

The complaint

In summary, Mr J complains that Compass Wealth Management Consultants Limited didn't make him aware it was taking commission from his policy. He didn't agree to it doing so.

What happened

In 1999 Mr J took out an income drawdown plan through an adviser. In 2010 Compass took over Mr J's former adviser's firm. Mr J said he received no documents from Compass and had managed and made changes to his pension without the assistance of Compass after his adviser retired.

In its response to Mr J's concerns, Compass explained that it had taken over his former adviser's clients and that commission had been received in respect of Mr J's policy since 2010 under the terms of the original contract.

It explained that when the policy was set up commission payments would remain in force until cancelled by him. And it went on to explain how such arrangements changed for new investments, but not existing ones, when the retail distribution review came into force at the end of December 2012. It said that Mr J could have cancelled the arrangement but didn't. And it was unable to provide a copy of any signed documentation in respect of the payment of commission.

One of our investigators looked into Mr J's concerns. In summary he concluded that by not contacting Mr J, Compass didn't give him the opportunity to consider if he was happy for the commission arrangement to stay in place. And he thought that if Compass had contacted Mr J in 2010, he would have cancelled the commission payments.

Compass didn't agree. In summary it said the commission was set out at the point of sale, and Mr J would have been given documentation to confirm that it would be paid. The plan commenced in 1999. It went on to say that the commission payments were 0.5% and it believed Mr J would have had a copy of this. It had tried to contact Mr J in 2010 when he migrated to Compass, but it had no records of further contact; or of what was discussed at the meeting/telephone conversation.

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've decided to uphold Mr J's complaint. I'll explain why.

Firstly, I want to make it clear that the legitimacy of commission payments being made from pension arrangements such as Mr J's, is not in dispute. I understand and accept that taking into account the plan started in 1999, the payment of commission from Mr J's income drawdown plan was an appropriate way for the adviser who set the policy up for him to be remunerated at that time. And the application of the retail distribution review (RDR) from the end of December 2012, didn't mean that commission payments couldn't continue to be paid on policies started prior to that date.

But the crux of Mr J's complaint isn't that commission payments were taken by the adviser that set up the plan originally; it's that he wasn't told the agency of his plan had been transferred to Compass in 2010. And that it had taken commission payments from that time without Mr J knowing that it was doing so until 2020.

Mr J has argued that since the retirement of his adviser in 2010, he has made his own decisions regarding his drawdown plan and wasn't aware that Compass had in effect taken over the agency of his policy. There isn't any documentation available from the time of the policy was taken out. And neither Compass nor Mr J have been able to provide much in the way of documentation either. So, I've considered what little evidence is available.

Compass has confirmed that the annual statements it holds on its file don't show commission payments being paid. And this corroborates what is shown on the statements provided by Mr J. So, I think it's unlikely that Mr J was aware commission payments were being made from 2010 at least, until his 2020 statement, which does show a commission figure.

Compass has said it wasn't obliged to provide any ongoing service by way of reviews, as Mr J was never on a service proposition with it. This isn't surprising to me because it doesn't appear to have had any/or any substantive contact with him since it took over the agency of his policy in 2010. So, I don't think it's given Mr J the opportunity to have a service relationship with it, even though it was receiving commission from his policy for 10 years.

Compass said it wrote to Mr J in October 2010 reminding him of the need to review his finances regularly, but it's not provided a copy of that letter or any other correspondence to him. It's also told us that in October 2010, it phoned Mr J to book a review meeting, but it can't confirm if contact was made. Compass hasn't been able to provide any evidence that indicates it tried to make further contact with Mr J. So, I'm not persuaded that it made any meaningful further attempts to contact him.

It's also said that it wasn't obliged to contact clients who weren't paying fees in accordance with its service proposition, although historical commission payments may have been received. I'm a little surprised at this statement having reviewed the proposition booklet it has provided. This does explain that: *"..an annual review will be offered at an extra charge and is recommended."*

It then goes on to set out the review options and the ongoing charges. The basic option of the three offered is the *"Essential"*. And the charges for that option are stated as: *"0.5% of the value of any investments held or the natural trail commission if the product was inception before 31/12/2012."*

So, taking into what is said in the proposition booklet, I'm satisfied that Compass was being paid commission on a policy taken out before the end of December 2012. And the payment it received was in line with payments it required for reviews to be potentially provided.

For the reasons I've set out above, I'm not persuaded that it that it made any meaningful attempt to inform Mr J about the review service that was available to him. And I think in line with its proposition to clients such as Mr J, it should have tried to contact him to offer a review after its initial attempt in 2010. But as I've also explained above, I don't think it did. As a result, I don't think it has treated Mr J fairly or reasonably.

Mr J has explained that since his adviser retired, he has in essence, managed the policy himself. And when he found out about Compass being paid commission, he cancelled that through the product provider. And it doesn't appear to be in dispute that Mr J was able to do

that. And I've not seen anything which persuades me that Mr J wouldn't have also cancelled the commission payments and not used Compass; if he had been contacted by it in 2010, or at any time after that. So, I agree with the conclusions reached by our investigator and for the reasons he explained.

Although Compass has said Mr J needed to cancel any commission payments, I've not seen anything to indicate why it wasn't able to simply ask Mr J's income drawdown provider to stop paying it commission if it didn't want to receive it. And in my experience that is generally a very simple thing for an advisory firm to do.

Compass has also referred to another case this service has considered, which it says is similar to Mr J's, and supports its argument that his complaint shouldn't be upheld. I and this service assess cases on their own individual facts and circumstances. I'm not going to comment on any findings made on another case. My consideration is about what has happened in the particular circumstances of Mr J's case.

Also, I'm not bound by any assessment or decision that may have been reached by an investigator or ombudsman in a different case, however similar the parties may think they are. And in my experience cases that seem to be similar, are not always the same. There are often different facts and circumstances that distinguish one case from another. And that can lead to different outcomes on cases that may appear to be similar.

Putting things right

- Compass needs to refund Mr J all of the commission it has received from his income drawdown plan.
- Pay simple interest at the rate of 8% a year from the date those payments were received to the date payment is made to Mr J.
- Provide Mr J with a breakdown of how it has calculated the compensation paid to him.

My final decision

For the reasons I've set out above my decision is to uphold Mr J's complaint about Compass Wealth Management Consultants Limited. If Mr J accepts my decision it should pay Mr J compensation using the methodology set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 12 August 2022.

Simon Dibble
Ombudsman