

The complaint

Mr G complains that Brewin Dolphin Limited mismanaged his portfolio causing him to suffer from poor investment performance.

What happened

Around 2009 Mr G had a small self-administered scheme ('SSAS') which was a type of occupational pension. Mr G engaged Brewin Dolphin to provide a fund management account within his SSAS wrapper. Following that, assets were transferred to Brewin Dolphin to invest. Mr G agreed with Brewin Dolphin for it to provide a discretionary fund management ('DFM') service.

In 2021 Mr G transferred the pension assets in his SSAS to a self-invested personal pension ('SIPP'). Brewin Dolphin continued to provide the DFM service for the same fund within the SIPP.

In September 2023 Mr G complained to Brewin Dolphin about the management of his investments over the course of his relationship with it. He had numerous questions about the management of his fund.

Brewin Dolphin responded to his complaint in December 2023. It explained that it provided a Discretionary Management service, which meant that it had day to day control of his investment account to manage the most appropriate mix of assets. It explained that investment performance isn't something that it could guarantee. It didn't uphold Mr G's complaint about his investment's underperformance. It reviewed the balance of investments in the portfolio and explained that the portfolio had been within the tolerances for Mr G's attitude to investment risk.

Mr G was unhappy with Brewin Dolphin's response and referred his complaint to our service. He alleged mismanagement and system failures dating back to 2009/2010 and considered that he was owed substantial compensation.

Our investigator looked into what happened and gave his opinion on the following areas relating to Mr G's complaint: the accuracy of the initial funds transferred to Brewin Dolphin's management in 2010; the existence of trail commission; the application of charges/fees on the policy; the risk profile; and the fund performance. He didn't think that Brewin Dolphin had done anything wrong regarding these issues and explained why.

Mr G didn't agree with our investigator so this case has been referred for an ombudsman's decision.

I issued a provisional decision to let both parties know my thoughts about the parts of Mr G's complaint that our service would be able to consider. And then I gave the reasons why I also didn't think that Brewin Dolphin had done anything materially wrong that it needed to compensate Mr G for. I summarise my reasons for these findings as follows:

- I explained the time limits that apply to complainants referring complaints.

- I then explained why that meant that I did not have the jurisdiction to consider any of the activities that Mr G referred to if they were more than six years before his complaint.
- I explained that I would not uphold Mr G's complaint simply because his fund had not performed better. I would need to be persuaded, based on the evidence available, that Brewin Dolphin had made mistakes that led to a loss.
- I considered the arguments and evidence from both parties and didn't think that there was evidence that Brewin Dolphin had mismanaged Mr G's investments.
- I investigated the application of the fees to Mr G's investments as these had a direct impact on the investment returns.
- Brewin Dolphin provided a quarterly breakdown of the fees it had applied and it identified minor errors which led to an initial over charge of £448.84 followed by a later undercharge of £661,62. So I was of the opinion that Mr G had not suffered any loss due to these regrettable errors.

Brewin Dolphin acknowledged my provisional decision and agreed with my findings, offering no further evidence.

Mr G disagreed with my finding. He remained of the opinion that he had suffered a significant loss and asked for his outstanding questions to be answered and he wanted a further explanation about how the charges had been applied.

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 have not been provided with any new evidence. I would reassure Mr G that the points he has raised were already amongst the things that I previously considered. Having looked at the evidence and arguments again I have not changed my mind. My final decision remains the same as the provisional decision that I previously shared. I will explain the reasons why I am not upholding Mr G's complaint below.

Jurisdiction

As I explained in my provisional decision, some of the things that Mr G asked us to consider aren't in our jurisdiction. As I previously explained, our service exists to provide an alternative means for resolving disputes between consumers and regulated financial firms. We get our authority to do this from legislation, and the rules that govern our service are set out under the DISP section of the Financial Conduct Authority ('FCA') Handbook. Section 2 of DISP governs the times that our service has authority to act. It refers to this as our jurisdiction. It means that we can't necessarily consider all complaints under all circumstances. So, before proceeding to give an answer I need to first decide that I have the jurisdiction to do so.

In this case, Brewin Dolphin have explained that they think that a lot of what Mr G has complained about has been made too late for us to consider it. And I will explain why I think it is right about this.

The relevant rule in DISP is 2.8.2R which basically means that we can't consider a complaint if it's made more than:

- Six years after the event complained about (the six-year rule); or **if later**
- Three years after Mr G became aware, or ought reasonably to have become aware, that he had cause for complaint about that event (the three-year rule); **unless**
- Brewin Dolphin consent to us looking into it, or I am of the view that failure to comply with the time limits was a result of exceptional circumstances.

The scope of Mr G's complaint is effectively asking our service to look into the actions and alleged mismanagement of his portfolio since around 2010. He suggests that he was led to expect returns of 10% a year, and that these have not been delivered. Wrapped up in this has been the impact that Brewin Dolphin's fees have had on the fund performance. So he thinks that his fund ought to be significantly larger than it is by this stage.

Mr G complained to Brewin Dolphin about his disappointment with the performance and management of his fund on 8 September 2023. So any events prior to 8 September 2017 were more than six years ago. This means that the 'six-year' rule does not give me jurisdiction to consider anything prior to that. But there is a second element to DISP 2.8.2R that I have referred to above as the 'three-year rule'. That means our service may still be able to look at complaints about events before those dates if they were made within three years of the time that Mr G ought reasonably to have known of a cause to complain.

In deciding this I need to determine what I think is at the heart of Mr G's complaint. Which I think is that the performance of the funds under Brewin Dolphin's management was lower than it should have been.

In Mr G's complaint he referred to an expectation that he would get 10% a year. Up until September 2017, Mr G's Brewin Dolphin portfolio was held within his SSAS wrapper. He was the trustee of the SSAS and it is evident from email correspondence that he, understandably, took an active interest in the SSAS portfolio. Mr G would have been provided with fund valuations for his SSAS. These would have come from Brewin Dolphin and from the SSAS administrator. I therefore think he was able to monitor the ongoing performance on at least an annual basis. So, at the end of each year he would have been able to gauge the performance of his Brewin Dolphin portfolio.

Any dissatisfaction with the ongoing performance of the investments ought reasonably to have been apparent to him on receipt of each valuation. So by the end of each year of investment performance. What that means is that awareness for the three-year rule, for each year's performance and management, would only have been at most 12 months after the performance complained about. So the three-year rule doesn't give any longer to complain than the six year rule.

For this reason our service does not have jurisdiction to consider any of the events about Brewin Dolphin's discretionary fund management prior to 8 September 2017.

I have considered whether Mr G's specific concerns about the fees that he was being charged are similarly limited. And I think that they are. Mr G was made aware of the fee structure for Brewin Dolphin. And he would have had regular statements that would have indicated what fees had been charged. In short, he could have reviewed that annually. So he ought reasonably to have been aware of any issues regarding the application of fees within the time allowed by the six year rule. So I will not be able to consider the fees paid prior to 8 September 2017.

Mr G has also raised the question of the payment of trail commission to Brewin Dolphin. The trail commission would have been put in place at the start of the policy. So more than six

years ago. I cannot consider this issue under the six year rule. So, again, this complaint has been made too late unless Mr G complained within three years of the time he was aware of the issue. But Brewin Dolphin have shown us a query from Mr G that makes it clear that he was aware of the commission payment in 2010. So, significantly more than three years before he made this complaint.

The issues, which I have said were complained about too late, can only be considered here if Brewin Dolphin consent. Or if there is an exceptional circumstance that meant that complaint couldn't have been made in the allowed time frame.

Brewin Dolphin have already explained to us that they do not consent to our looking into the issues that have been complained about too late. So the only remaining thing that would allow me to consider anything prior to 8 September 2017 would be if there were exceptional circumstances that prevented Mr G from making a complaint about those older issues sooner. The bar for exceptional circumstances is quite high however, with the example given at DISP 2.8.4G being where a complainant has been incapacitated. I've not seen evidence that Mr G was incapable of raising a complaint sooner by any issues. It is evident that he has been in contact with Brewin Dolphin at certain points and received regular correspondence from them. I will of course consider any representations he makes on this point in response to my provisional decision.

Have Brewin Dolphin treated Mr G unfairly?

I would start by explaining that in order to give a fair and reasonable answer I have focussed on the issues that I think are at the crux of Mr G's complaint. Which I think is about whether or not Brewin Dolphin have done something wrong that might have caused him a loss. It means I will not have addressed every argument that he has made, and have not sought to answer every question that he has put to us or Brewin Dolphin. I have only addressed those things that I consider to be material to giving a finding on the crux of the complaint. I don't intend this as a discourtesy to Mr G, it is instead a reflection of the fact that our service is intended to give consumer access to an alternative resolution service that is provided with a minimum of formality.

Mr G has been clear in his disappointment with the performance of his Brewin Dolphin investments. But I am persuaded that Mr G always understood that investment performance was not guaranteed. Investment carries with it a risk. Brewin Dolphin were clear about that. I have considered Mr G's expectation that he'd been led to believe that he could receive returns in the region of 10% a year. But I have seen no evidence that corroborates that Brewin Dolphin told him that.

I understand that he has compared the performance of his portfolio with others and considers his has not performed as well. I am sorry to hear this, but I have seen nothing in Brewin Dolphin's correspondence that guaranteed that it would outperform all other investments.

It is not fair or reasonable for me to uphold Mr G's complaint because Brewin Dolphin were not able to achieve higher investment performance with the portfolio that it managed. What I can do is to consider any specific mistakes that Mr G has alleged it made that caused him a loss.

Brewin Dolphin determined Mr G's attitude to risk and were in contact with him periodically. I have seen nothing that causes me to think that it did not assess this fairly, either in the service it provided in the SSAS or in the SIPP after 2021. I also think that Mr G had the capacity for loss to be able to invest in line with the risk grading Brewin Dolphin agreed with Mr G. I also think Brewin Dolphin most likely provided discretionary fund management in line

with the agreed attitude to risk. Mr G has not given me any cause to identify any investment choices that meant his portfolio departed from the agreed risk profile. I would explain that our service is intended to provide an alternative resolution with a minimum formality. We do not provide forensic scrutiny of a discretionary managed portfolio looking for unreasonable decisions. I would consider any specific concerns that Mr G highlighted. But I have not gone through every investment decision made within the portfolio over the six years prior to Mr G's complaint.

I have considered Brewin Dolphins application of the fees, as I understand that these costs would have an impact on overall fund performance. I have sought a clear explanation of the fees that were agreed to and evidence of the actual fees that were applied. Brewin Dolphin have provided a spreadsheet that sets out in a clear way the fees that were charged for its services. And I have shared this with Mr G. Mr G has queried why the figures in the spreadsheet did not match other figures he says that he was given. But Mr G is not comparing similar things. The figures that Brewin Dolphin provided, and I shared with Mr G, related to the charges that it applied for its service. Which was what I think was relevant. But they were not the only charges that applied to the portfolio.

There were other costs that Mr G ought to have understood as they were set out in the annual summary of charges letter that Brewin Dolphin provided each year for the previous year ending on 31 December. These additional charges included transaction charges and third party charges that Brewin Dolphin were correct to include in the annual summary as they were costs that impacted on the fund. Those were not charges that Brewin Dolphin were applying for its services. But they were the reason that the overall charge figure was more than the fee that Brewin Dolphin applied for providing the investment management and the financial advice.

Brewin Dolphin have shown that the fees being charged for the portfolio management on the SSAS should have been 0.5% a year plus VAT. This was because it had discounted Mr G's portfolio from its standard 0.75% a year fee. Brewin Dolphin's audit of these charges showed that there was an administration error in the quarterly fee that was deducted on 5 October 2018. Brewin Dolphin explain that it was changing its rates at that time and the discount was not applied to that quarterly fee. It calculates that it caused Mr G to be overcharged by £448.84. It has then calculated the investment loss on that charge to be £26.02. Which I think is a fair way to assess the impact of that overcharge. I can see that from 5 January 2019 onwards the charges to the SSAS were all correctly applied at the agreed rate.

Mr G's portfolio was transferred from the SSAS to the SIPP in 2021 as I have already explained. Brewin Dolphin has shown that Mr G agreed to a new charging structure for the SIPP. Brewin Dolphin would then be charging for its DFM service as well as for providing ongoing financial advice. The audit of charges has highlighted a further error in the application of the charges from the SIPP on 5 July 2021. Brewin Dolphin calculated that the combined undercharge of fees from that error was £661.62. Which means that, even without factoring in the additional growth on this undercharge that Mr G ought never to have had, it is still greater than the loss his fund suffered from the earlier overcharge. So the combined effect of these two errors has resulted in a net gain for Mr G.

I appreciate that Mr G may, understandably, find these errors to be unacceptable. And I agree that mistakes like this should not occur. But, where mistakes do happen, I need to consider the impact of that and, if there is a loss, to find a way to put that right. In this instance, the evidence that I have seen persuades me that Mr G has not suffered any actual financial detriment from these issues. So there is nothing that Brewin Dolphin need to do to put these mistakes right.

I would also like to point out that I have considered whether these errors caused Mr G any

distress and inconvenience. Although Mr G argues that he had been caused distress by what he considers to be a loss of thousands in his fund, I am not upholding that part of his complaint. I haven't found that Brewin Dolphin have caused him a loss. Investment performance can vary over time and not all funds perform equally well. But that is not, by itself evidence of any failings by Brewin Dolphin. In considering distress and inconvenience, I am therefore only considering the impact of Brewin Dolphin's mistake in the application of fees. And I don't think that this specific issue caused any distress or inconvenience. I say that because these were not errors that Mr G identified or raised in his complaint. Put simply, I don't think Mr G was specifically caused distress by an issue that he was previously unaware of.

My final decision

For the above reasons I am not upholding Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 14 August 2025.

Gary Lane
Ombudsman