

Ombudsman Decision**CIFO Reference Number: 24-000428****Complainant: Mr E****Respondent: Fairway Pension Trustees Ltd****Background**

Mr E is a member of the Fairway Jersey Personal Pension Scheme. Fairway Pension Trustees Ltd act as trustee and Homebuyer Financial Services Ltd (HBFS) is the investment manager. He originally complained in broad terms about the administration of his pension trust and the service provided by Fairway when dealing with his annual payments.

To settle the complaint Mr E was looking for the 2023 fee of £475 charged by Fairway to be refunded.

In my initial assessment I set out my understanding of the complaint and concluded on the information available to me that the complaint should not be upheld. I said:

- The complaint about the delay in the January 2024 payment being received sat better as a complaint about Scottish Widows.
- The complaint about what's included in the annual trust charge is a difference of opinion rather than any breach of a regulatory requirement. I said I was happy to take further representations or evidence on that point.

¹ Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

After further correspondence I issued my provisional decision. I reconfirmed my initial conclusions and said:

- I was not persuaded that Fairway had contributed to the delay in the 2024 annual payment being received and that the actions it had taken to mitigate the impact of the delay on Mr E were reasonable. There was a dispute about ownership of the interest element of a compensation payment made by Scottish Widows to Mr E, but Fairway had not acted incorrectly.
- My conclusions on the annual trust charge remained unchanged.
- The pension trust had not been disadvantaged by making annual encashments on a proportionate rather than equal basis. I noted that Fairway had accepted that an error had been made, and that Mr E had requested equal encashment.

A copy of my provisional decision is attached to this decision.

Subsequent Submissions

Mr E has made extensive further submissions. Put simply he disagrees with my conclusions saying:

- He does not accept the legality of the deduction of the interest element of the compensation payment from his 2025 annual payment.
- He continues to believe that Fairway is not providing sufficient accounting information as a matter of course and as part of the annual trust charge.
- He does not believe that Fairway can offset 'losses' and 'gains' on individual funds in the proportional versus equal recalculation. On that basis he considers a refund should be made to his pension trust.

My Findings

I have carefully considered all that you and Fairway Pension Trustees Ltd have provided to decide what is fair and reasonable in the circumstances of the complaint.

I mean no disrespect to Mr E, but he has provided a lot of correspondence which I have considered but which I believe simply restates his earlier assertions. He is clearly dissatisfied with the service provided by Fairway, and I note that much of that dissatisfaction is longstanding and not relevant to this complaint.

As regards the complaint I am not persuaded to depart from my provisional conclusions which as above are attached to this decision and form part of this final decision.

I do not find that Fairway has acted incorrectly in relation to the interest payment. It took advice from Revenue Jersey about ownership and whether the money could remain with Mr E on a goodwill basis. Revenue Jersey did not consent and that is why there was a deduction from the 2025 payment.

I do not find that there has been a breach of trust in relation to the accounting information provided to Mr E as part of the annual trust charge. Fairway has confirmed that it will provide additional information but there may be a charge. That is not unreasonable.

I do not agree on a fair and reasonable basis that the 'losses' and 'gains' in the recalculation described above cannot be offset. That would not be fair; the trust has received a benefit overall notwithstanding Mr E's instructions. I also have some sympathy for Fairway, which was dealing with contact from both Mr E and the investment manager, HBFS.

On that point I reconfirm that under the terms of the pension trust HBFS is the investment manager not Mr E. That does not mean that Mr E has not been active in decision making but rather than formally Fairway accepts instructions from HBFS.

I note that in recent contact Mr E has suggested that there may be a conflict of interest between HBFS and Fairway through the owner of HBFS. I have not been able to substantiate that claim and understand that a signature was added to a document by the owner of HBFS in his capacity as a director and partner in that business.

If Mr E has evidence to the contrary or other evidence of a conflict he may wish to raise the matter with the regulator. And if there is a conflict and he has lost out as a result CIFO may consider looking at a new complaint on that point.

I would add that CIFO offers informal dispute resolution as an alternative to the court. I realise that Mr E may be disappointed by my conclusions and the fact that I have not responded to all his calculations and assertions in detail. That said I am satisfied that the conclusions I have reached are both fair and reasonable.

Final Decision

My final decision is that I do not uphold this complaint.

Clare Mortimer

Clare Mortimer
Ombudsman

Date: 7 April 2025

Ombudsman Provisional Decision

CIFO Reference Number: 24-000428

Complainant: Mr E

Respondent: Fairway Pension Trustees Ltd

Background and initial conclusions

Mr E is a member of the Fairway Jersey Personal Pension Scheme. Fairway Pension Trustees Ltd act as trustee and Homebuyer Financial Services Ltd (HBFS) is the investment manager. He complains about the administration of his pension trust and the service provided by Fairway when dealing with his annual payments.

To settle the complaint Mr E would like the 2023 fee of £475 charged by Fairway to be refunded.

In my initial assessment I set out my understanding of the complaint and concluded on the information available to me that the complaint should not be upheld. I said:

- The complaint about the delay in the January 2024 payment being received sat better as a complaint about Scottish Widows.
- The complaint about what's included in the annual trust charge is a difference of opinion rather than any breach of a regulatory requirement. I said I was happy to take further representations or evidence on that point.

² Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

Since then, both Mr E and Fairway have provided further information. Fairway has also conducted a review of the annual payments dating back to 2021 which Mr E had suggested had been completed with encashments made on a proportionate rather than equal basis.

The current position

I summarise the position here:

The January 2024 payment

As I now understand it Scottish Widows disregarded an initial instruction issued by Fairway at the end of November 2023 to encash funds for the annual payment due to be paid to Mr E at the beginning of January 2024. It did act on a later instruction to transfer the investments in full to Quilter.

I have not identified whether the instructions were conflated or what caused the delay in the money from Scottish Widows being available for the January 2024 payment. But the matter was taken up with Scottish Widows and compensation paid.

Because there was a delay in making the annual payment Fairway made money available to Mr E from its own funds. He has said that it only did that after protest and complaint from him and pointed out that he needed the money to meet some financial commitments.

The compensation payment from Scottish Widows (which included an element of interest) was paid direct to Mr E rather than Fairway as trustee. Fairway explored with Revenue Jersey whether Mr E could legally retain the interest but ultimately that was not an option because the payment belonged to the trust.

The interest amount was later deducted from Mr E's January 2025 annual payment to regularise the position. That solution was agreed with Revenue Jersey as Mr E disputed the return of the money during 2024.

The annual trust charge

Mr E has provided detailed further submissions on what information he believes should be included as standard in the annual trust charge (trustee administration fee). There remains a difference of opinion about what should be included in the annual fee, but Fairway has confirmed that it will provide additional information on request and at an additional cost.

The encashments

Fairway has conducted a review of the annual encashments made since late 2020 (for the 2021 payment) to see if Mr E has been disadvantaged by them being made on a proportionate basis (as would be standard to maintain risk profile of the investment) rather than equally as he requested.

The review suggests that Mr E's pension trust has not been disadvantaged and has instead been advantaged by £895.10. Overall, Fairway has said that the trust was disadvantaged by the over-redemption of units on three of the holdings and advantaged by the under-redemption of units in the other four holdings with the calculation being made to the date of transfer of the investment to Quilter in February 2024.

Discussion and provisional findings

In my initial assessment I explained that the law giving me power to consider and decide your complaint is the Financial Services Ombudsman (Jersey) Law 2014. It requires me to reach any decision based on what I consider to be fair and reasonable in the circumstances and with regard to any relevant law, regulation, codes of practice, and good industry practice.

In that respect Fairway is required to observe the Code of Conduct issued by the Jersey Financial Services Commission Trust Company Business Code of Practice. This includes a requirement to act with due skill, care and diligence and for it to be transparent in its dealings when disclosing information about charges.

Mr E has not suggested that Fairway has breached the Code but rather that it breached its fiduciary duty when dealing with his pension trust. I can confirm I have considered that duty when reviewing the complaint.

I should also add that I have considered the extent to which I have mandate to consider Mr E's complaint. I note that Fairway issued a final response letter on 16 August 2023, but that letter did not set out that Mr E had six months to refer the complaint to CIFO.

Following further correspondence on largely the same matters Fairway wrote again on 14 May 2024 to Mr E reminding him that he could refer his complaint to CIFO. In September 2024 Mr E asked us to review his complaint.

Given that Mr E was not informed of a time limit I am satisfied that I have mandate to consider the complaint.

Turning to the issues as identified above I have now considered the complaint further. I am issuing a provisional decision as I did not cover the encashment complaint in my initial assessment.

Did Fairway contribute to the late 2023 issues with Scottish Widows and delay in the January 2024 payment?

On this point my conclusion remains that Fairway could have sent the disinvestment instruction earlier but that there was sufficient time for it to be processed by Scottish Widows in time for the January payment. In my initial assessment I said:

'Scottish Widows was experiencing processing delays in 2023, and you have said it was quoting a service turnaround time of five weeks at the relevant time. I have considered whether that placed a greater duty on Fairway to make sure that the disinvestment instruction was sent earlier than the end of November. My conclusion is that Fairway could have acted sooner but that it would not be fair to hold it responsible for Scottish Widow's delay or the errors it made when dealing with the instruction.'

And although you say that the instruction was incorrect, I can't immediately see that you have suffered loss as a result of that instruction. This is because there was the larger error of the account being terminated in full and for which compensation has been paid by Scottish Widows.'

I am mindful that there is a tension as disinvestment takes you out of the market and potentially leaves Fairway open to a complaint about timing if there were a negative impact on you. In the event the instruction was sent on 29 November which, in my view, was not unreasonable and had it been implemented correctly should have allowed the money to be received on time.'

The first working day of 2024 was Tuesday 2 January, and I can see that you were told on 28 December that money would not be received until 8 January at the earliest. Fairway advanced you first a month's payment, £1,371.22 on 3 January and then the remaining amount of the full annual payment, £15,084.51, on 10 January to help you to meet your financial commitments.'

I have now been told that Scottish Widows failed to act on that November instruction and instead the accounts were terminated in full when the transfer instruction was received. It is my understanding that this is why Scottish Widows paid compensation.

As I said in my provisional assessment I do not wish to underplay the distress experienced by Mr E at a when he was waiting for his annual payment but overall I have not identified any persuasive reason to hold Fairway liable for the impact of the

delay and in reaching that conclusion I am mindful that it promptly took steps to mitigate that impact when advancing the money.

Should compensation be paid to Mr E for the way in which encashments were made despite the fact that his pension trust has benefitted from the mistakes?

This point was not considered in my initial assessment. I have shared the review calculations carried out by Fairway with Mr E. I am happy to consider any additional representations Mr E may wish to make but as it stands the calculations show an overall benefit to him.

I do not therefore consider it necessary to recommend the payment of compensation for the error in the disinvestment instructions. Nor do I consider it necessary to consider liability bearing in mind that ultimately Fairway took instructions from Mr E's investment manager.

What is covered by the annual fee and whether the failure to include all the information requested by Mr E is a breach of the Code of Conduct or its fiduciary duty?

The Fairway Jersey Personal Pension Scheme Fee Tariff (2023) includes:

'Trustee Administration Fee £100 min to £475 max Charged annually in advance for the period 1st January to 31st December. The fee is based on 1% of the value of the assets as at prior 31st December each year, subject to the minimum and maximum rates and is not refundable (see Important Note 2).'

It continues with an illustrative list of what is included in scope of the fee:

'Trustee Administration Fee, subject to the Important Notes, covers:

- 1. Annual trustee responsibility; and*
- 2. Annual standard sub-trust administration, including:*
 - a. Establishment and maintenance of sub-trust records;*
 - b. Establishment, maintenance and termination of investment accounts (at the sub-trust level) subject to no more than two amendments per annum (see Important Note 11);*
 - c. Receipt and payment of all sub-trust monies;*
 - d. Provision of annual sub-trust statement; and*
 - e. General enquiry handling.'*

Important Notes 2 and 11 are not relevant to Mr E's complaint but Note 12 states:

'12. Time costs may be charged for any additional (out of scope) administration required, in line with our general charge out rates as published on our website, but these will always be agreed in advance.'

As above it seems to me that Fairway has set out what is included by way of account information in its annual charge. It will provide more detailed ledger information on request, but it will make an additional charge. That does not seem unreasonable and in the absence of persuasive evidence to suggest that Fairway is not meeting its regulatory obligations it remains my conclusion that this part of the complaint should not succeed.

Conclusion

I can see from the detailed correspondence over an extended period of time that Mr E is unhappy with the service provided by Fairway. He can, of course, explore what other providers are able to offer and whether they would better fit his requirements.

In the meantime, I do understand that my conclusions will be a disappointment but in the absence of unresolved errors or practices which do not align with Fairway's duties as pension trustee I do not uphold the complaint.

Provisional decision

My provisional decision is I do not uphold this complaint.

Clare Mortimer
Ombudsman

Date: 4 March 2025