complaint

Mr G is unhappy that Cofunds Limited has taken its charges by selling funds from his ISA and not from his cash account as usual.

background

Mr G has had a stock and shares Individual Savings Account (ISA) and a General Investment Account (previously known as “cash account”) with Cofunds since 2003, which he opened through his financial advisor.

In 2017/18 the administration of these accounts was taken over by a company I’ll call “A” and migrated to its new platform. Revised terms and conditions were issued to all customers. Mr G received a statement in March 2018 prior to the migration and was told going forward they’d be produced every three months. But he didn’t receive another statement until October 2018, which he obtained through his financial advisor.

Mr G noticed units had been sold from his ISA to pay the annual management charge (AMC) of his investment, as there wasn’t enough money in his cash account. Mr G says if he’d received statements as promised he’d have topped up the account to save selling units in his ISA which he can’t now replace. He doesn’t feel the new platform is an improvement as the statements don’t have enough detail to show which funds have been sold, and he didn’t get paper contract notes for the sales. He’s worse off as his ISA has been depleted so he wants Cofunds to reinstate the funds to his ISA and pay compensation.

Mr G’s financial advisor complained to Cofunds on his behalf in November 2018 but didn’t get a response. So Mr G himself complained in February 2019. Cofunds said the way the charges are administered is set out in its terms and conditions, so it had the right to automatically sell units if the balance in the GIA was too low. Cofunds told Mr G it had informed financial advisors of the delays to paper statements, and updates were posted on the Cofunds online “bulletin board”. So while it was sorry Mr G’s advisor hadn’t passed this information to him it didn’t uphold the complaint.

Mr G didn’t accept the response as he said Cofunds hadn’t met the commitments in the terms and conditions (to provide periodic or three-monthly statements detailing all transactions). He reiterated that their administrative failures led to funds being withdrawn from his ISA which he can’t now replace. Cofunds apologised and paid him £100 to reflect the inconvenience. It said Mr G’s charges for May-November 2018 were £385.14, so offered to carry out a price comparison to see if he’d been financially disadvantaged by selling the units. But only if he was prepared to top up the account, which he wasn’t.

So Mr G complained to this service and one of our investigators reviewed what had happened. She thought the new terms and conditions did make clear that funds could be automatically sold to pay charges, if the GIA wasn't adequately funded. She saw from his previous statements that Mr G did pay money into his account periodically. So she thought he was likely to have preferred to pay the charges in cash rather than by selling units. But she didn't think it was reasonable to require Mr G to pay the money in before A would carry out the comparison, as he might not have been financially disadvantaged. So she asked A for a hypothetical fund valuation to be done, showing the value of the sold units had they remained invested to the point Mr G switched out of those funds. This showed the units in one fund would have made a loss of £42.31, and the other would have gained by 45 pence, so a total net loss of £41.86. She also said the new terms and conditions state contract notes for individual sales will no longer be sent to save paper, but Mr G could view the transactions online. She concluded Mr G hadn't been financially disadvantaged by Cofunds selling funds from his ISA to pay the charges. And she felt the £100 Cofunds had paid was fair for the service issues.

Mr G disagreed. He still feels through no fault of his own, his ISA balance has been reduced by £385.14 which Cofunds should reinstate. He says he couldn't have checked his balance online as he doesn't have an online account, which is why he needed the statements.

As agreement couldn't be reached it's been passed to me to make a decision.

my findings

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 not going to uphold it. Let me explain why.

I appreciate Mr G isn't happy with the migration to the new platform and the delay receiving his statements. But if he didn't want to risk units being sold, I think it was always his responsibility to ensure there were sufficient funds in his GIA to meet the charges.

Before the migration he was sent a document called "*How the service we provide to you is changing"* which sets out the revised terms and conditions. The fifth bullet point on the first page says "A*ll charges will be settled by the **automatic** sale of your investments if there's insufficient cash in your product" (*my emphasis).

In the body of the document there's a list of the changes to various numbered terms and conditions which will be effective after migration to the platform. On page 12 under the heading "*Charges*" there's a change to term 10.3.1 whereby the annual charge will apply to a customer's total holding (including cash), whereas previously the cash element was excluded "*leading to an increase in how much you pay*". But after the change, interest is also earned on any cash holding.

And the change to term 5.4 explains that after the migration, units may be sold at more than one point during the month (previously assessment was on day five and sale on day nine) and for a specific amount to exactly match the charges due (previously the amount required plus ten per cent would be sold). So I think Mr G was given notice that the charges were likely to be higher than previously, slightly offset by interest on any cash balance. And he was warned units could be sold without notice to meet the charges.

Mr G says he would have topped up his cash account to prevent the sale of units in his ISA if he'd received a statement. He hasn't disputed the charges themselves, so if he wants Cofunds to reverse the sales of the units and reinstate the funds into his ISA he'll need to pay the same amount into his GIA. He can't expect not to pay the charges at all. Put simply, crediting his ISA with £385.14 would mean deducting that amount from his cash account.

I can see in January 2016 Mr G credited his cash account with £100 and the platform and service charges for the year totalled £109.57. And in January 2017 Mr G credited his cash account with £100 and the charges for 2017 totalled £140.81. So the amount Mr G paid in didn't quite cover the charges for each period. At the time it made sense to keep the cash account balance as low as possible as it didn't earn interest.

In January 2018 Mr G credited his account with £130 but when he received his statement in March 2018 he'd have seen the GIA balance was only £59.57 and charges for the first three months were £84.38 (service charge £56.25 and platform charge £28.13). Which should have put him on notice the next quarter's charges were likely to exceed the remaining balance in his GIA. He'd already been told to expect charges post-migration to be higher than he was used to. So I think even without another statement he could have estimated the likely charges for the remainder of the year and topped up the account accordingly. And he could have kept a higher balance on his GIA as it was now interest-earning.

I've seen a copy of the September 2018 statement with a covering letter headed "*Your Cofunds statement – account upgrade 8 May 2018*" including the transactions from 1 March 2018 to the upgrade date, which shows the balance of his Cofunds Cash Account as £3.91. Mr G says he didn't get this statement until October 2018 through his financial advisor. But it appears correctly addressed, so if Mr G didn't receive it in September I can't hold Cofunds responsible for that. And as I've said above, I don't think the statement was essential for Mr G to manage his account.

Mr G says he queried the delay in receiving his statements several times with A, over the months. But when doing so he doesn't appear to have asked for the balance of his GIA. I've not been able to listen to any calls between May and October 2018 as they're only retained for 12 months. But A says if Mr G had asked, they'd have provided up to date account balances.

Mr G said checking his balance online wasn't an option as he doesn't have an online account. But the document referred to above says under online access "*If you're not currently registered, you'll need to follow the simple registration instructions on our website to access your secure online account*". Which suggests this is something Mr G could have done, even if he didn't previously access his account this way. And A has pointed out online requests for fund switches were received on 31 July 2018 and 26 October 2018, suggesting the existence of an online account for Mr G, which may have been used by his advisor rather than himself.

While I can see it was Mr G's usual practice to pay his charges from his cash account rather than through selling units, the theoretical fund value comparison found Mr G would have been £42 worse off had he retained the units in his ISA and paid the charges in cash. Mr G believes his ISA balance must be £385.14 lower because the funds have been deducted and not replaced. But the total value of Mr G's ISA fluctuates according the value of his units, and the particular units sold to pay the charges would have actually lost value had he kept them. I leave it to Mr G to decide if he wants to pay sufficient funds into his GIA to enable Cofunds to re-credit his ISA.

And although Mr G was clearly inconvenienced by the migration to A's platform I think the £100 he's already received is fair compensation, so I won't be asking Cofunds to do anything else.

my final decision

I don't 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 28 March 2020.

Sarah Milne
ombudsman