

complaint

Mr J's complaint, in summary, is that Alliance Trust Savings Limited did not give him the option to transfer his holdings free of charge after it introduced a regular administration fee.

background

In early 2012 BNP Paribas, which was managing and administering Mr J's account, decided to withdraw its service. At that time Mr J was offered three options:

1. transfer the holdings to Alliance Trust in which case he would be bound by its terms and conditions;
2. transfer to an alternative provider of his choice, free of charge; *or*
3. sell the shares free of charge

Mr J chose option (1) which also involved accepting Alliance Trust's charging structure and terms and conditions. The charges included a transfer-out fee should Mr J transfer the holdings out of Alliance Trust in future. There was also a stock re-registration fee should Mr J choose at a later date to register the stocks into his name.

There was no on-going administration fee at the time. However, the terms and conditions allowed Alliance Trust to vary its fees after providing due notice to its clients.

In August 2012 Alliance Trust introduced an administration fee for its existing clients but that did not include the clients who had newly transferred in from BNP Paribas, like Mr J. However, in February 2013, Alliance Trust wrote to the latter clients informing them of the introduction of a regular administration fee from May 2013. This meant that Mr J had to pay a quarterly fee of £10 plus VAT from May 2013 in respect of his holdings.

Mr J considered that the introduction of this charge rendered his account with Alliance Trust uneconomical and so tried to transfer the holdings. But he was faced with its transfer-out fee. In the end he proceeded to de-register the holdings and convert them into certificate form. For that too Alliance's charges applied and he had to pay £40.

Mr J complained to Alliance Trust that these charges were unfair and he ought to have been given the option to transfer the holdings free of charge. He asked it to repay the £40 he incurred.

Alliance Trust did not agree and so he brought the complaint to us.

An adjudicator considered the complaint and concluded that it should not be upheld. In summary, he said that Alliance Trust was entitled to make a commercial decision to impose the fee. Also that the fee Mr J paid was applied correctly as per the terms and conditions of the account.

Mr J did not agree. He said, in summary, that it was unfair of Alliance Trust to put him in that position. He said he would have had to pay a fee no matter what course of action he decided to take and he considered this to be unfair.

I issued a provisional decision broadly agreeing with the adjudicator. Neither Alliance nor Mr J provided any substantive response to it.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to depart from my provisional conclusions.

Mr J acknowledges that he was given a choice to transfer his holdings free of charge elsewhere when his account was transferred from BNP Paribas to Alliance Trust. He also says that he was aware that under Alliance Trust's terms and conditions there was a transfer-out fee but says that this clause was of no consequence to him at the time because he did not intend to transfer his holdings, as Alliance Trust offered a no-fee service then.

Mr J's concern principally is that when Alliance Trust introduced the administration fee it gave him no 'exit route without penalty'. He says that at the time all the options available to him meant that he would have been forced to incur a fee one way or the other. He considers this to be unfair and believes that Alliance Trust's terms were widely drawn and one-sided.

When deciding what is fair and reasonable, I have taken in to consideration the relevant law and regulations as well as all the evidence provided by Mr J and the business. In particular, I've considered:

- ☐ The Unfair Terms in Consumer Contracts Regulations 1999 ('UTICC Regulations')
- ☐ The Financial Conduct Authority's guidance '*Unfair contract terms: improving standards in consumer contracts*' of January 2012, and the Authority's publication '*Fairness of terms in consumer contracts - Statement of Good Practice*' of May 2005

I should clarify that the interpretation of the legislation is a matter for the Courts to decide. But I will have regard to the regulations when considering what is a fair and reasonable outcome in the circumstances of this complaint.

My understanding of the UTICC Regulations, as suggested by its Schedule 2, is that where a business is amending the terms and conditions of a contract and there is no valid reason for the changes specified in the contract, then such changes could potentially be unfair.

Schedule 2 further suggests that unilateral changes without valid reason are less likely to be a problem if the business has provided reasonable advance notice of the changes to the consumers affected *and* for the consumer to be permitted to exit from the contract freely and so not to be bound by any such changes.

In the view of the FCA, as stated in its Statement of Good Practice, "*free to dissolve the contract*", in the context of financial services, means "*the consumer is able to withdraw from the contract without inhibition such as, for example, a requirement to make a payment...*" Otherwise, consumers would be much more likely to stay put and accept unfair terms imposed on them, because they would not want to pay the exit fees.

Put another way, if valid reasons for introducing or amending a charge were not given in the contract to which Mr J agreed, then such an introduction or amendment is more likely to be unfair.

However in this instance, the contract terms which Mr J agreed to state that the business would be able to change the charges for valid reasons which included:

- ☐ *any increase or decrease in the cost of providing the services; or*

- ☐ *any increase or decrease in the volume of customers using the services; or*
- ☐ *any change in the level or method of delivery of the service.*

Alliance Trust has said that the reason for introducing the administration fee was the rising operating costs of administering the business, which I consider is consistent with the first reason above. It is unfortunate that Alliance Trust introduced the charges within a year of Mr J transferring his account to it. However, I consider that the potential for Alliance Trust to do this in future was made known to Mr J when he agreed to its terms and conditions.

The contract also provided a notification period of 30 days which Alliance Trust adhered to.

As per the terms and conditions if there is a variation to Alliance Trust's charging structure and if the consumer objects to it, they could close the account and withdraw the investments. However the closure would be subject to the charges that were current at the time. In this instance, Mr J decided to close the account following the introduction of the fee but the closure was subject to the de-registration fee which was part of the charging structure he signed up to initially.

Given all of the above, my conclusion is that Alliance Trust's introduction of the fee was in line with its terms and conditions, and it did not act unreasonably in this instance. I appreciate Mr J's strength of feeling in this matter and recognise that he will be disappointed with my conclusions. However I hope that he finds the above explanation helpful to understand why I am unable to uphold this complaint.

my final decision

For the reasons given my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr J to accept or reject my decision before 16 February 2015.

Raj Varadarajan
ombudsman