DRN-4451934

The complaint

Mr J complains that Nationwide Building Society has been collecting charges from him as part of a stocks and shares ISA investment he took out, but he hasn't been offered or received the service he paid for. He would like the charges to be refunded.

What happened

In March 2002, Mr J invested in a Nationwide Life stocks and shares ISA. Due to the passage of time, Nationwide has no sales paperwork available. Mr J has provided a confirmation of the investment and Nationwide's involvement in the sale.

The ISA remained invested for several years and responsibility for administering the investment has passed between several businesses.

Nationwide sent Mr J a letter in December 2021, which confirmed the service charge he was paying entitled him to financial advice. He contacted Nationwide, who told him he could discontinue the service charge. So, he asked the current investment manager to remove Nationwide as his advisor and stop the charge. In January 2022, Mr J raised a complaint with Nationwide. He complained that he had been paying a service charge that entitled him to the availability of financial advice, but he had never received or been offered advice.

I issued a provisional decision in October 2023. This is what I said:

"Mr J took out his ISA in 2002 and this was sold by Nationwide. Since then, the business responsible for the management of his ISA has changed several times. This has meant that the charges and fees on his investment have been administered and collected by different businesses over the years. But what has remained consistent is that Nationwide were recorded as the business who sold his investment. As a result of this, during the time he's held the investment Nationwide has received ongoing payments.

When Mr J took out his investment in 2002, Nationwide started to receive trail commission as part of the transaction. 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 wasn't something that Mr J could opt out of. 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 Mr J's ISA. There were further changes brought in for pre-RDR investments that came into effect after 2013. It appears it was at this point that a commercial decision was taken by the investment manager of Mr J's ISA to restructure its charges.

Nationwide has provided copies of correspondence sent to Mr J about changes to charges around this time. I've seen an August 2014 letter from the investment manager. This gives information about platform fees and service charges. The section on service charges explains "The Service Charge is as agreed with the person or company who introduced you" to the investment. And goes on to say you can get more detail about the charge from them. It does say that it will be charged at 0.5%. Nationwide has provided copies of letters dated October 2015 and January 2016 from the investment manager to Mr J about changes to the structure of charges. Nationwide says the January 2016 letter referred Mr J to the Financial Planning Team at Nationwide if he wanted to speak to about his options.

Nationwide has also referred to a tariff of charges document Mr J had access to. It says this supports he was aware of the availability of advisory services. In my view this wasn't particularly clear. On the second page of the January 2016 letter in a section under the heading 'New Terms and Conditions' there was a website address to follow that provided a document giving details of charges and services. As previously mentioned, I don't think it's apparent that Mr J would have understood from this letter the importance of following this link to find information about the services including as part of the service charge.

It appears when changes were made to charges, the decision made by the investment manager sought to convert the previously "bundled" (with trail commission) charging arrangements into a new "unbundled" format. In the unbundled format, the trail commission would still exist, but it would be displayed clearly and separately from other fees charged to the investment. From the information I've seen this is what happened with Mr J's investment when a service charge started to appear on his statements. The first statement I've seen showing the service charge is from Mr J's 2016 statement.

I've considered all of this evidence alongside the information from the conclusions of the RDR, to decide what is fair and reasonable in these circumstances. 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 this one, 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 thought about this carefully when considering Mr J's complaint. I acknowledge his comments about not requiring or receiving advice services in exchange for the charge applied. But I haven't found that the relevant regulations required a service to be provided in exchange for the commission to be claimed. I also acknowledge that Nationwide has confirmed that the trail commission originally charged wasn't something that was optional when Mr J first took out his investment. So, this wasn't something that he could have avoided all together – even if he did have full clarity of the services that were being provided.

Mr J has acknowledged that he was aware of the fee when it appeared on his statement as a service charge, but not the services being charged for. Referring to the regulator's guidance for consumers about trail commission, it would've been for Mr J to either rearrange his investment 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. As I haven't seen evidence of this happening, I haven't found a failing. Going back to Mr J's awareness of the service charge - given this, I think it reasonable for him to have enquired further with Nationwide if he was concerned, he might not be getting value for money out of it. As I've mentioned above, I think Nationwide didn't do a good enough job of highlighting the services the charge was for. But here I don't think that's resulted in a loss to Mr J. By his own admission he didn't want to use the advisory services, so I don't think he's lost out on the ability to have done so. In my view Mr J knowing about the charge in 2016, especially without knowing what it was for, was enough for him to take steps to either find out more or ask Nationwide to stop charging it. I therefore don't find that Nationwide's somewhat unclear *explanation of the services has been to Mr J's detriment. I appreciate Mr J will be disappointed by this conclusion but I haven't found that Nationwide has done something wrong in the way it collected charges for the available services.*

Nationwide has told us that when the current investment manager took over the running of the investment in April/May 2019, there was an ability to opt out of the charge and associated services that came with it - and this would need to be requested. As mentioned above, Mr J took up this option around the time he made his complaint. So going forward he isn't paying for the services he doesn't require."

Mr J responded to reaffirm that until Nationwide's letter in December 2021, it was far from transparent that he was being charged for the availability of financial advice – and he was unaware that he had been paying 0.5% per annum unnecessarily. He still believes that Nationwide should refund the charges paid.

Nationwide responded to say it had nothing further to add.

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.

I've considered the further submissions made by Mr J. I acknowledge the points he makes about his awareness of the availability of advice and that he has paid unnecessary fees. But I haven't found reason to change the conclusion I reached in my provisional findings.

For the reasons I explained in my provisional decision, I haven't found Mr J should be refunded the service charges he's paid or that I should conclude that Nationwide has failed in its obligations. In coming to my decision about what's fair and reasonable in this case, I've thought very carefully about the findings of the regulator's RDR. I understand Mr J's frustration at paying a fee for services that he was unaware of but having considered the circumstances of how and why it came about, I'm not persuaded that Nationwide has treated him unfairly. It follows that I do not 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 Mr J to accept or reject my decision before 11 December 2023.

Daniel Little
Ombudsman