

The complaint

The trustees of M (“the trust”) complain that TrinityBridge Limited trading as Close Brothers Asset Management (“Close Brothers”) failed to provide annual reviews of the investment that was held in the trust, despite having been charged ongoing advice fees. The trustees are also unhappy that discussions that did take place did so without all the trustees present.

What happened

The background to the complaint will be well known to both parties, so I’ll only give some key details here.

In early 2017 the trust was established in accordance with the wishes of the late Mrs W, to provide an income for life for her husband, Mr W, and later, the remaining capital sum to her children. It was set up with Mr W and her three children as the four trustees.

Advice was provided by Close Brothers to invest around £70,000 into its Diversified Income Portfolio Fund in an Investment Account that would be held in the trust. The adviser explained that the recommendation met the objectives of providing an income to Mr W, along with growth on the capital sum at a suitable level of risk.

In late 2022 one of the other trustees, Mr B, approached Close Brothers to arrange a meeting to review the investment, which was to be attended by all four trustees. Due to Mr W’s health at the time this was delayed until July 2023. At the meeting, Mr B and the other trustees became aware that reviews of the investment had been taking place since 2018 without their involvement, only with that of Mr W.

A complaint, as set out above, was made to Close Brothers. It responded in September 2023 explaining why it was not upholding the complaint. It gave details of its records of review meetings with Mr W between 2018 and 2021 and of him declining a review in December 2022, following which there’d been the interaction with Mr B and the complaint made. Close Brothers felt the annual review meetings of the trust investment and reconfirmation of its suitability had been carried out with Mr W in line with its regulatory responsibilities.

In respect of the issue of dealing solely with Mr W Close Brothers pointed out that the trust application form, which had been signed by all four trustees, had made clear that all correspondence would be sent to only the first trustee, which had been recorded on the form as being Mr W.

Close Brothers went on to explain that its terms and conditions provided for circumstances of dealing with a single trustee in this type of situation. It said that as there’d been no specification of any one of the four trustees as the nominated authorised representative, its terms allowed it to deem all trustees to be authorised representatives. As such, it had been appropriate and reasonable for it to correspond and conduct annual reviews solely with Mr W.

Mr B referred the complaint to this service, but our investigator reached broadly the same

conclusion as Close Brothers. He said, in brief –

- All four trustees had attended the initial advice meeting and had signed the application form for the trust, which confirmed that all correspondence would be sent to the first trustee, Mr W, on behalf of the trust.
- Close Brothers had taken a practical approach in dealing solely with Mr W as the first trustee and also 'primary beneficiary' of the trust.
- Given the nature of the investment arrangement and trust objectives it was unlikely that there would've been significant work required in respect of the annual reviews, but it was evidenced that they'd taken place each year from 2018 through to December 2022, at which point Mr W declined that year's review.
- Close Brothers' terms provided the right for it to deal with a primary trustee.
- It would nevertheless be reasonable for Close Brothers to refund the ongoing advice charges for 2022, the year in which a review wasn't carried out.

Mr B responded on behalf of the trustees to say, in brief –

- The trustees should've been able to act collectively, but the actions of Close Brothers had sidelined the other three.
- It would've been practical to have meetings with all four of the trustees, which could've been carried out remotely if necessary. The Close Brothers adviser who dealt with the meeting in 2023 had felt it unreasonable to charge for the service without all four trustees present.
- If the reviews had been 'light touch' as the investigator had suggested, had the fees charged been proportionate and was the evidence sufficient to support them actually being carried out, rather than them simply forming part of Mr W's annual reviews of his own investments held with Close Brothers.
- The limited nature of the work carried out warranted a refund of all the charges, not just those for 2022.
- There'd been a strained relationship between Mr W and the other trustees that Close Brothers had been aware of, which underscored the need to ensure the participation of all the trustees in the process.

Close Brothers also responded to the investigator's view, primarily to confirm its disagreement with the suggested refund of the charges for 2022. It stressed that the review had been declined via a phone conversation with Mr W, rather than there having been a failure to engage with him, and the position regarding the ongoing suitability of the trust investment had then been confirmed back to him in writing.

The investigator issued a further view in which he noted Mr B's concerns with the legal position regarding the trustees' need to act collectively. But he nevertheless remained of the view that Close Brothers' approach had been fair and reasonable in the circumstances.

He reiterated that for all the years except 2022 (for which he remained of the view there should be a refund of fees) there was evidence that a conversation had taken place between Close Brothers and Mr W that would've enabled it to ask questions and conclude that no changes were required to the investment or the income payments being made to Mr W.

The investigator said that as the purpose of the trust was to ensure the carrying out of Mrs W's original wishes, it was likely there'd be less work required than might be the case with the changing circumstances of a normal retail client. And further, the service could've been discontinued at any point.

In response to the investigator's additional comments, Close Brothers maintained that the

2022 charges had been correctly and fairly applied.

Mr B said, in brief -

- When the trust was set up the adviser emphasised the importance of all trustees acting together and agreeing on matters. But despite this and Close Brothers being aware of the strained relationship, it held meetings with Mr W of which the other trustees were unaware.
- He questioned what it would've cost Close Brothers to send an email explaining that it had spoken with Mr W and he was happy with the current arrangements, so could the other trustees just confirm their agreement?
- It was only when the other trustees had met with the adviser that they'd become aware that the meetings had taken place solely with Mr W, but had the meetings even been necessary as they'd already agreed the objective of the trust at the outset? Why hadn't previous Close Brothers advisers pointed this out?
- Close Brothers saw this as a means of making money and this was a clear dereliction of duty on its part. When the new adviser took over in 2023, he must have had a similar conversation with Mr W because he had also opted out of the ongoing service, which would indicate that he too had previously been unaware it was optional and unnecessary.

As no agreement could be reached, the matter was referred to me to decide.

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 conclusions as those reached by the investigator and for broadly the same reasons. I want to assure Mr B I've read and considered everything on the file. But that said, I'm satisfied I don't need to comment on every point raised to reach what I consider to be a fair and reasonable decision. Where I've chosen not to comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. That approach is in line with the rules we operate under.

I've taken account of relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, I'm ultimately deciding what I consider to be fair and reasonable in all the circumstances.

I think there are two key issues I need to address in considering the trustees' complaint. Firstly, did Close Brothers act reasonably in dealing with solely with Mr W and secondly, in providing and charging for the ongoing advice service?

In respect of the former, while I understand the trustees' concerns about there having been no ongoing collective oversight of the investment, in all the circumstances I nevertheless think dealing solely with Mr W was a reasonable and pragmatic course of action.

He was recorded on the application form (to which all the trustees were party as part of the initial advice process, during which they were all present) as the "first trustee" who would receive all the correspondence on behalf of the trust. And Close Brothers' terms provided for this type of situation and enabled it to deal with any one trustee, unless a specific nomination had been made, which wasn't the case here.

I note what Mr B's said about the potential for the adviser to have a least confirmed to the other trustees as and when discussions about the trust and its investment took place. But there was no requirement for it to do so once Mr W had been recorded as the first trustee who would receive correspondence. I understand there were difficulties in respect of the relationship between Mr W and the other trustees and that Close Brothers may have been aware of this. But I think that situation was one for the trustees to manage themselves. On balance, I don't think it's reasonable to expect Close Brothers to have deviated from its process of corresponding with the first trustee in an attempt to address that type of issue.

Ultimately, any of the other trustees would've been able to approach Close Brothers, as Mr B did in December 2022, and ask to be more involved, or for changes to be made – providing of course all four trustees agreed.

In respect of the actual service provided, I don't think it was unreasonable that the ongoing service was suggested at the outset, and I'm satisfied it was then provided to Mr W on behalf of the trust, albeit I accept that it was, as the investigator noted, somewhat 'light touch' by virtue of the relatively straightforward investment objectives.

The recommendation report explained "*When drawing an income from your investments, a regular review is even more important as we need to keep a close eye on how investment performance, tax and your needs will affect the sustainability of your income.*" And it went on to set out what the cost would be.

It does appear from the documentation that the reviews of the trust investment took place effectively rolled into the reviews of Mr W's own investments. But I don't think that created any sort of conflict or necessarily meant that they weren't performed to an acceptable standard.

Had all the trustees been involved on each occasion, I don't think it's likely that such involvement would've led to any different action from the adviser and Mr B hasn't indicated that he and the other trustees have identified an alternative investment approach that might've been adopted.

It may have been the case that if all the trustees had been involved, then after the first few annual reviews a decision might've been taken that they were no longer required – as eventually happened in 2023. But again, I don't see that there was any failing on the part of Close Brothers in continuing with the service until instructed otherwise.

Turning to the issue of the proposed refund of the charges incurred in 2022 for the ongoing advice service, in the context of my finding that Close Brothers generally acted correctly I don't agree that a refund is warranted. Had there been a complete failure to engage with Mr W during the year in question I think that would be a different matter. But Close Brothers pro-actively contacted Mr W in December 2022, discussed the review being due which, for whatever reason, he declined, and it then followed up with a written confirmation. In those circumstances, I think it was reasonable to leave the ongoing service in place. As such, I've decided not to direct a refund of any charges.

In summary, I'm satisfied Close Brothers acted fairly and reasonably. I think its advice and service proposition was clearly set out to all the trustees at the outset and was then provided and charged for correctly, in accordance with that proposition.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or

reject my decision before 29 August 2025.

James Harris
Ombudsman