DRN-4454291

The complaint

Mr G complains about commission charges Nationwide Building Society has been collecting from him in relation to a stocks and shares ISA. He is unhappy about paying for something that he hasn't received a service for. He would like the charges to be refunded.

What happened

In 2005, Mr G invested in a stocks and shares ISA through Nationwide. The investment remained invested for several years and responsibility for administering the product has passed between several businesses.

In June 2022, Mr G received a letter form Nationwide explaining he was paying an ongoing commission charge for his investment for the services it provided – including for advice. It also gave options going forward including the ability to not pay a monthly charge for services and instead move to pay as you go service.

Following this, in July 2022, Mr G contacted Nationwide to raise concerns about the charges he was paying on his investment. A meeting was arranged with an adviser but this wasn't productive and Mr G was referred to another adviser. After a delay he was contacted by phone by another adviser. Mr G requested the relevant information to cancel the commission payments. But he didn't receive the relevant forms through the post as he was expecting. So, he raised a complaint about both paying for a charge that he didn't know about and the problems he he'd had in trying to remove the charge.

Nationwide responded. It explained:

- As part of the original sale of Mr G's investment it was entitled to receive commission. The receipt of commission allowed it to provide and maintain a sales and advice service, which entitled him to request advice in the future without further charge at any time – but not pro-active contact from Nationwide.
- It had written to him in 2015, 2016 and 2018 and through these communications it was made clear he was paying commission charges. Mr G's 2020 and 2021 statements specifically showed the commission for the previous years and these payments were for the services that Nationwide had provided.
- It said Mr G's complaint about paying the charges had been made out of time because the investment started more than six years ago, and he would have been reasonably aware he had cause for complaint in 2015 (more than three years ago).
- Lastly, it acknowledged the more recent service failings Mr G had experienced when attempting remove the charge. It apologised and paid him £125 in compensation for the inconvenience caused.

Mr G remained unhappy, so referred his complaint to this service. During our investigations, Mr G clarified that his main concern was in respect of being told commissions payments were mandatory but when they later became optional, he wasn't told. He feels he has been paying for services that weren't required and he wasn't informed that when he could avoid the charge. One of our investigators looked into these concerns and made an assessment. He was satisfied Mr G's complaint about Nationwide not notifying him that the trail commission service charge was something he could opt out of as of 2019 was made within the time limits required. So, he went to look at the merits of this complain, but 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 commission 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 Mr G's investment – and after this he was now able to switch off the trail commission. He didn't think Nationwide was responsible for Mr G not being informed about this. The investigator also mentioned regulations that came into force about later in 2019 that required fund managers to review the value of funds.

Mr G didn't agree. In summary he said:

- He spoke to the business who currently administers his investment and was informed it was the responsibility of Nationwide to inform him that the charge was no longer mandatory.
- He was 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 him, as he 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, he 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.

Since making his original complaint, the crux of the complaint and the remaining issue that is in dispute relates to how Mr G was informed about the fact the trail commission charge changed from being mandatory to optional. So, the focus of my decision will only be on this point, although I have noted the overall circumstances of the complaint.
Nationwide has explained the charge associated with trail commission became optional when Mr G's investment migrated to the new administrator in May 2019. It says prior to this, there were no means of having this charge removed whilst the account was 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 Mr G of the possibility of removing the charge. And information about this would've been available to him under the platform terms and conditions (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 investment on its own platform that it became possible to request a stop to the charge. It doesn't appear to be in dispute that Mr G was aware of the change in administrator in 2019.

I've noted the information provided about the new administrator's terms and conditions (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 Mr G from being a Nationwide customer or cease their right to advice services. It also says paying the commission meant Mr G had access to a variety of services offered by Nationwide, which he wouldn't have if he 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 Mr 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. Within his submissions, Mr G has accepted 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 Mr G's ISA. 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 considered the regulator's guidance for consumers about trail commission. This indicates it would've been for Mr G 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. So, on this basis when the charge became optional, it still would have been for Mr G to request its removal. I haven't seen there was a proactive requirement on Nationwide to contact him. I appreciate Mr G has argued he wasn't aware of the change to an optional charge, but the fact he didn't request the removal 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 Mr 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 Mr 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 Mr G the trail commission could be opted out of when his investment moved administrators in May 2019.

I confirm I have listened to call Mr G had with the current administrator of the investment. I note the opinion given in the call was that Nationwide was responsible for informing Mr 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 Mr 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 he was aware the charge had become optional in May 2019, but that I don't find Nationwide should have done more to make him aware. In summary, I acknowledge Mr 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 Mr G to accept or reject my decision before 29 December 2023.

Daniel Little
Ombudsman