

The complaint

Mr M complains that Close Asset Management Limited trading as Close Brothers Asset Management (CAM) gave him unsuitable advice to transfer out of an Occupational Pension Scheme (OPS) in 2002.

What happened

There is very limited information about what happened due to CAM not being able to provide a file as they have no record of Mr M's transfer. The firm who originally gave the advice have been acquired and through multiple acquisitions CAM are now responsible for its previous business. Furthermore, due to the time that has passed the evidence and testimony provided by Mr M through his representatives has been limited and inconclusive.

Below I've set out the background to the complaint alongside the evidence we do have and the arguments put forward so far.

What we do know is that Mr M was a deferred member of an OPS prior to the transfer to the personal pension in 2002. The previous administrator of the OPS has told us the scheme was winding up in 2001 and the trustees had employed the services of a firm to provide deferred members with a deferred benefit and transfer value statements. We've been unable to gather more information regarding this despite attempts being made.

But we can see that Mr M did pay £200 deducted from the transfer value to JRG now CAM '*for their services*'. This was on a pre-printed form headed by the name of the OPS. We also know from the claims quotation produced by the ceding administrator that the '*scheme was probably terminating*'. Mr M transferred to a personal pension provider and from some correspondence regarding DSS payments it received it appears a couple of other members of the OPS also transferred using CAM's services to the same pension provider.

The illustration provided also shows that CAM were paid commission for '*arranging this plan*' of £474.52 and that this was paid out of the deductions which include commission and expenses. The illustration shows this amounted to a 0.3% reduction a year.

Mr M's initial testimony was that he was visited at his workplace by CAM – and this started the process. He then had one meeting with it at a hotel and he felt the only option given to him was to transfer the OPS – and he signed all the relevant paperwork then. He says he wasn't given enough time to consider his options.

We initially told Mr M's representatives that unless we received more evidence we would close the case. It did provide some extra information including some referred to above.

The application for the personal pension said that his home address was verified at a home visit. Since this evidence, Mr M's testimony through his representatives is that there was also a home visit and it took exception to the investigator saying that JRG met him at his work place – despite that being part of the initial testimony. The investigator explained to Mr M's representatives that he wouldn't be upholding the complaint in part because it wasn't clear whether Mr M had received advice to transfer or whether it had been transferred as part of

the winding up of the scheme. It said in response that Mr M had told them he'd been told it was the best thing to do and he'd receive better returns in the long run, so it didn't agree he hadn't been advised to transfer.

CAM's position is that the complaint has been made out of time as Mr M received advice later from another adviser about his personal pension. However, the investigator explained that this advice made only a passing reference to the earlier transfer and so he didn't agree that Mr M ought to have known then about his cause for complaint. CAM had also mentioned the long stop 15-year limitation rules but the investigator explained this wasn't relevant to our jurisdiction.

The investigator looked into the merits but didn't think the complaint should be upheld. He explained that we do not know what information was presented to Mr M at that time, what options he had, nor of any justification that may have been given for the transfer. And that none of the parties to the complaint have been able to produce any meaningful information about the scheme.

The investigator said he did not know what capacity CAM were acting in and it seemed possible they had been providing services to scheme members on behalf of the trustees. He also said that as the scheme was being wound up it was not Mr M's choice to remain a deferred member of the scheme – it was no longer possible to do so.

He said on the basis it was not possible to retain the benefits on the DB scheme, he'd considered whether the personal pension selected was a reasonable place to transfer and he felt that it was.

Mr M's representatives in response said (in addition to what has already been referred to above):

- It believes CAM acted as Mr M's adviser.
- If they had been working with the agreement of the trustees/employer Mr M wouldn't have been charged.
- The trustees may have instructed CAM to advise clients in relation to the scheme but the evidence shows it wasn't just facilitation. And it owed Mr M a duty of care.
- Usually with bulk transfers the benefits are transferred to a deferred annuity or section 32 ensuring some or all of the benefits are retained.
- It disputed the scheme had been wound up as at a later date another company had purchased the business and it believes had he stayed with the scheme his benefits would've been retained.
- It believes there is enough information available for an experienced actuary to calculate Mr M's benefits and do a loss calculation.

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.

Firstly for clarity I agree with the investigator that this complaint has been made in time and for the same reasons. Whilst this complaint does go back 20 years, I've seen no evidence to suggest that Mr M ought to have had knowledge of his cause for complaint earlier than he

did. He did receive financial advice in 2017 but his OPS and the transfer weren't discussed in any detail according to the records of this advice. Mr M will have received statements from the personal pension over the years but I've seen nothing to suggest he could compare this with the benefits he may have given up on transfer. So I am satisfied this is a complaint we can consider.

However, there is limited information with which to draw any conclusions about the transfer. Mr M's testimony is not detailed or particularly consistent with the facts we have been able to ascertain, which isn't surprising given the time that has passed. We have made efforts to get information from third parties and so have Mr M's representatives but as CAM have no records and it appears Mr M either didn't receive or didn't keep any paperwork from the time – it is very difficult to ascertain what happened 20+ years ago.

The evidence does suggest that CAM were instructed by the trustees of the scheme to provide its services to the members. Mr M's testimony was that they came to his place of work. And we know it had pre-printed forms with the OPS' name on it permitting it to make a deduction to the total transfer value calculated by the scheme prior to transfer for its services. Mr M's representatives have said Mr M wouldn't have been charged if CAM were working on behalf of the trustees but I don't think that is necessarily true. Fees incurred as part of running the scheme in relation to advisers and service providers can be apportioned to the employer or to the scheme members by the trustees.

The evidence also strongly suggests the scheme was winding up. Mr M himself told his financial adviser many years later that this is why he transferred. And the information from the provider administering the scheme was that at the time of the transfer the scheme was intending to wind-up. We've been unable to find out further information and Mr M's representatives have argued that the business was bought out and so the scheme will have continued. But the business being bought out does not mean the pension scheme wasn't wound up by the previous owners.

The investigator said that if the scheme was wound up, Mr M wouldn't have been able to remain within the scheme and therefore CAM wouldn't be responsible for the loss of Mr M's deferred benefits. However, as Mr M's representatives have said, commonly an option on scheme wind-up is to secure deferred annuities for members. If this was the case here and this option was available, then Mr M would've been able to retain some or all of the guaranteed benefits built up in the OPS.

It appears that this scheme was very small, which may also explain the difficulty in finding any information about it, evidence from when the business eventually ceased shows that it employed only a small amount of people. It's possible perhaps in part due to the small amount of people involved that purchasing a deferred annuity as part of a bulk transfer wasn't secured by the trustees. It is also possible that CAM had secured the personal pension for the scheme members and were paid to facilitate the transfers to the pension provider. And it's my understanding that on the winding-up of OPS', members could be transferred to a personal pension with their consent. But I'm not able to say one way or the other what happened here in terms of the scheme, as we simply don't have any evidence of what options were open to the scheme members. All we've been able to ascertain is that Mr M transferred to a personal pension, and this was alongside it appears a couple of other members of the scheme.

There is evidence to suggest Mr M was advised by CAM, he paid £200 for '*its services*', and it received commission from the personal pension for '*arranging the plan*' and this was under the heading adviser costs on the standardised illustration from the provider. Mr M's testimony is that he was told to transfer his pension. However, there is no documentation evidencing a personal recommendation to transfer – nor what the reasons for this

recommendation were.

We know that CAM were responsible for and at the very least facilitated Mr M transferring to the personal pension. However, as the investigator said, there is no reason to say that this wasn't a suitable place for Mr M's transfer value to be invested.

I think CAM did provide services in the context of the winding-up of the scheme after being instructed by the trustees/employer. But it is still entirely possible that Mr M was advised to transfer out of the OPS and that this was a personal recommendation. But in the event I was satisfied that this was the case, I'd then need to consider whether this advice was suitable for Mr M's circumstances at the time. To do this I'd usually consider the customer's circumstances at the time, the various options available, the financial viability of the transfer, the reasons for recommending the transfer and what the business did or did not tell the customer. However, I have such limited information available regarding the above.

Firms are required to retain information regarding pension transfers but it's not surprising that 20+ years after the event and with multiple acquisitions having taken place that this information is no longer available. Usually we'd be able to get information from third parties about the OPS but Mr M's representatives and our own efforts to get more information has mostly been unsuccessful. Mr M himself hasn't kept any paperwork from the time (if it existed) and his testimony is limited and so the complaint itself with little supporting evidence is speculative in its nature.

I am able to make decisions on the balance of probabilities, but this needs to be supported by evidence. To uphold a complaint that the advice to transfer was unsuitable, I need to be able to say that on the balance of probabilities the business has done something wrong and hasn't acted in the customer's best interests. It is my view that there are too many unknowns to decide in a fair and reasonable manner that CAM acted unreasonably in advising Mr M to transfer out of his OPS. In conclusion and for the reasons explained, I am not upholding this complaint.

My final decision

I do not uphold this complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 July 2024.

Simon Hollingshead
Ombudsman