DRN-4454286

The complaint

Mrs G complains that Nationwide Building Society didn't communicate that commission charges on her investments were no longer mandatory. She's requested a refund of these charges.

What happened

Several years ago, Mrs G took out investments through Nationwide. The investments remained invested for several years and responsibility for administering the products has passed between several businesses.

In 2023, Mrs G complained to Nationwide after finding out the ongoing commission charge for her investments that was paid to Nationwide for the services was no longer mandatory and it hadn't been since 2019. She requested this be refunded as she wasn't made aware that she could opt out of the charge.

Nationwide responded but said it wouldn't be refunding any charges. It explained:

- When Mrs G took out her investments it was explained that commission would be payable and at this time it was mandatory, which allowed it to provide and maintain a sales and advice service. This entitled investors to request advice in the future without further charge at any time.
- It was under no obligation to make pro-active contact to arrange further meetings.
- In 2015, the business responsible for administering the investments wrote to Mrs G advising her of a change to her terms and conditions and how she would be charged moving forward. It provided a breakdown that stated that the 'Nationwide charges' figure was the commission received for the advisory services provided. A reminder letter was sent in February 2016, providing a link to Nationwide's new Tariff of Charges document and referred her to the Financial Planning Team at Nationwide.
- In terms of when the charge became optional, this occurred when Mrs G's investments migrated to a new administrator in May 2019. Prior to this, there were no means of having this charge removed. In the Terms and Conditions (T&Cs) provided by the new administrator, term 10.4.6 stated *"At any time you can ask us in writing to alter or stop paying the adviser charge."* Nationwide was not required to inform her of the possibility of removing the charge.

Mrs G is represented by her husband Mr G, they remained unhappy with the response, so referred her complaint to this service. One of our investigators looked into the complaint. He didn't uphold it. In summary he said:

- The regulator's retail distribution review (RDR) resulted in changes in the way firms provided advice – but advisors could continue to receive commissions on products sold prior to 1 January 2013. But the RDR rules didn't provide a provision for customers to opt out of this.
- The FCA released guidance notes for retail customers about trail commissions outlining ways in which it could be stopped or reduced indirectly – but no requirement was made for firms to contact customers paying trail commission about these options.

- In May 2019, a new business took over the administration of Mrs G's investments – and after this she was now able to switch off the trail commission. The investigator didn't think Nationwide was responsible for Mrs G not being informed about this. He also mentioned regulations that came into force about later in 2019 that required fund managers to review the value of funds.

Mr G responded on behalf of Mrs G. In summary he said:

- He spoke to the business who currently administers the investments and was informed it was the responsibility of Nationwide to inform them that the charge was no longer mandatory.
- They were not informed by anyone that the trail commission charge was changed to no longer being mandatory. It was unfair to carry on charging a commission without informing them, as Mrs G was left believing the charge was still mandatory when it wasn't.
- In reference to the 2019 regulatory changes that the investigator mentioned, the investment administrators' terms were in place in place in May 2019 before the rules changed in September 2019. So, Mrs G couldn't have stopped the mandatory trail commission in May 2019 because it wasn't until September 2019 that the rules changed the way fund managers had to deal with such things.
- Nationwide hasn't met its obligation under the regulatory requirements of the 'Treating Customers Fairly' directive.

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.

Nationwide has explained the charge associated with trail commission became optional when Mrs G's investments migrated to the new administrator in May 2019. It says prior to this, there were no means of having this charge removed whilst held with the previous administrator. It referred to the terms and conditions of the new administrator that say a customer can ask in writing to alter or stop paying the adviser charge. It also says Nationwide was not required, under regulation, to inform Mrs G of the possibility of removing the charge. And information about this would've been available to her under the platform T&Cs (as described above). It doesn't accept there has been a breach of any regulated activity when applying these charges to the account.

From the evidence I have available, I'm satisfied it was only after May 2019, when the current administrator acquired the investments on its own platform that it became possible to request a stop to the charge. It doesn't appear to be in dispute that Mrs G was aware of the change in administrator in 2019.

I've noted the information provided about the new administrator's T&Cs, which make reference to the ability to cancel the commission charges at any time. These say in section 10.4.6 you can: "can ask us in writing to alter or stop paying the adviser charge". I think it is important to explain that these aren't Nationwide's T&Cs, but the business who now administer the investment.

I understand that Nationwide says it had no requirement to encourage customers such as Mrs G from being a Nationwide customer or cease their right to advice services. It also says that paying the commission meant Mrs G had access to a variety of services offered by Nationwide, which she obviously wouldn't have had access to if she cancelled the commission payment. I accept this is a reasonable position to take. Only after the platform migration in 2019 could investors choose to switch off the commission, and this severed the relationship with Nationwide, and the right to receive future advice or access to Nationwide's services.

I've also taken into account the broader circumstances around the charging of trail commission. Nationwide started to receive trail commission as part of the transaction when Mrs G first invested. Trail commission is a fee paid to the business / financial adviser who sold the investment. It usually takes the form of a percentage fee taken from the sum of the investment and intended to cover an ongoing service. It appears Mrs G accepts this was a mandatory charge originally. At the time it was legitimate and not uncommon for advisors or intermediaries selling investments to be paid in this way and commission would form part of a bundle of charges which were deducted from any investments sold.

The Financial Services Authority (FSA), the UK's former industry regulator, conducted what's known as The Retail Distribution Review (RDR), which outlawed trail commission for all new investments sold following 31 December 2012. But it did not immediately require any amendments be made to existing arrangements which were subject to trail commission – such as Mrs G's investment. There was no regulatory requirement for firms to provide a specific level of service in exchange for historic trail commission they receive. In short, investments like these, when they were sold, the firm could take an open-ended annual sum from the investment to pay for the initial sale. That's what's happened here and I see no fair and reasonable reason to say Nationwide shouldn't have charged it.

I've considered the regulator's guidance for consumers about trail commission. This indicates it would've been for Mrs G to either rearrange her investments to remove the commission element, or alternatively, to speak to Nationwide about the level of service it was providing in exchange for the fee it was collecting. So, on this basis when the charge became optional, it still would have been for Mrs G to request its removal. I haven't seen there was a proactive requirement on Nationwide to contact her. I appreciate Mr G has argued they weren't aware of the change to an optional charge, but the fact no request was made to remove until more recently, means I haven't found this was as a result of a failing by Nationwide.

During our consideration of the complaint, the investigator referred to regulatory changes made in September 2019 - to which Mr G points out these changes happened after the point the investigator said the ability to opt out of trail commission for his investment was available. The investigator clarified that Mrs G was able to opt out of the charge in May 2019, when the administrator changed. It appears this reference to regulation has confused matters. I don't find this bears relevance to when Mrs G was able to opt out of the trail commission charge. So, I don't think further consideration of this point is helpful in deciding whether Nationwide have failed to do something it should have done. For the reason given above, I've found there wasn't a requirement on Nationwide to tell Mrs G the trail commission could be opted out of when her investments moved to a new administrator in May 2019.

I confirm I have listened to call Mr G had with the current administrator of the investments. I note the opinion given in the call was that Nationwide was responsible for informing Mrs G that the trail commission was no longer mandatory. I've taken this into account, but it doesn't lead me to change my findings. And as I'm deciding a complaint about Nationwide, I won't be commenting on what another business' obligations were. My findings are specific to Nationwide and whether I have identified failings by this business.

I appreciate Mrs G will be disappointed by this conclusion but I haven't found that Nationwide has done something wrong in the way it collected charges. This doesn't mean that I conclude she was aware the charge had become optional in May 2019, but that I don't find Nationwide should have done more to make her aware. In summary, I acknowledge Mrs

G’s overall concerns with the situation, but having given the matter careful consideration, I don’t require Nationwide to do anything further.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs G to accept or reject my decision before 29 December 2023.

Daniel Little
Ombudsman