DRN-5810549

The complaint

Mr and Mrs D complain that TrinityBridge Limited gave them unsuitable investment advice. They say they were pressured into investing in ethical investments. They want TrinityBridge to refund its initial fee and on-going fees, and to compensate them based on the investments they say they should have been advised to invest in.

The investment advice was given by Close Brothers Asset Management Limited in 2018. Following a sale, Close Brothers was renamed as TrinityBridge from March 2025. For ease, I'll refer to the business as Close Brothers throughout my decision.

What happened

I set out the background to this complaint in my provisional decision, a copy of which is reproduced below and forms part of this final decision.

In my provisional decision I explained why I didn't think the advice given by Close Brothers in March 2018 was unsuitable for Mr and Mrs D. And that, whilst Close Brothers had made a mistake in investing in the ethical portfolio, this hadn't led to a financial loss.

Whilst I thought the initial and DMS fees were fair, Close Brothers had also charged an on-going advice fee of 0.6% per annum. As part of this advice service, I found Close Brothers had a duty to ensure the investment remained suitable for Mr and Mrs D's needs and objectives and that its annual reviews should have identified that they were wrongly invested in the ethical portfolio. For this reason, I thought Close Brothers should refund the on-going advice fee, plus interest at 8%, from when the 2018 investment took place until 23 October 2020, when Mr and Mrs D appointed a new, third-party advisor.

I invited both parties to provide any additional information and evidence.

Close Brothers said it accepted the findings of my provisional decision and agreed to refund its on-going advice fee from 15 May 2018 to 23 October 2020, plus interest. It confirmed no on-going fees were charged after 23 October 2020.

Mr and Mrs D didn't agree with my provisional decision, saying their complaint should be upheld in full and compensation paid as recommended by the investigator. They set out their concerns saying, in summary, that:

- They were happy with their previous investments and were "steered" into the DMS. They queried this at the time but were told the DMS was better suited to their needs and they were reliant on the professional advisor. The DMS didn't bring them any benefits, only unnecessary cost and complexity. It resulted in new costs and tax liabilities that they specifically wanted to avoid.

- They were told the 2018 recommendation was better for them. But investments recommended in 2017 would have performed better.

- The provisional decision said the DMS allowed them to transfer into ISAs, but they'd already been doing this under the old arrangement.

- The on-going service they were paying for wasn't delivered to the required standard – it wasn't identified that they were invested in the wrong portfolio. They shouldn't have been charged on-going fees at all, let alone VAT on those fees. All on-going fees, plus interest, should be refunded.

- Using 23 October 2020 as a limit for the redress is unfair and arbitrary. In view of volatile markets, they were cautious and, only when it became clear that their portfolio was underperforming, compared to the investment they think they should have been in, did their new advisor recommend changes.

- They agreed to go ahead with the 0.6% fee, after querying it, because they had to rely on professional advice.

- Throughout the complaint, Close Brothers hasn't replied in time to them, or to the ombudsman's requests for information.

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 explained in my provisional decision why I didn't think the advice to invest in a DMS was unsuitable for Mr and Mrs D. What they've said in response doesn't change my conclusion, I'll explain why.

They say they were reliant on the advice they received and were "steered" into the DMS. I don't disagree with this. They may not have been actively searching for a discretionary management arrangement, but I'm satisfied that, having received an explanation of the service and its benefits, they agreed to go ahead. But I don't find they *had* to go ahead. If they weren't comfortable with the discretionary arrangement, and the fees involved, they were free to seek advice elsewhere, or to instruct to go ahead with a similar investment on a non-discretionary basis.

I appreciate the ability to transfer to an ISA each year was an arrangement that had been in place in the past under the non-discretionary arrangement. This continued under the discretionary arrangement. But the discretionary arrangement also allowed for the utilisation of Mr and Mrs D's annual capital gains tax allowance.

Mr and Mrs D seem to suggest that, because the discretionary portfolio didn't perform as well as the investments that were recommended in 2017, this proves the 2018 recommendation wasn't better for them. My decision must be made without the benefit of hindsight. And, whilst the DMS may not have performed as well as hoped – or as well as an alternative recommendation - that doesn't automatically mean it was unsuitable.

The DMS arrangement involved higher fees. But this reflected the higher level of service being provided. I'm satisfied that the fees were set out in the investment report and that Mr and Mrs D had time to consider this before they agreed to go ahead.

Mr and Mrs D also say they weren't happy that every sale and purchase triggered capital gains and losses calculations. But one of the benefits of the DMS, as set out in the investment report, was that the discretionary manager was able to make changes to the holdings to ensure the portfolio remained suitable for Mr and Mrs D, and also to allow the manager to respond to market movements to try to ensure investment growth. And sales could be arranged to consolidate gains within Mr and Mrs D's annual capital gains tax allowances.

Overall, I find the DMS was not unsuitable for Mr and Mrs D given their circumstances, their investment objectives, risk profile, and investment time horizon. And, for that reason, I won't be asking it to refund its DMS fees.

Close Brothers has agreed to refund its on-going advice fee for the period from 15 May 2018, when the investment in the DMS took place. No on-going advice fees were charged after Mr and Mrs D moved to a new advisor on 23 October 2020. Mr and Mrs D would like all fees refunded. But, as I have decided the DMS wasn't unsuitable for them, it's fair they pay the fee for that service. Close Brothers made a mistake in investing in the ethical portfolio. But my aim is to put Mr and Mrs D back in the position they'd be in if a mistake hadn't been made. I find they would still have been invested in a DMS, so would still have been subject to DMS fees.

Close Brothers calculated that for the period to 23 October 2020 the ethical portfolio had outperformed the non-ethical portfolio, resulting in no financial loss. Mr and Mrs D say the calculation should go beyond 23 October 2020, until the point they disinvested. I don't agree. From 23 October 2020, Mr and Mrs D had a new advisor and I don't think it's unreasonable that, within a relatively short timescale, that new advisor would have reviewed Mr and Mrs D's circumstances, including their existing investments. Mr and Mrs D say there was a "wait and see" approach. But I can't hold Close Brothers responsible for the decision to retain the ethical portfolio after Mr and Mrs D started taking advice from a third party advisor.

I explained in my provisional decision why I didn't think the initial charge of 0.6% including VAT was unfair, taking into account Close Brothers agreed to reduce it by 50%. Mr and Mrs D say they had to go ahead after querying the fee because they relied on the professional advice. But as I've already noted, there was no compulsion to go ahead. They were free to seek advice elsewhere if they weren't happy with the fee they would have to pay.

Finally, I accept it was frustrating that Close Brothers didn't always reply to Mr and Mrs D, or to this service, in a timely manner. But I don't find this changes the overall outcome here, or the conclusion set out in my provisional decision.

My final decision

For the reasons I've explained, my final decision is that TrinityBridge Limited, trading as Close Brothers, should:

1. Refund its on-going service and advisory fees of 0.60% including VAT for the period from when the investment was made in 2018.

2. Pay interest at 8% per annum simple on the amount it refunds, from the date the fee was charged to the date of settlement. *

* HM Revenue & Customs requires TrinityBridge Limited, trading as Close Brothers to take off tax from this interest. TrinityBridge Limited, trading as Close Brothers must give Mr and Mrs D a certificate showing how much tax it's taken off if they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 15 October 2025.

The complaint

Mr and Mrs D complain that TrinityBridge Limited gave them unsuitable investment advice. They say they were pressured into investing in ethical investments. They want TrinityBridge to refund its initial fee and on-going fees, and to compensate them based on the investments they say they should have been advised to invest in.

The investment advice was given by Close Brothers Asset Management Limited in 2018. Following a sale, Close Brothers was renamed as TrinityBridge from March 2025. For ease, I'll refer to the business as Close Brothers throughout my decision.

What happened

In 2014, Mr and Mrs D opened a joint investment account with Close Brothers, together with stocks and shares ISAs in each of their names. They told us they were invested in the Close Managed Conservative fund, the Close Balanced Portfolio fund, and the Close Conservative Portfolio fund.

In or around August 2017, they withdrew their investments as they needed money to buy a new house, before their existing home was sold. Close Brothers kept their accounts open as Mr and Mrs D's intention was to re-invest once they received the proceeds from their existing house sale.

In November 2017, before the house sale completed, they met with their Close Brothers' advisor to discuss how the money, when it became available again, should be reinvested. A financial planning questionnaire was completed and the advisor recommended reinvestment in the Close Conservative Portfolio fund. He agreed to waive the initial fee as Mr and Mrs D had only temporarily withdrawn their money.

The advisor left the employment of Close Brothers shortly after this advice was given, and the investment didn't go ahead. Mr and Mrs D were allocated a new advisor who they met in March 2018.

At this meeting it was agreed that:

- Mr and Mrs D's goals were to reinvest their capital to obtain a higher rate of growth than cash deposits and to reduce exposure to income tax and capital gains tax.
- Mr and Mrs D had £360,000 available to invest.
- They were assessed as having a medium attitude to risk (4 out of 12), but after discussion, it was agreed they were prepared to accept a "low medium" level of risk (3 out of 12).

Close Brothers recommended:

- £42,000 to be transferred into a stocks and shares ISA from Mr D's cash ISA account, and £20,000 to be paid in for the 2018/19 tax year.
- £51,000 to be transferred into a stocks and shares ISA from Mrs D's cash ISA account, and £20,000 to be paid in for the 2018/19 tax year.
- £227,000 to be transferred into a joint investment account.
- All of the money to be invested in the Close Discretionary Managed Service ("DMS") Conservative Portfolio.
- An automatic facility would be set up, whereby money would be transferred from the joint investment account into each of Mr and Mrs D's ISAs each year to utilise their annual

allowance.

Mr and Mrs D agreed with the recommendations and the investment went ahead.

In October 2020, Mr and Mrs D appointed a financial advisor from a third-party firm. This was the former Close Brothers' advisor who had provided the recommendations (which didn't go ahead) in November 2017.

In or around January 2024, Mr and Mrs D complained. They said that, having compared the performance of what they'd invested in with what they had previously been invested in, they realised they'd made a loss. They said they'd been pressured into investing in ethical investments at a higher charge. And that they'd had to pay an initial advice fee when they were returning their money to their original accounts.

Close Brothers reviewed the advice it had given in 2018 and concluded it was suitable for Mr and Mrs D's circumstances at the time. It said that the fact a fund or investment strategy had outperformed another, didn't indicate the advice was unsuitable. It said Mr and Mrs D weren't investing back into the same funds that they'd previously held and it was fair to charge an initial fee, although it had reduced the fee by 50%. It said the fees and charges had been set out in its recommendations and Mr and Mrs D agreed to go ahead on this basis.

But, during its investigation of Mr and Mrs D's complaint, Close Brothers identified that, whilst it had recommended, and Mr and Mrs D agreed to invest in, the Close DMS Conservative Portfolio, it had actually invested in the Close DMS *Ethical* Conservative Portfolio. It apologised for this mistake. It compared the performance of both portfolios and found that, from the date of investment (17 April 2018) to the date Mr and Mrs D appointed a new advisor (23 October 2020), the Ethical portfolio had outperformed the portfolio Mr and Mrs D should have been invested in. So it didn't find there had been any financial loss and concluded no compensation was due.

Our investigator initially didn't recommend that the complaint should be upheld. She concluded that the advice to invest in the Close DMS Conservative Portfolio was suitable. And that, whilst Close Brothers had made a mistake in wrongly investing in the Ethical Portfolio, this hadn't caused Mr and Mrs D a financial loss.

Mr and Mrs D didn't agree. They said, in summary, that:

- There's been no explanation as to why the investment recommendations changed between December 2017 and March 2018.
- Why wasn't their money invested in line with the 2017 recommendation?
- They didn't need or ask for a discretionary service, which allowed Close Brothers to earn higher fees, which attracted VAT, costing them even more. They want the VAT refunded. They also questioned how a discretionary service would meet their aim of reducing exposure to income and capital gains tax.
- They were told initial fees would be waived, but they were charged. They want these refunded in full.
- It's not clear to them why the performance of the Close Conservative Portfolio hasn't been included in establishing whether there's been a financial loss, or why the performance comparison has only been made until October 2020.

The investigator sought more information from Close Brothers and, as a result, recommended that the complaint should be upheld. She concluded that:

- Mr and Mrs D didn't express an interest in ethical investment, so the investment was unsuitable for them.
- They'd made it clear they wanted to reduce their exposure to tax, but they had to pay VAT on the discretionary fees, which they wouldn't have incurred if they'd reinvested in the funds they were invested in before they made the withdrawal.

- It seems reasonable to assume that they were happy with the advice given in December 2017 and would have felt the same a few months later – they wanted to be invested in the same funds as prior to the withdrawal.

But the investigator couldn't conclude with certainty that, had Mr and Mrs D been recommended to invest in the same funds as prior to the withdrawal, that they would have stayed invested in them. So, for compensation calculation purposes, the investigator recommended the FTSE UK Private Investors Income Total Return Index should be used. And she thought the calculation should be from the date of investment to the date of settlement.

Mr and Mrs D responded to say, in summary, that:

- They had to pay VAT while invested in the DMS, but the investigator hasn't asked for this to be refunded.
- They had to pay higher management fees under the DMS, but the investigator hasn't asked for the additional costs to be refunded.

Close Brothers didn't agree that the complaint should be upheld. It said, in summary, that:

- It has provided full documentary evidence in support of the recommendations which went ahead in April 2018. This was fully in line with Mr and Mrs D's goals, objectives and tax considerations at the time.
- The investigator has based her conclusion on advice that didn't go ahead in 2017. This means the 2017 assessment is incomplete and shouldn't be relied upon.
- Mr and Mrs D's complaint is that they were pressured to take out ethical investments – but this was not the recommendation. The investment in the ethical portfolio only went ahead due to an administrative error.
- Mr and Mrs D benefitted from the error of investing in the ethical portfolio up to the date they appointed a new financial advisor. If they were unhappy with the investment after this date, they should have sought advice from their new advisor.
- The initial fee for the investment in 2018 was negotiated to a level which Mr and Mrs D agreed to. The offer to waive the initial fee in full was made in respect of the advice given in 2017, which was for different advice.
- All fees and charges were disclosed and agreed.

What I've provisionally 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.

Was the advice given in March 2018 suitable?

Overall, I don't find that the advice given in March 2018 was unsuitable for Mr and Mrs D. I say this because:

- Mr and Mrs D had previously made it clear that they'd withdrawn from their investments temporarily. They were now in a position to reinvest with the aim of obtaining a better return than a deposit account.

- I'm satisfied that risk and reward were discussed. Having answered the risk profile questions and been assessed as having a medium attitude to risk, further discussion took place because Mr and Mrs D didn't feel this accurately reflected their attitude. It was agreed that they felt more comfortable with a low medium risk.

- Taking what was recorded about their circumstances at the time, I think the objective and risk profile seem appropriate for Mr and Mrs D. And I'm satisfied that the Close DMS Conservative Portfolio was suitable for them, given their investment objective, risk profile and medium to long term investment time horizon.

- Mr and Mrs D said one of their aims was to reduce exposure to income and capital gains tax. I'm satisfied that the recommendation took this into account by ensuring existing ISAs were transferred and systems were set up to ensure annual ISA allowances were utilised each year.

- I've not seen anything to show that Mr and Mrs D had expressed an interest in investing on a discretionary management basis. But I think it's more likely than not that this was discussed during the March 2018 meeting. The advisor noted that Mr and Mrs D were "*happy for investment decisions to be made for them by a team of investment professionals*". There's nothing to suggest a discretionary arrangement wouldn't be suitable for them. And I can see that the advisor noted how the discretionary agreement would meet their aim of using their annual CGT allowances:

  > "*We also discussed the impact of Capital Gains Tax on future growth and they were keen to consider an investment option that would look to actively utilise their annual CGT allowances and involve a higher level of investment management*."

- I'm satisfied that it was made clear in the investment report that the recommendation was for a discretionary service and Mr and Mrs D agreed to go ahead on this basis. I think it would've been reasonable for them to question this service if it wasn't something they wanted, or didn't understand, and they had the opportunity to request the same advisory service they'd been used to, if this was what they preferred.

The advice differed to that given around three to four months before, in December 2017. But I don't find that makes the recommendation given in March 2018 unsuitable, even if the performance of the investment from the earlier recommendation may have turned out to be better. Whilst Mr and Mrs D's circumstances didn't change greatly during this short period, by March 2018 they had the money from their house sale, had presumably settled in their new home, and may have been in a better position to know their on-going income and expenses and their longer-term investment needs. I can see that the March 2018 recommendation included transferring existing cash ISAs in each of their names, which the earlier recommendation didn't mention. So it would seem likely that the March 2018 discussion probably went into a bit more depth and Mr and Mrs D's overall financial position could be recorded more accurately.

So, overall, I think the recommendation given in 2018 was suitable, given Mr and Mrs D's circumstances, objectives, and risk profile recorded at the time.

December 2017 recommendation

As already noted, in December 2017 – before Mr and Mrs D had the money available to invest – Close Brothers recommended investment in its Close Conservative Portfolio fund. Mr and Mrs D want to know why this investment didn't go ahead.

Neither party has provided evidence to show why the recommendation given in 2017 didn't go ahead. But, when the recommendation was made, Mr and Mrs D didn't have the money available to invest. By the time they'd received the money and were ready to invest, the advisor who'd met them and given the recommendation had left the employment of Close Brothers. If Mr and Mrs D had wanted to go ahead once they had the money available, I would have reasonably expected them to have contacted Close Brothers with their instruction to invest in line with the December 2017 recommendation. I can't see that they did this – either when the money became available or when they met with a different advisor in March 2018, or in response to his written recommendation.

The investment in the ethical fund

It's important to note that whilst Mr and Mrs D complain that ethical investments weren't suitable for them (and our investigator upheld the complaint on this basis), there was never a recommendation to invest in ethical investments. The ethical investment took place by mistake. Following Mr and Mrs D's agreement to go ahead with the recommendation to invest in the Close DMS Conservative Portfolio, in both their GIA and their ISAs, Close Brothers wrongly invested in the Close DMS Ethical Conservative Portfolio.

Having realised its mistake, Close Brothers apologised but concluded there'd been no financial loss, because the ethical portfolio had performed better than the portfolio Mr and Mrs D should have been invested in.

It compared the performance of the two portfolios from the date Mr and Mrs D invested to the date they appointed a third-party financial advisor, 23 October 2020. I think it's fair to use this date because, from then on, the new advisor was responsible for ensuring the investments in Mr and Mrs D's name were suitable for them.

The ethical portfolio returned 17.62% in this period, compared to 9.55% for the portfolio they should've been invested in if Close Brothers hadn't made a mistake. Close Brothers said there were no additional fees associated with the ethical portfolio. So, whilst a mistake was made, I'm satisfied this didn't result in a financial loss, so Close Brothers does not need to pay any compensation.

I understand when Mr and Mrs D complained to Close Brothers they were still invested in the ethical portfolio. It's up to them and, since 23 October 2023, their third-party advisor to decide what to do with their investment. As they hadn't suffered a financial loss, I don't find Close Brothers needs to do anything more.

Fees

Close Brothers initial advice fee was 0.6%, including VAT. It had agreed to waive that fee in full when it gave its investment recommendation in December 2017. But that recommendation was to invest largely in line with how Mr and Mrs D had been invested before they withdrew their money. The 2018 recommendation was for a different fund and under a different, discretionary arrangement. I can see that when Mr and Mrs D queried the initial charge in 2018, Close Brothers agreed to reduce it by 50%. I don't find there was any obligation on Close Brothers to waive it completely. And I can see that Mr and Mrs D agreed to go ahead, knowing they'd be charged 0.6%.

The on-going cost of the DMS was more than their previous arrangement. But that reflected the additional elements of this service.

Mr and Mrs D complained that the DMS fee was subject to VAT. But all the fees charged by Close Brothers were subject to VAT, so I don't find this is a reason not to recommend the DMS.

But, as well as the 1.40% DMS charge, Mr and Mrs D were paying a 0.60% charge for "on-going service and advice". I asked Close Brothers for more information about how it fulfilled this service, but it couldn't provide a response in a suitable timescale.

I've considered this carefully in the absence of a response. In April 2018 Close Brothers invested in the wrong portfolio. A review should have taken place at least yearly – so in April 2019 and 2020, before the third-party advisor was appointed in October 2020. Close Brothers had a duty to ensure the investment remained suitable for Mr and Mrs D's needs and objectives and, had it carried out a review to the required standard, it seems that it would have identified it had wrongly invested in the ethical portfolio much sooner than it did. As it didn't identify this mistake, I'm minded to conclude that either the reviews didn't take place, or they weren't carried out with the required skill and care.

For this reason, I think the on-going fee of 0.6% per annum should be refunded for the period from when the 2018 investment took place. Presumably no further on-going service and advice fees were charged from 23 October 2020. But if these fees continued after Mr and Mrs

D appointed a third-party advisor and therefore stopped obtaining on-going advice from Close Brothers, these charges should also be refunded. Close Brothers should add interest at 8% simple per annum from the date the fees were charged to the date of settlement.

My provisional decision

For the reasons I've explained, my provisional decision is that TrinityBridge Limited, trading as Close Brothers, should:

3. Refund its on-going service and advisory fees of 0.60% including VAT for the period from when the investment was made in 2018.

4. Pay interest at 8% per annum simple on the amount it refunds, from the date the fee was charged to the date of settlement. *

* HM Revenue & Customs requires TrinityBridge Limited, trading as Close Brothers to take off tax from this interest. TrinityBridge Limited, trading as Close Brothers must give Mr and Mrs D a certificate showing how much tax it's taken off if they ask for one.

Elizabeth Dawes
Ombudsman