October 2023, the Compliance Manager explained that its fees were set out in the service agreement Mr J signed and agreed to. She disagreed that the annual fee should be refunded because, as far as Fairstone was concerned, it had delivered a service in line with the terms of the agreement with Mr J. And, if he had any questions, its advisers were available to answer them. In any event, Fairstone’s position was that the matter of annual fees had already been considered as part of Mr J’s previous complaint to the Financial Ombudsman Service.

Mr J responded later that month. He disputed some of what was said in Fairstone’s response dated 26 October 2023, including that he’d already raised a complaint with this Service about annual fees. I understand that Mr J terminated his agreement with Fairstone around the same time.

Mr J brought his complaint about the annual fee to this Service. It was assigned to one of our Investigators. Whilst noting Mr J’s recollection that he wasn’t contacted at all in April or May 2023, the Investigator referred to the call note I mentioned earlier, which Fairstone provided from April 2023 (it couldn’t provide a call recording as it didn’t record its calls). The

Investigator felt that the evidence was more persuasive in suggesting that Fairstone did at least offer Mr J an annual review. Therefore, he thought Fairstone attempted to fulfil its service agreement with Mr J – albeit that if he'd declined to have an annual review, it might have been good customer service for Fairstone to have confirmed that in writing. Or at least, to have reminded Mr J that he'd need to contact Fairstone at a later date if he wanted a review to take place. Overall, the Investigator felt that Fairstone had treated Mr J fairly, so was entitled to charge him an annual fee.

Mr J didn't accept the Investigator's opinion and made a number of points in response. He disputed that Fairstone tried to call him in April 2023. He also said that Fairstone effectively did a partial review during the 'introductory' meeting with him in June 2023, despite him making it clear about the basis upon which he was willing to meet. In any event Mr J said the review document Fairstone sent him didn't accurately reflect his up to date circumstances. Mr J felt Fairstone had been deceitful about the purpose of the meeting in June 2023.

As no agreement could be reached, the complaint was referred to an Ombudsman. It's been passed to me to decide.

My provisional decision

I sent Mr J and Fairstone my provisional decision on 9 October 2024.

The provisional findings that I set out in that decision can be broadly summarised as follows:

- I was satisfied that Mr J and Fairstone's accounts agreed to the extent that they each appeared to have initially viewed the June 2023 meeting as an introductory meeting. And Mr J made it clear to Fairstone that was the only basis upon which he was willing to meet until his ongoing complaint was resolved. The adviser himself, having spoken to Mr J to arrange the meeting on 16 June 2023, noted its purpose was so he could introduce himself.
- A note the adviser made immediately following the June 2023 meeting said "*meeting went well and it was agree (sic) to complete the annual review and once this had been completed we can revisit the OAC*" (which I assumed was referring to ongoing advice charges). I said my interpretation of that note, which seemed to accord with both Mr J's and the adviser's understanding, was that it was still Fairstone's intention to complete the full annual review process at a later date. I thought this would also have accorded with Mr J's broad expectations when he went into the meeting. So, I said that, at best, given his references to the adviser leaving a "*working*" review document with him which Mr J had skimmed over, it seemed likely he thought any discussions that took place formed part and parcel of the preparatory work needed for an annual review at a later date. I pointed out that nothing I'd seen caused me to think Mr J ought to have interpreted the discussion as the review meeting itself.
- I also didn't think Mr J would have attended the meeting expecting to engage in an annual review of his circumstances. He'd made it clear upfront that he didn't want an annual review until his complaint was resolved. But his complaint wasn't resolved until about August 2023, meaning it remained outstanding in June 2023. I said I found it unlikely that Mr J would have changed his mind either before or during the meeting, even if the adviser made it clear, despite Mr J's expectations, that he would be conducting an annual review after all. In any event, I said I'd seen no persuasive evidence suggesting the adviser explained things in these clear terms.
- I also said that the level of detail in the 2023 review report was different in parts to what Mr J had seen previously. I made the point that notwithstanding different advisers will likely have their own styles of conducting a review, if this was an annual review, I'd still expect to see a little more detail recorded about Mr J's circumstances

and investment aims. I said the 2023 report didn't mention Mr J's capacity for loss and simply said his circumstances hadn't changed. Mr J said that wasn't correct. This along with the other factors I'd referred to, tended to suggest that the adviser probably didn't conduct a full review of the kind I'd typically expect. Again, I also said that if the adviser was intending to treat the meeting as an annual review, I'd seen no persuasive evidence to suggest he made that clear to Mr J. Or that Mr J understood its purpose had changed from being an opportunity for the adviser to introduce himself to something else entirely. Had he understood that I thought Mr J would likely have said he wasn't happy to proceed at that point.

- It was unclear to me why Fairstone then decided to send Mr J an annual review report or why the adviser then told him on 26 June 2023 that Fairstone was in the process of sending him his annual review report (as mentioned above Fairstone had already sent Mr J its annual review report by that time). That was at odds with the note the adviser made immediately following the meeting which suggested the review would happen at a later point. I could therefore appreciate why Mr J was surprised and concerned on receiving the annual review report when he did – not least because he clearly felt it was prepared with little input from him. I could also see why he might have felt Fairstone got him to attend the meeting under “*false pretences*”.
- I concluded that Fairstone hadn't gone about things fairly and reasonably. I said that if the purpose of the meeting had changed, I'd have expected Fairstone to make that clear to Mr J, ideally upfront. He could then have made an informed decision about whether he wanted to go ahead or not. Or, at least, if Fairstone had decided, after the event, that it wanted to treat the 'introductory' meeting with the adviser as Mr J's annual review, it should have explained that in really clear terms. Given that Mr J had made it clear why he wasn't willing to engage in an annual review, Fairstone needed to explain to him why it decided to proceed regardless (if that is what happened).
- And, as I didn't think Mr J would have been prepared to discuss changes in his circumstances or engage in the process in the way he might typically have done, if Fairstone was intent on charging him a fee, it needed to make sure it based its advice on up to date circumstances and objectives. I wasn't persuaded it had done that based on the evidence I'd seen.
- In summing up, I said I accepted that Mr J signed an agreement with Fairstone to receive ongoing advice. And I also agreed that it was reasonable for Fairstone to charge the associated fee on delivery of that service. But, in the particular circumstances of Mr J's complaint, I didn't think Fairstone conducted the 'annual review' in a fair; reasonable or transparent way. I therefore concluded that it wasn't fair of Fairstone to charge Mr J a fee. So, I said I was intending to uphold the complaint and direct how Fairstone should put things right.

Developments

Mr J initially said he had no further points to make. However, he asked that he was given the opportunity to respond again if Fairstone said anything that was likely to alter what I'd said in my provisional decision.

Fairstone made a number of comments in response. Those included:

- I'd misinterpreted its fee structure as I'd suggested a separate annual review fee had been charged. It confirmed that the fee of £2,792.05 was an annual fee in respect of ongoing advice.
- The annual review document was dated April 2023 because it was automatically generated by the system 12 months following the previous review (in April 2022). Once an annual review document has been sent, the client has the opportunity to request changes or updates as appropriate.

- Contrary to Mr J's comment that "*there was no dialogue, conversation, contact, support, call it what you will*" since the review in April 2022, Fairstone said there was evidence of valuations, as well as calls and requests for help from Mr J after April 2022. It said Mr J continued to have access to its advisers throughout that time if he needed their help.
- Fairstone felt that the issue at the heart of Mr J's complaint was that he continued to be charged ongoing advice fees whilst his complaint was being investigated. It said halting fees whilst a complaint investigation is ongoing doesn't generally happen, nor, as far as it's aware, is it required. In any event, it said Mr J paid fees whilst other complaints were being investigated.

I responded separately to Fairstone's point that I'd misunderstood the nature of the fees agreement in place. I accepted that I'd used different terminology when describing the fees that Mr J didn't think he should have to pay. But I didn't agree that meant I misunderstood the nature of the fees agreement in place. I pointed out that, elsewhere in my provisional decision, I'd said "*part of*" Mr J's service agreement was that he'd receive annual reviews. I didn't specifically say that those reviews would require a separate fee to be charged. I also clarified that Mr J doesn't think it was fair to charge him a fee (regardless of what it was called) when there had been no/minimal contact and service from Fairstone for over a year. In fact, as far as I could tell, Mr J was effectively saying that the only activity carried out was an annual 'review' and, as far as he was concerned, that wasn't done in a transparent or satisfactory manner. In fact, as I mentioned in my provisional decision, he said it had been conducted under "*false pretences*". It was these factors that led me to referring to the fee as an "*annual review fee*". Nevertheless, I agreed to clarify the terminology within my final decision. I've now done that.

In the interests of transparency, I told Mr J what Fairstone said about there being more contact from April 2022 than suggested in my provisional decision. I asked him if he wished to comment. He said:

- Contrary to what Fairstone had said, all contact between him and Fairstone ended in July 2022 when he queried its actions. He said his correspondence was passed to Fairstone's Compliance Department for action. Eleven weeks later he received a reply from the Compliance Manager, which led to a series of exchanges and a compensation offer of £300. Mr J says he refused to accept Fairstone's offer.

I asked Fairstone to provide evidence of the additional contact that it said had taken place with Mr J. It then sent me further evidence and comments, some of which related to Fairstone's investigation of the previous complaint. In addition:

- An email from the Compliance Manager to Mr J's previous adviser dated 13 October 2022 asking her to comment on a particular issue that Mr J had raised, which the adviser hadn't previously addressed. The adviser provided a response to the Compliance Manager on 14 October 2022, which she then forwarded on to Mr J. The Compliance Manager said she had similar involvement concerning another query from Mr J.
- The new adviser didn't mean to give the appearance of conducting the annual review under "*false pretences*" as Mr J had alleged. Rather, he used the review document as a way to engage and get to know Mr J.
- A new adviser was assigned at Mr J's request. And much thought went into which adviser should be assigned. The new adviser also spent considerable time preparing background information in an effort to get to know Mr J.

- As far as Fairstone was concerned, it attempted to conduct a review in 2023, once a new adviser was assigned.
- Conducting an annual review wouldn't have impacted the ongoing investigation by this Service or affected Mr J's relationship with the new adviser. Whilst Fairstone couldn't see a viable reason to postpone the review in 2023, it nevertheless accepts that was Mr J's preference.
- And given Mr J's feelings about the annual review, it said it was "*regretful*" that an annual review document was sent to him following the June 2023 meeting when a follow up email or simple letter explaining the next steps might have been better. However, it didn't think that error alone should warrant a full refund of the fees paid during 2022 – 2023.
- If Mr J had no need to engage with Fairstone between reviews, this would not change the terms of the agreement he had (otherwise it would be set out clearly within the agreement). Nor would it alter the fact that he had access to advisers at all times. Fairstone made the point that some clients don't need to make contact between reviews because very little has changed in terms of their objectives.
- However, in acceptance that it made an error in judgement when sending Mr J an 'annual review' document following the June 2023 meeting, Fairstone said it was willing to offer him £500 (it didn't expressly say if this was compensation or a refund towards fees). It felt that was a fair offer in the circumstances.

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.

I don't propose to address each individual comment that Fairstone has made in response to my provisional decision. Instead, I'll mostly focus on those that go to the heart of the findings I've reached and the reasons for my decision.

Before I do that, I'll first address a theme that runs throughout Fairstone's comments. It believes that Mr J wasn't happy to pay the ongoing advice fee due to the fact he had an outstanding complaint. It makes the point (amongst others) that there's nothing to suggest it shouldn't charge an ongoing advice fee simply because of an outstanding complaint.

I've thought about this. And, notwithstanding any comments that Mr J may have made directly to Fairstone on this point, I'm not persuaded that's the issue at the heart of his complaint to this Service. I'm satisfied, based on what he's said, that his complaint to us is that Fairstone hasn't delivered the level of service to warrant charging the ongoing advice fee – in fact, he went as far as saying that Fairstone behaved as though his account was "*dormant*".

My view here is strengthened by a particular point that Fairstone made to me. It said that Mr J had paid the ongoing advice fee previously even though there was a complaint being investigated. That doesn't strike me as the action of somebody who is generally opposed to paying ongoing advice fees whilst there is a live complaint. And in this particular instance, whilst I do accept that the issues Mr J raised about the service Fairstone gave him in the period from about April 2022 onwards later coincided with a complaint that he made about a separate matter, I'm not persuaded that was the crux of Mr J's issue to this Service. But, again, he is clearly saying (amongst other things) that it isn't fair to charge an ongoing advice fee when he received no ongoing advice or support to warrant charging it. So, that remains the key focus within my decision.

Fairstone made a number of additional points on this issue. Those include that there was more activity than Mr J suggested. It's also made the point that, even if Mr J hadn't been in touch for further advice in the period between annual reviews, he still had the option to do so if he wanted. Further, once a new adviser was appointed around April 2023, he was at Mr J's disposal and subsequently completed the necessary groundwork in order to help him get to know Mr J.

I've thought very carefully about all of this. And I think the key question I have to consider here is whether Fairstone did enough to deliver the kind of service that Mr J was entitled to expect and to warrant the fee that it charged.

In thinking about that question, I've also referred to the terms of the agreement that Fairstone has sent to me. It shows that Mr J signed up to Fairstone's 'Activeplan' service. That entitled him to (amongst other things):

- Personal client relationship manager- a dedicated manager who would serve as “a *one stop access point*” for all financial queries and requests.
- Annual investment valuation – to review and comment on the performance of the investments and pensions managed against agreed benchmarks to confirm they remained within the agreed profile.

Whilst not a specific focus of this decision, it's evident from what Mr J and Fairstone have said that he had direct access to a dedicated adviser for a number of years. However, things seemed to have changed when Mr J made a complaint about the adviser around July 2022.

As mentioned in my provisional decision, Fairstone said that when a complaint is made about an adviser, it asks the adviser not to make direct contact with the client. Fairstone has said since that doesn't mean the client can't contact the adviser though. It also said that, as part of the complaint process, it would look into whether an annual review was due and, if so, ask the client how they'd like to proceed and whether they'd like a new adviser appointed. Fairstone said Mr J made it very clear that he didn't want to hear from the previous adviser, which is why a new adviser was appointed. As far as Fairstone is concerned, it is never the case that a client is left without an adviser or financial advice while a complaint is in progress.

I make no particular comment about the appropriateness of Fairstone's policy to discourage an adviser from contacting a client where a complaint has been made about them. I'm satisfied that's a decision that Fairstone is entitled to make. However, I'm not persuaded by some of the other comments it's made, or that the service it has described here lives up to what the terms of the agreement say about the client having a “*one stop access point*”.

First, if it is the case that an adviser is unlikely to be in contact with a client whilst a complaint is being investigated, it doesn't seem unreasonable to expect some form of communication with the client to explain that. So they at least know that even if their adviser won't contact them, they can still instigate contact with the adviser (or an alternative contact) if they have any queries or need advice. I think that helps to manage expectations about the likelihood (or not) of there being contact from the adviser whilst a complaint is ongoing. I appreciate it may not be necessary in every case, but I do think it's relevant here given that there had clearly been a fair amount of contact with the previous adviser, which presumably stopped completely once Mr J complained about her. It's not clear if Mr J was given this kind of explanation.

From what I've seen in Mr J's case and contrary to what Fairstone has suggested, it does seem entirely possible that a client can be left without an adviser whilst a complaint

investigation is ongoing. Mr J's complaint about the adviser was ongoing between about July and September 2022. As I've mentioned, the adviser who was the subject of the complaint wouldn't have been in contact with Mr J during that time. And as far as I'm aware, Mr J wouldn't necessarily have known who to contact if he needed advice (although I accept that there may have been some contact with the Compliance Manager during that time.)

Fairstone said that as part of the complaints process it looks into whether an annual review is due and asks the client how they want to proceed whilst the complaint is ongoing - including whether they want a new adviser to be appointed. It's suggested that's what happened in Mr J's case. But I'm not persuaded, on balance, based on the sequence of events, that's what happened. The complaint about the previous adviser appears largely to have concluded by about September 2022 (when Fairstone sent its response). I don't know when Fairstone first started to think about appointing a new adviser, but Mr J wasn't contacted by the new adviser until 2023 when preparations got underway for the 2023 annual review. It seems more likely therefore that the appointment of the adviser coincided with the need to conduct an annual review, as opposed to it being part of a complaints process that had already concluded.

So, I don't think things were as seamless as Fairstone has suggested. And, it does mean that there was a period of around nine months where there was apparently no dedicated adviser assigned to Mr J's account. Whilst I note Fairstone's point that any of its advisers were available to Mr J in the event of any queries, I'm not persuaded, given what the terms of the agreement say, that is enough. At the very least, if it was clear to Fairstone that Mr J didn't want contact from his previous adviser (even once that particular complaint investigation was finished), then, notwithstanding any attempts Fairstone may have been making to source a new adviser (as it's suggested in a recent response to me) I can't see why one couldn't have been appointed sooner – and in advance of the annual review becoming due. And even if Mr J didn't have any particular needs that required advice (as Fairstone seems to be suggesting) that doesn't mean he wasn't entitled to a dedicated adviser as per the terms of his agreement. Taking all of this together, I can see why Mr J might have felt that Fairstone wasn't overseeing his account in the way he expected, nor did he think it was offering the kind of service he was paying for.

Turning again to Mr J's concerns that Fairstone conducted the introductory meeting in June 2023 under "*false pretences*". Fairstone continues to dispute this. And although it does accept that there was an error of judgement in it sending Mr J a review document following the meeting, it maintains the document was used during the meeting purely as a means of engaging and getting to know Mr J.

I again thought about this matter in light of Fairstone's responses to me. As far as Mr J and the adviser were concerned, initially at least, the meeting was arranged purely as a means of them getting to know each other and to move the relationship forward. I'm not necessarily persuaded that they needed an annual review document in order to do that. However, I've kept in mind that Fairstone had completed some preparatory work by that point (a point that Fairstone also makes to me) in anticipation that the annual review would be due soon, and probably before it knew that Mr J wasn't happy to proceed. So, on balance, I don't think there was anything untoward in it using the document during the introductory meeting in the way it has since suggested.

However, I'm not persuaded based on what happened thereafter, that the review document was sent to Mr J in error. I don't think that's the most plausible explanation for what happened. It seems more likely that, afterwards, Fairstone decided it was going to treat the meeting as Mr J's annual review in any event - perhaps because it felt it had already

completed a certain amount of work to justify that. Fairstone told me that any changes can be made to a review document after it is sent. Whilst I can't be certain about its intention when making this point, it's possible it was thinking that even if Mr J didn't have the opportunity to fully engage in the review process, there would be an opportunity for him to make any changes to the review document or highlight changes in his circumstances afterwards. In other words, he wouldn't be disadvantaged.

In making the assumption that Fairstone decided to treat the introductory meeting as the annual review, I've taken account of the fact the adviser told Mr J shortly after the meeting that Fairstone was about to send him the annual review document. As I said in my provisional decision, by the time of that particular correspondence, Fairstone had already done that. So, again, following Fairstone's logic, if this was a document used purely as a means of getting to know Mr J, I can't see why the adviser would even mention (shortly after the meeting) the fact that Fairstone was about to send the annual review document to him. And the fact it then prepared a letter dated 21 June 2023 (five or so days after the meeting) attaching the review document covering the period from April 2023, suggests that regardless of what Mr J expected (that the annual review would probably take place at a later date) Fairstone likely decided to treat the introductory meeting as Mr J's annual review. I find the contemporaneous evidence more persuasive here rather than the response that Fairstone has given me since.

And based on what I think is most likely to have happened, there was no clear communication with Mr J here. That means he wasn't given the opportunity to say whether he was happy to continue with the meeting on its altered terms or fully engage in the process. And, on balance, that means I can't fairly say that Fairstone completed the annual investment valuation part of the service (as referenced earlier) as Mr J's agreement entitled him to.

In summing up, within this decision I've outlined instances where I'm not persuaded that Fairstone delivered the kind of service that Mr J was entitled to expect. That was out of kilter with the service agreement he signed up to. Further, it would also appear to go against the FCA's general expectation that businesses like Fairstone need to make sure (amongst other things) they have robust systems and controls in place, so their clients receive the ongoing service they have committed to.

Overall therefore, I'm not persuaded that Fairstone acted fairly and reasonably in delivering a service to Mr J between 2022 and 2023. So, I remain of the opinion that it wasn't fair to charge Mr J the ongoing advice fee in the particular circumstances I've described. On that basis, I'm upholding this complaint and directing Fairstone to take the steps I've set out below.

Putting Things Right

My intention is to put Mr J back into the position he would have been in (or as close to that position as possible) had Fairstone acted in a different way. Fairstone Financial Management Limited should:

- Refund the £2,792.05 it charged Mr J for the ongoing advice fee. It should arrange to pay this back into Mr J's pension if possible. In addition:
- had that amount not been charged, it's possible Mr J's fund (which would have been worth £2,792.05 more) would have benefited from additional investment growth. So, Fairstone should calculate the notional investment loss from the above step (if applicable) from June 2023 to when Mr J ceased his agreement with Fairstone around October 2023.

For the purposes of this part of the calculation, Fairstone should assume that the additional amount was invested in line with Mr J's other investments, in the same proportions, whilst Fairstone was Mr J's adviser.

- It should then work out any additional growth (or loss) from the date that Mr J transferred his services in October 2023 up to the date that Fairstone is told about acceptance of my final decision. The presumed investment growth should be based on the actual investments Mr J made once he stopped using Fairstone's services. Fairstone should obtain details of those investments from Mr J's pension provider/new adviser (if applicable).

If Fairstone is unable to obtain details of Mr J's actual investments, it should use the following benchmark:

- FTSE UK Private Investors Income Total Return Index.

I've chosen this benchmark because it seems Mr J's objective was to achieve capital stability/growth whilst taking some risk.

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.

So, I consider this a reasonable assumption that broadly reflects the sort of return Mr J could have obtained from investments suited to his objective and risk attitude.

If the additional steps I've set out above suggest there is a loss, Fairstone should pay the additional amount (as well as the refund of fees) into Mr J's pension plan to increase its value by the amount of the compensation. 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 J'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 J won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr J's marginal rate of tax at his selected retirement age.

If Mr J is a basic rate taxpayer in retirement, the reduction would equal 20%. However, if Mr J would have been able to take a tax-free lump sum (if applicable), the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%. Neither Fairstone nor Mr J have disputed this assumption, which was set out in my provisional decision, so I'm satisfied it's fair for the compensation to be adjusted in this way.

Fairstone should explain its calculations in a clear format.

This matter has clearly been a source of concern and frustration for Mr J. So, Fairstone should pay him £200 compensation in recognition of that.

My final decision

I uphold this complaint for the reasons I've set out above. Fairstone Financial Management Limited should now take the steps I've directed above under the heading 'Putting Things Right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 7 February 2025.

Amanda Scott
Ombudsman