

The complaint

Ms B's complaint against Close Asset Management Limited ("CBAM") relates to charges she has paid on some of her investments. She is concerned that CBAM have charged fees without providing any service to her.

What happened

In November 2022 CBAM sent Ms B a statement of the advice costs and charges she had incurred in relation to her investments during 2021. The statement included "ongoing advice charges" for an Aegon bond and a Credit Suisse investment trust.

Ms B queried the charges with CBAM and said she hadn't received any advice from them in relation to those two investments. She said she would like to be reimbursed for all of the advice costs she had been charged for the Aegon and Credit Suisse investments, which she believed to have been over a period of about 10 years.

CBAM responded to Ms B in September 2023. They said that the two investments had originally been sold to Ms B by Cavanagh Financial Management Ltd ("Cavanagh"), who CBAM acquired in 2011. CBAM said they were upholding Ms B's complaint because they had not provided the ongoing advice for which they had been receiving fees. CBAM also said they had recently received a payment in relation to two policies Ms B held with Reassure and for which no advice had been provided.

CBAM said they would put Ms B back in the position she should have been had fees not been taken from her accounts for the Aegon, Credit Suisse and Reassure investments. They said they would contact the providers as a matter of urgency to find out if units in the investments had been sold to fund the fees so that they could make sure Ms B was correctly compensated. CBAM also offered to pay Ms B £200 for the inconvenience caused.

In a further email a couple of days later CBAM increased their offer for the inconvenience caused to £300. They also said that as an alternative they were prepared simply to refund all the fees Ms B had paid on the relevant investments, plus interest. That would mean them paying Ms B total compensation of £4,250, including the £300 for inconvenience.

While Ms B's complaint was with our service, CBAM reconsidered their position. They said they had made mistakes in their response to Ms B and were withdrawing their earlier offer. CBAM said they had subsequently contacted the providers of the investments in question, as well as Aviva who Ms B also held two plans with. Having done so, CBAM said they were now satisfied that the fees notified to Ms B were renewal commission charges which they were entitled to receive. They said they had not provided advice in relation to any of the investments. CBAM said they had decided to rescind their original offer to Ms B but increase their offer for compensation for the inconvenience they had caused to £400.

Our investigator looked into Ms B's complaint and thought it should be upheld in part. She said that CBAM had provided the following information, in summary, on each of the investments in question:

- Credit Suisse - Cavanagh were the original selling agents. Renewal commission was paid at 0.5% p.a. from 2009 until January 2023 when Ms B removed CBAM from the agency.
- Aegon - the annual renewal commission of 0.5% was set up at the commencement of the bond. CBAM were entitled to receive the renewal commission disclosed to Ms B at the outset of the policy.
- Aviva policies – on one of Ms B's policies no fees were payable. A second policy, a flexible bond, was sold by Bradford & Bingley in 1999, The agency switched to Cavanagh in 2003 and was inherited by CBAM in 2011. The bond has paid annual commissions.
- ReAssure - Any commission payments are paid by ReAssure directly rather than by the deduction of units from the Ms B's fund, therefore Ms B has not been impacted financially.

Our investigator said the charges CBAM took from Ms B's investments were not for advice fees but were historic trail commission and she was satisfied that it was not unfair for CBAM to have claimed the charges that they did. She said that whilst trail commission wasn't allowed on new investments arranged from 2013, the Financial Services Authority (FSA – now the FCA) decided that existing arrangements could be left as they were. Firms were not compelled to review these arrangements with their customers, nor were they required to provide any ongoing services in exchange for the commission they were claiming. In considering what was fair and reasonable in the circumstances of this complaint, she said there was no basis for her to say that CBAM (and its predecessor firm) should not have taken the commission from Ms B's investments.

Our investigator said that CBAM had taken some time to investigate Ms B's complaint and given her the impression that an amount would be refunded to her on the basis that the payments related to ongoing advice fees. CBAM subsequently retracted that offer when it realised the payments were for trail commission. She said that CBAM had caused Ms B a fair amount of distress and inconvenience and they should not have made an offer until they were sure of their position. But she could only endorse CBAM's original offer to refund the charges if she was satisfied there was a fair and reasonable basis for doing so and she didn't think there was. Our investigator thought that CBAM's offer of £400 for the upset caused to Ms B was fair and reasonable.

Ms B disagreed with our investigator and asked for an ombudsman to make a final decision. She said:

- A trail commission is not supposed to give an adviser income in perpetuity in exchange for doing nothing. They should be reviewing and advising, portfolio monitoring and rebalancing. She has never been in receipt of those services from CBAM in relation to the policies in question. She was paying them quarterly advice costs of 0.5% and platform charges of 0.25% which she had always been led to consider were her total fees.
- The annual costs and charges statement only showed charges for Aegon and Credit Suisse. If Aviva and Reassure were being paid in the same way, they should also have been on the statement. The Credit Suisse policy was not Credit Suisse but Premier Miton and at the time of the statement the account name had also changed. CBAM were totally unaware of these facts which is further proof that they were not and never had given any advice about the policy.

- She was bemused as to why if CBAM were receiving commission from Aviva they suddenly resigned themselves as servicing agents for that policy in November 2023 which she would have known nothing about had Aviva not written to her. CBAM then sent her a letter of authority to sign for them to access the account once again. A similar scenario had occurred with Aegon and Credit Suisse.
- CBAM made her an offer in September 2023 which she did not fully understand. She requested a higher interest rate and goodwill payment instead which she thought might be a helpful alternative. She heard nothing in reply and was unaware that CBAM had retracted their offer until our investigator told her.
- She feels that her treatment from CBAM has been appalling throughout the entire experience and she never received the revised offer that our investigator referred to.

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.

I have concentrated my findings on what I consider to be the key factors in reaching a fair and reasonable outcome to this complaint. If there's something I haven't mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

I should make clear that our service has no regulatory or disciplinary powers, which means we can't direct a business how to operate and we can't impose any penalties. We consider each case on its own facts and where things have gone wrong, we look to put them right on a fair and reasonable basis.

Ms B's complaint was prompted by the statement of charges she had incurred in 2021, which she received in November 2022. The statement listed "ongoing advice charges" for her Aegon and Credit Suisse investments. As she was not receiving ongoing advice in relation to those investments, I can understand why she was concerned and requested clarification from CBAM.

Unfortunately, it took CBAM a long time to provide accurate information on what the charges were. They initially offered to compensate Ms B on the basis that she had been charged for ongoing advice that she hadn't received. It was only once Ms B's complaint was with our service, and about 18 months after Ms B had first queried the matter, that CBAM provided what they believe to be an accurate explanation of the fees she had been charged.

I have considered first the explanation CBAM have now provided for the fees Ms B has been charged, which our investigator set out and I have summarised above. Based on what I've seen, I'm satisfied that CBAM's explanation is reasonable.

I've not seen evidence that CBAM have provided advice in relation to any of the investments in question. As our investigator explained however, for investments arranged before 2013, advisers could receive a regular commission known as trail commission. This was a yearly commission (generally around 0.5%). Businesses did not have to provide an ongoing service in order to earn this commission, nor did they have to review existing arrangements with their customers when new rules were implemented following the Retail Distribution Review. In view of this, and based on the information I've seen, I don't think I can fairly say CBAM have done anything wrong by taking the charges Ms B has complained about.

I can see however that CBAM have made mistakes in how they have handled this matter, which have caused distress and inconvenience to Ms B. The statement provided to Ms B in November 2022, which triggered this complaint, incorrectly described the charges on two of her investments as “ongoing advice” charges. CBAM also provided wrong information to Ms B in their response to her complaint. Their response was not only incorrect but also led her to believe that she would be receiving significant compensation for fees she had been charged.

Now that the correct position has been established, I don’t think it would be fair and reasonable for me to ask CBAM to honour the offer they made to Ms B on the basis of incorrect information. But they have clearly caused unnecessary distress and inconvenience to Ms B, which has had a significant impact on her. I have considered carefully what CBAM should do to put this right and on balance I’m satisfied that their offer of £400 is fair and reasonable in all the circumstances of this case.

Ms B queried why CBAM resigned themselves as servicing agents for the Aviva policies in November 2023. CBAM have said that as Ms B had ceased her ongoing advice relationship with them in early 2023, on receipt of client statements from Aviva in relation to Ms B’s plans with them, their local office wrote to Aviva and removed their agency. Ms B subsequently received notification from Aviva of their resignation which prompted her to include the Aviva policies in her complaint. CBAM then sent Ms B a letter of authority to sign so they could access the account once again to respond to the complaint. Having considered what happened here, I don’t think I can fairly say that CBAM did anything wrong on this point.

I recognise that Ms B feels strongly about what has happened and realise this will be a disappointing decision for her, but I think the offer CBAM have now made is fair and I won’t be asking them to do anything further.

My final decision

For the reasons I’ve explained, my final decision is that I uphold in part Ms B’s complaint against CBAM. CBAM have already offered to pay £400 in compensation to Ms B. I think that offer is fair in all the circumstances.

So, my decision is that Close Asset Management Limited should pay the £400 compensation they have offered if they haven’t done so already.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms B to accept or reject my decision before 10 December 2024.

Matthew Young

Ombudsman