

The complaint

Mr R has complained about an ongoing commission fee paid to Nationwide Building Society, which entitled him to advice relating to his Individual Savings Account (ISA). He says that he didn't know about the fee or that he could opt-out of it from 2019.

What happened

Mr R took out a Nationwide Equity ISA through a Nationwide branch in 2001. Between 2008 and 2019, the management of Nationwide investments such as this, changed firstly to L&G and latterly to Aegon. However, Nationwide continued to provide any requested advice for these investments, as the two companies that had taken over the management of the investments did not provide advice.

Mr R complained to Nationwide in late 2021. He said that he'd received a letter informing him he'd been paying a trail commission for this investment. He said he thought the amount was an administration fee and that it hasn't been explained to him clearly and wasn't a fair charge.

Nationwide initially responded to say that whilst they maintained the fee was fair, they didn't think that Mr R had brought his complaint in time. They said that this was because he had three years from when he ought reasonably to have known that the charge was being taken to bring the complaint to our service (as the ISA had been taken out more than six years ago).

Mr R remained unhappy and he brought the complaint to our service. An ombudsman considered whether the complaint had been brought in time. They concluded that Mr R's complaint about the charge itself had not been brought in time. However, they also said that we were able to consider Mr R's complaint that he hadn't been told that the charge had subsequently become optional.

An investigator looked into the merits of the issue that we could consider. He said that Mr R had been made sufficiently aware of the opt-out option that applied from 2019, when he was sent new terms and conditions to accept at that time.

Mr R remained unhappy and amongst other points, provided evidence including a transcript of a call with a Nationwide associate, which he says showed he wasn't aware he could opt-out of the charge. He said that Nationwide hadn't even explained when this was valid from, until the complaint was brought to this service. He also said that he hadn't previously been provided with the relevant terms and conditions from the time.

As no agreement has been reached, the case 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.

Having done so, I have reached the same conclusion as the investigator. I'll explain why.

As stated, the only issue I am deciding on is whether Nationwide should have done more to make Mr R aware that the ongoing commission charge he had been paying, had become optional since May 2019.

It was only after May 2019, when Aegon's own platform replaced the Investor Portfolio Service (IPS) platform – taken over from L&G – that it became possible to request Aegon to halt the charge. That's when the funds were re-registered away from the IPS platform and on to Aegon's new platform that started at this time.

Mr R received a letter from Aegon in April 2019 advising on the upgrade from the IPS and the new terms and conditions taking effect from 28 May 2019. The letter stated that a documentation pack was sent the previous year, highlighting the new terms and conditions available online and in paper form.

Mr R also received a letter dated 29 March 2019, which was sent as part of the new regulatory information disclosure required about the costs and charges of an investment. It gave a thorough breakdown of the total service charge, the platform and Nationwide charge, and it detailed the commission amount of 0.40%.

I have also been provided with a copy of the 2018 and 2020 terms and conditions (T&Cs), which make reference to the ability to cancel the commission charges at any time. The business has confirmed there were no specific 2019 T&Cs and that the 2018 set apply. These state under section 10.4 titled Adviser Charge and Service Charge, that it *"refers to the charges paid to Nationwide"*. In section 10.4.6, it states that at any time Mr R *"can ask us in writing to alter or stop paying the adviser charge"*. I think it is important to explain that these are Aegon's T&Cs, who manage the investment and that there is a responsibility on Mr R to read and accept them.

I understand that Nationwide says it had no requirement to encourage customers such as Mr R from being a Nationwide customer or cease their right to advice services, and that paying the commission meant Mr R had access to a variety of services offered by Nationwide, which he obviously wouldn't have had access to if he cancelled the commission payment. I don't believe that conclusion is unreasonable. Only after the Aegon platform migration could investors choose to switch off the service charge, and this severed the relationship with Nationwide, and the right to receive future advice or access to Nationwide services mentioned.

It might be useful to explain that trail commission was in due course outlawed by the industry regulator, the Financial Services Authority (now the Financial Conduct Authority (the FCA)), as part of its Retail Distribution Review (RDR) for any new investments. The RDR – which came into force around January 2013 and ruled out trail commission – only applies to new investments sold after this time – so it doesn't apply to Mr R's investment, and he's not entitled to his money back because of it.

I want to reiterate to Mr R that this doesn't mean that I conclude he was aware the charge had become optional in May 2019, but that I don't fairly conclude that Nationwide should have done more to make him aware. In summary, I appreciate Mr R's overall concerns with the situation and recognise he will be disappointed that I've reached the same conclusion as the investigator. But having given the matter careful consideration, I don't feel able to

conclude that this complaint should be upheld.

My final decision

My final decision, for the reasons set out above, is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 October 2023.

Yoni Smith
Ombudsman