

## complaint

Ms L complained that after her adviser left Positive Solutions (Financial Services) Limited, the company withheld the on-going service relating to her SIPP which had previously been provided by the adviser.

## background

The adviser met with Ms L in February 2010 to provide retirement planning advice and recommended the use of a SIPP held on a SIPP platform (regular contribution with no lump sum transfers). In an email in February 2010, under the heading 'Ongoing Service Charge', he explained that his usual charge was 0.75% per annum and he listed the services that would be provided for that charge. He also stated the following:

*'because the initial commission/fees we are due to receive is more than expected I am happy to reduce the ongoing service charge to 0.50% and use some of the initial commission to supplement the ongoing service.'*

In a subsequent email in February 2010, the adviser stated the following:

*'I understand your concerns, however with the charging structure set up through RBS I am limited to what we can offer. When we first met I advised that to set this up we would need to charge £750 fee and 0.75% per annum of the fund value to cover our ongoing service. As I can only take the level of commission that RBS originally set up I am proposing we reduce our annual charge to 0.50%.'*

The illustration produced the same date which showed that commission of around £5,300, representing 2 ½ times the monthly premium, would be taken.

On the application form, which Ms L signed on 8 February 2010, the adviser appears to have first specified that 0.5% 'fund based renewal commission' would be taken, then crossed it out and stated 'nil'. I have seen no document from the point of sale explaining this change and I understand that no such document exists.

Ms L has said that the adviser told her he would provide an ongoing service for six to seven years. I also understand that the adviser provided the ongoing service described in his email of February 2010 until he left the business in July 2012. Positive Solutions (Financial Services) Limited has stated that Ms L asked the adviser to investigate the possibility of the servicing of her policy remaining with the business. When her new adviser explained that she would need to pay for ongoing advice, she made the complaint.

In an email in August 2012, Positive Solutions (Financial Services) Limited quoted an explanation it had obtained from an unnamed source, which stated that:

- The adviser had only been able to take initial commission.
- It had been agreed that he would provide an ongoing service for four years, with the cost of that service covered by the initial commission.
- There was no formal agreement, but the adviser stated that, in the event of any claw back of commission, the ongoing service would need to be paid for going forward.

Ms L maintained that a six to seven year timescale had been agreed, and said that variation and suspension of contributions had been discussed in the light of her particular employment situation.

Positive Solutions (Financial Services) Limited ultimately rejected the complaint. It made the following points, among others:

- There had been no written agreement between both the adviser and Positive Solutions (Financial Services) Limited to provide an ongoing service, and any verbal agreement had been dependent on contributions being made.
- The terms of business had stated, *'we will not give you any further advice unless you request it.'*
- Because the initial commission had been *'slightly higher'* than he would normally receive, it had been the adviser's intention to reduce trail commission to 0.5%; however, no payment had ultimately been taken for the ongoing advice provided.
- The adviser had stated that Ms L had been fully aware that the ongoing service would only continue to be provided without charge if she maintained contributions.

#### **my provisional decision**

I issued a provisional decision on this complaint in April 2014. Briefly, I said:

- It does not appear to be in question that the adviser did consider that he had been paid in advance for the ongoing service described in his email of February 2010, and which he provided until July 2012 without further payment.
- Ms L's suggestion that the adviser agreed to provide an ongoing service for six to seven years does not seem unreasonable, given the disparity between the fee initially quoted of £750 and the actual commission of around £5,300. Clearly, this payment was not *"slightly higher"*, as Positive Solutions (Financial Services) Limited's response to the complaint seemed to suggest.
- It is reasonably clear that verbal agreement was reached over commission and ongoing service. That agreement should clearly have been documented, particularly after the trail commission was reduced to nil.
- Our approach to complaints is to attempt to place the consumer in the position he or she would be in if the business had not made an error. The adviser should have documented clearly what he was agreeing to provide for the commission taken, including any conditions. Positive Solutions (Financial Services) Limited is liable for that error.
- Had the adviser properly documented the agreement, he could not have guaranteed that Positive Solutions (Financial Services) Limited would provide an ongoing service, as it is an "umbrella company", and its advisers are self-employed. The responsibility to provide the agreed service lay on the adviser himself; therefore he could only have guaranteed that he personally would provide the agreed service. However, the consumer cannot complain against the adviser personally, and this service cannot direct him to make payment to her. Nevertheless, I believe she is due

compensation, as I am satisfied that she has suffered a loss as a result of the adviser's error.

- Taking all of these points into account, I believe that a reasonable solution would be for Positive Solutions (Financial Services) Limited to refund sufficient commission to put Ms L in, or close to, the position she would be in if she had paid an initial fee of £750 and trail commission of 0.75%, as quoted by the adviser at the outset.
- Ms L has clearly been inconvenienced because she has not had access to advice and has paid for a service she has not received. I intend to award £200 for the distress and inconvenience caused.

Ms L has indicated that she agrees with my provisional decision. Positive Solutions (Financial Services) Limited has not made any further comment.

### **my findings**

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusions as I did in my provisional decision, and for the same reasons.

### **my final decision**

I uphold this complaint and direct Positive Solutions (Financial Services) Limited to refund the commission received less £750 and less 0.75% of the plan value at year one and year two.

In addition, I direct Positive Solutions (Financial Services) Limited to pay Ms L compensation of £200 for distress and inconvenience.

Roy Milne  
**ombudsman**