

The complaint

Mr and Mrs H have complained that Brewin Dolphin Limited ('BD') didn't effectively managed their investments and as a result they have missed out on profit. Mr and Mrs H would like financial compensation for their losses.

What happened

In May 2018 Mr and Mrs H transferred their stocks and shares ISAs to the discretionary management of BD. They added to the funds and invested a total of £456,000 but say their portfolio didn't perform in line with indexes and hadn't recovered post COVID/Ukraine.

In 2023 Mr and Mrs H became unhappy with the returns, management fees, unauthorised use of their ISA allowances, poor investment decisions, lack of due diligence and poor and incorrect financial reports. They raised a complaint with BD and moved their account to another provider.

BD responded to Mr and Mrs 's complaint on 14 June 2024. It said;

- Mr and Mrs H's portfolio was managed within BD's Risk Level 7 – Capital Growth mandate.
- Mr and Mrs H had given RB authorisation to continually use their ISA allowance.
- The portfolio asset allocation was largely in line with what would be expected for a Capital Growth Risk Level 7 portfolio.
- It wouldn't have been possible to forecast the events of 2022. All stocks within the portfolio were thoroughly researched.
- The portfolio had provided 35% growth since inception which was comparable to the benchmark so hadn't underperformed
- Receipt of ISA cash in January 2020 had been confirmed to Mr and Mrs H.
- Fees and charges had been explained to Mr and Mrs H and had been correctly applied.

Unhappy with the outcome Mr and Mrs H brought their complaint to the Financial Ombudsman Service. Our investigator who considered the complaint thought DB needed to do more;

- Mr and Mrs H had the capacity to incur losses.
- They had agreed to transfer ISAs to BD and use the annual allowances.
- The risk category was reflective of Mr and Mrs H's attitude to risk.
- Asset allocation wasn't contrary to the agreed mandate and in line with risk profile.
- Mr and Mrs H had some investment experience and knowledge.
- They were given adequate information about the costs and fees.

- The discretionary mandate allowed BD to make changes to the portfolio in line with the pre-agreed risk profile and investment objective.
- But he thought BD should pay Mr and Mrs H £100 for the inconvenience caused when there was a delay in reporting because of the introduction of a new system.

BD accepted the outcome albeit it didn't agree with the investigator's view of payment for inconvenience caused by the delay of the introduction of a new system as Mr and Mrs H had access to the information via the MyBrewin platform and their Investment Manager while formal reports were produced.

Mr and Mrs H didn't agree with the investigator. They said they weren't arguing about the performance but about the proper exercise of financial prudence, contractual and financial accountability and competency in handling large sums of money. The investigator was biased and just accepted what BD had said. No assessment had been made of the risk of the investment, the funds transferred in January 2020 had disappeared, they had introduced funds in 2022 to take advantage of lower markets, but they continued to lose money despite recovery in the markets. They weren't sure where all their funds had gone. BD didn't consider the heightened risk due to the Ukraine war.

As the complaint remains unresolved, it has been passed to me for 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 conclusion as the investigator and broadly for the same reasons. I'll explain why.

I've assessed Mr and Mrs H's circumstances and investment objectives at the time they opened their account with BD. BD has provided a copy of its 'Needs Assessment Fact Find Form' completed on 20 April 2018. That document recorded;

- Mr H was 69 years of age and Mrs H 58. They were married and both retired but Mrs H ran a small business as a hobby.
- Including their main residence they had three properties with an overall value of £880,00.
- They had stocks and shares ISAS valued at £100,000 and £120,000.
- They had no liabilities.
- Income wasn't a requirement for the time being as they received pensions and some rental income. Capital growth was the priority.
- Mr H was in good health but Mrs H had recently been diagnosed with arthritis.
- Mr and Mrs H had three financially independent children between them.
- Their investment term was ten years plus.
- Mr and Mrs H were looking for discretionary management as they had tried their own investment management but it hadn't worked.
- Mr and Mrs H had some investment knowledge and experience.

Looking at Mr and Mrs H's circumstances, there's nothing to suggest that a discretionary managed portfolio wouldn't be right for them, particularly bearing in mind they had tried to manage their portfolio themselves but weren't happy with the outcome. Mr and Mrs H had the financial means to make such an investment, so I don't think was unaffordable for them. And they also had some investment knowledge and experience about how stock markets

worked. So, on the face of it I don't think it would be reasonable for me to conclude that, provided the discretionary portfolio was managed in line with Mr and Mrs H's investment objectives and risk profile, that it wouldn't be suitable for them.

I've also considered Mr and Mrs H's understanding of and attitude to the level of risk they were willing to be exposed to. Mr and Mrs H completed a risk questionnaire and the score on BD's Client Risk Profiler was 61 which was 'High-Medium Risk Tolerance' described as being;

'The risk tolerance score puts the client in the 'High-Medium risk' category. People in this category have a high medium risk tolerance, and probably concentrate on getting higher returns on investments.'

The outcome is that Mr and Mrs H were classified as being within BD's risk category seven where the range was one to ten with one being the lowest attitude to risk. Within BD's 2018 'Risk guide – Understanding risk' – which I understand was discussed at the April 2018 meeting – risk category seven was described as being;

'You are seeking to generate higher investment returns through an increased exposure to equities to help achieve your long-term investment goals. The portfolio will typically have a very high proportion of the investment held in equities and very low levels of fixed income, cash and alternative asset classes. A larger proportion invested in equities increases the likelihood of volatility and degree of change in the overall value of the portfolio.'

The typical portfolio at the time was exposed 83% to equities, 7.5% into fixed income, 7% into alternatives and 2.5% in cash.

Further to their initial meeting with BD Mr and Mrs H were provided with a Client Investment Proposal on 2 May 2018. This provided more information about Mr and Mrs H's circumstances in that as well as the stocks and shares/cash ISAs they also had cash of £200,000 plus Investments valued at just under £70,000.

The Proposal confirmed the outcome of the risk questionnaire and that the resulting risk score of 'D' was described as being;

'The risk tolerance score indicates a 'Medium-High risk' category. People in this category have a medium-high risk tolerance and probably concentrate on getting higher returns on investments. However, they are still probably concerned about too much fluctuation and therefore the possibility of losing money.'

Mr and Mrs H were to transfer their stocks and shares and cash ISAs to BD as well as cash and it was agreed BD was to make use of their individual ISA allowances of £20,000, a point with which Mr and Mrs H disagree.

BD has provided evidence of how it went about identifying Mr and Mrs H's attitude to risk. So along with this and the 'Risk guide' document, I think it most likely risk was discussed with Mr and Mrs H and they were willing to take some risk with a proportion of their overall assets in return for the potential for capital growth.

As already mentioned Mr and Mrs H say BD used their annual ISA allowances when it shouldn't have. They say they didn't give their permission for it to do so.

BD has provided its meeting notes of 24 January 2020 which said;

'As previously mentioned, you confirmed that you would use the cash in your [building society] account to subscribe to your respective Brewin Dolphin ISAs in each tax year...You also confirmed that you are happy for Brewin Dolphin to make use of your ISA allowances, where the current allowance stands at £20,000 per individual.'

It's not clear to me whether these notes were then repeated in an Advice Review document for 2020 and sent to Mr and Mrs H but they do suggest to me that this was discussed. And the Advice Review document of 1 October 2021 recorded that both Mr and Mrs H;

'confirmed you have not utilised your ISA allowance in the current tax year and that you are making this available to us now and on a continuing basis.'

However, Mr and Mrs H say they never gave such permission, and this was worrying for them because of Inland Revenue requirements and the funds to finance the ISAs would need to come from their taxable portfolio and there may be capital gains tax consequences.

Mr and Mrs H say that when they met their investment manager in 2022, after they found BD was using their ISA allowance, he accepted that he had no authority to do so but assumed they wouldn't mind. And they say their investment manager offered to 'reverse' the ISAs – I assume to sell the investments and/or move the funds back into the taxable portfolio – but Mr and Mrs H declined this offer. I asked BD about this but Mr and Mrs H's investment manager couldn't recall the conversation. But if the offer to reverse the ISA was made and not taken up, bearing in mind that putting the funds back into the taxable portfolio would attract both capital gains tax and income tax benefits this seems the logical response.

And looking at Mr and Mrs H's portfolios, over time the majority of the funds held with BD were within the ISA accounts, more funds were added to use the annual allowance and the taxable portfolio reduced. This is generally considered to be advantageous compared to a taxable portfolio because of the obvious tax benefits. I haven't seen anything to suggest that Mr and Mrs H would have or did use their ISA allowances elsewhere which could have potentially caused consequences with the Inland Revenue in that Mr and Mrs H exceeded their annual allowances. Nor have I seen any capital gains tax implications if funds were in fact raised from their taxable portfolio.

In general, a discretionary investment manager would have discretion in raising funds from a client's taxable portfolio to finance an annual ISA because of the considerable tax benefits. While I appreciate Mr and Mrs H have concerns about any capital gains tax implications because of that but generally the investment manager would look to raise the funds in the most beneficial way – i.e. crystallise losses or ensure that any capital gain incurred remained within the annual capital gains tax allowance. But, from the evidence presented, Mr and Mrs H held very little outside of their ISAs, and I haven't seen anything to suggest they were using their capital gains tax allowances elsewhere that would have caused tax to be paid.

So, despite it being recorded in 2020 meeting notes and the 2021 Advice Review document that Mr and Mrs H had agreed to the annual utilisation of their ISA allowance I appreciate Mr and Mrs H say this wasn't the case. While I recognise Mr and Mrs H's concerns about this, I haven't seen anything to suggest they were financially disadvantaged because of funds being added to the tax beneficial ISA wrappers. And Mr and Mrs H say they were given the opportunity to 'reverse' their ISAs but chose not to do so.

As Mr and Mrs H were given the opportunity to put the matter right and I haven't seen anything to suggest they have suffered a financial loss because of the use of ISAs, I don't think BD has to do anything more here.

Mr and Mrs H transferred additional cash ISA funds to their portfolio in January 2020. This was confirmed to them by email on 8 January 2020, but Mr and Mrs H say the funds disappeared and they have never had a satisfactory answer to where the funds went. BD has provided a copy of the quarterly valuations for the period it managed Mr and Mrs H's investments which were sent to and received by Mr and Mrs H shortly after the end of each quarter.

I can see the portfolio valuation for the period 6 January 2020 to 5 April 2020 shows a 'Net Capital Added/Withdrawn' figure of £178,589 for the period when cash of £162,078 was added. And the Transaction Statement in the same valuation lists all the purchases made during the period – a total of 30 trades totalling just under £110,000.

And there were further purchases during the following quarter (plus one sale) costing just over £79,000 making of a total of £188,896 invested. The 'Dealing and Deposit Statement' section shows the credits and debits over the quarter including the payments received. These funds were added to Mr and Mrs H's ISA portfolios – which is what I would expect to see as the funds were cash ISAs – and not kept separately.

However, I think it's clear from the valuations when the funds were invested and what they were invested in. And looking at all the valuations I'm satisfied they all provided similar and clear information about any action taken during each quarter with regard to cash flow, trades, increase/decrease in the value of the portfolio, fees taken, asset allocation, transaction statements etc. On the assumption Mr and Mrs H received the quarterly valuations – and I have no reason to think they didn't – then I'm satisfied BD provided them with all the necessary information they needed to monitor their portfolios including what happened to the January 2020 cash addition.

However, I do note that BD said it introduced a new Custody and Settlements system in January 2023 which caused some delays in its usual reporting cycles, but it apologised to Mr and Mrs H for this in its final response letter. Our investigator recommended BD should pay Mr and Mrs H £100 because of the inconvenience caused. BD accepted the investigator's assessment of the complaint but didn't agree that Mr and Mrs H were inconvenienced because they had access to its online platform and their investment manager. But looking at Mr and Mrs H's letter of complaint, I can see they were unhappy they didn't receive the information they expected so I think they would have been inconvenienced by this. I think £100 is a fair reflection of the inconvenience suffered. But other than that, I don't agree BD needs to do anything.

Mr and Mrs H have questioned the overall risk profile of their portfolio and whether it stayed within their risk profile of '7'. In particular they made reference to two holdings – Digital 9 where shareholders voted for a managed wind-down and Hipgnosis which was delisted. I've reviewed the asset allocation of the portfolio and haven't seen anything that would make me conclude it was outside of the agreed risk profile or asset allocation compared to the benchmark. And all the investments held were collective investments – investment trusts and similar – which would reduce the risk of direct equity exposure. The majority of them are with well known and established investment managers.

And in its response to Mr and Mrs H's complaint BD assured them that all stocks held within discretionary managed portfolios were thoroughly researched by its analysts and investment was then made by the investment manager from a centrally approved list of securities. From my experience in handling investment complaints this is a common model for firms who manage funds on a discretionary basis. And I haven't seen anything to suggest that either BD didn't carry out its due diligence when deciding on investment opportunities or that the investment manager invested elsewhere than BD's centrally approved list of securities. So,

while inevitably some of those investments have a higher risk exposure than others, overall I'm satisfied the portfolio was invested within the parameters of a risk profile of '7' and as defined by BD.

And with regard to the asset allocation, as an example I can see that on 5 January 2019 Mr and Mrs H's portfolio was invested 7.4% into fixed income compared to the benchmark of 7.0%, 80.5% in equities compared to 83% for the benchmark and 6.2% in alternatives compared to the benchmark of 7.5%. As another example on 5 October 2022 the same asset exposure was 2.5%, 81.3% and 8.7%. So, while the asset allocation did change over time – which is what I would expect to see from an actively managed portfolio – the asset allocation was reasonably in line with the benchmark agreed at the outset.

And in response to me asking BD about the two holdings Mr and Mrs H referred to, I agree with what it said in that they made up less than 5% of the portfolio and so had a limited impact. The inclusion or exclusion of these two holdings from the portfolio wouldn't alter the wider risk profile of the portfolio. So overall, I am satisfied that Mr and Mrs H weren't exposed to more risk than agreed and that the asset allocation was in line with the benchmark.

Mr and Mrs H disagree with BD's assessment of the return on their portfolio for the period of BD's management. It said the overall growth of around 35% was comparable to the benchmark after taking into account the additions, withdrawals and fees. So, it hadn't underperformed.

I asked BD for details of its calculations, and it has provided performance data spreadsheets for the portfolio. This details monthly performance since inception and incoming and outgoing cashflow such as cash additions and payment of fees – for which I have cross referenced samples with the valuations – plus the value of the portfolio. The cash additions over the period were;

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Date	Mrs H	Mr H
31.05.2018	£85,764.53	£122,684.99
31.01.2020	£39,390.25	£41,133.83
29.02.2020	£17,488.70	
31.03.2020	£19,900.38	£19,889.95
30.04.2020	£10,215.70	£14,098.44
30.06.2020		£39,828.10
Total	£172,759.56	£237,634.22

So, in total Mr and Mrs H invested £410,393.79 and the value of their portfolio upon transfer to another provider was £461,047.19. Over the period of investment Mr and Mrs H paid fees and charges of just under £30,000. The performance data spreadsheet shows that Mrs H's portfolio performance was recorded as plus 52.51% over the period and Mr H's as plus 17.03% giving an average between the two of just under 35%. So, I am satisfied with BD's conclusions about the overall performance of the portfolio.

Mr and Mrs H have referred to correspondence with their investment manager December 2021 when they say it was clear the Ukraine war was imminent. They suggested moving their portfolio to cash but this wasn't done and they say inevitably prices fell and then their portfolio didn't recover along with the markets in 2022/2023.

Mr and Mrs H say if their investments had been sold in December 2021 the funds could have been reinvested when the markets recovered, they foresaw this and it wasn't said with the benefit of hindsight. Their investments would have been a lot better off during a period when

they have been paying management fees for little in return. Further they have suffered continued loss of investment opportunity because of this as they were only able to transfer a lesser amount to their new investment manager for future investment.

BD provided me with a copy of the correspondence and I see that Mr H wrote to BD on 9 December 2021 as he had concerns about Russia/Ukraine, USA/West in conflict with China and Iran altering the East/West balance. He asked if BD had researched this and questioned whether it was time to move to cash. BD responded on 10 December 2021 with a commentary about market performance since 1950, unpredictability of timing of markets – an example being that if the portfolio had been encashed prior to March 2020 (pre-COVID) it would have had a detrimental effect on the portfolio – but by staying invested that the portfolio was up 34.06% since March 2020.

I appreciate the point Mr and Mrs H are making. They are of the view that the downturn post the Ukraine crisis was foreseeable and their investment manager should have taken defensive action – as suggested by them. Mr and Mrs H no doubt had their own views, and I note they previously managed their own portfolio so would have been used to having their own opinion about what should happen with their portfolio and making their own investment decisions. But by handing their investments over to the discretionary management of DB it allowed their investment manager the freedom to manage Mr and Mrs H's portfolio as DB saw fit provided it was within the terms agreed at the outset. I think BD's response to Mr H's questions was reasoned regarding the timing of the market and backed up with data about the performance of the portfolio and a UK Financial History chart showing performance over time – and during downturns. But it was for the investment manager to take the decision that he did.

Ultimately Mr and Mrs H aren't happy with the return they received on their portfolios while they were being managed by DB. While I can't consider performance in and of itself, I can consider whether the portfolio was unsuitable for Mr and Mrs H whether it's been mismanaged.

Provided a portfolio is invested in line with its overall objectives and disclosed risk – in this case for capital growth long term by investing in a broad range of assets – primarily equity investments in collective investments for capital growth – within the agreed risk profile, then it wouldn't be fair or reasonable for me to uphold the complaint on this point. But as I have said above, I haven't seen anything to suggest that the portfolio was invested outside of its stated investment objectives or risk profile.

And the fact that the risk of underperformance of the portfolios materialised against the benchmarks, does not automatically mean that the DB did anything wrong. In the absence of any evidence that DB mismanaged the portfolios – and the performance of the portfolio alone doesn't evidence this – I am unable to say that DB has done anything wrong in the overall management of Mr and Mrs H's investments.

While I can understand why Mr and Mrs H may not be happy with the performance of their portfolios during the period in question, but the issue of portfolio performance is not straightforward in that it is actively managed. This means the money is invested in specific assets of funds chosen by Mr and Mrs H's investment manager. If the portfolio in a certain period poorly performed that's because the investment manager had taken certain decisions that hadn't paid off – at least in the period under review. That's disappointing, of course, but reflects the investment manager exercising their judgment – which they were supposed to do. It doesn't mean the investment manager had been negligent or failed in their duty of care. And it doesn't mean the investment manager's decisions won't pay off over the longer term.

Taking all the above into consideration, and the individual circumstances of this complaint, I don't find the portfolio was mismanaged by BD bearing in mind Mr and Mrs H's personal and financial circumstances, their attitude to risk and their investment objectives. It follows that other than the inconvenience Mr and Mrs H suffered because of the report cycle delays for which BD should pay Mr and Mrs H £100, I don't uphold the complaint.

I appreciate Mr and Mrs H 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've reached my decision.

My final decision

For the reasons given, I uphold the complaint and Brewin Dolphin Limited should pay Mr and Mrs H £100 for the inconvenience they were caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 1 January 2026.

Catherine Langley
Ombudsman