DRN-5045058

The complaint

Mr and Mrs C have complained that Brewin Dolphin Limited, trading as RBC Brewin Dolphin ('Brewin') shouldn't have accepted their instruction to liquidate their discretionary portfolio. They say they were vulnerable at the time of the instruction and incurred trading fees and investment losses as a result. Mr C doesn't accept Brewin's argument that he was an experienced investor.

What happened

Mr and Mrs C became clients of Brewin in April 2018, and their portfolios were managed on a discretionary and advisory basis. The discretionary investments comprised ISAs and joint General Investment Account ('GIA'). £324,519 was invested in April 2018 and a further £50,000 was added in August 2019. The risk categorisation for Mr C was 'Moderate' investment risk and for Mrs C 'Low to Moderate'. Mr and Mrs C were looking to invest for ten years plus. The Advisory account was a SIPP held with an external SIPP provider.

During correspondence with Brewin about several aspects of his account Mr C raised concerns about the performance of the portfolio and the costs that had been incurred. Brewin treated his concerns as a complaint. It responded in its letters of 17 July 2023 and 4 January 2024. It said;

- Mr C had instructed the sale of the equities within the portfolio in March 2020 and reinvestment was gradual as he didn't want to risk losing any more value due to the volatility caused by COVID 19. The sales raised £258,904.47 and were reinvested over six months at his request.
- The portfolio had underperformed compared to the linked benchmark by just under 28% between March 2019 and March 2023 but Brewin cannot guarantee performance.
- Mr C's instruction to sell in March 2020 and reinvest had a substantial impact on the performance. Mr C had been previously advised of this. More recently the new investment manager had sold less favourable stock, had reinvested and was to improve the style blends and reduce riskier assets.
- It had been agreed that fees for the managed accounts would be discounted by 33%.
- In August 2019 Mr C wanted to explore the possibility of generating a greater return from his cash reserves of £110,000 and it was recommended that £50,000 be used to invest into lower risk assets in the GIA.
- Mr and Mrs C had held investments with another investment business for some time before transferring to Brewin and also held investment properties, which indicated they had an understanding of risk and reward. They also had an execution only account – a Cherished Holdings account. So overall it was reasonable to suggest they had some good level of knowledge and investments in March 2020.
- In February 2020 Mr C's adviser explained he had no intention of selling as he expected markets to revert. But further to a conversation in March 2020 a significant number of equities were sold at his request and later reinvested. Considering Mr C's

nervousness and wish to avoid further losses, the investment manager felt it was the right decision for him.

- Mr and Mrs C had previously signed a Dual Client Authorisation, so Mr C was independently able to give instruction on the accounts.

Unhappy with the outcome, Mr and Mrs C brought their complaint to the Financial Ombudsman Service

Our investigator who considered the complaint didn't think that Brewin needed to take any action. She said;

- She was satisfied that reference to Mr C as being an experienced investor only went as far as him having experience in investing. Mr and Mrs C were treated as retail clients. She didn't think Mr C's previous investment experience would have been the sole reason why Brewin accepted his instruction to liquidate the portfolio.
- She concluded correspondence from Brewin to Mr C in February/March 2020 about the stock market/discussion about the portfolio was seen by Mr C.
- After discussion with his investment manager, it was Mr C's decision to sell the portfolio. Mr C was clear about this, and he wanted to lock in gains made and stop further losses. The investment manager had already given his view on the markets by this time, and he couldn't give assurance about their future direction.
- Brewin considered Mr C's nervousness and his retirement when it received his instruction to liquidate the portfolio. Taking account of Mr and Mrs C's circumstances the investigator couldn't say with any certainty Brewin would have successfully recommended that they take a different course of action.

Mr and Mrs C didn't agree. The direction of travel to disinvest came from Brewin. Their investment manager 'fanned the not inconsiderable flames' of Mr C's anxieties and he detailed this after listening to a call recording. The investment manager's view was contradictory to Brewin's policy to remain invested. Mr C reiterated he was not an experienced investor.

The investigator's view remained unchanged.

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'm aware I've set out the background to this complaint in far less detail than the parties and I've done so using my own words. The Financial Ombudsman Service was set up to be a quick and informal alternative to the courts. And the purpose of this decision is to explain what I think is fair and reasonable in the circumstances, not to offer a point-by-point response to everything the parties to the complaint have said. I have read all the submissions made but I will not refer to every submission, comment, or relevant consideration. I don't intend any discourtesy by this, but my decision sets out what I think are the most important points in order to explain my decision in a way that is intended to be clear and easy to understand.

The decision to sell

I’m aware that at the time of the sale instruction Mr and Mrs C had their own concerns – Mrs C’s potential exposure to COVID in her workplace, their daughter’s welfare who was based overseas, the fall in the value of their assets needed for retirement and financial exposure because of the funding for a residential property development. Mr C retired in February 2020 at the age of 68 years, and he says all these circumstances made him vulnerable which Brewin was aware of.

Emails were exchanged between Mr C and Brewin on 28 February 2020 during which Mr C confirmed he was retiring and asked about the liquidity in his portfolio and the opportunities to invest as it looked like a good time to buy. Brewin responded to say the portfolios weren’t liquid but that the markets looked attractive. However, the investment manager had reservations as to whether there would be more downside over the next few months, and he expected ‘demand to snap back and therefore markets do likewise.’ He wasn’t considering selling at the time but a reduction in bonds and alternatives could be considered to add to equities, but the risk profile would need to be increased to six from five.

However, the decision to sell down the equity exposure wasn’t made until later and I’ve listened to the call Mr C had with Brewin on 16 March 2020 which resulted in the sale instruction. Mr C’s investment manager had sold six stocks by that time but didn’t want to panic and thought the remaining investments were well placed. The investment manager was clearly concerned about what was happening in the stock markets but said that things should bounce back. However, he said Mr C had to do what he felt comfortable with, and the investment manager would sell more if that was what Mr C wanted. It was initially decided the investments would be reviewed again at the end of the day or first thing in the morning, but the investment manager then offered to run through the stocks line by line at the time if Mr C had the time, which he did.

The holdings were talked through and there was discussion about what should be held or sold. There was also a general discussion. Mr C said he didn’t have a ten-to-fifteen-year timeframe, advantage could be taken of the bounce back in the stock markets even if some of that was missed but Mr C needed to feel comfortable. Brewin as an investment house wasn’t going to take any action, but the investment manager didn’t agree as it wasn’t known where things were heading. Mr C had concerns about his own property developments. Mr C concluded by saying he could buy on the stock market rise and would then sleep better so it was agreed further investments would be sold.

Overall, while I accept there is a different investment proposal from the emails of 28 February, I don’t agree that the investment manager was ‘fanning the flames’ of Mr C’s nervousness. Generally, it wasn’t a positive call, but this wasn’t inconsistent with the backdrop of what was happening in the markets bearing in mind the volatile circumstances. During the call, amongst other comments, the investment adviser gave his view on the investments held, referred to a podcast he had listened to at the weekend, the markets not responding to actions taken by the banks, investment research, the impact on businesses because of the pandemic and his concerns about whether the stock market would continue to fall like the 1930’s crash.

But I’ve not heard anything that would lead me to conclude the investment manager talked Mr C into making the decision to sells his shares or didn’t try and talk him out of it. Its clear Mr C was nervous bearing in mind his age, recent retirement, concerns about his property investments and the impact losses would have on him. He was worried about the unprecedented times the market was going through and was considering derisking his portfolio by selling further equities. The investment manager made clear that Brewin’s house view was to take no action – which wasn't the same as his own – but that Mr C should decide a course of action he felt comfortable with.

So, while I acknowledge Mr C's argument that Brewin should have talked him out of making the decision to sell, the decision made was one that Mr C felt comfortable with at the time taking account of his circumstances and needs. And bearing in mind Mr C's comments and reservations, I'm not convinced his investment manager would have succeeded in changing his mind. And if he hadn't sold the holdings when he did, it seems likely Mr C would have continued to worry.

Any decision to sell, or not to, could only be assessed with the benefit of hindsight. It wasn't known whether the markets would continue to fall or would bounce back, or how quickly. The investment manager couldn't give any such assurances about that and from my listening, the priority during the call was for Mr C to make a decision that he felt comfortable with. I accept Mr and Mrs C's personal circumstances at the time must have been worrying for them but Mr C presented as robust and in control during the call so I don't think this would have caused the investment manager any concerns about their vulnerability. And I'm satisfied Mr C seemed happy to make the decision to take cash, hold it in the short term and then look to reinvest to take advantage of the stock market upswing. And I think he made that decision after discussion so made an informed decision.

The investment manager later contacted Mr C about the reinvestment and what Brewin was recommending as promised. And I can see from the investment manager's subsequent file note the resulting portfolios reflected the investments Brewin considered would be resilient and recover more strongly through the pandemic. The asset allocation was in line with that recommended by Brewin's Asset Allocation Committee and portfolios remained within their risk profiles.

Taking all the above into account I don't think Brewin acted incorrectly when it accepted Mr C's instruction to sell equity investments. I'm satisfied Mr C made that decision after discussion and deliberation about the stock markets and Mr C's investments, and after considering his own circumstances and objectives. So, I don't think Brewin did anything wrong when it didn't dissuade him from taking the action he did.

<u>Mr and Mrs C's investment experience</u>

I've considered Mr and Mrs C's investment experience and knowledge when Mr and Mrs C opened their account with Brewin the investment experience was recorded as;

> 'I have had a discretionary managed portfolio of investments for some time.'

It was further noted under;

> 'Have you gained any knowledge of financial investment through employment
>
> [Mr D] is a CFO [chief financial officer] and has a strong understanding of investments & taxation.'

In response to the question 'Do you have any Self-investing Execution Only experience?' it said;

> 'Yes, [another investment business] ex-only [execution only] portfolios.'

Brewin's Financial Planning Report of April 2018 stated under 'knowledge and experience of investing';

> ‘It is important that we establish financial knowledge and the experience you have from previous investments because it is my role to make sure you understand the recommendation and the risks involved. [Mr C] has held investments for a number of years, including a portfolio managed on a discretionary basis by [previous investment firm]. He therefore has a good understanding of the terminology used and has witnessed the various ups and downs in markets over that time. [Mrs C] has less experience of investment, with most of her pension provision being through the [her employer’s] defined benefit scheme which is not subject to direct investment risk.’

In March 2020 Mr C was willing to raise their risk profile from five to six in order to reduce safe investments – bonds and alternatives – in favour of equity markets. As part of that process Mr C was emailed;

> ‘As you are an experienced financial decision maker with a strong understanding of financial markets who prior to engaging Brewin Dolphin held a portfolio managed on a discretionary basis by [an investment business], we will make the change without conducting an ad-hoc review.’

I’m satisfied Mr and Mrs C clearly did have investment experience of discretionary managed portfolios. They also had a smaller ‘Cherished Holdings’ portfolio they looked after themselves on an execution only basis (valued at around £42,000 in August 2019). And Mr C in particular had experience via his buy to let properties/property development and through his role as Chief Finance Officer. So, I’m satisfied they were aware of investment risk/reward and how the stock markets could rise and fall and the profits and losses that could be incurred as a result of that.

That being said, Mr and Mrs C used the discretionary portfolio service of Brewin and quite rightly expected a discretionary service. But its evident Mr C took an active interest – understandably so during such a volatile time – and raised his concerns with Brewin. During the calls its clear he is experienced and has knowledge of investments as he refers to the cash balances held by a particular investment and chartists views, as some examples.

But I don’t think that Brewin is suggesting that because of Mr C’s investment experience and knowledge meant that was the reasons for its decision to act on his instruction or absolved it of any issues with the performance of his portfolios. And a discretionary manager cannot ignore an instruction from its client whatever their level of experience.

Mr C sought guidance from Brewin for its expertise because of his concerns, but taking all the above into account I don’t think that Brewin acted incorrectly. His investment manager responded to questions raised and I think his responses were honestly given – selling assets within his own pension, not agreeing with Brewin’s house view and if he were in Mr C’s position he might have sold further investments.

But as mentioned above, I’m satisfied the priority for the investment manager was to make sure Mr C felt comfortable with his investments and any decisions he made about that. Mr C’s decision meant that he had cash in hand, rather than exposure to the volatility of the stock market, which was clearly worrying him, and was ready to take advantage of any upswing in the markets. In the meantime, he wasn’t exposed to further worry about the potential falls in value of his investments.

It follows that I don’t uphold Mr and Mrs C’s complaint. I appreciate they will be disappointed with the outcome – it’s clear they feel strongly about it – but I hope I have been able to explain how and why I have reached my decision.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 21 March 2025.

Catherine Langley
Ombudsman