

## The complaint

Mr W complains that the withdrawal of the tax-free cash from his pension was unduly delayed by Fairstone Financial Management Limited (Fairstone). During this delay period the fund value dropped meaning the tax-free cash available to Mr W was reduced. Additionally, Mr W states that the monies were to be used to repay a mortgage and as such additional interest costs were incurred because of the delay.

I would note here that both Mr W and his wife both went through the same advice process with Fairstone at the same time, both with the same objectives. Both Mr and Mrs W have raised complaints, both of which have been passed to me. Given the near identical scenarios in both complaints I make no apologies for the similarities between my decisions in these cases.

## What happened

I have included a summary of the dates I consider to be key in this case. Whilst not all points of contact between the parties have been included below, I wish to reassure all parties that all evidence has been fully considered.

Mr W (jointly with his wife Mrs W) underwent a fact-finding exercise with Fairstone in February 2022 as part of their ongoing advisory relationship. Notes from this fact find stated that Mr and Mrs W were *"pretty much living to their means at the moment"*, that the couple had *"nothing in the way of savings"* and documented that before their next annual review the couple wished to discuss accessing their pensions, with a warning included by the Fairstone advisor that this process could take between 8-12 weeks.

On 14 April 2022 a meeting took place between Mr and Mrs W and Fairstone where advice was sought on the withdrawal of the tax-free cash element from each of their pensions.

Having been asked to consider other options before deciding to access their pensions, and having discussed things with their mortgage adviser, Mrs W emailed Fairstone on 21 April 2022 on behalf of both herself and Mr W to confirm that they had considered what was discussed the week before and had concluded that they both would like to withdraw their maximum available tax-free cash.

Mr and Mrs W contacted their Fairstone adviser in May and June 2022 looking for updates on how their withdrawals were progressing. On 17 June 2022 a text message received in reply to these information requests stated the request *"is being processed and in the queue"*.

Internal Fairstone documentation show the case was picked up for work on 18 July 2022 however could not be progressed as key documentation including the fact find and cash flow calculations were missing.

A fact find was completed by the adviser on 19 July 2022. The above notes from February 2022 regarding the lack of disposable income and savings levels were left intact, with additional notes added stating that the pension withdrawals were required to complete renovation work on a rental property, and that other funding options had been considered

but none were suitable.

The fact find and other documentation were submitted to the relevant Fairstone department on 21 July 2022 with the advice report subsequently being completed on 17 August 2022.

Forms requiring Mr and Mrs W's signatures were sent to the couple on 22 August 2022 with these being returned to the Fairstone offices in person on 24 August 2022.

Within their commentary to this service Fairstone have noted that these forms were forwarded to Mr and Mrs W's pension provider – Transact – the same day.

Additionally, to provide bank account verification, Mr and Mrs W sent £1 to Transact on 24 August 2022.

With no funds received Mr and Mrs W messaged their Fairstone adviser on 7 September 2022. This noted the couple had been told the process would take around eight weeks but were still waiting for their funds over twenty weeks later. Additionally, they stated that *"it is costing us more each month because we can't sort anything out until we have the money"*.

The adviser replied the following day stating he thought the withdrawal had completed and said he would contact Transact to enquire what had happened.

With no tax-free cash received Mr and Mrs W submitted a complaint to Fairstone on 13 September 2022.

Mr W received his tax-free cash on 22 September 2022 and Mrs W received hers the following day.

Fairstone issued their response to Mr and Mrs W's complaint on 16 November 2022. This explained that there was a period of time after 21 April 2022 where the adviser needed to be sure that Mr and Mrs W had considered all of their options before deciding on a pension withdrawal. As such the transaction *"began its processes with us in July"*. The letter explained that these processes would typically take between 3-5 weeks, with the £1 deposit to Transact being sent on 24 August 2022 to open the account where the cash would be paid into. From there Fairstone noted *"numerous"* requests from the adviser to Transact however despite this, cash was not paid until 22/23 September 2022.

Fairstone did accept there had been some delays to the withdrawal process on their side, with these being mainly due to staffing issues, and as such offered £200 by way of compensation.

Mr and Mrs W responded noting that whilst they appreciated the acceptance of delays on Fairstone's part, they believed the redress offered was *"arbitrary"* and as such the offer was rejected.

The complaint was then referred to this service.

Our investigator looked into things and upheld the complaint. It was noted that whilst there may have been delays once the paperwork was submitted to Transact that were outside of Fairstone's control, there were delays in the process of around two months that Fairstone should be held accountable for.

Fairstone did not agree. They noted the seriousness of making pension withdrawals without considering alternatives and stated the adviser had to be sure these had been considered by

Mr and Mrs W before advice could be given. Notes from the adviser were quoted which stated, *"they (the clients) would have to consider any alternatives first, such as a re-mortgage, personal loans & savings"*.

As such Fairstone suggested the process should have started in June 2022. Whilst there were some delays to the process due to Fairstone staffing issues, compensation had already been offered regarding this, with subsequent delays the responsibility of Transact.

Fairstone additionally noted that the findings issued by the investigator seemed to be challenging the businesses internal processes, something which would sit with the Financial Conduct Authority rather than this service.

As no agreement could be reached the case was passed to me.

I issued a provisional decision in which I said:

*"Firstly, I would like to be clear that the decision below does not seek to change or alter Fairstone's internal business processes in any way, it is their right to manage their business as they see fit. What I have done is consider whether those processes were implemented fairly, without undue delay, and with adequate explanation of these given to Mr and Mrs W in order to manage their expectations.*

*I would also like to note that there are areas where the evidence and commentary provided by Mr and Mrs W contradicts that provided by Fairstone. The documentation provided by Fairstone notes that the withdrawn funds were to be used to pay for renovations on a rental property.*

*Mr and Mrs W state that the money was to be used to repay the mortgage on the rental property and have pointed to a mortgage illustration showing a fixed rate deal ending in June 2022 to support their view. In addition, I note a September 2022 text message sent by Mr and Mrs W to the adviser stating that their costs have increased because of the delay. It is impossible for me to know which is correct as I was not present at the meetings. As such I have considered both possibilities below.*

*In addition to this I note that Fairstone have stated withdrawal paperwork was sent to Transact on 24 August 2022. Mrs W has commented that having phoned Transact herself on 9 September 2022 she was informed that the request had only been submitted by the adviser that day. I have asked for copies of Fairstone's correspondence with Transact to clarify this point however this has not been provided. As such, to avoid further delay I have completed the below without this information.*

*It is clear that the process of withdrawing Mr and Mrs W's tax-free cash was delayed.*

*Fairstone's own response to the complaint accepted this and offered an amount of £200 as redress.*

*As such I do not need to consider whether the process was delayed. Where parties disagree is in the extent of the delays and the way in which this should be redressed. This is where I have focussed my decision.*

*I have concluded that the withdrawal process should have commenced on 21 April 2022 – when Mr and Mrs W confirmed to Fairstone that having considered what had been discussed the week before, they wished to proceed with the withdrawals.*

*There are several reasons why I consider this appropriate.*

*Firstly, when managing customers' expectations, I consider it entirely reasonable that Mr and Mrs W would assume that the advice process began after they had completed their fact-finding meeting with their adviser, or the following week when they confirmed they wished to proceed. I do not consider it reasonable to expect Mr and Mrs W to be aware that the previously communicated timescales for their withdrawal would actually commence two or three months after their meeting with the adviser.*

*I also note that the February 2022 fact find records that the withdrawal was already being considered, as such Mr and Mrs W would already have had months to consider other options – not just the time between 14 and 21 April 2022.*

*Whilst the commentary from Fairstone about the seriousness of a pension withdrawal is entirely appropriate, and there is a need to consider alternatives before a withdrawal is made, consideration must be given to the relative simplicity of Mr and Mrs W's circumstances.*

*Whether the intention was to fund renovations or repay the buy-to-let mortgage, the couple had no savings. Both the February and July 2022 fact finds confirm this. As such the adviser would have been fully aware that little to no time would be required to consider this as an alternative – Mr and Mrs W simply did not have this option.*

*If the intention was to repay the mortgage, as per Mr and Mrs W's comments, then further borrowing would seem to be an irrelevant option needing little further consideration. If, as per the Fairstone advice file, renovations to the buy-to-let property were the reason for the withdrawal then the fact finds (both February 2022 and July 2022) note that the couple were "pretty much living to their means at the moment" which would indicate there was little scope for Mr and Mrs W to afford further debt.*

*Overall, given the relative straightforward nature of Mr and Mrs W's financial circumstances I do not see how it took the adviser from 21 April 2022 until 21 July 2022 to confirm alternatives had been appropriately considered, especially when the couple had previously informed the adviser of this possibility as far back as February 2022.*

*Even if the adviser was adamant there were better alternatives that were not being appropriately considered by Mr and Mrs W, he could have proceeded with the advice, noted his concerns, and presented advice that recommended against the withdrawal. This alternative recommendation could have been given in a timely manner allowing Mr and Mrs W to either accept this advice and change course or reject the advice and proceed with the withdrawal against advice on an insistent client basis.*

*Given the above I have concluded that the process should have commenced on 21 April 2022, with a further eight weeks allowed for Fairstone to complete their stated advice process in a timely manner.*

*I consider this eight-week timescale to be reasonable given the evidence on file. It is consistent with the note included by the adviser in the February 2022 fact find, would allow sufficient time for the relevant paperwork to be completed by the adviser and Mr / Mrs W, and include sufficient time for Fairstone's stated 3–5-week timescale to complete the advice report.*

*Eight weeks from 21 April 2022 would mean the process was finalised with documentation issued to Transact on 16 June 2022.*

*As above there are inconsistent dates and a lack of evidence as to when documentation was issued to Transact.*

*Fairstone have stated paperwork was issued on 24 August 2022 with funds then being received by Mr W on 22 September 2022. Factoring in the 29 August 2022 bank holiday this would leave a timescale of 20 working days for Transact to deal with the request and issue the payment.*

*Mr W has stated that Transact confirmed the request was made on 9 September 2022. This would equate to Transact taking 9 working days between receipt of the request and payment of the funds.*

*Without the evidence I have already requested from Fairstone it is impossible for me to know what was requested from Transact and when. The evidence on file does however show inconsistencies in some of the communications from the Fairstone adviser to Mr and Mrs W.*

*An example of this is that in June and July 2022 the adviser messaged the couple stating the case was being worked on by the analysis team with things hopefully being finalised within a week. This is inconsistent with the evidence on file showing that the fact find and cash flow calculations required had not been completed by the adviser at that point in time.*

*As such without any evidence to clarify which date is correct, and to try and resolve this complaint in a timely manner, I have based on the below on the information provided by Mr and Mrs W and used the 9-working day turnaround time for Transact to complete their steps in the withdrawal process.*

*The new hypothetical timeline of events I consider fair and reasonable is therefore, the advice process commences on 21 April 2022, the advice process completed with paperwork issued to Transact on 16 June 2022, allowing two working days for the underlying investments to be sold means an encashment date of 20 June 2022 with payment made by Transact to Mr W on 29 June 2022."*

In addition to the rationale above I asked both parties to respond to the provisional decision with any further commentary or evidence they wished me to consider by 7 October 2023.

### **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.

In response to the provision decision neither party has sought to provide any additional information or commentary, with Fairstone confirming they have accepted the outcome. Given this, I see no reason to make any changes to the provisional decision. I remain of the opinion that this represents a fair and reasonable outcome.

The redress instructions below are also unchanged from those included in the provisional decision.

### **Putting things right**

My aim is that Mr W should be put as closely as possible into the position he would probably now be in had the withdrawal of the tax-free cash not been delayed.

I wish to be clear that it is impossible for me to know exactly what would have occurred without the unnecessary delays. As such the below alternative timeline and associated redress is based wherever possible on the evidence on file and the principles of fairness and reasonableness.

## **What must Fairstone do?**

To compensate fairly, Fairstone Financial Management Limited must:

Calculate the tax-free cash Mr W would have received had there been no undue delays in the withdrawal process. In line with the above commentary, I have concluded that an encashment date of 20 June 2022 is a reasonable approximation of when the underlying investments would have been sold.

The cash should have been received on 29 June 2022.

If the tax-free cash amount at this earlier date is higher than that received by Mr W, then a loss has occurred. This loss can be broken down into three parts.

- Mr W has lost the difference between the higher (earlier) tax-free cash amount and the actual amount received. As such, this difference should be paid to Mr W.
- Mr W was also deprived of access to this full amount from 29 June 2022 until his actual tax-free cash was received on 22 September 2022. As such, interest of 8% per annum on the full (earlier) tax-free amount should be calculated between 29 June 2022 and 22 September 2022 with this amount paid to Mr W as part of the overall redress.
- Finally, Mr W has additionally been deprived of the difference between the earlier tax-free cash amount and the actual amount received from 22 September 2022 and now. As such interest of 8% per annum on this difference should be calculated between 22 September 2022 and the date of my final decision. This amount should also be paid to Mr W as part of the overall redress.

If the tax-free cash available at the earlier date is lower than actually received by Mr W then a loss may still have occurred.

Mr W was deprived of this lower amount between 29 June 2022 and 22 September 2022.

As such interest of 8% per annum should be added to the earlier tax-free cash amount between 29 June 2022 and 22 September 2022.

If the earlier amount plus interest is lower than the actual amount received by Mr W then no loss has occurred.

If the earlier amount plus interest is higher than the actual amount received, then the difference should be paid to Mr W.

In addition to the above and in line with the redress instructions recommended by our investigator, it is clear that the above chain of events caused significant distress and inconvenience to Mr W, as such an additional amount of £200 should be paid to compensate for this.

Income tax may be payable on any interest paid. If Fairstone Financial Management Limited deducts income tax from the interest it should tell Mr W how much has been taken off. Fairstone Financial Management Limited 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.

## **Why is this remedy suitable?**

I've chosen this method of compensation because:

- It is clear that Mr W's access to his tax-free cash was unduly delayed. The redress calculations detailed above account for the possible changes in actual tax-free cash which would have been provided, the fact Mr W was deprived of access to the full amount for a number of months and that Mr W has been additionally deprived of the difference between the tax-free cash amounts from September 2022 until now.
- I have not made any award in relation to the increased mortgage costs noted by Mr W within his complaint. The documentation on file is contradictory in relation to this. Whilst Mr W has stated that the funds were intended to repay a mortgage, the paperwork notes home improvements as the intended use for the monies. As such I have concluded the addition of 8% as detailed above adequately covers the delay periods and the financial consequences for Mr W.
- I have not made any award in relation to the annual charges levied by Fairstone in relation to Mr W's pension. Whilst Mr W has requested these be returned as part of the redress, my instructions are intended to put a consumer as close as possible to the position they would now be in had an error not occurred. They are not intended to punish a business. I consider the above redress adequate without the need for additional redress covering Fairstone's fees.

### **My final decision**

As per the rationale above I am upholding this complaint and require Fairstone Financial Management Limited to calculate and pay redress in line with the instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 November 2023.

John Rogowski  
**Ombudsman**