

The complaint

Mr J's complaint is about the non-disclosure of charges on his With Profits ISA held with Wesleyan Assurance Society ('Wesleyan'). He says he wasn't made aware of all of the charges when he received advice from Wesleyan. He would like a refund for the additional fund charges made since the inception of the plan in excess of 1.2% as well as compensation for his time and the stress incurred.

What happened

In July 2018 Mr J met with a Wesleyan financial consultant. He has said that in response to his queries about charges he was told that in addition to a set-up fee of 3%, an ongoing annual management charge ('AMC') of 1.2% would apply. There wasn't mention of any additional charges. Mr J held £53,140 in a cash ISA with another provider and after the meeting he decided to transfer those funds into the Wesleyan With Profits ISA.

In October 2020 Mr J contacted Wesleyan as he was concerned about the charges showing on his annual statement of approximately 1.4% including ongoing advice service ('OAS') and the ongoing advice charge ('OAC'), which didn't apply to his account. He sought clarification of the AMC and was advised it was 1.2%. Mr J raised a complaint.

On 12 November Mr J received a replacement statement which did not include the OAC, but the fund charges had increased to around 1.6%. He phoned to raise a further complaint and was told the charges would be checked.

Mr J was advised during a subsequent call on 16 November 2020 confirming the AMC was 1.2% but that additional charges were also applied. He was made aware the reoccurring charges percentage included the Wesleyan Financial Services ('WFS') fee. He then raised a complaint as he wasn't made aware of these additional of sale. He wasn't satisfied with the response and it was escalated.

Mr J says Wesleyan have failed to justify why the charges were not disclosed and questioned the point of specifying a defined AMC of 1.2% when unspecified and unlimited administration charges can be added.

Mr J said he had been told by Wesleyan that earlier statements had not been as transparent but following legislation changes in 2018 charges now had to be shown and be quantified.

He assumed that at the time of taking out the plan these '*additional admin charges*' were effectively hidden and deducted before declaring the fund value and then deducting the 1.2% AMC.

In its response to Mr J's complaint Wesleyan wrote to him on 3 December 2020. It said:

- It confirmed that in error incorrect charges weren't included in the initial statement, but the charges shown in the amended statement were correct.

- The WFS fee had always been applied and had been included in Mr J's 2019 statement in the 'product and fund management charges' section but was not as transparent. That transparency came about because of mandatory changes in October 2018.
- It paid a fee to WFS each year for the provision of administration services. The service fee wasn't a direct charge for With Profits policyholders. And, *'although the service fee is not a direct charge for With Profits policyholders, the With Profits Fund shares in Society [Wesleyan] profits and losses, this fee has led to reduced returns on the fund. Therefore, the Society has shown this fee on annual statements in the charges section.'*
- Other business profits which were not shown on the annual statement had been allocated to the With Profits fund during the period and were worth +0.7% which exceeded the allocated WFS costs of 0.4%. There was also a 1% mutual bonus added to the policy values on 1 September 2020.
- The AMC had always been 1.2% if the customer had not opted into the OAS and 1.7% if they did.
- In conclusion, Mr J's complaint about the AMC wasn't upheld. The WFS fee had always been applied albeit not as transparent as in the 2019 statement. The complaint was upheld in respect of the first annual statement not being correct and for Mr J not receiving further information about his query when he first contacted Wesleyan. £50 was offered for the distress and inconvenience caused to Mr J.

Mr J commented that it was of little value knowing an AMC of 1.2% was made if Wesleyan was then able to make additional unquantified charges each year as it saw fit.

On 7 January 2021 Wesleyan responded again. It said that although the document provided didn't state the WFS fee specifically, that particular charge had always fallen under the *'other product charges'* section of his statement but that that year Wesleyan thought it necessary to include the charge in more detail. The KFD document was quoted as saying;

'We (Wesleyan Assurance Society) collect charges from your With Profits ISA to cover our costs in managing your account and investments. If you have received advice from Wesleyan Financial Service (WFS) about your investment or you are opted into their Ongoing Advice Service (OAS), part of the charges we collect will also cover the costs of these services. We will take the necessary charges from your account and pay them to WFS.'

Mr J replied on 7 January. He said that his fundamental complaint hadn't been addressed, namely that he wasn't advised of any charges in addition to the AMC. The KFD he had, and the right to cancel letter of 6 August 2018, didn't indicate any other charges than the AMC of 1.2% and didn't include the paragraph I've quoted above. He went on to say that while Wesleyan had explained the details of the charges, no evidence had been provided to confirm that any of the documentation he had received indicated that these charges were in addition to the AMC. And that being the case, then his complaint should be upheld. All of the charges that had been highlighted to him would reasonably be expected to be included within the category of the AMC.

Our investigator who considered the complaint thought that it should be upheld. He said:

- From his review he had concluded that the WFS service fee was an additional fee which was taken out of the underlying value of Mr J's investment. It formed part of the 'Product and Fund Charges' which was in addition to the AMC.
- He couldn't see the WFS service fee was explicitly described anywhere other than the 'How the With Profits Fund Works Document' where it said *'The charges we deduct from your policy pay for costs such as the following: Those we incur in administering policies.'* And Wesleyan had said *'The WFS fee falls under the section of the profits and losses from other areas of the business and is a fee for the provision of administration services.'*
- While the 'How the With Profits Fund Works Document' stated there were service fees too, this point wasn't clear from the illustration or the suitability letter. That document could be referring to costs that were already included within the AMC charge of 1.2% as the illustration said the AMC was *'the amount that is taken for the cost of running the plan.'*
- The investigator concluded that Mr J hadn't been able to make an informed decision and that Mr J would have acted differently had he known there were other charges in addition to the 1.2% AMC.
- To put things right the investigator thought Wesleyan should refund the total WFS service fee that was deducted from Mr J's ISA since inception plus interest at a rate of 8%. But now that Mr J was aware of those additional costs Wesleyan could impose those charges as the illustration for the ISA stated Wesleyan could change its charges at any time. As a result, Wesleyan wouldn't be acting unfairly as those costs were a business decision.
- The investigator recommended an additional £50 be awarded for the stress and inconvenience Mr J had been caused.

Wesleyan didn't agree with the investigator. It said:

- The WFS charge was Wesleyan Assurance Society paying Wesleyan Financial Services a fee for administration services. The WFS charge was not a policy charge which is why it was not specifically shown on the policy illustrations. It wasn't a direct charge to With Profits policyholders but as the With Profit fund shares in the Wesleyan Assurance Society's profits and losses, it had led to reduced returns on the fund. The WFS charge isn't paid for directly by policyholders, it's a loss to the fund.
- It went on to say, *'As confirmed previously, this was a change in rules regarding businesses disclosing losses, so the Society decided to display the WFS charges on Annual Statements. While we started disclosing the WFS charge in 2019, it has always been applied where a loss has occurred. Due to confusion it caused our customers, we have decided to remove it from the statements.'*
- It commented that a similar complaint previously brought to this service hadn't been upheld by the investigator. It asked for the case to be decided by an ombudsman.

In response Mr J made some comments for my consideration. He said:

- The adviser didn't mention the WFS fee and Wesleyan hadn't demonstrated he had been made aware of the charges. It was now stating they were not a charge but the sharing of a loss.

- The fact that Wesleyan had said the inclusion of the charge on its statements had caused confusion would suggest it had received other complaints from its consumers.
- He didn't think that Wesleyan's reaction to that 'confusion' – to remove the charges from statements was treating consumers fairly.
- He didn't see that Wesleyan having a complaint in its favour by this service had any relevance to his complaint.

As the complaint couldn't be resolved, it was passed to me for a decision. I issued my provisional decision explaining that I intended on upholding the complaint and detailed how the matter should be put right but I asked both parties to give me anything further they wanted me to consider before I issued my final decision. Here's what I said;

"Wesleyan has referred to another complaint about its charges considered by this service and that complaint wasn't upheld. I should make clear that we consider each case on its own particular merits in the individual circumstances of that complaint. So, in this decision I'm only considering Mr J's complaint about what he was told about the charges when he invested with Wesleyan.

Despite the detailed background to Mr J's complaint the crux of it is quite straightforward – Mr J wasn't told about any charges over and above the AMC charge of 1.2% at the point of sale. Mr J is extremely unhappy he has incurred additional charges which he only became aware of when Wesleyan included them within his annual statements as a result of regulatory changes.

When bringing his complaint to us, Mr J has been very specific about his recollections from the time of the sale. He told us he had concerns about charges that would be incurred as the money he was going to invest was coming from a standard building society cash ISA. Mr J has been consistent with this point and I am persuaded that at the time of the sale this would have been something he paid particular attention to.

And I also note that Mr J didn't want the ongoing advice service as confirmed in the suitability letter '*You have made your decision because you felt that you did not wish to pay additional annual management charges and pay this additional 0.50% for ongoing advice.*' This suggests to me that Mr J was conscious about keeping costs to a minimum for this investment.

Charging structures for With Profits policies can be complicated. We asked Wesleyan for further information about the charges incurred.

It told us that prior to 2019 the fund had been paying back a debt. Therefore, it said that With Profits policyholders would have paid their AMC and then had an additional reduction to returns. After 2019 the debt had been repaid and the AMC covered the cost of the expenses incurred by the fund. It confirmed the WFS charge was taken in the unit price and was not an explicit charge – just a dampening of the fund performance.

And Wesleyan had previously explained the WFS fee fell under the section of '*profits and losses from other areas of the business*' and was a fee for the provision of administration services. The fee was a cost applied to the fund itself.

While I haven't seen anything to make me think Wesleyan has done anything untoward and was entitled to do this, I don't think it was transparent with Mr J at the point of sale about the costs he could.

Wesleyan has referred to the information Mr J was given at the point of sale and said that the KFD document didn't include all the terms and conditions or every potential charge or expense. It said this additional detail was to be found within the terms and conditions or the Principles and Practices of Financial Management on its website, 'With Profits - Detailed Guides Wesleyan.co.uk.' It referred to section 4, page 21 of the document.

But I can't see that Mr J was given this document. And equally I wouldn't have expected for him to have to have read through this 33-page document in order for it to have been given an answer in response to a straightforward question, namely, what he would be charged.

And while I accept there may have been additional costs that were unknown at the outset I think Mr J should have been made aware this was a possibility and that those charges could have been over and above the 1.2% AMC, which he understood to be the only charge he would incur.

I think Mr J was clear in his own mind that he wanted to keep costs to a minimum, sought out this information and relied on what he was told by the adviser and seen in the point of sale documents. And I think the fact that Mr J is so dissatisfied – and has been consistently – with the additional charges that he is now aware of, lends weight to this point.

The investigator concluded that the complaint should be upheld. He recommended that any WFS charges Mr J had incurred should be repaid to him plus interest at a rate of 8%. He also thought that now Mr J was aware of those charges, and Wesleyan was entitled to change its charges, that it was for Mr J to decide whether to continue you with the ISA or look to do something differently. He also recommended that Mr J be paid £50 for the stress and inconvenience he had been caused.

However, I don't think this is the correct outcome. When this service looks to put a complaint right, the aim is to put the complainant in as close to the position they would have been in but for the error. And by returning to Mr J the charges he has incurred over and above the AMC would mean putting him in a position he'd unlikely to have ever been in.

And on the basis that I don't think Mr J would have invested if he had been made aware of the additional charges to the fund, then I need to put him in the position he would be in if he hadn't invested."

I outlined how Wesleyan should put the matter right by comparing the performance of the fund with a benchmark split half between the FTSE UK Private Investors Income Total Return Index and half with the average rated from fixed rate bonds. I also said Wesleyan should pay Mr J £50 for the stress and inconvenience he had been caused.

Wesleyan replied disagreeing with my provisional decision. It said;

- It didn't feel the judgment was fair and reasonable.

- The Financial Ombudsman had considered cases which had the same complaint point where it had agreed with Wesleyan and this case wasn't essentially different.
- Its customers weren't informed of any further charges when taking out plans as this was not an explicit charge, but a dampening of the fund performance. Policy holders might not always experience a loss in performance so it couldn't predict the deductions each year when setting up a plan as some year there may be no reductions. Customers were provided with a leaflet explaining how with funds profits worked and also directed to its website where this could be viewed.

In response Mr J said he was happy with the overall outcome but didn't agree with the compensation;

- When he took out the plan, he accepted a higher level of risk in return for potentially higher returns taking into consideration fund charges. The investment return on the plan isn't relevant to his complaint and doesn't have a bearing on the level of compensation paid in respect of the non-disclosure of charges.
- He thought it better for him to be repaid any additional charges over 1.2% plus 8% interest.
- His complaint related solely to the non-disclosure of charges. Any consideration of what else he might have done was conjecture.
- He had knowingly taken the risk associated with a With Profits fund and while he didn't know how that had performed in relation to the benchmark I proposed, he shouldn't be penalised should the With Profits fund return be in excess of the benchmark.

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.

In my provisional decision I explained that the Financial Ombudsman considers each complaint on its own individual merits. Wesleyan may have had what it considers to be similar complaints with this service which were found in its favour, but I provisionally concluded that in the particular circumstances of Mr J's complaint – regarding the information he was given about the charges – that it should be upheld. And Wesleyan's comments in response to my provisional decision haven't caused me to change my mind.

As I explained in my provisional decision, I was satisfied that Mr J was very specific about charges he could incur, and he wanted an answer to a relatively straightforward question about those charges.

I don't think he got a sufficiently clear enough answer to have enabled him to have made an informed investment decision. And I don't think it's right for Wesleyan to provide a blanket response that a customer was provided with a leaflet – or similar – that explained how the With Profits policy worked, or that policyholders might not always experience a loss so any future deductions couldn't be predicted. While I accept that scenario may be the case, but Mr J should have been made aware of that fact in response to his questions, and I can't see that he was.

The funds Mr J was investing into the With Profits fund were coming from a standard building society cash ISA and I think it's evident Mr J was sensitive to any additional charges he may have incurred compared to that account, hence him seeking an answer to his question about what the charges were. I remain of the opinion that Wesleyan should have done more in making sure he had a clear answer to a straightforward question and the complaint should be upheld because of that.

In my provisional decision I concluded that I didn't think Mr J would have invested if he had been made aware of the additional charges. Mr J has said his decision to make the investment has nothing to do with this complaint which is solely about those charges. But I disagree.

As mentioned above, the funds were coming from a standard building society cash ISA and I think Mr J would have been very aware of potential costs he could incur in exchange for a hoped for better performance by investing in a With Profits fund. Mr J has said it was his decision to choose to expose his funds to a higher risk investment but with the potential for a better return.

However, implicit in that hoped for better performance are the management charges – and similar – to be paid for the decision making about how to invest the With Profits fund's assets, offset of risk versus reward and general management etc. And as has been highlighted by Wesleyan – the information Mr J wasn't made aware of – the WFS fee fell under the section of '*profits and losses from other areas of the business*'. So, it seems just as likely that Mr J could benefit from those potential '*profits...from other areas of the business*'.

The charges incurred were all an intrinsic part of investing in that particular With Profits fund and the potential upsides and downsides of that plus the other areas of Wesleyan's business which could have an impact. Quite simply, if Mr J wasn't willing to incur those charges – albeit not being told about them at the outset – then it wouldn't be fair for him to benefit from the performance of the With Profits fund where the charges incurred are a tacit part of the costs in order to achieve that hoped for better return.

Effectively Mr J's argument is that he should have been able to invest in the With Profits fund but without incurring the same charges that other policyholders have had to pay. And that simply wouldn't be fair. I've found that Wesleyan, in this case, didn't clearly answer Mr J's question about the costs he would incur. It wasn't made clear to him that additional costs could be incurred – either directly or via a dampening of performance – because of other areas of the business. But, and as I said in my provisional decision, I haven't seen anything to make me think Wesleyan has done anything untoward and was entitled to do this. It's just that this wasn't clearly explained to Mr J.

My provisional decision concluded in the particular circumstances that it wasn't fair – where Mr J had been so specific about the costs – for him not to have been given a straightforward answer. He invested on the assumption that he would only be paying charges of 1.2%. He wasn't aware he could potentially be paying more – whether as a direct cost to him or a dampening of the fund performance – so in this case, I don't think Wesleyan was transparent with Mr J at the point of sale about the costs he could incur and his complaint should be upheld.

As I've said, I don't think Mr J would've invested in this With Profits fund if he had been fully made aware of the charges he could incur. On this basis, I need to put him in as close to the position he would be in if he hadn't invested. I think fair compensation should be as per below and as outlined in my provisional decision. It is for Mr J to decide whether he wants to accept it or otherwise.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mr J as close to the position he would probably now be in if he had been given a transparent answer to his question about the charges.

I think Mr J would have invested differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr J's circumstances and objectives when he invested.

What should Wesleyan do?

To compensate Mr J fairly, Wesleyan must:

- Compare the performance of Mr J's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Wesleyan should also pay interest as set out below.
- Pay Mr J £50 for the stress and inconvenience he has been caused.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
With Profits fund	Still exists and liquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Wesleyan should use the monthly average rate for one-year fixed-rate bonds as published by the

Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr J wanted Capital growth with a small or moderate risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr J's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr J into that position. It does not mean that Mr J would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr J could have obtained from investments suited to his objective and risk attitude.

My final decision

For the reasons given above, I uphold Mr J's complaint about Wesleyan Assurance Society. If Mr J accepts my decision, Wesleyan Assurance Society should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 18 November 2022.

Catherine Langley
Ombudsman