

The complaint

Close Asset Management Limited trading as Close Brothers Asset Management (“CBAM”) manage six investment portfolios on behalf of Mr N and his wife. He complains that CBAM failed to tell him about product and transaction costs deducted from his portfolios or that VAT would be charged on the annual service fee he paid.

Under this complaint reference, I’m only considering the product, transaction and VAT charges in connection with the pension investment portfolio in Mr N’s name. The charges in connection with the five other investment portfolios will be decided under a different complaint reference.

What happened

The events leading up to this complaint were set out in detail by our investigator in his assessment which he sent to both Mr N and CBAM. I don’t intend to repeat here in detail what our investigator stated but will instead provide a summary.

Mr N and his wife started investing with CBAM in 2007. Between them they had six investment portfolios. During 2023, Mr N contacted CBAM to request a consolidated tax report in connection with one of the investment portfolios.

After receiving and reviewing the report, Mr N noticed that product and transaction costs had been deducted from the portfolio. He contacted CBAM to query this. This set off an exchange of correspondence between Mr N and CBAM regarding costs and charges deducted from all six investment portfolios. CBAM explained that these were not new costs and charges and had in fact always applied since 2007. However, following the implementation of The Market in Financial Instruments Directive (MiFID II) in January 2018, firms were required to disclose itemised product and transaction costs. So the change in disclosure was driven by new regulations.

This complaint

Mr N was unhappy about the explanation provided by CBAM and complained. He said that when he started investing with CBAM in 2007 he agreed an annual service fee of 1% of the portfolio value. He said there weren’t any discussions or agreement that the underlying investments in the portfolios would be subject to ongoing product and transaction costs or that VAT would be charged on the annual service fee he paid to CBAM. So, from his point of view, he expected the total annual cost to be 1% of the portfolio value.

Therefore, he was unhappy about the deduction of product and transaction costs and that VAT had been charged on the annual service fee since 2007 which pushed the total cost of investment above 1%. He said that he never agreed to these additional costs and charges. He said that had he known VAT was chargeable on the service fee he would have negotiated a lower fee. He believed he had suffered a substantial financial loss. To put things right, he wanted CBAM to refund all costs and charges over 1% since 2007.

CBAM didn't uphold this complaint. In its final response it repeated its previous explanation that the product and transaction costs complained about had in fact always applied since 2007 but the rules around disclosing these changed in January 2018 following implementation of MiFID II. It said that it made Mr N aware of this change in a letter dated 18 December 2017. And that investment reports and statements he viewed through the online portal from 2018 onwards would have detailed the product and transaction costs. In addition, it explained that it had correctly charged VAT on the annual service fee and that this had been disclosed to him as an itemised charge in reporting since 2007.

Mr N referred his concerns to the Financial Ombudsman Service. One of our investigators explained to Mr N why he didn't think CBAM had done anything wrong in terms of disclosing product and transaction costs. In addition, he explained that HMRC and not CBAM decide what services are VAT chargeable – and that CBAM had correctly charged VAT on the annual service fee since 2007. Notwithstanding this point, he was satisfied that CBAM had disclosed from the outset that the annual service was VAT chargeable, as evidenced in investment reports that showed the VAT amount as separate itemised charge.

Mr N didn't accept our investigator's view and provided additional comments setting out his reasons why. Our investigator considered those additional comments but wasn't persuaded to change his view. Since agreement couldn't be reached, this complaint has now been allocated to me to review and decide. This is the last stage of our process.

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've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Mr N has requested an oral hearing. I don't consider an oral hearing is necessary in this case. The documented arguments and evidence from both Mr N and CBAM are sufficient in my view for me to reach a fair and reasonable decision. I'd like to clarify that the purpose of this decision isn't to repeat or address every single point raised by the parties to this complaint. So if I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Having considered the evidence, I've reached the same conclusion as the investigator and for largely the same reasons. There are two main strands to Mr N's complaint. I'll deal with these under separate headings.

Product and transaction costs

The starting point is to understand that the product and transaction costs about which Mr N has complained are part and parcel of investing. MiFID II regulations were implemented in January 2018. This required asset management firms such as CBAM to improve transparency in relation to such costs and charges across through additional disclosure requirements. This additional disclosure was designed to help investors to see the total cost of investing so that they could shop around and make informed choices. Importantly, the rules weren't retrospective so there wasn't any requirement on CBAM to provide historical charges information prior to 2018.

A key point to bear in mind here is that the product and transaction costs which started to be disclosed to Mr N from 2018 onwards weren't new charges – these had always been

deducted since 2007 but CBAM didn't have to disclose them before 2018. Up until then the impact of product and transaction costs would have been reflected in the net returns position reported to Mr N instead. There was no requirement placed on CBAM or any other asset manager to set out this information to investors prior to 2018. This doesn't mean CBAM did anything wrong before 2018. Rather, from 2018 onwards when it started to disclose product and transaction costs it was simply adhering to the new MiFID II regulations. The evidence shows that from 2018 onwards, the statements issued to Mr N provided the itemised product and transactions costs expected in the regulations.

CBAM has provided a copy of a letter dated 18 December 2017 which it says it sent to Mr N to make him aware about the impending changes related to MiFID II regulations. Mr N says that he didn't receive that letter and suggested it was fabricated by CBAM in response to this complaint. I don't think it's necessary to prove whether Mr N received the letter. I say this because from 2018 onwards, CBAM provided investment reports to Mr N that clearly showed the breakdown of product and transaction costs in both percentage and monetary terms. He also had access to this information through his online portal. I think that from 2018 onwards he was provided sufficient information to be able to see the total cost of investment and to make an informed choice as to whether to remain with CBAM or switch to an alternative asset manager. Bearing this in mind, I don't think receiving the letter dated 18 December 2017 would have made Mr N act differently.

Mr N is concerned about the impact of the product and transaction charges on the growth of his pension portfolio. But the level of charges of the underlying investments in the portfolio isn't something we would involve ourselves with. These types of charges are part and parcel of investing and vary depending on the nature of the underlying investment. And while lower charges may have been available with a different asset manager or underlying investment, lower charges don't necessarily mean a fund or investment will perform better as a result.

Overall, I'm satisfied that CBAM hasn't made an error or treated Mr N unfairly in respect of disclosing the product and transaction costs in his pension investment portfolio.

VAT charged on the annual service fee

Mr N is upset that VAT was charged on the annual service fee he paid to CBAM. He said that had he known this he would have negotiated a lower fee.

A crucial point to note here is that HMRC and not CBAM decide which services are VAT chargeable. And in the context of portfolio management services as applies to Mr N's case, VAT is due on the services provided by managers who manage the investment portfolios of individual clients. CBAM doesn't have any discretion over whether to charge VAT on the annual service fee. I'm satisfied that CBAM correctly charged VAT and that this had been disclosed to Mr N as an itemised charge in reporting since 2007.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 26 October 2024.

Clint Penfold
Ombudsman