DRN-5108722

The complaint

Ms F complains about the performance of her pension whilst it was being managed by Close Asset Management Limited trading as Close Brothers Asset Management. She thinks Close Brothers failed to accurately ascertain her needs and objectives, and she says she hasn't received the service she expected.

What happened

Ms F's complaint was considered by one of our investigators. He sent both parties his assessment of the complaint on 2 August 2024. The background and circumstances to the complaint were set out in that assessment, and so I won't repeat them all again here. But to summarise, Ms F spoke with a representative of Close Brothers in 2021, and a fact find was carried out on 5 January 2021. This established that Ms F was in her early 60s, employed, but concerned about potential redundancy. Her objectives were to fund her retirement, and she also wanted to ensure there were provisions in place for her daughter should she pass away. Ms F's existing pension provision included two defined benefit pension schemes and two personal pension arrangements with different pension providers – I will refer to them as Provider A and Provider B.

Further calls then took place in February and March 2021, in which Ms F's objectives were discussed in more detail. Ms F said that her main objective was to secure a fund to allow her to enjoy her current lifestyle at retirement.

A suitability report dated 4 May 2021 recorded Ms F was recommended to open a SIPP with Close Brothers and transfer her personal pensions with Provider A and B into it. The capital would be invested into a discretionary managed portfolio focusing on socially responsible investments. The funds were transferred in June 2021.

Ms F subsequently complained to Close Brothers in 2023, as her pension had been losing money since the transfer. Close Brothers didn't uphold her complaint, and she referred it to us.

Our investigator said, in summary, that he considered Close Brothers had accurately ascertained Ms F's attitude to risk - low medium risk. And he thought the conservative socially responsible investment portfolio was broadly aligned to the agreed level of risk. However he didn't think the advice to transfer was suitable; he didn't think Ms F needed to transfer the two existing pension arrangements into a SIPP and utilise Close Brothers' Discretionary Management Service in order to achieve her retirement objectives.

The investigator said Ms F's objectives were straightforward in nature, her priority was to secure funds so that she could maintain her lifestyle when she reached retirement age, and she wanted to ensure there were provisions in place on her death for her daughter.

The investigator said he was satisfied from listening to the calls and reviewing the suitability reports and fact-find that Ms F already had sufficient provision for her daughter. So he said the focus of Close Brothers' advice was to ensure Ms F had enough money to retire on and enjoy her current lifestyle.

The investigator noted the total charges associated with the recommended SIPP were 3.801% in year one, and 2.148% from year 2. The charges for the exiting pensions were 1.01% (plus £30.53) for Provider A, and 1.62% (plus £5.45 monthly maintenance charge) for Provider B.

The investigator said it was clear that Ms F's existing arrangements with Provider A and B carried lower charges than the SIPP. He also noted they both had a wide range of investment funds for Ms F to invest in should she wish to. The investigator said whilst Ms F may not have been able to utilise Close Brothers' investment options with her existing pensions, he wasn't persuaded they were explicitly necessary for Ms F to meet her needs. He said although the pensions with Provider A and B may not have provided flexible retirement options, he thought this was something that could be addressed at the point Ms F wished to retire.

The investigator said that ultimately, Ms F was a low medium risk investor with about four years until retirement at the time of advice. He said Ms F had relatively simple objectives for retirement, and the total ongoing charges relating to the recommendation were far higher than Ms Fs arrangement with Provider A, and still higher than her pension with Provider B. So he said this would have significantly eroded any growth Ms F could have attained through the lower medium risk funds.

Overall, the investigator didn't think Close Brothers' advice for Ms F to transfer out of her existing pensions was suitable in the particular circumstances. He said Ms F's objectives could've been met with the original pension plans, and at a significantly lower cost to Ms F. And he said if the existing investments within Ms F's personal pension arrangement(s) didn't align with her risk appetite, she could have simply switched the funds within those respective plans - there were a wide range of fund available to her.

In terms of the level of service provided by Close Brothers, the investigator said he was broadly satisfied that it had delivered on the services that had been agreed. He said annual reviews had taken place each year from 2022 through to 2024. In addition, Close Brothers had said it had issued Ms F with quarterly investment reports which contained commentary from its investment team about current financial markets. A monthly newsletter was issued to all customers who utilised Close Brothers' Discretionary Managed Service, which contained market updates. And special issues were sent to customers when specific events or issues might impact them.

Close Brothers didn't agree with some of the investigator's assessment. It said, in summary, that it believed its clients wanted to protect their wealth and manage risk, especially through turbulent times. It said it thought the best way to achieve that was by actively managing their investments across diversified multi asset portfolios. Its fundamental approach was for its clients to have direct access to an investment manager, as well as their financial adviser, who together would find the optimum path for their investment portfolio.

Close Brothers said Ms F's existing pensions weren't being actively managed or regularly reviewed. Ms F hadn't been receiving any retirement planning or financial advice. It said its investment team worked in partnership with its research team to select the best risk rated funds to perform well in a given environment. It listed the key benefits of its Discretionary Managed Service including:

- Access to the whole market: best of breed in direct equities and funds, large cap and small cap.
- Investment in funds for access to overseas markets to help smooth returns and reduce stock specific risk.

- Direct access to the members of its investment team.
- Personalised dealing restrictions to accommodate ethical and moral values and workplace restrictions.
- Sensitivities to tax planning, reliefs and allowances.
- In-specie transfers: considerate transition and integration of the portfolio holdings into the selected investment style.
- Ongoing portfolio analysis and risk monitoring.
- The ability to tailor income payments flexibly - standing orders, natural income, frequency.
- Access to valuations through its online portal.
- Quarterly portfolio valuations and annual tax packs.

It went on to provide confirmation of the charging structure for its services and said its charges were competitive and comparable with many of the static funds that the investigator had said were available from the ceding provider. It provided details of its fund range and said the funds had ongoing charges figures of between 0.5 to 1.67%, which were again competitive and in line with the marketplace. It said its clients could change their investment strategy at any time in line with changes in their objectives.

Close Brothers said although Ms F could have switched funds in her original plans the funds themselves or the portfolio as a whole weren't actively managed, and this approach wasn't in line with Ms F's objectives. It said Ms F's investments wouldn't remain in line with her risk profile unless a manual review was undertaken, typically annually, which would require advice and which would need to be paid for. It provided details of its advice fees – initial - 2% of the amount invested (up to £250,000) and 1% for funds in excess of £250,000. Ongoing - 1% p.a. (up to £250,000), 0.75%p.a. on the next £250,000. It said Ms F's charges were discounted to an initial fee of 1.25% (+VAT) of the total amount invested with the ongoing fee at a flat 0.5% p.a. (+VAT).

Close Brothers said when the cost of advice was factored in this dramatically reduced the gap between the alternative courses of action. It said it was clear which provided a more suitable service more closely aligned to Ms F's objectives.

Close Brothers noted the investigator had said that Ms F intended retiring at aged 65. However it said it was clearly recorded that during discussions with the adviser, although Ms F intended to stop work at age 65, she would likely not need to start drawing down on the SIPP until around age 70. It said it was also clear that the most likely approach to satisfy Ms F's retirement income needs would be via a flexible drawdown arrangement. It said whilst the ceding providers didn't offer flexible retirement options, the mention of Ms F's current arrangements not having access to a full range of flexible retirement options was a fact mentioned in the policy details of the adviser's Advice Report, and not part of the rationale to switch out of the ceding funds – it was merely noted as a feature of her current plans.

Close Brothers referred to the Regulator's report published in 2008 on the quality of advice following a thematic review into pension switching. It said the findings showed that it would not be deemed unsuitable if advice to switch incurred extra product costs where a driver was for flexibility of a drawdown option and there was clear evidence that this option was needed. It said this underlined the principle that discussion of retirement options took place in the run up to retirement not just 'at retirement', especially when there was a clear need for flexibility in retirement with the funds being switched and invested.

It said it thought it was an important fact that should not be overlooked that Ms F's objective was not over a shorter timeframe to age 65. It said it was clearly discussed and agreed with the adviser that to achieve her relatively straightforward objective of having sufficient income Ms F would have to do whatever was necessary to reduce an identified income shortfall.

It said Ms F's objectives were best met by regularly disinvesting from the relevant element of her entire portfolio (a combination of existing active pensions, SIPP and ISA to maximise tax efficiency), to receive the required retirement income, whilst leaving the remainder of the funds invested for further growth. This meant Ms F's investment time horizon would be long term, potentially up to age 90. And her adviser explained numerous times that his recommended approach was taking a longer-term view.

Close Brothers said short term volatility had been repeatedly explained as to be expected with any risk-based portfolio, but that the potential for growth would only be achieved using a long-term strategy. The main purpose of the investment advice was to create a fund in the most tax efficient way, to try to reduce the projected shortfall and help sustain Ms F's income throughout her life, as opposed to a fund being available to her at a predetermined retirement date.

It said the transfer rationale was to consolidate for ease of ongoing management, and to access its Discretionary Management Service investment solution for active investment management in line with Ms F's risk profile over the long term throughout life. It said although the ongoing charges may have been slightly higher, which was discussed, agreed and detailed in the advice reports, the alternative didn't provide the extent of service nor meet with the client's objectives.

Overall, Close Brothers thought that the advice to switch was suitable.

Ms F said, in summary, that she didn't think Close Brothers had fulfilled its obligations to her as she had detailed in her complaint letter. She said despite what Close Brothers had said about the service offered, she hadn't received this advice from Close Brothers. She said she had no pro-active contact from the adviser about her portfolio, despite being promised an annual formal portfolio review and ongoing advice.

Ms F said she had checked with both ceding pension providers and both offered flexi-drawdown options at the time the switch was made. And she said although she had some cash reserves to support herself for a few years, she had made it clear she would need to be drawing on the pension fund from the age of 70 at the latest. She said given her family's medical history it was unlikely that she would have long life expectancy, so she needed to achieve short term growth, not a long horizon time up to age 90.

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 conclusions as the investigator, and largely for the same reasons.

Close Brothers has said it considers the complaint is purely about performance and not suitability.

The Ombudsman Scheme is intended to deal with complaints in an informal manner. We have an inquisitorial remit, and complainants don't have to precisely define their complaint as they'd need to do in bringing legal action in court; we are able to look more widely at the correspondence to determine the scope of the complaint made. This is consistent with the Court's findings in the case in Full Circle Asset Management v Financial Ombudsman Service.

Like the investigator, I do think Ms F was complaining about suitability. Looking through the complaint correspondence Ms F said, amongst other things, that at her time of life she needed to ensure that her funds would be safe and that her existing pension funds hadn't ever been valued at less than the money she had invested until her investment with Close Brothers. And she said she explained this to the adviser and that she could only tolerate very limited losses.

In my opinion Ms F was expressing dissatisfaction with the losses she had suffered and linking them to the suitability of the advice that she had been given. I recognise she may not have identified what was actually wrong with the advice. But Ms F wasn't an expert, and I'm satisfied the overall suitability of the advice was within the scope of the complaint.

As well as this complaint about the SIPP, Ms F has also complained about advice she was given about her ISA. Close Brothers thinks they should be considered as one complaint – not as two separate complaints. The investigator explained why he considered the issues as two separate complaints in his letter to Close Brothers dated 29 July 2024. To sum it up, he thought that there had been two separate provisions of a financial service, and that two identifiable complaints had been made. I don't think there is anything further I can materially add to the investigator's explanation.

Suitability

I think irrespective of the age at which Ms F intended to start to take her benefits, and I note what Ms F has said about her family history, the investment would ordinarily be considered to be a longer term investment if Ms F intended to ultimately take her pension though some type of drawdown arrangement; the funds would remain invested even after she had started to draw from it. I've listened to the calls between Ms F and the adviser, and in my view the adviser explained the longer-term nature of the investment. And also that it involved taking some risk – against taking no risk at all. He specifically covered that Ms F had noted down she wanted none to limited risk on the questionnaire, and discussed the implications and whether Ms F did in fact want to take some risk given the negligible returns available from no risk funds at that time.

Close Brothers referred to the Regulator's report published in 2008 about the Quality of advice on pension switching. In the report the regulator identified some areas where it was concerned that consumers were losing out. It found that by far the most common reason for advice to switch to have been unsuitable was where investors had been switched to a pension that was more expensive than their existing one(s) (because of exit penalties and/or initial costs and ongoing costs), without good reason.

Our investigator noted that the overall costs associated with the SIPP recommended by Close Brothers were materially higher than the costs Ms F was paying on her existing pensions. And, effectively, he didn't think there were good reasons to pay those extra costs. Close Brothers consider there were good reasons – pointing to the advantages of their product/service as I've set out above.

I think it's clear that the SIPP and accompanying service that Close Brothers offered had features that weren't provided by Ms F's original pension schemes. But I think what's key to consider here, is whether those features were likely to be of benefit to Ms F given her objectives and in her particular circumstances, and so whether they were worth the extra costs involved after the switch.

The suitability report provided illustrations of what fund values might be achieved at age 75 assuming certain growth rates and taking the different charges into account. They showed that at all the assumed rates of growth the existing plans would provide materially higher fund values at age 75. I accept this was only on a charges comparison, and they weren't on an exact like for like basis. Another illustration said that if the charges for the ongoing service weren't taken into account, the additional growth required on the SIPP was 0.5/0.6%. Even assuming Ms F received initial and ongoing advice with her existing scheme, which would result in a smaller differential in charges, there was still a material difference.

The suitability report didn't refer to the performance of Ms F's existing pensions. Notes on the unsigned Financial Planning questionnaire said Ms F thought the pension with Provider B had performed badly (she had contributed £52,000 since 1994 but its then value was £59,754). But it also said Ms F thought the pension with Provider A seemed to have performed well. The pension with Provider A made up about 75% of the total transfer value and was the lower charging of the two pensions. Whilst I accept that the funds Ms F was invested in may not have been aligned to her attitude to risk, I think there would, again, need to be a good reason to switch pension providers rather than merely switch funds. Given consolidation, reducing the amount of paperwork, and having a single coherent investment strategy were noted as highlighted benefits of the switch, these wouldn't apply if Ms F didn't switch the pension with Provider A.

Close Brothers has said it thinks the investment solution was more suitable as, amongst other things, it provided both the ongoing investment management and the necessary controls to make sure that it remained consistent with Ms F's attitude to risk. However, the layers of management - the costs of a discretionary manager and ongoing costs of a financial adviser, meant Ms F was paying higher charges. Ms F could have switched funds with her existing pensions and then obtained advice as and when she required it. Or retained the adviser to provide ongoing advice and have yearly reviews to ensure the ongoing suitability of her investments, which would still have been cheaper than the costs associated with switching to the SIPP.

Ms F queried the additional costs of using the Discretionary Managed Service in one of her conversations with the adviser. She said it involved another quite high fee, and asked if she needed it. I think the switch has to be looked at in the context that Ms F already had two pensions - she was satisfied with the performance of the one making up the majority of the transfer value and its costs were lower than the pension proposed. Ms F wasn't a particularly sophisticated investor. Although the proposition offered by Close Brothers may have allowed her greater control and access to the investment manager and input, I don't think these features were particularly beneficial to Ms F; she had said she had little experience of investing in stocks and shares, and so in reality I think they would have had limited benefit to her.

I accept however, that the Discretionary Managed Service meant Ms F's funds were actively managed on her behalf. But as I've said, I think this benefit and its costs needs to be considered in the light of what Ms F already had. I've seen no persuasive evidence or analysis showing that the Discretionary Managed Service was more likely to outperform suitable funds with Ms F's existing providers by at least the amount of the additional charge. Looking forward, it would needed to have been expected to outperform by more than the difference in charges to make a switch worthwhile.

There were material costs involved in the transfer as reflected in the higher charges. And for the reasons set out above and by investigator, I think the potential benefits of a transfer were limited in Ms F's circumstances, and didn't outweigh the associated additional costs of switching.

Taking into account all the initial and ongoing charges meant that the SIPP had to outperform the existing scheme by a material amount just to provide the same benefits, and in funds presenting lower medium risk where smaller differentials in charges were likely to be harder to recover. I've carefully considered the benefits of the switch to Ms F in her particular circumstances. But having done so, for the reasons set out above and by the investigator, I'm not persuaded the benefits obtained from the switch outweighed the additional costs incurred. Accordingly, I'm not persuaded that the advice was suitable in the particular circumstances of the case.

Putting things right

In assessing what would be fair compensation, my aim is to put Ms F as close as possible to the position she would probably now be in if she had been given suitable advice. I note Ms F has said she agreed with the investigator's proposal to remedy the situation, as this would restore her fund within a range of what she could have reasonably expected based on the advice she given to around +4% p.a. growth. However that isn't what the investigator proposed. The 4% growth wasn't guaranteed by the adviser. Interest rates at the time were historically low, and cash-based investments were providing negligible returns - even negative returns when charges were taken into account. So in order to obtain growth, some risk needed to be taken and which Ms F agreed to.

I think Ms F would have remained with her previous providers if suitable advice had been given. However given she may have switched into more suitable funds, it's not known exactly what funds she would have invested into. So the compensation compares the value of Ms F's actual fund with what the value might have been using a benchmark that is appropriate to the low medium risk that she agreed to accept. I'm satisfied that what I have set out below is fair and reasonable in this situation to put things right.

To compensate Ms F fairly, Close Asset Management Limited should:

- Compare the performance of Ms F's investment with that of the benchmark shown below. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.

- Close Asset Management Limited should also add any interest set out below to the compensation payable.

- If there is a loss, Close Asset Management Limited should pay into Ms F's pension plan, to increase its value by the amount of the compensation and any interest. Close Asset Management Limited should allow for the effect of charges and any available tax relief. Close Asset Management Limited shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

- If Close Asset Management Limited is unable to pay the compensation into Ms F's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Ms F won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Ms F's actual or expected marginal rate of tax at her selected retirement age. It's reasonable to assume that Ms F is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Ms F would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- In addition, Close Asset Management Limited should pay Ms F £200 for distress caused by the loss of the investment.

- Close Asset Management Limited should provide details of the calculation to Ms F in a clear, simple format.

investment	Benchmark	from ("start date")	to ("end date")	additional interest
Close Discretionary Managed Service Conservative (SRI)	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of this final decision	8% simple a year from date of this final decision to date of settlement if settlement isn't made within 28 days of Close Brothers being notified of Ms F's acceptance of this decision

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the fair value when using the fixed rate bonds as the benchmark, Close Brothers should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. It should apply those rates to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in. Any withdrawals from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, Close Brothers can total all those payments and deduct that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I’ve chosen this method of compensation because:

- Ms F wanted Capital growth with a small risk to her capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.

- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It’s a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Ms F's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Ms F into that position. It does not mean that Ms F would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Ms F could have obtained from investments suited to her objective and risk attitude.

My final decision

My final decision is that I uphold Ms F’s complaint.

I order Close Asset Management Limited trading as Close Brothers Asset Management to calculate and pay compensation to Ms F as outlined above under ‘Putting things right’.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms F to accept or reject my decision before 13 February 2025.

David Ashley
Ombudsman