

## **The complaint**

Mr and Mrs M have complained about the advice and services they received from Brewin Dolphin Limited ('Brewin') and the fees paid. They say they were charged for unnecessary services that were not in their best interests and they haven't been provided with the advice they should have been about inheritance tax ('IHT') planning. They would like for the fees to be repaid to them.

Mr and Mrs M are being represented by their son in bringing the complaint but for ease of reference I shall refer to 'Mr and Mrs M' in my decision.

## **What happened**

Mr and Mrs M had been clients of Brewin since December 2015 after they became disillusioned with their previous investment adviser.

Mr M held two Business Property Relief ('BPR') investments which I shall refer to as 'Business B' and 'Business C' in my decision. They had been recommended by Mr and Mrs M's previous adviser business. £105,000 was invested into each in March 2015. Both were held in Mr M's sole name for estate planning purposes.

Mr M complained to Brewin saying he wasn't aware he could stop the adviser fee of 1% per annum (plus VAT) being paid to Brewin for the Business B investment. He questioned what service had been received for the fee paid.

Brewin responded to Mr and Mrs M's complaint on 30 June 2023. It said;

- It detailed the change of agency on the product from Mr M's previous investment adviser to Brewin and no trail commission was payable, just a fee paid to Brewin for the ongoing suitability of Business B. Mr M was aware of this. Its terms and conditions detailed cancellation of its service and fees. There was no indication that Mr M wasn't happy.
- After correspondence in 2023 agreement was reached for a discount to Brewin's fees for a two-year period, the adviser charges for Business B would be switched off and it would resign as the adviser.
- The ongoing advice fees for Business B would have been provided by the policy provider at the outset. The adviser remuneration covered ongoing monitoring, administration and suitability of investment into Business B.
- Business B had confirmed that no more ongoing adviser charges would be paid to Brewin.
- It concluded by saying that as several complaints had been made within a short space of time it questioned whether Brewin was right for Mr and Mrs M. It offered alternative methods of investment if Mr and Mrs M wished to stay, or they could transfer their investments to another provider.

Unhappy with the outcome, Mr and Mrs M brought their complaint to the Financial Ombudsman Service. Our investigator who considered the complaint didn't think Brewin needed to do anything more. She said;

- It was most likely the ongoing advice service and fee payable for Business B was arranged with Mr M's previous adviser.
- Mr M had signed agreement for any adviser fee to be redirected to Brewin. This was confirmed to Mr M in September 2015, and it was explained the fee contributed to the cost of the ongoing service Brewin would provide.
- She couldn't agree the investment into Business B hadn't been assessed for ongoing suitability as it was addressed by Brewin in 2015 and subsequent suitability reports.
- Correspondence suggested Mr M was aware of the fee and was satisfied with the service he received from Brewin.

Mr and Mrs M didn't agree with the investigator;

- Mr M's agreement to the change of investment adviser for fee purposes of Business B was to ensure the commission earned prior to June 2016 would be paid to Brewin and not the previous adviser. Brewin's adviser would have known of Mr M's lack of understanding about financial products and his reliance upon the adviser.
- No proactive advice had been given about Business B other than it remained suitable and there was no option but for it to be held until Mr M's death.
- Mr M was never offered the option of turning off the advice on the product and commission payments.
- No commission payments were made on the Business C investment and the adviser would have known he could have offered Mr M the same for the Business B investment. If it had been offered Mr M would have accepted.
- Mr M provided a copy of the Change of Agency Mandate from September 2015 which didn't suggest the commission could be paid to Brewin 'until further notice'. It didn't give Mr M the option to turn off the commission. Brewin wasn't acting in Mr M's best interests and bearing in mind he was 81 years of age at the time.

As the complaint remains unresolved, it has been passed to me for a decision in my role as ombudsman.

### **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.

After doing so, I've reached the same conclusions as the investigator and broadly for the same reasons. I'll explain why.

I should first say that I think its most likely any adviser fees or commissions would have been agreed between Mr M and his previous adviser at the time the investment into Business B was made. Brewin has been able to provide a copy of Business B's 'Estate Planning Service Memorandum' and I think it likely Mr M would have seen the same or similar at the time of the advice. Under the 'Charges' section it says;

'Retail Distribution Review

With effect from 31 December 2012, commission is not permitted to be paid to Intermediaries who provide a personal recommendation to UK retail clients on retail investment products and discretionary managed services. Instead of commission being paid, a fee ("Adviser Charge") will usually be agreed between the Intermediary and the Investor for advice and related services...

...

#### Annual Adviser Charge

An annual Adviser Charge may be facilitated through the Service. The fee will be deducted from the Investor's Portfolio and paid to the Intermediary once a year. Alternatively, the Investor can pay this fee personally.'

Clearly, I'm not privy to what was discussed at the time the original advice to invest was given, but I'm satisfied, on the balance of probabilities, this was most likely when the Adviser Charge arrangement was agreed to and set up.

The rules surrounding commission and fee payments are laid out in the Financial Conduct Authority's Conduct of Business Sourcebook ('COBS'). It gives guidance for when a client moves to a new investment adviser;

'Re-registration of commission when a retail client moves to a new adviser

#### COBS 6.1A.4B R 31/12/2012

If a retail client chooses to become a client of a firm and that firm or its associate enters into an arrangement in COBS 6.1A.4AR (2), the firm must:

- (1) before the arrangement is entered into, disclose to the retail client that the transfer of the commission, remuneration or benefit of any kind will be requested by the firm or its associate;
- (2) throughout the period during which the firm or its associate receives the commission, remuneration or benefit of any kind, provide the retail client with an ongoing service; and
- (3) as soon as reasonably practicable after it makes the disclosure in (1):
  - (a) disclose to the retail client, as a cash amount or percentage of funds under management, the amount of the commission, remuneration or benefit of any kind it expects to receive and any it has received; and
  - (b) provide the retail client with a description of the ongoing service it will provide to the retail client in accordance with (2).'

So, Brewin was entitled to receive the commission when Mr M signed up for its services, but I've gone onto to consider what Mr M was told by Brewin and his awareness of the fees.

Mr M signed a Change of Agency Mandate for Business B on 24 September 2015 which stated he authorised;

'...the Change of Agency and any commission to Brewin Dolphin Ltd that may be payable.'

I can see that on 28 September 2015 Brewin confirmed to Mr M that it was sending his letter onto Business B requesting a transfer of the agency rights to Brewin. It said future fees due under the original contract would be paid to Brewin and the;

‘commission will contribute to the cost of ongoing services which Brewin Dolphin Ltd will provide.’

Business B wrote to Mr M on 14 October 2015 to confirm the change of agency on the investment to Brewin and that no trail commission was payable.

I note from Brewin’s recommendation report of 19 November 2015 it detailed Mr and Mrs M’s circumstances, investments and investment objectives etc and went on to say;

‘We have been appointed as the advisor on each of the investments but we have been restricted in what we can do as detailed below.’

For the investments in Business B and Business C it said;

‘These were taken out as part of your ongoing estate planning strategy and the benefit from business property relief.

The nature of these investments is that the only ongoing service we can provide for these is to establish ongoing suitability. I will therefore look to undertake this with you on an annual basis and advise accordingly.’

At that time, it was recommended that Mr and Mrs M take out a discretionary managed portfolio. While I appreciate there’s no specific reference to Business B the report also stated that if Mr and Mrs M;

‘...wish to stop receiving our Investment Management and Financial Planning Services; these can be cancelled at any point...’

Mr M emailed Brewin on 24 June 2016 to advise that he had received an investment report from Business B for the period ending 31 March 2016 but that a copy was still being sent to his previous adviser and;

‘I should not like the thought of any commissions going to him. Rather than to you!’

I can see from a sample copy of Business B’s March 2018 ‘Trading & Deposit Statement’ it recorded the ‘Ongoing IFA Chg’ of £1,187.67. Copies were sent to Mr M and Brewin.

Overall, I’m satisfied that Brewin made Mr M aware that it would be receiving the Adviser Charge from Business B. Mr M agreed to that as evidenced by his completion of the Change of Agency Mandate and his subsequent comments to Brewin about his wish for it to receive the commission rather than his previous adviser. Mr M has said that he didn’t agree commission could be paid ‘until further notice’ but there’s nothing to suggest that it wouldn’t be an ongoing charge.

Mr M was also made aware of the Annual Adviser Charge in the statements he was sent by Business B and Brewin made clear the fee was to contribute to the ongoing services it would provide. While Mr M may be of the opinion the advice he was given about Business B was limited, but Brewin had an obligation to ensure the investment remained suitable, and I haven’t seen any evidence that it didn’t.

It follows, that I don't think Brewin has done anything wrong, so I don't uphold Mr and Mrs M's complaint. No doubt they will be disappointed in the outcome. It's clear they feel strongly about it, but I hope I have been able to explain how and I why I reached my decision.

### **My final decision**

For the reasons given, I don't uphold Mr and Mrs M's complaint about Brewin Dolphin Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 20 March 2025.

Catherine Langley  
**Ombudsman**