

The complaint

Mrs H complains that Personal Touch Financial Services Limited trading as PRIMIS Mortgage Network (PRIMIS) received ongoing commission payments on her Personal Pension Plan (PPP) without providing services, causing her losses. She wants compensation for her losses.

What happened

From September 2012 Mrs H dealt with a financial adviser, who I'll refer to as X as necessary. X worked through various advisory firms who were appointed representatives of PRIMIS. In May 2020 PRIMIS stopped offering advice about pensions and investment and X joined another firm, who took over the servicing of her plan.

There is some dispute about what happened. But PRIMIS advised Mrs H to transfer existing pension plans to a new plan with Scottish Widows in 2012, on the basis it had better growth potential. Mrs H says there was only one contact with X subsequently and she was unaware of the amount of initial commission or that commission was being paid on an ongoing basis. She said she only became aware of the ongoing commission payments in November 2021 on receiving an updated annual statement from Scottish Widows that broke down the charges on her plan, including the ongoing commission payment. She says this totalled around £9,300 to May 2020. In January 2024 Mrs H complained to X's new firm saying these charges should be refunded. The complaint was referred to PRIMIS in respect of the period before May 2020.

PRIMIS didn't accept the complaint. It said Mrs H had signed documents in 2012 confirming the charges and a letter of authority in December 2014, when X also changed firms, referring to commissions, so she was aware that there were ongoing charges. It said the agreement was that Mrs H was to contact X to arrange reviews, but despite this X had reached out to her, offering a review in May 2016, but hadn't been able to contact her, so had posted documents. And PRIMIS said that X had carried out a review in April 2017 and also offered a review in 2019 without response before emailing documents in December 2019. PRIMIS said it felt the service provided was *"commensurate to the ongoing fee charged"*. It also said Mrs H had made her complaint out of time as it was both more than six years since the advice was given and more than three years since any problem should have been reasonably identified, which it said was 25 April 2017 when a review was carried out.

So, Mrs H referred her complaint to our service. Our investigator looked into it, and he said he thought we could consider the complaint and that it should be upheld.

Our investigator said the complaint had been made in time. He said whilst PRIMIS had argued Mrs H should have complained within three years of April 2017, when it said it carried out a review, he didn't consider a review had been carried out then or that Mrs H was aware she was being charged on an ongoing basis. He said the Scottish Widows document sent to Mrs H in 2016 was only fund performance data, that made no mention of PRIMIS or charges and offered no advice. He said the annual statements sent directly by Scottish Widows to Mrs H didn't refer to any commission payments until November 2021 and it was reasonable that she'd had three years from then to complain and had done so.

Our investigator said it was clear initial advice had been provided in 2012 in return for the commission paid but said ongoing services were only provided in 2017 when fund switches were made. He said the FCA was clear that advisers should actually provide ongoing services not just offer them, so PRIMIS should refund the charges including any lost investment growth for 2013, 2014, 2015, 2016, 2018, 2019, and those received in 2020. He also said it should pay Mrs H £300 for the distress and inconvenience caused.

Mrs H said she felt the distress and inconvenience award was too low. PRIMIS didn't agree and said it still considered the complaint was made too late.

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

My provisional decision

I issued my provision decision on; 24 April 2025, I explained the reasons why I was planning to uphold the complaint in part. I said:

When I reviewed the evidence, I thought there were a number of inconsistencies about what had happened. PRIMIS had only provided information about the transfer of one pension plan with HSBC Life worth £64,799.85, but other evidence suggested that four other plans had been transferred to Scottish Widows at the same time, more than doubling the total transfer value to £138,879.47.

So, I asked Mrs H, PRIMIS and Scottish Widows about this. Mrs H said she'd been advised to consolidate all her existing pensions by X. PRIMIS said it had only advised on one plan with HSBC Life and that Mrs H must have arranged the other transfers herself. Scottish Widows confirmed that PRIMIS had arranged all transfers and received a total of £6,249.60 in initial commission (4.5% of the total transfer value of £138,879.47) and "Fund based commission" of 0.5% per annum in addition.

When the evidence is incomplete, contradictory or disputed we use the balance of probability to decide what was most likely to have happened. Mrs H has said she knew all the plans were being consolidated and that she also knew PRIMIS was being paid through commission. And once the transfers were completed Scottish Widows would have written to her providing cancellation rights that would have set out the commission payments involved and that was independent of any documents that were or weren't provided by PRIMIS at the time.

So, I think there was an agreement to proceed, and I think what was set out in the suitability report in respect of the HSBC Life plan would reasonably apply to all the plans transferred. Which was that the new Scottish Widows plan would need ongoing reviews and advice and that PRIMIS would receive an additional commission payment deducted from the plan to meet the costs of this, with this described as a benefit over the alternative option of a lower cost Stakeholder Pension Plan which wouldn't be able to make such a payment,

"We also discussed the fact that we are not paid commission on the stakeholder contract for our ongoing review and advice service and you would therefore need to pay our advice fee from your own funds should you prefer to proceed with the stakeholder option. You preferred the personal pension option where our ongoing advice fees can be taken as commission from the funds held within your plan."

The report continues that the adviser payment charge would be 4.5% of the transfer value and 0.5% of the fund value each year. PRIMIS had also provided a copy of a "Replacement /Switched Policy Declaration" document dated 29 October 2012 signed by Mrs H. This

summarises the pros and cons of the recommendation to transfer the HSBC Life plan including that the commission payable by Scottish Widows to PRIMIS as noted above. Mrs H said she had no recollection of seeing this document previously.

Since PRIMIS provided the advice to Mrs H the regulator issued specific rules about ongoing charges, and what firms needed to do to justify them, which is basically to regularly provide the services charged for and to proactively offer them to the consumer and to discontinue the charge where the customer doesn't engage.

Why we can consider the complaint

Our service can't consider every complaint referred to us as there are time limits for consumers to raise complaints with a business. The rules say that generally complaints need to be brought within six years of the event complained about, or, if later, within three years from when they reasonably should have become aware they had grounds to complain. Mrs H didn't complain until January 2024, which is clearly more than six years after the Scottish Widows plan was set up. And PRIMIS says it did provide some reviews, the last being in April 2017, so Mrs H therefore had until April 2020 at the latest, to complain about reviews not being provided subsequently.

However, where reviews haven't been provided but have been charged for, our service considers each missed review as being an event capable of being complained about. We also think, as the Regulator's guidance and developing rules over the period required, that reviews should have been provided at least annually. So, under the six-year part of the rule I think we can consider the charges and missed reviews going back to 2018, and I'll explain what this means below.

I've also considered the period before then where the question is should Mrs H have reasonably known she was being charged for reviews that weren't being carried out under the three-year part of the rule on time limits. As I've said above the suitability report did refer to ongoing reviews and that these would be paid for from commission paid from the plan. Although she says she had no recollection of seeing the "Replacement /Switched Policy Declaration" document this also confirms that ongoing commission would be paid. And this commission was also separately confirmed to Mrs H by Scottish Widows after the plan started. So, taking everything together I think she should have been reasonably aware that charges would be taken from her plan rather than not knowing about this until November 2021. And when reviews weren't then provided by PRIMIS, I think she could have reasonably questioned this sooner.

So, I think the only part of Mrs H's complaint we can consider is for the six years before she brought her complaint in January 2024.

What reviews were provided

I've considered the arguments and evidence here. I don't think PRIMIS provided any reviews. There is no evidence of any proper formal review appraising Mrs H's position and objectives and reconfirming the ongoing suitability of the plan for her. The switch activity in 2017 doesn't seem to have involved advice from PRIMIS as Scottish Widows confirmed the fund switch was because it had closed one of its funds and automatically switched Mrs H into an alternative. If PRIMIS was involved there should be a suitability letter setting out the recommendation and it hasn't provided one or any other evidence around this. I mention this because I think it's relevant to the charges Mrs H paid for a review in 2018 which is within the complaint we can consider.

PRIMIS has shown a file note entry for 4 December 2019 which says an email was sent to Mrs H regarding a review meeting. But there is no copy of the email, and it would be reasonable for further follow ups to have been made, there no evidence they were. The document PRIMIS says was emailed in December 2019 doesn't constitute a financial review in my view. There is no evidence of any contact in 2018 or 2020. So, I'm satisfied no reviews were offered or undertaken in 2018, 2019 or 2020 by PRIMIS.

What has Mrs H been charged

The fund-based commission paid to PRIMIS was an additional charge over and above the underlying Scottish Widows policy charges. It was paid monthly based on the fund value of the plan, so it's a reasonable conclusion that these payments were funding the next annual review. Mrs H's policy commenced on 13 November so I think it's reasonable that a review should have been carried out around the anniversary of that. No review was carried out in 2018, but the ongoing commission deducted from Mrs H's plan from 13 November 2017 was to pay for this. It's fair that charges since then be refunded along with any lost growth and I think Mrs H has been caused distress and inconvenience by what has happened, and she should also be compensated for that.

Putting things right

I said my aim in awarding compensation was to put Mrs H as closely as possible into the position she would probably be in now if she had been treated fairly by PRIMIS. I said it should calculate whether Mrs H's fund value was lower because of the commission deducted since 13 November 2017, including any lost investment growth. And if was, then compensation should either be paid into her pension plan or to her directly, after being notionally adjusted for tax. And I said PRIMIS should also pay Mrs H £300 for the distress and inconvenience caused by failing to provide reviews as it should have.

I asked both parties to send me any further information or comments they would like me to consider.

Response to provisional decision

PRIMIS accepted my provisional decision and asked for copies of annual statements to calculate any compensation due.

Mrs H disagreed and made a number of points. She said that PRIMIS wasn't aware that X had actually arranged five rather than one transfer spoke "*volumes about their record keeping, disorganisation and incompetency*". She said she'd only become aware of the payment of ongoing commission in November 2023, having noticed the change on Scottish Widows annual statement from 2021. She said that ongoing commission was never discussed by X and as PRIMIS hadn't provided any services it should refund the commission payments from 2013 as it was unfair to only consider the six years prior to making her complaint in January 2024. Because, I had effectively agreed she'd been charged without her knowledge since 2012. She said no reviews were carried out and nothing had been confirmed after the fund switch in 2017.

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 the complaint in part.

PRIMIS has asked for information to assist with the calculations. It should approach

Scottish Widows for this, who might be able to undertake the calculations required for it, but I've included links below to our service's website about how to carry out loss calculations.

I've carefully considered Mrs H's further comments, and I do understand her frustration, but I need to be fair to both sides. That includes the time limits that apply about bringing complaints. What I need to consider is not just when Mrs H actually knew but when she ought reasonably to have been aware she had cause for complaint. This is also known as "constructive knowledge". That's where knowledge of a certain fact is presumed, regardless of whether someone has actual knowledge of the fact, because had the person taken reasonable care, the fact should have been known to them.

As I set out in my provisional decision there is some contradictory evidence here and I agree PRIMIS' record keeping isn't what it should be. Taking everything into account I think it's more likely than not that Mrs H did know X and PRIMIS was being remunerated through commission. It would certainly be unusual for a client to have no interest in or knowledge of how their adviser was going to charge for its services. Mrs H should have been provided with illustrations for each transfer setting out the commission, which was noted on the suitability report we do have in respect of the HSBC Life transfer. Even if these weren't provided by PRIMIS, details of the commission would have been confirmed in documents sent to Mrs H by Scottish Widows after the transfers had completed, that gave her the right to change her mind and cancel. Importantly, these documents were sent independently of PRIMIS and even if Mrs H didn't read them, she had constructive knowledge of the contents. And there are also other documents, from the time of the advice, carrying her signature which also disclose what the commission arrangements were.

So, whilst Mrs H may not have actually known she had cause to complain until later, I do think she should have been reasonably aware of this sooner, given these other details provided to her. And if ongoing services weren't provided (which they weren't), she then had six years to complain about each review not completed. And I can only reasonably tell PRIMIS to consider the position for the period the plan was with it in the last six plan years before the complaint was raised.

What is clear is that PRIMIS didn't provide any ongoing services to Mrs H. There was no investment review in 2017, just the replacement of one fund with another by Scottish Widows. Even if X discussed this with Mrs H, it appears to have been in a limited way, and no actual advice was provided. So, I'm satisfied no reviews were carried out by PRIMIS, which means it is fair that it refunds, with any lost investment growth, all commission it received after 13 November 2017. I'll set out how it should do this below. Mrs H has also been caused distress and inconvenience by what has happened, so it's fair that PRIMIS also compensates her for that.

Putting things right

My aim in awarding compensation is that Mrs H should be put as closely as possible into the position she would probably now be in if she had been treated fairly by PRIMIS.

- Had the commission not been deducted from the plan, the funds would have remained invested, so Mrs H has also potentially lost out on investment growth. PRIMIS must refund the commission deducted from 13 November 2017 and also calculate if any loss of growth has been suffered from the date that each individual payment was deducted. It may be possible to ask Scottish Widows to undertake these calculations. If PRIMIS is unable to obtain the necessary valuation information to calculate any investment loss suffered, then it should use the benchmark alternative I've set out below.

- The compensation amount should be paid into Mrs H's pension plan if possible. 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 Mrs H as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.
- If Mrs H has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.
- PRIMIS must provide Mrs H with a simple calculation of how it has worked out the figures.
- PRIMIS must pay Mrs H £300 for the distress and inconvenience caused by failing to provide reviews as it should have, which I think is fair in the circumstances of the complaint.

If PRIMIS is unable to obtain the necessary valuation information to calculate any investment loss suffered it should,

- Compare the performance of Mrs H's investment with that of the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable.

If the *fair value* is greater than the *actual value* there is a loss and compensation is payable.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Scottish Widows Pension	Still exists and liquid	FTSE UK Private Investors Income Total Return Index	13 November 2017	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

- Income tax may be payable on any interest paid. If PRIMIS deducts income tax from the interest, it should tell Mrs H how much has been taken off. PRIMIS should give Mrs H a tax deduction certificate in respect of interest if Mrs H asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum that Mrs H paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal from the portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if PRIMIS totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mrs H wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs H's circumstances and risk attitude.

There is guidance on how to carry out calculations available on our website, which can be found by following this link:

<https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-investment-complaints>

Alternatively, just type 'compensation for investment complaints' into the search bar on our website: www.financial-ombudsman.org.uk.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against Personal Touch Financial Services Limited trading as PRIMIS Mortgage Network.

I direct Personal Touch Financial Services Limited trading as PRIMIS Mortgage Network to undertake the calculations set out above and pay any compensation due.

I further direct Personal Touch Financial Services Limited trading as PRIMIS Mortgage Network to pay Mrs H £300 in compensation for the distress and inconvenience she's been caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 6 August 2025.

Nigel Bracken
Ombudsman