

## The complaint

Mr A complains that Wesleyan Financial Services Ltd ('Wesleyan') charged him transaction fees on his With Profits ISA which it hadn't disclosed to him when he invested in the ISA. He wants to keep the ISA but have the transaction charges removed.

## What happened

In March 2019 Mr A invested in a With Profits ISA that was provided by Wesleyan. He did so on a non-advised basis. And he opted out of having ongoing advice.

In 2022 Mr A received an annual statement which said he'd be charged fees totalling 1.4% of the ISA balance.

Mr A said the key facts document he'd been given when he opened the ISA said he would be charged an annual fee of 1.2%. He queried this with Wesleyan. Wesleyan said a transaction charge of 0.2% also applied in 2022. Mr A said that charge wasn't disclosed to him and so it shouldn't be applied.

Wesleyan said the illustration Mr A had been given said he would be charged an Annual Management Charge of 1.2% and transaction costs as well. Wesleyan said the document had included the following paragraph:

### ***'Transaction Costs***

*These are transaction costs incurred which are the ongoing costs of trading within the fund(s) you are invested in, for example, broker commissions and stamp duty. These are included as Investment Product Costs in the section 'Breakdown of charges'.*

Mr A referred his complaint to this service. He gave us a copy of the key facts document he said he'd been given when invested in the ISA in 2019. He said it didn't include the information about transaction costs that Wesleyan had referred to.

One of our Investigators looked into Mr A's complaint. He said the policy document Wesleyan referred to and the copy of its key facts document which it gave to this service in response to Mr A's complaint were different from the key facts document Mr A was given when he invested in the ISA. The Investigator asked Wesleyan several times to comment on this discrepancy. Wesleyan didn't respond.

The Investigator said he thought Mr A's complaint should be upheld. He recommended that Wesleyan calculate and refund charges it had applied to Mr A's ISA in excess of the 1.2% he was led to expect. The Investigator said he couldn't recommend that Wesleyan remove charges from its products in future – he said Wesleyan was entitled to charge those fees on its product. The issue had been that it hadn't disclosed them to Mr A when it should have.

Wesleyan didn't respond to the Investigator's opinion. Because no agreement could be reached, this complaint was passed to me to review afresh and make a decision.

I issued a provisional decision in which I said I was minded to uphold the complaint. I said I didn't think Wesleyan had given Mr A clear enough information about fees at the time he was applying for the product. I said I thought the impact of this on Mr A was distress and inconvenience and that Wesleyan should pay Mr A £200 in compensation for that.

Wesleyan accepted my provisional decision. Mr A said he had nothing to add. I haven't departed from my provisional findings. So I've repeated them below as my final decision.

### **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, I'm upholding the complaint. I'll explain why.

In deciding whether Wesleyan did sufficiently inform Mr A about the fees he'd be charged I've taken into account the rules of the regulator, the Financial Conduct Authority (FCA). COBS 4.2 in the FCA Handbook says the information a business gives its customers must be clear, fair and not misleading. In my view the information Wesleyan gave Mr A about fees fell short of this standard.

Our Investigator put it to Wesleyan that the information about fees it gave Mr A when he opened the ISA wasn't the same as the information about fees it gave him when it responded to his complaint. Amongst other differences, the key facts document that Mr A was given didn't include the paragraph on transaction costs that Wesleyan cited in its response to his complaint.

Wesleyan made no response to the Investigator's repeated request for comment about the discrepancies between the fees documents. So I have no reason to doubt that the key facts document Mr A sent to us was indeed the information that Wesleyan gave to him in 2019.

To be fair to Mr A, the information Wesleyan gave him about fees should've informed him about the transaction costs he'd have to pay in addition to the Annual Management Charge. Mr A couldn't make an informed decision about whether to invest in the ISA without knowing what fees would be charged.

Having reviewed the key facts document provided in 2019 I see that it purported to describe the fees that would be charged and it included illustrations. But I don't think it did make clear that Mr A would be charged transaction costs in addition to the Annual Management Charge. '*Transaction costs*' weren't mentioned in the document. The document included that '*The product charges also include expenses and other adjustments*'. But if this was intended to inform Mr A about the transaction costs that he was later charged then I don't think it does so at all clearly – and there's no indication of what amount that would be or how it would be calculated. I think the information Wesleyan gave Mr A would reasonably have led him to believe that – if he opted out of ongoing advice, which he did – then the only ongoing fee he would pay would be the 1.2% Annual Management Charge.

So I've concluded that Wesleyan failed to give Mr A information about fees that was clear, fair and not misleading. And so I agree with our Investigator that Mr A's complaint should be upheld.

When we find that a business has unfairly caused a consumer a financial loss, the aim of this service is generally to return the consumer to the position they would've been if the business had treated them fairly – or as close as possible to that position. In this case our Investigator recommended Wesleyan should refund the fees Mr A paid that were additional

to the 1.2% he'd been expecting. But I think that would put Mr A into a position he wouldn't ever have been in. If Mr A had've had reasonable information about the fees, he could've chosen either to go ahead with the ISA and pay all the applicable fees, or to decline the ISA. But he couldn't have gone ahead with the ISA and paid only 1.2% in fees. So I've given further thought to what the impact was on Mr A and what would've happened if Wesleyan had disclosed its fees properly to him.

By failing to properly disclose its fees, Wesleyan prevented Mr A from making an informed decision about whether to invest in the With Profits ISA. He might've acted differently had he known there were other charges to pay in addition to the 1.2% Annual Management Charge.

Mr A has said he wants to keep the ISA – but he doesn't want to pay fees above 1.2%. But it's a commercial decision for Wesleyan to charge the fees it charges. I've found that Wesleyan should've given Mr A better information about its fees. But I have no basis to say Wesleyan mustn't charge the fees it charges.

It's possible Mr A might've made a different investment decision in 2019 if he'd known then that the fees would be higher than 1.2%. But I can't say with any confidence that Mr A would've done anything differently. And any decision he might make now about the suitability of the ISA for him is likely to be affected by how the investment has performed as well as knowledge of the fees to be charged. So in the particular circumstances of this case I can't confidently say how Mr A would've acted at the time if Wesleyan had given him better information in 2019.

Becoming aware after the fact of fees that should've been disclosed when he invested in the product has caused Mr A frustration and disappointment. He invested a significant sum of money in the With Profits ISA and his investment returns are less than he expected them to be due to the ISA fees being higher than expected. And it's reasonable to expect Mr A will want to think again about his investment choice, to decide whether – now that he knows the fees are higher than he thought and that Wesleyan is entitled to charge those fees – the With Profits ISA from Wesleyan still meets his needs and objectives. He might decide the product still does meet his needs and objectives. But he will have been inconvenienced by not receiving all of the information he should've received when he made his investment decision in 2019.

### **Putting things right**

Wesleyan's failure in the particular circumstances of this case has caused Mr A distress and inconvenience. For that I require Wesleyan Financial Services Ltd to pay £200 to Mr A.

### **My final decision**

For the reasons I've set out above, my final decision is that I uphold Mr A's complaint. Wesleyan Financial Services Ltd must pay Mr A £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 February 2024.

Lucinda Puls  
**Ombudsman**