

The complaint

Mr B complains that Creative Benefit Wealth Management Limited trading as Creative Wealth Management, didn't discuss the risks or issue warnings that the new pension arrangement it recommended to him didn't have a track record in the market, or that it could fail and close early.

Mr B says if warnings had been given, he would have remained with his existing pension provider and wouldn't have had to pay two lots of advice fees. He'd like the advice fees he paid to Creative Wealth Management refunded.

What happened

Mr B's complaint was considered by one of our investigators. She sent her assessment of it to both parties on 22 January 2024. The background and circumstances to the complaint were set out in her assessment. However to recap, the investigator said Mr B had a meeting with Creative Wealth Management (CWM) as he was considering transferring his pension to his employers new investment scheme. I will refer to it as Company A. She said Mr B was eligible for certain discounts/benefits in that scheme.

Following a review, it was recommended that Mr B didn't transfer the pension plan that had originally been considered. But the focus moved to a Self-Invested Personal Pension (SIPP) that Mr B also had investments in. Mr B met with CWM in November 2018 and a Client Financial Review Form was completed. This said that Mr B had attained some financial qualifications and had advised on protection and mortgages. CWM recommended that Mr B transfer his SIPP and invest in line with his risk profile. The report recorded that there was an annual charge on his existing SIPP of 0.5%, whereas the charges on the new pension recommended were 0.4%.

The investigator didn't think that the recommendation to transfer was unreasonable.

The investigator noted that Mr B had referred to comments made in another related complaint that he'd made to this Service. This had been against the provider of the new pension arrangement – (Company A), that CWM should have considered the financial strength and longevity of the new pension provider because of the greater risks associated with a newly created investment business. In particular the risks of it having to cease trading in its early years because of lack of business growth, compared to longer established firms that had been trading for some time. The investigator said she'd considered the comments made by CWM about this:

"At the time that the advice was provided, [Company A] were an approved pension provider on our panel and offered one of the lowest cost pension products in the UK. This was particularly advantageous for existing [Company A] policyholders who participated actively in [Company A]'s healthy living programme such as yourself. In becoming a UK regulated product provider, [Company A] were required to meet strict FCA criteria and achieve a certain degree of capital adequacy and therefore would have no concern as to their long term presence in the market."

The investigator said she understood Company A had stopped accepting new clients in July 2022 (approximately two and half years after the advice Mr B had received). It had closed its book of business on 1 September 2023, with all remaining plans transferred to another provider. It had given an enhanced transfer value to compensate for product features and benefits lost because of the transfer, such as the Healthy Living Discount.

The investigator said without the benefit of hindsight, she'd considered what was likely to have happened if the risks of a newly created business had been discussed with Mr B. That is, would the benefits provided by the pension with Company A have outweighed the risks that were associated with a newly created investment business?

Given the circumstances, and in particular the attractive charges of the recommended pension plan, she thought it was more likely than not that Mr B would have taken the same course of action and transferred his pension and benefited from the lower charges. She also said that Mr B had approached CWM for financial advice and had received the service he'd paid for. So she wasn't recommending that CWM refunded the cost of its advice.

Mr B didn't agree with the investigator's findings.

He said, in summary, that he had never been a financial adviser in any form, and he was concerned he had been recorded as such by CWM. He said he did have CII qualifications in personal taxation and protection. But no investment or pension qualifications. He said since 2021 he had achieved Dip PFS status, but had never acted or trained as an adviser.

Mr B said he could have moved his pension to Company A on an execution only basis. But he didn't – he wanted to take advice to ensure he was aware of all the risks and potential consequences. He said no advice around the risks of transferring to a new provider were considered or presented to him. He said if risks or warnings had been given he would have chosen not to proceed.

The investigator responded to say that she recognised that Mr B had approached CWM for advice. And that CWM were the professionals and Mr B was entitled to rely on the advice it had given. She said putting aside any knowledge Mr B might have had in financial services, she'd reviewed the complaint in light of Mr B's comments. The investigator referred to a file note from the time of the advice which said:

"[Mr B] is keen to consider transferring his pension fund to his employers new investment plan called [name of the product].... As he works for [Company A] he has an in depth understand of his employers approach and his likely timeframe with [Company A]. For this reason the ...product works well for him. He is also aware the charges will work well for him as he knows that he will likely remain a platinum member and benefit from charge discounts within plan. [Mr B] has 'bought in' to his employers approach to protection which is based on health, [name of the product] is a natural progression for this pension monies."

The investigator acknowledged that Mr B felt CWM should have considered the financial strength of Company A – and the risk of it having to cease trading in the early years because of the lack of business growth compared to longer established firms that had been trading for some time.

She said she'd take Company A situation into account at the time of the advice and also CWM's comments as outlined above – about it being an approved pension provider on its panel, and offering one of the lowest charging pension products in the UK. She said that, without using the benefit of hindsight, she'd considered what likely would have happened if the risk of Company A being a newly created business had been discussed with Mr B, as well as its approved pension provider status and regulatory status (including capital

adequacy). Effectively, she considered whether the benefits provided by a pension with Company A would have outweighed the risks that were associated with a newly created investment business?

The investigator said she remained of the opinion that with the attractive charges of the new plan, it was more likely than not that Mr B would have taken the same course of action and transferred his pension and benefited from the lower charges. So she didn't think that Mr B's complaint should succeed.

Mr B didn't agree with the investigator's findings. He said his fundamental point was how a retail customer could be left out of pocket by such a process. He said his initial complaint was against Company A, and the Ombudsman had said it wasn't its fault, and CWM should have warned him about it. He had now complained about CWM, and we had said it wasn't its fault either. He had paid for financial advice and it had failed. It wasn't his fault that he was out of pocket. So he would like an explanation of how this was fair.

The investigator responded to say that a financial loss incurred by a customer didn't necessarily mean that a business had done something wrong and needed to put the matter right. And she explained that when the Ombudsman considered Mr B's complaint against Company A, she hadn't decided whether CWM was at fault.

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've come to the same overall conclusion as the investigator, and largely for the same reasons.

Mr B has said CWM provided *"...no warning, consideration or discussion around the longevity of the scheme and the negative impact of an early closure would have. The scheme has closed quickly, and I'm left paying fees twice when I would have been better off staying with my original provider."*

I appreciate that, ultimately, moving his pension has had a negative impact on Mr B. However, as the investigator said, these matters can't be looked at with the benefit of hindsight. I accept that there were the risks that are associated with any new business. But I can't see that there were any concerns about the pension provider's underlying financial stability at the time. And I've seen no evidence of any 'red flags' that might have indicated there were any greater risks of early closure than those ordinarily associated with any new firm. I don't think the risks at the time would have appeared significant. I understand the company made a strategic commercial decision to withdraw from that particular retail product, which is always a possibility, rather than it got into financial difficulties.

I recognise that Mr B hadn't got a background or qualifications in pensions or investments and was entitled to rely on the advice he was being given. But like the investigator, I don't think even if CWM had specifically highlighted the risks associated with a newer business, it would have made a difference to Mr B's decision. As I've said, I think the risks of early closure would have appeared limited on the one hand. And on the other, the charges on the new product were cheaper – albeit only slightly and particularly when the cost of advice was taken into account. But there were also potential enhancements to the underlying value of the pension at certain points during the term of the investment. Mr B already had an association with the firm and had a long term to retirement. So overall, I think the benefits provided by the new pension would have appeared to have outweighed the risks of early closure at that time. I don't think it's more likely than not that Mr B would have made a

different decision had CWM discussed the particular risk/given the warnings he's referred to.

I appreciate that Mr B feels that as a retail customer he has been left out of pocket. And that he might feel it's unfair that neither firm have been held responsible. But sometimes events can unfold that don't work out favourably or as expected. But it doesn't necessarily always follow that's because an individual or a firm has done something wrong.

I realise that M B will be disappointed with my decision. However for the reasons I've outlined above, I haven't been persuaded that Mr B's complaint should succeed.

My final decision

Accordingly, my final decision is that I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 April 2024.

David Ashley
Ombudsman