

The complaint

Mr and Mrs O complain about the fees applied by Wesleyan Assurance Society (“the Society”) trading as Wesleyan, referred to as “the business” or “Wesleyan”.

In short, they say they weren’t made aware of the Wesleyan Financial Services (WFS) fee, and it wasn’t disclosed within the paperwork.

To put things right, they’d like the fee removed from their statements going forward, and some compensation paid.

What happened

In mid-December 2022, I issued my provisional decision, a copy of which is stated below and forms part of my final decision. In the decision I said:

“...subject to any further submissions, provisionally I’m going to uphold this complaint.

On the face of the evidence, and on balance, despite what the business says, I don’t think it behaved reasonably in this instance.

This case isn’t just about what the WFS fee is and whether, or not, the business was entitled to deduct this fee – I’m not persuaded that the business has done anything wrong by doing so, such that the complaint should be upheld on this basis.

This complaint is primarily about Wesleyan’s failure, at the point of sale (post IDD) to make this fee reasonably clear to Mr and Mrs O before they went ahead with the investment. On the face of the evidence, and on balance, despite what the business says, I think it failed to do so, at the point of sale and within the policy documentation.

However, on the face of the evidence, and on balance, given that it wasn’t a ‘fixed charge’ to the policyholder, or a fee that they could opt out of, and given the (potential) cost versus rewards of investing in the With Profits fund, I think it’s more likely than not they still would’ve gone ahead with the investment, even if the business had made the WFS fee clear to them at the outset.

In other words, on balance I think it’s unlikely that they would’ve done anything different – I note they’re not unhappy with the investment. So, I can’t say that they’re entitled to a refund of the WFS fees paid.

However, in the circumstances, and on balance, I think the business should pay Mr and Mrs O £200 compensation (£100 each) for the distress and inconvenience caused by the business’s failure to make the WFS fee clear at the outset, resulting in subsequent confusion and uncertainty lasting a relatively short period of time.

Before I explain why this is the case, I think it’s important for me to note Mr and Mrs O’s strength of feeling about this matter. They’ve provided detailed submissions to support this complaint, which I’ve read and considered carefully. However, I hope that they won’t take the

fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised either. My role is to consider the evidence presented by Mr and Mrs O, and Wesleyan, and reach what I think is an independent, fair, and reasonable decision, based on the facts of the case. Despite what they say, it's not my role to punish the business, that's the role of the industry regulator, the Financial Conduct Authority ("the FCA").

I note key policy documentation, which Mr and Mrs O received for each of the plans, made reasonably clear the AMC (at 1.2%) and the IAC at (0.3%) – the latter isn't the subject of complaint. I also note they opted out of the ongoing advice charge (OAC), so a fixed 0.5% annual charge didn't apply to them. However, there was no clear mention of the WFS fee within the key policy documentation, as a possible (additional) fee/deduction.

I appreciate Wesleyan says that this isn't an additional (fixed) charge to the policy holder, in the same way that the OAC might be, instead the fee is taken out of the fund as a loss (sometimes described as dampening of the fund performance). In other words, the WFS fee is part of the fund's 'profits and losses' and is therefore variable, but not a direct charge to the policyholder.

Whilst this might explain why Wesleyan didn't make the fee as clear as the other charges (and why it wasn't on the Illustration), in this instance and on balance, I don't think this necessarily justifies it not doing so.

I'm conscious that the WFS fee is described as the Society paying WFS a fee for 'admin services', so is arguably an agreement between the two entities – I don't seek to disagree or challenge this. I'm conscious that a business is (unilaterally or otherwise) entitled, in the reasonable exercise of its legitimate commercial judgement, to set its own term of business and own fees – so long as the terms of agreement are made clear to its customers. It's not for us to tell a business how it should run its affairs. But I don't think it did make clear the WFS fees to Mr and Mrs O when it should have done.

That said, I don't think the business was required to specifically obtain Mr and Mrs O's consent on it, before going ahead – it's generally not required to in respect of everything it can and can't do. So, on balance, I'm unable to safely say that it has done anything wrong by not specifically doing so in this instance. I also don't think it excuses Mr and Mrs O from paying the WFS fee which the business was entitled to charge. Just because it didn't make it clear, doesn't mean Mr and Mrs O aren't obliged to pay it.

I note the WFS fee comes out as a loss/reduced return to the fund, for providing a service – described by the business as "transaction/dealing costs associated with trading within the funds you are invested in" – which I understand is arguably different to the OAC for example, and one that Mr and Mrs O can't just opt out of, because it's not a direct charge to the policyholder.

I'm also aware it's a fee that has always been applied by the business where there's been a loss, so it wasn't something that was added at the last minute. I appreciate it probably gave Mr and Mrs O the impression that it was, when they received their statements in 2020 and 2021 – I note they were only expecting to pay the AMC and weren't aware of any other deductions.

The WFS fee is nevertheless a deduction – described by the business as "it is applied to the whole With Profits fund, which subsequently reduces the value of a policyholder's fund value" – and one that can (potentially) affect Mr and Mrs O's investment. Therefore (arguably

post IDD) the business ought reasonably to have made this clear to them, and at the very least made them aware of it.

I note that Wesleyan had to disclose anything that could reduce the value of the policy on a consistent basis – irrespective of whether it was a charge or a loss, so should have done this at the outset with Mr and Mrs O. In the circumstances, I don't think reference to 'How our with profits fund works' justifies or excuses its failing to do so.

I don't think the business's actions post complaint are wholly immaterial as suggested by Mr and Mrs O. I note the business initially didn't think it made sense to show the profits in the charges section – even though it offset some of the losses – so starting in 2019 it decided to display the WFS fees on its annual statements. It had grouped the AMC, transaction costs and WFS fees together under 'Product and fund management charges' – but has since addressed this. The AMC now covers the cost of the Society expenses incurred by the With Profits fund as well as WFS fees – so, Mr and Mrs O won't see the WFS fee on future statements. Nevertheless, I still think the business should pay them £200 compensation for the distress and inconvenience suffered.

Despite what Mr and Mrs O say, I don't agree that the business has caused them a financial loss or taken money/made adjustments that it wasn't entitled to, so I don't think they're entitled to any financial loss claimed or any further compensation. I'm mindful that this wasn't their primary objective in any case.

I've also mentioned above that I don't think they would've done anything different even if they'd been given the correct information. In other words, I appreciate that they opted out of the OSC, but the WFE fees weren't something they could opt out of and it was a deduction for a wholly different purpose which they'd have to pay through the fund going forward in any event.

I appreciate that Mr and Mrs O will be unhappy that whilst I've reached a different conclusion to the investigator and upheld the complaint, I still haven't given them what they want. Whilst I appreciate their frustration, I'm unable to give them what they want and award more than the £200 compensation I've recommended."

I gave the parties an opportunity to respond to my provisional decision and provide any further submissions they wished me to consider before I considered my final decision.

The business responded and accepted my provisional decision. In short, it said: *"I confirm that we accept the Ombudsman's decision"*.

Mr and Mrs O also responded and accepted my provisional decision but made a number of observations. In short, they said:

- They wanted me to change the wording of the complaint to reflect the nature of their complaint better.
- They felt a lot of my references to what they would've (or wouldn't) have done was 'speculation', and at times unnecessary.
- They strongly feel that my final decision should include a directive to Wesleyan to list the WFS fee as a separate item on their annual statements and clearly describe it in its literature.
- It's not strictly correct that Wesleyan displayed the WFS fees in its statement beginning in 2019, as it lumps it in with other charges as "Product and fund management charges".
- The business's future plans don't hold any promise.

- They disagree with my decision that they haven't suffered a financial loss.
- The above notwithstanding, they accept my decision for an award of compensation, by way of compromise.
- They are most sincerely grateful for my detailed familiarisation of their submissions in total and for my upholding the complaint.

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, notwithstanding the latest submissions from Mr and Mrs O, my decision to uphold this complaint remains the same, principally for the same reasons as set out in my provisional decision.

In other words, despite being given time to respond to my provisional decision, I'm satisfied that no new material points have been made that persuade me I should change my decision.

In this instance, and on balance, I'm still satisfied that the key points remain the same, and have been considered by me, above.

As I said in my provisional decision, this case isn't just about what the WFS fee is and whether, or not, the business was entitled to deduct this fee – I'm not persuaded that the business has done anything wrong by doing so, such that the complaint should be upheld on this basis.

This complaint is primarily about Wesleyan's failure, at the point of sale (post IDD) to make this fee reasonably clear to Mr and Mrs O before they went ahead with the investment. On the face of the evidence, and on balance, despite what the business says, I think it failed to do so, at the point of sale and within the policy documentation.

However, on the face of the evidence, and on balance, given that it wasn't a 'fixed charge' to the policyholder, or a fee that they could opt out of, and given the (potential) cost versus rewards of investing in the With Profits fund, I think it's more likely than not they still would've gone ahead with the investment, even if the business had made the WFS fee clear to them at the outset.

In other words, on balance I think it's unlikely that they would've done anything different – I note they're not unhappy with the investment. So, I can't say that they're entitled to a refund of the WFS fees paid.

However, in the circumstances, and on balance, I think the business should pay Mr and Mrs O £200 compensation (£100 each) for the distress and inconvenience caused by the business's failure to make the WFS fee clear at the outset, resulting in subsequent confusion and uncertainty lasting a relatively short period of time.

I note Mr and Mrs O aren't entirely happy with the wording of my complaint summary, but it's not something I feel I need to change, as it broadly reflects the nature of the complaint. In my provisional decision I said that despite what Mr and Mrs O say, I don't agree that the business has caused them a financial loss or taken money/made adjustments that it wasn't entitled to, so I don't think they're entitled to any financial loss claimed or any further compensation.

I also mentioned above that I don't think they would've done anything different even if

they'd been given the correct information. In other words, I appreciate that they opted out of the OSC, but the WFE fees weren't something they could opt out of and it was a deduction for a wholly different purpose which they'd have to pay through the fund going forward in any event.

I'm sorry Mr and Mrs O feel like I was 'speculating' about a number of issues, including whether or not they were happy with the investment – I was merely drawing conclusions based on what I thought was more likely (than not) to be the case. And despite their disagreement, for the reasons set out above and in my provisional decision, on balance I still can't safely say that they've suffered a financial loss.

I'm sorry to hear that Mr and Mrs O don't think the business's future plans hold any promise – the business will however be aware of their observations and feedback in respect of what they think it should do.

Putting things right

Wesleyan Assurance Society trading as Wesleyan should pay Mr and Mrs O £200 compensation for the distress and inconvenience caused.

My final decision

For the reasons set out above, and in my provisional decision, I uphold this complaint.

Wesleyan Assurance Society trading as Wesleyan should pay Mr and Mrs O redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 9 February 2023.

Dara Islam
Ombudsman