DRN-5597461

The complaint

Miss J complains that Aptus Wealth Limited (Aptus) has received commission on her Personal Pension Plan (the plan) without her knowledge or providing her with any services. She wants the commission repaid.

What happened

Miss J's plan is with Royal London and was taken out in 2008 through another advisory firm I'll call Prestige. Prestige received initial commission and an ongoing trail or renewal commission payment. The trail commission was 0.5% per annum of the plan value, paid monthly. In 2023, Miss J contacted Royal London about her plan and was told that Aptus was recorded as being her adviser and was receiving trail commission. Miss J says she had never heard of Aptus but contacted it with a view to having a review of the plan and her other pensions in August 2023. Aptus said it didn't hold any records for her and wasn't aware it was receiving commission, but that it would check and put together quotation for the advice she required.

Aptus confirmed it had received trail commission and in view of this it would discount its normal fee to review Miss J's pensions from £2,400 to £1,680. As Royal London had confirmed that a total of £6,198.66 had been paid in trail commission on her plan, Miss J didn't think it was fair for Aptus to charge her. She told Royal London to remove Aptus from her plan. And complained to Aptus, requesting it refund the commission it had been paid.

Aptus didn't accept the complaint. It said Royal London had confirmed that Miss J's plan was part of a *"bulk transfer"* of Prestige's clients when it ceased trading in January 2019. Aptus said whilst *"unusual"*, neither Prestige or Royal London had provided it with any information about the plan or Miss J, so it hadn't been able to contact her. It said it was now aware around £35 a month in commission had been paid to it, before Miss J cancelled this in August 2023, a total of £2,181.41. It said when Miss J had requested services, it had in the circumstances applied the maximum discount possible on its normal fees, but she hadn't responded until making her complaint.

Aptus said that as the plan had been arranged before 31 December 2012 and had been bulk transferred it was a *"legacy product"*, under the Regulator's rules, it was allowed to receive existing trail commission, even if services weren't provided. But if it had Miss J's contact details it would have written to her providing details of its services and given her the opportunity to subscribe to one of them, for which there was a minimum fee of £50 per month. It said had Miss J subscribed to its *"Premier Ongoing Service"* which offered ongoing reviews in January 2019, she would have paid a total of £17,640 in fees compared to the £2,181.41 paid in commission.

Miss J referred her complaint to our service and our investigator looked into it, but she didn't uphold it.

Our investigator said when Miss J had taken the plan out trail commission was often built into the products charges and paid by the product provider to the adviser, rather than directly from the client's funds. She said trail commission was often part of the payment for the initial advice provided with no obligation on the advisory firm to provide ongoing services. The Retail Distribution Review (RDR) had changed this from 1 January 2013, by abolishing commission payments and requiring services to be provided in return for any ongoing fees deducted. But she said trail commission could continue to be paid from existing pre RDR plans and could also be re-registered to a new adviser, so Aptus was entitled to receive this. Our investigator said Aptus had confirmed it didn't have contact details for Miss J, but would have charged additional fees to provide her with ongoing advice and she didn't think it needed to refund any commission it had received to Miss J.

As Miss J 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 not upholding the complaint.

I can understand why Miss J feels aggrieved about what has happened. But the regulations in place do permit pre RDR trail commissions to be continue and also to be paid to another firm. However, there are some caveats. Where a firm that didn't originally arrange the plan paying the trail commission takes on a client is should agree what services are to be provided in return for the trail payment it receives. Whilst not a specific rule around RDR, firms would be expected to keep the appropriateness of continuing that plan under review as it might have higher charges than more modern contracts, which might be better for the client. As this is in keeping with the Regulators Principle 6, that firms should deal openly and honestly with consumers and the Conduct of Business (COBS) rule 4.2.1R, that firms communications to clients are clear, fair and not misleading.

The exception to this is when a firm acquires a client via some type of bulk re-registration or transfer of clients from another business, which as Aptus says was the case here. Typically, a bulk transfer takes place when a business buys another firm's client bank. What should have happened in this scenario is that both Prestige and Aptus would write to Miss J to inform her what was happening. And Aptus would provide its disclosure documents setting out details of the services it offered, its charges and contact details. If the client then chose to engage, specific client agreements would need to be completed.

Aptus says it was *"unusual"* it didn't receive any details about Miss J from either Prestige or Royal London, and I asked both firms for further information about what happened. Aptus provided documents from the time which showed Miss J's plan hadn't been included on the initial commission schedule from Royal London. And it provided a sample of the letter it had sent to Prestige clients it was aware of. It reiterated that it hadn't done anything wrong in retaining the commission in the circumstances. A query I had over the agency number in use for Prestige and Aptus, which was the same, was clarified as this had also been migrated to Aptus. So, there is no evidence that Aptus didn't contact Miss J when it should have.

As the rules in place do allow trail commission to continue to be paid, Aptus hasn't treated Miss J unfairly in retaining it, although I understand that will be difficult for her to accept. The Financial Conduct Authority has information about trail commission here; https://www.fca.org.uk/consumers/trail-commission

Commission was usually a contractual arrangement between the pension provider and the advisory firm; in that it was paid out of the pension providers charges (although of course these were paid by the client) rather than being an explicit additional cost. That might mean that stopping any renewal payment to an adviser wouldn't reduce the ongoing charges on the plan. However, in some cases ongoing payments were an explicit additional charge usually agreed for some ongoing service.

When Miss J originally took the plan out through Prestige, it should have disclosed the commission that was to be paid both initially and on an ongoing basis. This should have been shown on the illustration and key features document she should have been provided with. Once the plan was set up Royal London would have written to her giving her the right to cancel and would have reconfirmed what the commission payment arrangements were.

If Prestige didn't disclose this commission as it should, it may be possible for Miss J to complain about that. Prestige was an appointed representative of a firm called First Financial Advisers Limited which was responsible for Prestige's regulated activities, there details can be found on the FCA Register, https://register.fca.org.uk/s/ .

But in respect of this complaint Aptus hasn't treated Miss J unfairly, so I can't uphold it.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 27 August 2025.

Nigel Bracken
Ombudsman