

The complaint

Mr and Mrs M complain about the service they received from Nationwide Building Society ('Nationwide').

Mr M says they're unhappy about the Ongoing Advice Charge ('OAC') as they haven't received any advice (or reviews) since 2017. So, they've not had any assistance to help them make decisions about their stocks and shares ISA ('ISA').

To put things right, they'd like a refund of the OAC fees.

What happened

In 2016, Mr and Mrs M following a financial review were advised to invest (for income and growth) into the ISA with a third-party provider. They say they were advised about the 'on-going charges' which they accepted on the basis that the ISA provider would manage their investment.

It was news to them when in late 2022 they were notified in writing that the OAC was increasing. Around this time Mr M says he was approached by a new adviser who suggested that they should have a financial review, but they'd have to pay if they didn't re-invest through Nationwide.

After making enquiries, they found out that they were paying the OAC to Nationwide and not their ISA provider. They in due course complained to Nationwide and cancelled the OAC. They maintain that they've not received any financial advice or reviews from Nationwide, other than an annual update on their portfolios. Having been Nationwide customers for over 50 years they're incredibly unhappy about the situation.

Nationwide didn't uphold the complaint. In summary, it said that the OAC was optional, Mr and Mrs M opted-in to pay the OAC, and the benefits – including access to an adviser at their request – was made clear to them at the outset.

One of our investigators considered the complaint but didn't think it should be upheld.

In summary, he said:

- The terms and conditions made clear that the OAC was optional.
- The evidence demonstrates that Mr and Mrs M opted for this service, when they opened their account, so they'd been correctly charged for this.
- Customers who had opted into this service could contact Nationwide for advice at any time, so the service was available for Mr and Mrs M when they needed it.
- They were also provided with their financial planner's contact details so that they could make use of this service – but it was up to them.
- Not making use of the service, despite paying for it, isn't something he can blame Nationwide for.
- In the circumstances he can't reasonably ask Nationwide to refund the charges for this service.

Mr and Mrs M disagreed with the investigator's view and asked for an ombudsman's decision. There's been much correspondence between them, the investigator and Nationwide, but in summary, Mr M made the following key points:

- Recently, they had issues with the investment administrator and received £500 compensation due to the mismanagement of their investments. With the current investment, over a period of five or six years, and without taking any income, growth was still negligible. So why were they still being charged for advice that wasn't provided?
- They were advised that the ISA should be left untouched for five years, so why would they need 'ongoing advice'? It seems like deliberate 'mis-selling' of a product that they didn't need.
- Previously, in relation to a different investment – but in partnership with Nationwide – they had free face to face assessments and annual statements. And when Nationwide became concerned with the investments, it brought this to their attention and advised them to move their holdings elsewhere. They've not seen any of that 'duty of care' from Nationwide this time.
- Online forums would also suggest that many people are having similar concerns, regarding OAC – this isn't just a Nationwide issue but involves other businesses too.
- They'd have to invest/re-invest with Nationwide in order to get a free review with a new adviser, that he'd never met, in a different part of the country. As a way forward, this wasn't a suitable option.

The investigator having considered the additional points wasn't persuaded to change his mind. In summary, he said:

- Mr and Mrs M haven't paid for a service that wasn't available. It was for them to contact Nationwide, as and when they needed advice, but they didn't. This doesn't mean Nationwide failed to manage their investments.
- If they didn't utilise a service that they were paying for, it doesn't mean that Nationwide did anything wrong.
- They hold a five-year ISA with Nationwide. The funds won't just be available without paying a charge.
- Any issues to do with missed reviews will need to be referred to Nationwide first, as it hasn't had an opportunity to address this issue.

As no agreement was reached, the matter was passed to me for review and decision.

In early June 2024, I issued my provisional decision, a copy of which is stated below and forms part of my final decision. In the decision I said:

"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, subject to any further submissions, provisionally, I'm going to uphold this complaint.

On the face of the evidence, and on balance, despite what Nationwide says, I can't safely say that it behaved reasonably in the circumstances.

I'm not persuaded that simply offering an advisory service, that has been paid for, but not actually providing a service, is reasonable.

Before I explain further why this is the case, I think it's important for me to note I very much recognise Mr and Mrs M's strength of feeling about this matter. Mr M has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope that they and Nationwide 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 under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. My role is to consider the evidence presented by Mr M and Nationwide, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case.

Provisionally, I uphold this complaint, in summary, for the following reasons:

- *On the face of the evidence, and on balance, despite what Nationwide says I'm not persuaded that in this instance it was reasonable to charge an OAC simply on the basis that Mr and Mrs M had opted into this and had 'access' to a "Nationwide Financial Adviser should you wish to review your investments" – but didn't receive any advice – because they didn't ask for it, therefore Nationwide isn't to blame.*
- *In other words, in this instance I don't think it was reasonable for Nationwide to charge an OAC simply on the basis that Mr and Mrs M had access to an advisory service, but not any actual advice or review regarding their investment.*
- *In my opinion, it's crucial that the service was provided and not just offered, for the ongoing charge.*
- *I'm aware that from 31 December 2012 the Retail Distribution Review (RDR) meant that commission payments to advisers were prohibited in all new investment products. So, from the start of 2013 payments for investment advice should be arranged and paid as a separate fee between the financial adviser and the consumer. But this would mean that a service would have to be provided to receive the fees which wasn't the case here.*
- *The Financial Conduct Authority's (FCA) Conduct of Business Sourcebook (COBS) at 6.1A.22 – that applied from when the RDR came into force on 31 December 2012 – states:*
 - *"A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:*
 - (1) the adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:*
 - (a) the firm has disclosed that service along with the adviser charge; and*
 - (b) the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the retail client to give any reason; or*
 - (2) the adviser charge relates to a retail investment product for which an instruction from the retail client for regular payments is in place and the firm has disclosed that no ongoing personal recommendations or service will be provided."*
- *This requires that unless the ongoing charge came from regular premiums, any agreement to collect ongoing charge must be from the provision of personal recommendations 'or related services' on an on-going basis. In this instance Mr and Mrs M weren't in receipt of any ongoing (advisory) services therefore under COBS 6.1A.22 it's arguable that Nationwide isn't entitled to this money.*
- *COBS is also consistent with the guidance at the time, namely the FCA factsheet titled "For investment advisers – Setting out what we require from advisers on how they charge their clients" which, under the heading 'Ongoing charges' states:*

- *Ongoing charges should only be levied where a consumer is paying for ongoing service, such as a performance review of their investments, or where the product is a regular payment one. If you are providing an ongoing service, you should clearly confirm the details of the ongoing service, any associated charges and how the client can cancel it. This can be written or orally disclosed. You must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to."*
- *It's unclear whether the 'optional' element of the OAC, were made clear to Mr and Mrs M, but on the face of the evidence, and on balance, I think it's more likely than not they were made clear. I believe Mr and Mrs M ought reasonably to have known, but they probably misunderstood for which I can't blame the business. I also think that in 2017, Mr and Mrs M were written to confirming the following charges including the 0.5% OAC.*
- *I'm mindful that when they were told about the higher OAC in October/November 2022, they opted to cancel the OAC immediately and go for the 'pay as you go' service because they didn't think they needed ongoing advice on their investment. I note the latter started in or around January 2023.*
- *I note in particular, the FCA's factsheet included that advisers "must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to". In the circumstances and on balance, I'm unable to say that this was the case. Despite what Nationwide says, I still think it should've provided a service for the OAC.*
- *I note Nationwide says that there were other services bolted on as it were – including access to the online portal, the investment committee providing any notable update and the annual customer report that was provided every year apart from in 2019 – which Mr and Mrs M were receiving as a result of the OAC.*
- *It's arguable that these features were likely to happen anyway, especially the investment committee which I'm assuming looks into whether or not certain funds are tenable and worth providing. I note Mr and Mrs M say that they received an update on their portfolio which they expected to receive anyway. In any case, these additional features don't replace the need for regular ongoing advice/annual review, for which Nationwide was charging a fee.*
- *I note in 2018 Markets in Financial Instruments Directive (MiFID) II, changed the rules so that a minimum service would have to be offered in relation to ongoing advice. I note it required an 'annual' review of suitability for some products, which further supports my point that Nationwide in this instance should provide (and not just offer to provide) this service, and by failing to do so has behaved unreasonably.*
- *By way of redress, I think Nationwide should refund the OAC.*
- *I note Nationwide confirmed that Mr and Mrs M have paid the following OAC to date:*
 - *In 2018: £261.36 was paid.*
 - *In 2019: £269.31 was paid.*
 - *In 2020: £271.25 was paid.*
 - *In 2021: £299.25 was paid.*
 - *In 2022: £261.51 was paid.*
 - *I think Nationwide should also pay any investment returns based on the actual growth of their investment, from the date the OAC was taken to the date of settlement.*
 - *I note Nationwide acknowledges that the investment performance has been affected by a number of global factors – I presume such as the war in Ukraine and the global pandemic from which the markets are arguably yet to settle fully. The investment performance isn't something that I can blame Nationwide for because it isn't something that it can predict or control, and no guarantees were given."*

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, if appropriate to do so.

Nationwide responded and said:

- There's been no dialogue with it in relation to this matter since it sent the email dated 17 July 2023 stating the following:
 - *"If you're able to share the reasons why the customers disagree with your outcome we will be able to review these and provide any further submissions as we feel appropriate."*
- It received no response to the request, and to that end it's had no right of reply. Given the change in outcome it's neither fair nor balanced to the parties.
- Had this information been provided it would've had an opportunity to respond to the points raised.
- Significant additional evidence appears to have been provided by Mr M without it being able to comment and challenge accordingly.

Through the investigator I explained to Nationwide that I gave the parties an opportunity to respond to my provisional decision in which I reached a different decision to the investigator. This is consistent with our approach and gives Nationwide an opportunity to consider and respond to my findings. At this stage I don't think it's appropriate for the investigator to respond to any points raised by Nationwide.

Mr and Mrs M also responded and agreed with my provisional decision. They provided the following response:

- They're delighted that I'm leaning in their favour, and that they haven't wasted their time.
- They're delighted the decision has been composed with such accuracy.
- The above notwithstanding, they firmly disagree with Nationwide's OAC figures.
- It was only after Mr M accepted the invitation for a review that he received the paperwork and identified that there was a charge if they didn't reinvest with Nationwide. This was to be with a new adviser, and online. Mrs M was still with their original investor
- In 2020, Mr M alone paid £285 - £14.08 more than Nationwide confirmed they had both paid.
- In 2021, Mr M alone paid £314.80 -£15.55 more than Nationwide confirmed they both paid.
- Mr M has provided the statements. But he and his wife did have different amounts in their investments as shown in the spreadsheet provided.
- For the record they still have flex and savings accounts with Nationwide without any problems but no longer hold any stocks and shares from where the complaint originated.

In due course, after liaising with the investigator, Nationwide provided the following response:

- Having discussed matters with the relevant stakeholders within Nationwide, it's prepared to settle the case early, based on the methodology outlined by the ombudsman.
- If the investigator to was confirm that Mr and Mrs M ware happy it would proceed on that basis.

When asked if Mr and Mrs M agreed with the provisional decision, they provided the following reply:

- They're very pleased that Nationwide has accepted responsibility and is prepared to pay compensation accordingly.
- They don't fully understand what accepting the decision would mean.
- They're concerned the figures provided by Nationwide is inaccurate, so they're not sure if it can be trusted to pay the correct redress.
- They're not sure what the next stage involves and would appreciate the investigator's guidance on bringing this matter to a swift and realistic conclusion.

The investigator clarified that the OAC will be down to Nationwide to work out – it will have a record of the correct payments made for the relevant services. If Mr and Mrs M were to accept my decision, we'd still be able to act as a 'middle-man' to help bring the case to a resolution rather than making a ruling on the case.

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, in light of both parties acceptance of my provisional decision, my decision to uphold this complaint remains the same.

On the face of the evidence, and on balance, I still think this complaint should be upheld.

I still don't think it was reasonable to charge an OAC simply on the basis that Mr and Mrs M had opted into this and had 'access' to a "Nationwide Financial Adviser should you wish to review your investments" – but didn't receive any advice – because they didn't ask for it, therefore Nationwide isn't to blame. I do so for the reasons set out in my provisional decision which Nationwide has not sought to challenge.

In other words, I still don't think it was reasonable for Nationwide to charge an OAC simply on the basis that Mr and Mrs M had access to an advisory service, but not any actual advice or review regarding their investment, so I'm pleased that Nationwide accepts my provisional decision.

For clarity, Mr and Mrs M accepting this decision means that Nationwide is bound to pay the redress that I have set out here in my final decision (and previously in my provisional decision).

In the circumstances, and on balance, I think Nationwide should refund the OAC for both Mr and Mrs M as well as the actual growth of their investment.

Whilst I note that Mr and Mrs M are concerned that Nationwide hasn't used the correct figures, Nationwide should work out and pay the correct redress for both Mr and Mrs M and provide evidence of its working out. In the circumstances I don't think I need to defer the final decision for this to be done.

Putting things right

To put things right, Nationwide Building Society must do the following:

- Refund the Ongoing Service Charge (OAC) for both Mr and Mrs M.

- Pay any investment returns based on the actual growth of their investment, from the date the OAC was taken to the date of settlement.

My final decision

For the reasons set out above, and in my provisional decision, I uphold this complaint. Nationwide Building Society must pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 28 August 2024.

Dara Islam
Ombudsman