

## **The complaint**

Mr P is unhappy with the service he has received from Brewin Dolphin Limited ('BDL') in the management of his investment portfolio. He says he has lost a significant amount of money and the worry has impacted on his health.

## **What happened**

Mr P has been a client of BDL since 2007. His portfolio has always been managed on a discretionary basis. He held an investment account and a stocks and shares ISA. Over the years Mr P added additional funds to his account.

In 2022 Mr P became concerned about the performance of his portfolio and inaction on his account and he didn't think he was receiving the service that he should, so raised a complaint with BDL.

BDL responded. It outlined the recent service Mr P had received and said;

- Sales had taken place on his account in March 2021 to utilise his capital gains tax ('CGT') allowance for the year and investment was made in his ISA to use his 2020/21 allowance.
- Further funds were added to the portfolio in May 2021 and were invested between May and June in line with the risk strategy and approach previously agreed.
- No additional action was taken until March 2022 when further trades took place to use the CGT and ISA allowances. Although no further trades were made in that nine-month period, the portfolio remained in line with his requirements.
- Mr P was concerned about the lack of proactivity and had referred to the shares where the price had risen and then fallen back. But BDL confirmed trades can be made for several reasons and the portfolio was managed over the longer rather than shorter term.
- BDL detailed the contact it had had with Mr P from August 2020 to March 2022. It didn't uphold Mr P's complaint about portfolio management and general service/contact.
- There was a delay in the transfer of £12,500 in February 2022 and BDL apologised as it concluded that additional communication with Mr P would have avoided any confusion.
- Overall, BDL didn't uphold Mr P's complaint.

Mr P wasn't happy with the outcome and brought his complaint to this service. Our investigator who considered the complaint reviewed Mr P's account with BDL since its inception and thought it should be upheld. He said;

- He outlined the history, values, and risk levels of Mr P's account since it opened in 2007.
- Mr P's attitude to risk ('ATR') had become riskier since 2010 and the investigator

didn't think Mr P would have been comfortable with this.

- The benchmarks aligned to those risk levels and the assets Mr P was exposed to didn't match his medium risk profile that was agreed to and overall, the portfolio management wasn't suitable for him.
- Mr P had complained about when BDL had sold his holding of InterContinental Hotels Group, but the investigator explained the portfolio was managed on a discretionary basis and any trades were at the discretion of the manager.
- He couldn't see that Mr P had suffered any loss because of the delay in the cash transfer.
- The investigator was satisfied that reviews were carried out on a regular basis.
- To put the matter right the investigator thought BDL should compare the performance of Mr P's portfolio with the FTSE Private Investors Income Total Return Index and pay him the difference if he had suffered a loss during the period his portfolio was with BDL.
- BDL should also pay Mr P £250 for the distress and inconvenience he had been caused.

BDL didn't agree with the outcome and made further submissions about the risk profile for Mr P's portfolio and when those changes had occurred. Mr P also made additional comment about the losses and the charges he had incurred.

As the complaint couldn't be resolved, it has been passed to me for a decision.

### **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 should first say that I haven't addressed every point that Mr P has raised. I don't mean any discourtesy by this, but I am focusing my consideration on the crux of the complaint.

After doing so, I've reached the same conclusion as the investigator and broadly for the same reasons. I think the risk Mr P was exposed to was unnecessarily high for his investment objectives and his portfolio was invested outside of the investment remit for those risk profiles which I don't think was right for Mr P. I will explain why.

Mr P opened his account with BDL in 2007. I have a copy of the handwritten completed 'Account Opening Form'. At the time Mr P was single and employed earning under £30,000 per year. He had property valued at £225,000 with a mortgage attached of £67,000 and he held PEPs/ISAs. He invested £75,000.

Clearly Mr P was seeking a discretionary investment service because he didn't have the knowledge or experience to make his own investment decisions. BDL needs to be able to demonstrate that it made suitable investments under the discretionary mandate taking into account the agreed attitude to risk and investment objectives.

Without any investment experience – with the exception of small holdings of Lloyds and BT Group valued at around £2,000 which were held outside of the portfolio – Mr P would have been totally reliant upon BDL to make suitable investments on his behalf. It's recorded that his investment objective was for capital growth. And from the information I have, I think it's the case that Mr P did want to make his money grow more than it would have done in savings.

But I haven't seen sufficient documentary evidence to satisfy myself that BDL invested Mr P's portfolio in line with a level of risk that I think he was prepared to take bearing in mind the initial funds were new to Mr P as a result of a gift from his mother during her lifetime and then later the funds he inherited from her estate.

It's clear at the beginning of the relationship in 2007 that it was agreed Mr P was a medium risk investor. Any income was to be reinvested and Mr P didn't envisage taking any capital out, so the funds were available for longer term investment. Mr P felt that any of the funds his mother gave to him during her lifetime remained hers as he wanted to be in the position to provide her with financial help if needed.

Mr P opted for a discretionary service with a balanced return between income and growth. At the time BDL had three risk categories, low, medium, and high risk. Mr P chose a medium attitude to risk which was defined in the document as;

'May incorporate direct equity investment in larger or medium sized companies, fixed interest securities and Collective Investment Schemes. The portfolio may contain a proportion in smaller companies or less liquid investments.'

I think Mr P's classification and the above definition wasn't an unreasonable reflection of Mr P's requirements or the type of investment that would be suitable for a medium risk investor.

The change to Mr P's investment profile occurred in March 2010 when BDL wrote to him with 'New Client Risk Categories'. It explained that this was being done to increase the number of risk categories which it hoped would improve its customers' understanding and choice in the level of risk taken and types of assets it may recommend for clients' portfolios. It said the new categories bore no relation to the previous categories.

As a result of the new categories Mr P was classified as a 'Progressive Risk' investor and the portfolio was comprised of 'circa 12% in cash and fixed interest, with the balance invested in global equities and other investments.' The Progressive Risk investor was looking for a total return from the portfolio with the bias towards capital appreciation.' Under the 'New Risk Categories' Mr P's Progressive Risk profile equated to BDL's new 'Growth Return' category. The portfolio was to be measured against the APCIMS Growth index, but Mr P was told the portfolio would continue to be managed for his individual needs rather than the strict requirements of the benchmark. A guide was enclosed with the letter about the new profiles and benchmarks.

BDL has given us a copy of a file note further to a discussion with Mr P in June 2010. His mother had transferred some further funds to him and the file note suggests that during that discussion it was stressed to Mr P that he had to be happy with the strategy of investing in the stock market and if he felt it was too much risk, he shouldn't do it. Unless the adviser heard otherwise, he would continue to drip feed into the market and look to achieve returns over the next five to ten years but the adviser's 'overriding concern was meeting their objectives.'

But Mr P wasn't an experienced or knowledgeable investor. I think he would have been reliant on BDL to choose the right risk profile for him when the new ones were introduced, and which would have been similar to what had previously been agreed. While it's clear that Mr P was happy to invest in the stock market and for the longer term with a requirement for growth, I don't think it was necessary to expose him to such a level of risk as a 'Progressive' risk investor in order to achieve his investment objectives. I think Mr P's lack of investment

experience meant that he trusted BDL and the decisions it made on his behalf, both for the classification of the risk he was prepared to take plus the underlying investment decisions.

Mr P was given an update by BDL on 4 April 2012 which confirmed that Mr P was still a Progressive Risk investor.

The December 2012 terms and conditions show that BDL's risk profiles ranged from (a) Cautious with Lower Risk through to (e) Aggressive Total Return - High Risk. The Growth Return or Progressive Risk that Mr P was categorised as being was fourth out of the list of five, the second highest risk rating.

The description for clients in this category said;

'Clients in this category understand that the level of potential return on their investment should increase as a result of taking greater risk. They understand that to achieve the potential for higher returns, their investment could be substantially reduced at times, but that over the longer term they could achieve a higher level of return than an 'Income and Growth Return' client.'

However, as I've mentioned above, I think BDL could have satisfied Mr P's investment objectives and requirements without exposing him to the level of risk it did. I think a risk rating of four out of five to be of a higher level of risk than was necessary for him to take and one that he would have been comfortable with.

The Contact Report further to a phone call dated 13 November 2013 recorded that Mr P's;

'investment time horizon is still 10+ years and his attitude to risk, aims and objectives and capacity to bear losses have not changed. [Mr P] has significant capacity for loss as he does not need the capital or the income for the portfolio and is taking a long-term view with his investments. He is not likely to take the capital out any time soon but is happy with what we are achieving here with the portfolio.'

While I accept that Mr P was happy to take a long-term view with his investment, I disagree that he had a 'significant capacity for loss'. This money was important to him. It was money given to him by his mother which he said was hard earned by both his mother and father during their lifetimes. And I don't think Mr P was in the financial position to recoup a 'significant' loss to his capital. He was coming towards the end of his working life and there's no indication – with the exception of his house – that Mr P had any other substantial capital he could have relied upon. I'm not satisfied that such an opinion held by BDL about his 'significant capacity for loss' was right taking into account all of his circumstances and the origin of the funds invested.

The April 2015 Client Service Review said that Mr P was still employed but considering changing however, nothing was imminent. The portfolio was still managed on a Progressive Risk – Growth Return basis. As and when Mr P was to receive inheritance from his mother, and potentially consider retirement, his aims and objectives might change. He received an additional £50,000 from his mother which was to be invested.

Mr P's investment objectives were recorded as 'Capital preservation is key at this stage; you want to ensure that the cash is not eroded by inflation and is available should your mum need it.' This suggests to me that even though Mr P wanted growth for the portfolio he wouldn't be happy with any risk that wasn't necessary in order to achieve his investment objective of growth from a medium risk profit.

The September 2016 Investment Review shows Mr P was now classified as a Risk Level 6 (Moderate Investment Risk) – Capital Growth investor and this continued through to the February 2019. By August 2019 Mr P's mother had unfortunately died and Mr P inherited funds and house sale proceeds. At the time it's recorded that Mr P still wanted capital growth but understandably his aims and objectives may change because of retirement. A further £150,000 was invested into Mr P's portfolio in 2020.

There was a client meeting in August 2021 and Mr P had recently retired, didn't have a mortgage and was in a strong financial position. He had taken his pension of £1,200 per month and had invested the pension lump sum with BDL. Mr P didn't need income from the portfolio and was happy with the way things were. The advice review document concluded that Mr P's capacity for loss would have little practical impact on his daily life and the risk he was exposed to was commensurate with that.

While I accept that any loss Mr P may have incurred would have little impact on his daily life – he was in a financially comfortable position and taking his pension – but I don't think Mr P would have felt as comfortable if he had suffered losses. And I think this is made clear by the fact that Mr P did raise a complaint which was triggered by the loss in value of his portfolio from July 2021 onwards.

While it's recorded throughout the relationship that Mr P understood investment and stock market risk, I don't think he fully understood the level of risk that BDL was exposing him to. And I say this despite the risk questionnaires he completed as I would question his understanding in giving answers because during the relationship with BDL until he made his complaint, I can't see he had suffered any significant losses. So, I don't think he would have thought too hard about the answers he gave to those questionnaires as overall he trusted what BDL were doing for him as he had no reason not to. In any event, I would have expected BDL also to have taken into consideration what it knew about Mr P and his circumstances and objectives – that was part of its role as discretionary manager.

I accept that Mr P was looking for capital growth for the majority of the time that he was invested. I also accept that the investment manager had discretion to make investment decisions outside of BDL's strategic asset allocation and to vary the approach for Mr P. But I don't think Mr P would have had the knowledge to have understood the risks implicit in some of the investments that were made on his account.

I say this because of the make-up of Mr P's portfolio. And which I'm satisfied exposed Mr P to a higher level of risk than implicit in the categories he was exposed to after the change in 2010 from 'medium risk' to 'progressive risk' and then onto Risk Level 6. The latter categories I think were too high a risk for his investment objectives in any event. Mr P's circumstances and investment objectives suggest to me that he was more suited to a lower level of risk than the risk he was exposed to by BDL, such as the medium risk or similar as agreed at the outset.

I've been given portfolio valuations from April 2012 onwards. Those valuations show that from July 2014 – with only one exception – Mr P's portfolio was always underweighted in the lower risk category of fixed interest securities compared to the benchmark used. And correspondingly it was overweight in equities – both UK and international. While it's clear that Mr P was happy with a growth mandate for his portfolio, I don't think this should have been at the expense of exposure to lower risk investments to the extent that it was.

And even though I know that BDL commented on the make-up of Mr P's portfolio in some of the correspondence I've seen and that it was bespoke, I think it's more likely that Mr P wouldn't have grasped the different types of investment being invested into or the respective levels of risk he was exposed to because of that. BDL has referred to the bespoke service it

provided but there's nothing to suggest that Mr P needed such a service to invest outside of the benchmark his portfolio was compared with or that he ever agreed to it.

And adding to that risk of the overweight position in equities is the exposure to overseas equities compared to the benchmark for UK equities. From July 2015 onwards the valuations include both UK and overseas equity investment under the one heading of equities so I can't identify the split, but prior to that they were split between the two;

- July 2012 – Mr P's UK exposure to UK equities was 19.8% compared to the benchmark of 47.5%. Overseas equity exposure was 48.9% while the benchmark was 32.5%.
- July 2013 – UK equity exposure was 28.6% compared to the benchmark of 47.6% and the overseas exposure was 49.4% compared to the benchmark of 35%.
- July 2014 – Mr P was exposed to 35.8% to UK equities while the benchmark was 45%. The overseas exposure was 48.2% compared to the benchmark of 37.5%.

In its response to the investigator BDL said that it wasn't necessary for Mr P to have understood the funds he was investing into. And I don't disagree with that – that was the role of BDL acting as discretionary manager. But – and despite Mr P having his account for several years – it's evident he didn't have much investment knowledge and I think it's unlikely he would have understood the risks implicit in overweight positions with overseas exposure such as political and economic instability, currency fluctuations, and regulatory differences.

So while the underweight positions in fixed interest and overweight positions in equities – particularly overseas equities – might have driven the growth for Mr P's portfolio, it inevitably also posed a downside, and not one that I am satisfied Mr P either fully appreciated or needed to take in any event.

It's clear that Mr P wanted capital growth but not at the expense implicit in the higher levels of risk he was exposed to. Overall, and taking into account Mr B's circumstances, objectives and how important this money was to him, I think his money was exposed to risks I'm not persuaded he was willing or able to take.

I am satisfied that the risk he was exposed to wasn't suitable for him taking account of his personal and financial circumstances that I've already outlined. The risk he was exposed to was in my opinion unnecessarily high for the growth he wanted. The risk profiles were too high risk for him in any event and the investments that were made were outside of the benchmarks used for those risk profiles, thereby exposing him to additional risk.

So, and taking all of the above into account, and in the particular circumstances of Mr P's complaint I'm upholding it for the reasons given and BDL needs to put the matter right.

### **Putting things right**

In assessing what would be fair compensation, I consider that my aim should be to put Mr P as close to the position he would probably now be in if he had not been given unsuitable advice.

I take the view that Mr P would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr P's circumstances and objectives when he invested.

### **What must BDL do?**

To compensate Mr P fairly, BDL must:

- Compare the performance of Mr P's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.
- BDL should also add any interest set out below to the compensation payable.
- Pay to Mr P £250 for distress caused.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
portfolio	Still exists and liquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

### ***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.

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 withdrawal from the BDL 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 is a large number of regular payments, to keep calculations simpler, I'll accept if BDL totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

### **Why is this remedy suitable?**

I have decided on this method of compensation because:

- Mr P wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified

indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr P's circumstances and risk attitude.

### **My final decision**

For the reasons given, I uphold the complaint. My decision is that Brewin Dolphin Limited should pay the amount calculated as set out above.

Brewin Dolphin Limited should provide details of its calculation to Mr P in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 September 2023.

Catherine Langley  
**Ombudsman**