

The complaint

Mr S complains that MPA Financial Management Limited (MPA) continued to receive renewal commissions on his personal pension plan (PPP) despite providing him with no ongoing service after his adviser retired. He would like the payments refunded with compensation for any loss caused.

What happened

Mr S received advice from MPA in February 2012 to set up a PPP with Standard Life. He paid a single contribution of £12,500 with a monthly contribution of £625 to start in the new tax year. MPA was to be paid a commission of 2% of the single contribution and a renewal or trail commission of 0.75% per annum of the fund value each month. These commissions were deducted from the fund and paid to MPA by Standard Life. Mr S says it was agreed that in return for the ongoing commission MPA would provide an annual review of his arrangements. He says services were provided until 2017 when the original adviser retired after which there was no contact from MPA.

Mr S says he received a statement from Standard Life in April 2022, which showed renewal commission payments were being paid to MPA. He asked Standard Life about the payments made since 2018. He then contacted MPA expressing surprise it was receiving these payments. It apologised and said Mr S had “*slipped through the net*” after his original adviser had left. It offered to carry out a review of his plan and to refund £500, which was around half the commission paid over 2021/2022. Mr S said he'd consider this. But he decided to appoint another adviser to his plan in January 2023. And he raised a complaint with MPA saying he felt it should refund all the commission it had received since 2018.

MPA didn't accept the complaint. It said it was entitled to receive the commission without providing any ongoing service as the PPP had been arranged before the Retail Distribution Review (RDR) was introduced at the end of 2012. It said whilst this abolished commission the rules clearly allowed existing commission payments to continue. It said it had taken a reduced upfront commission “*in exchange for the trail commission charged*”. But it said it was willing to increase its offer to refund some of the commission to £750.

Mr S didn't accept this and referred his complaint to our service and our investigator looked into it, and she said it should be upheld.

Our investigator said it was correct that pre-RDR commission payments could continue without any ongoing service necessarily being provided. But in this case Mr S had agreed to the renewal commission in return for an ongoing service from MPA. And he was unlikely to have accepted these charges without the ongoing review. She said it was fair that MPA refund the fees in full, with interest at 8% per year simple, for the years where it hadn't provided the agreed service.

Mr S accepted our investigators findings, but MPA disagreed. It said our investigator had departed from the regulator's rules and was confusing commission “*with fees agreed with clients*.” It said it had taken a reduced commission initially in return for the ongoing payments and could keep these without needing to provide a service. It provided information from the

Financial Conduct Authority's (FCA) website about renewal commission which it said confirmed that consumers could request this be stopped, or a plan transferred to end it. But which didn't say that "you can claim back the money from FOS at a later date."

It said its client agreement signed by Mr S on 1 February 2012 said.

6. Following the issue of the "Suitability Report" and the commencement of any protection or investments which have been arranged, we will not automatically provide further advice, unless this has been agreed in accordance with the MPA Wealth Management Service."

Our investigator said the FCA's guidance also said that any trail payments may also have been intended to cover an agreed service, as they were here, so MPA's further comments hadn't changed her opinion.

As MPA doesn't agree it has come to me to decide.

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.

Having done so I am upholding the complaint.

RDR didn't abolish pre-existing trail commission payments, but post RDR for any new arrangements commission could no longer be paid, being replaced by adviser charges which needed to be specifically agreed by the client. Previously, commission was an agreement between the product provider and the advisory firm rather than between the consumer and the product provider. Effectively it was a payment from the provider to the adviser for introducing the business to it. There was no requirement that the advisory firm would provide ongoing services in return for trail commission payments, although it may have agreed to do so.

In this case there was a clear agreement that ongoing services would be provided in return for the ongoing payments. This was set out in MPA's suitability report of 27 February 2012 which explained its recommendations and said:

I have given some thought about how best to arrange a pension through MPA whilst making sure you receive regular reviews."

It then says the "MPA LITE product" is appropriate as Mr S could.

Still take advantage of our expertise through reviews/possible fund switches within the Standard Life range, but the charges reflect the services set out below."

The services were.

*"An annual telephone review meeting
Unlimited email access to your adviser
Portfolio management
Keeping you up to date"*

It said for the.

“MPA LITE proposition we make an initial charge of 2% and an ongoing charge of 0.75% which are both taken directly from the fund.”

So, the ongoing commission was in return for ongoing services. The key component of which was identified as the annual review. In fact, the provision of this appears to be a key part of why the recommendation was made. And the commission payments weren't an integral part of Standard Life's product charges, they were an explicit additional charge on top. That meant Standard Life would stop deducting them if Mr S requested it.

The aim of RDR was to increase the transparency and fairness of adviser fees and the services offered in return for them. And whilst RDR didn't abolish existing renewal commissions the then regulator – the Financial Services Authority, issued a policy statement (PS12/4) in respect of existing arrangements post RDR which re-enforced the factors firms needed to consider going forward. It said:

“We also received requests for clarification on the following points ...

Advisers should be required to remind clients of trail commission they are receiving and discuss with them why an existing product may be better than a cheaper post -RDR alternative which does not pay commission – The Consumer Panel and one insurer suggested that communications to a customer should cover existing trail commission on a product. We have not added specific guidance on this point, as we consider the overarching requirements in COBS 4.2.1R for communications to be clear, fair and not misleading and Principle 6 require firms to deal openly and honestly with their clients.”

So, even where specific ongoing services weren't being provided, I think there was and remains an expectation that firms should consider the fairness of ongoing renewal commission payments for their clients rather than just retaining them.

But specific services were agreed here in return for the ongoing commission deducted over and above the pension providers own charges. MPA accepts there was an oversight after the original adviser left in it not providing services to Mr S, although it says he was sent a valuation in 2021. But, as it didn't provide the services set out, particularly the key element of the annual review, I don't think it has treated Mr S fairly in receiving and retaining these payments. The payments themselves and any lost investment return are likely to have caused losses for Mr S.

Putting things right

My aim in awarding compensation is to put Mr S as closely back into the position he should have been in but for the errors made. So, MPA must.

- Refund the commission it has been paid in the years where it hasn't completed an annual review. Including for 2022, when it offered a review after Mr S had raised his concerns.
- To do so it must calculate the lost investment return on each commission payment deducted and add that to the refund due.
- Where possible it should pay the refund back to Mr S's Standard Life plan. He has confirmed he still has the plan and contributes to it. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

- If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr S as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.
- As Mr S has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement, presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.
- If both Mr S and MPA prefer it may instead calculate the compensation due by adding interest at 8% per year simple to the commission payments deducted, which may simplify the calculations and enable the matter to be resolved sooner. If paid directly to Mr S the same notional reduction for tax as set out above should be used.
- MPA should provide Mr S with a simple calculation of how it arrived at the figures.

My final decision

My final decision is that I uphold the complaint against MPA Financial Management Limited

I direct MPA Financial Management Limited to carry out the calculations set out above and pay redress as appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 April 2024.

Nigel Bracken
Ombudsman