

The complaint

Mr M has complained that since Atomos Financial Planning Limited ('Atomos') took over the predecessor business that had provided him with advice in 1989, it has continued to be paid commission but hasn't been offered any service in return. As a minimum he wants the commission paid to be returned to him.

What happened

Mr M had been given advice by the predecessor business to take out a HomeInvestor Plan – the policy for which was to pay off his mortgage. Atomos took over the predecessor business but never contacted Mr M despite receiving commission. Mr M encashed the policy as he wasn't receiving any advice, but the proceeds didn't cover the mortgage which Mr M had to extend as a result.

Mr M complained to Atomos who responded to his complaint on 25 November 2020, not upholding. It said;

- The predecessor business had been taken over by Atomos in 2010 and it had been receiving the commission since September 2010.
- In 1989 there was no requirement for an adviser to offer annual reviews, but he could contact the adviser if he wanted on.
- Regulations around transparency of costs and annual reviews changed in December 2012 but they didn't apply to advice given prior to that date.

Correspondence continued as Mr M sought further explanation, but the outcome remained the same.

Our investigator who looked at the complaint didn't think it should be upheld. She said;

- Mr M had been advised by a business which Atomos took over.
- She didn't have any evidence to suggest the policy was advised by Mr M's previous adviser to pay off his mortgage so she couldn't be certain this is what the policy was meant to do or any agreements that Atomos was to review the policy.
- The policy was set up in 1989 and it says that Mr M's previous adviser was entitled to receive commission in respect to the premiums paid.
- Because of the time limits that applied she could only consider the commission that had been paid since 2014. The commission listed in the policy schedule was at a rate of 2.5% which was payable to Mr M's previous adviser for the lifetime of the policy. Since Atomos had taken over the previous business then the commission was payable to Atomos.

Mr M didn't agree with the investigator. He said;

- He hadn't been given regular reviews of the policy. He had been abandoned and left to look after the policy on his own.

- If a business was to take over receiving commission for the policy, then they should introduce themselves to the client and offer their services.
- He thought the taking of commission and lack of repayment of his mortgage was morally wrong and shouldn't be acceptable.
- The fact that the policy didn't make enough to pay off his mortgage hadn't been addressed.

Mr M provided further documents from the time of the sale and the policy being set up to repay Mr M's mortgage and his claims for the loss he suffered. The investigator considered the additional information and concluded there was no evidence to suggest that it was Atomos who was responsible for carrying out reviews or ensuring the policy repaid the mortgage – that was the responsibility of the product provider.

Mr M asked that an ombudsman reviews his complaint, so it has been passed to me for a decision.

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.

After doing so, I have reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

I should first like to clarify the complaint points I'll be looking at. There is correspondence on file about what is and what is not being considered in this complaint and I want to be clear about that.

- Mr M has complained that Atomos has been receiving commission.
- Since Atomos took over the predecessor business it hadn't provided Mr M with any reviews of his policy to ensure it paid off his mortgage.
- The policy didn't cover the amount due on the mortgage – there was a shortfall and Mr M had to extend his mortgage.

Atomos took over the predecessor business – which gave the advice – in 2010 and has been receiving the commission from the policy sold since then.

The policy schedule from 1989 gave details of the different percentage rates of commission that would apply over the years plus the fact that the predecessor business would be entitled to receive commission in respect of those premiums payable for the lifetime of the policy. That entitlement to receive that commission would have been transferred on the purchase by Atomos of the predecessor business. As such, I'm satisfied that Atomos is entitled to receive the commission and at the rates indicated in the policy schedule. So, I don't uphold this element of Mr M's complaint.

Mr M isn't satisfied that despite Atomos receiving the commission of the policy it didn't provide him with any reviews about it.

Clearly, I can't know for sure what Mr M was told at the point of sale about this. But Mr M has been able to give us some information from the time of the sale and which include some of the documents which look like they were provided by the policy product provider. I've reviewed those documents which, amongst similar points, say;

'The value of your 'HomeInvestor Plan' should increase so that, at the end of your chosen term, you can repay your mortgage loan and have a considerable sum left over. To give you complete peace of mind [the product provider] will regularly review your Plan to check that its value is growing at the required rate. We will tell you if you need to make any adjustment to your premiums to ensure that you can repay your loan on the intended day.'

And with regard to the reviews, it continues;

'Reviews will take place one month before a Review Date (and any other time at the discretion of [the product provider]) to confirm that the plan is 'on course' to repay the mortgage in full or to make an appropriate recommendation.'

The document goes on to give details about when those reviews would take place.

The above statements given in the product provider's point of sale documents suggest to me that it was the policy provider that was to review the plan and not Atomos. And I haven't seen anything to indicate otherwise. So, I can't agree that Atomos was responsible in being proactive in giving those reviews as the reviews were the responsibility of the product provider.

Atomos has also referred to a change in the regulations laid down by the regulator – the Financial Conduct Authority ('FCA') – on 31 December 2012 about annual reviews and transparency of costs. But those new regulations didn't apply to advice given prior to that date. And Atomos has said it abides by the FCA's rules for all of its customers to ensure a consistent approach in dealing with its customers, so wouldn't deal with Mr M any differently.

I know Mr M doesn't agree with Atomos' reasoning around this, he thinks its morally wrong and that Atomos is hiding behind the rules. But I can't make a finding that Atomos has done anything wrong here. Atomos' approach means that all of its customers are treated equally – it couldn't treat some customers differently than others – and its treatment of its customers is in line with the regulator's rules. So, I don't agree that Atomos is acting unfairly or hasn't done anything other than it should.

Overall, I don't uphold Mr M's complaint as from the information I have been given I can't conclude that Atomos has done anything wrong. It was entitled to receive the commission when it took over the predecessor business and I can't see it was Atomos' responsibility to either provide reviews or ensure the plan repaid the mortgage.

I appreciate that Mr M will no doubt be disappointed with my decision. It's clear he feels strongly about his complaint, and I thank him for the efforts he has made in bringing it. But I hope I have been to explain how and why I reached the decision that I have.

My final decision

For the reasons given above, I don't uphold Mr M's complaint about Atomos Financial Planning Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 November 2023.

Catherine Langley
Ombudsman