## The complaint

Ms J complains that Fairstone Financial Management Limited has asked her to pay a clawback commission fee after she cancelled an insurance policy it had arranged for her.

## What happened

In February 2022, Fairstone recommended that Ms J take out life and critical illness cover with an insurer. Ms J accepted its recommendations and the policy started.

In April 2024, Ms J decided to cancel the policy, and did so directly with the insurer.

After the policy was cancelled, Fairstone told Ms J she owed it a commission clawback fee of £3,956.38. This was because she had cancelled the policy within 49 months of taking it out.

Ms J brought a complaint to this service. She said Fairstone hadn't made her aware she would need to pay a commission clawback fee if the policy was cancelled, and if she'd known this, she wouldn't have taken out the policy. Although she accepted that she had provided an e-signature on the client agreement, she said she wasn't provided with a copy of the agreement.

Our investigator recommended the complaint be upheld. She thought Fairstone hadn't made the clawback commission fee clear to Ms J and so recommended it cancel the fee.

Fairstone didn't agree with our investigator's recommendations and so the matter has been passed to me for a 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.

I've considered the information from the time of sale.

Ms J signed a client agreement, which is a 24-page document. On page 12, it says:

*'We will be paid a commission from the insurance company we recommend which will offset against any fee you would normally pay us for our professional services. Therefore, we will not charge you a fee for advising or arranging insurance products. You will receive an illustration specific to the product we recommend which will tell you the amount of commission we will receive.*

*However, this commission is only payable if you purchase a financial product. Where commission has been paid to us and you cease to pay the premiums or cancel the insurance product within the 'claw back period' we may be obliged to refund some or all of any commission to the insurance company. We reserve the right to charge you a contingency fee but this will not exceed the amount of commission that has been clawed back.*

*If you are considering stopping the premiums or encashing your insurance product, please get in touch to see if we can assist you with the reason prompting your decision. We can also advise you of the likely amount of claw back you will have to pay. If we exercise this right, you agree to pay us on demand.'*

I agree with our investigator that this is important information that ought to have been clearly brought to Ms J's attention. Whilst Fairstone is of the opinion the information is presented in a transparent and accessible manner, I disagree. In my view, including the information halfway through a lengthy client agreement does not sufficiently bring it to the reader's attention.

Also, the client agreement doesn't say what the clawback period is, which is relevant information. This should be made clear from the outset. It's not reasonable to expect a consumer to call Fairstone at the point they decide to cancel the insurance policy, to find out if they are still within the clawback period or not.

The adviser sent Ms J a recommendation report which reflected the details of their discussions and his recommendation. This report contained a section on adviser charges which said:

*'For recommending* [insurer] *as your product provider, we will receive £7,641.68 at the start of your policy.*

*All of the charges for the product and the advice are shown in the Key Features illustration provided by the product provider prior to you applying for this plan.'*

The suitability report didn't mention anything about Ms J being charged a fee if she cancelled the policy and the insurer clawed back some of that commission. This appears to support Ms J's explanation that it wasn't brought to her attention by the adviser.

I've read the illustration (provided by the insurer). This says the insurer would pay Ms J's financial adviser initial commission of £7,641.68, which would be followed by renewal commission paid monthly until each cover ends. It then says that £0.00 would be payable from month 49.

I don't agree with Fairstone that Ms J ought to have understood from this document that there was a clawback commission period of 49 months.

Though in any event, as our investigator has pointed out, it's not reasonable to expect a consumer to navigate various documents to try and understand information provided by a financial business. Fairstone had a duty to provide Ms J with information that was clear, fair and not misleading so that she could make an informed decision about the insurance product she was taking out.

Ms J has confirmed that if she had been made aware she would need to pay a commission clawback fee if she cancelled within the first 49 months, she wouldn't have taken out the policy through Fairstone.

In conclusion, I find that Fairstone failed to make it sufficiently clear to Ms J that she would be required to pay a clawback commission fee if she cancelled her policy within 49 months. If Ms J had known this, it would have had a direct impact on her decision to take out the policy through Fairstone. In all the circumstances, I find the fairest outcome would be for Fairstone to waive the fee.

**My final decision**

My final decision is that Fairstone Financial Management Limited should waive the £3,956.38 fee it has asked Ms J to pay.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms J to accept or reject my decision before 14 April 2025.

Chantelle Hurn-Ryan
**Ombudsman**