DRN-6158238

The complaint

Ms B has complained about the management of her investment portfolio held with Brewin Dolphin Limited ('BD') and the suitability of the discretionary service recommended to her. She feels that the returns she was promised haven't been delivered and she's been misled about how the portfolio performed compared with benchmarks. Ms B also believes that annual reviews haven't always been provided.

What happened

Ms B has been a customer of BD since 2007 when she opened a General Investment Account ('GIA'). As I understand it, in late 2012 when discussing the transfer of investments held with another adviser, BD introduced its discretionary service to Ms B. It sent her a letter dated 8 January 2013 containing an acceptance letter, which she was required to sign if she agreed to move to this service. Ms B signed this form on 11 January 2013. And I can see that a change of client details form was completed by Ms B in September 2013, which noted she was changing to the discretionary service. Ms B says she didn't select the discretionary service, rather that she asked for advice on this point.

I understand that by November 2013, Ms B transferred some additional assets to BD (these were added to the existing assets) and opened a Stocks and Shares Individual Savings Account ('ISA'). At this point, Ms B's investment manager at BD, Mr E, explained that he had previously managed her investments on an advisory basis, meaning he was required to explain any proposed changes in advice in writing. However, he proposed that in future the investments should be managed on a discretionary basis. Mr E explained this would allow him to make alterations to the portfolio without having to trouble her on every occasion. He explained under this arrangement, which I will refer to as discretionary fund management ('DFM'), he would report regularly on the changes to and performance of the investments. Mr E said the cost of the DFM service was slightly less than advisory management but the main advantage was that it allowed him to respond quickly to events both good and bad.

Mr E asked Ms B to confirm that she was happy the proposal. I understand Ms B agreed to take the DFM service and Mr E wrote to her on 29 January 2014 to confirm her portfolio would be managed on a discretionary basis in line with her 'progressive' risk appetite and what that entailed.

At a meeting in October 2014, after undertaking a new risk assessment, BD recommended that the DFM portfolio should be invested in line with her new risk profile, which had been deemed 'risk level 7'. This was confirmed in a 'Client Service Review' report sent in November 2014.

Ms B's husband, Mr R, became a customer of BD following some advice provided in November 2016. He'd received an inheritance so he had money to invest. Mr R also opened a GIA and a Stocks and Shares ISA and his investments were also managed on a discretionary basis. At this time, BD assessed Mr R's attitude to risk as 'level 8 – high' and Ms B's attitude to risk as 'level 7 – medium-high'. At this time, the investments held between Ms B and Mr R were rebalanced between them to allow each of them to make full use of their capital gains tax ('CGT') allowances. BD has told us that Ms B and Mr R's investments

have been managed by BD as one portfolio and it was agreed that this would be based on a risk level of 7.

In September 2024 Ms B made a complaint on behalf of her and Mr R. She complained that, following a meeting with Mr E, they were left concerned about what they had been told about the performance of their investments over the years. Ms B said:

"…my husband and I were told different figures about the same things in relation to returns, which made us question what we'd been told so far regarding returns. [Mr E] *sent us a risk guide which gave details of 5, 10 and 15 year returns on various risk categories. We had been told our portfolio would outperform benchmark in a rising market, and were told, over the long term, it was doing so. We were also told at this time that the fees incurred for this service were about 1%. Even deducting 1% per annum, it became apparent from the value stated on the portfolio that the returns were nowhere near what was stated in the risk guide, despite what we had been told."*

Ms B said that Mr E should not have assured them that their portfolio would outperform the benchmark in a rising market; a rising market is what they'd had, but their portfolio has not outperformed it. Ms B added:

"What I am most distressed by is misleading information. For example, in the last month, we have asked about returns. In our recent meeting, [Mr E] *said our portfolio returned 8% per annum, on average, net of fees, over the past five years. He told* [Mr R] *by email that this figure was 7.81%. MyBrewin told me it was 25.49% over 5 years - I don't understand compounding, but I don't believe this is 8% average annual return."*

This underperformance compared with the benchmarks led her to also question the advice they have received and whether their portfolio has been appropriately invested in line with their attitude to risk and circumstances. She added that BD failed to provide them with access to 'MyBrewin' (BD's online platform) at the outset, which would have allowed them to see the returns and they likely would have been able to identify the poor performance sooner.

Ms B also said that Mr E had told her that she and Mr R had declined inheritance ('IHT') tax advice because the potential for *"further education, property etc. may take priority"* but she denies they said this.

In addition to the above issues, Ms B says that BD failed to advise her or Mr R to invest excess cash funds. Ms B says that keeping the amount of cash reserves they had was not in line with their risk profile and it has effectively been eroded by inflation. Ms B understands that BD would usually recommend they retain three to six months of expenditure in cash but they ought to have been advised to invest the excess sum and they have likely lost considerable returns.

Ms B added that BD failed to advise her or Mr R to contribute to a self-invested personal pension ('SIPP'). She says they didn't know they could have more than one pension, meaning they had missed years of investing up to their personal allowances. Furthermore, Mr E didn't mention subscribing to a Junior ISA '(JISA') for their children until 2023 – he ought to have told them about this sooner and they should be compensated for the missed allowances before then.

Ms B also questioned BD's advice to use its DFM service. Ms B doesn't recall BD explaining the fees or the service to either of them at the time it was recommended and she isn't persuaded it was a suitable arrangement for them given their investment knowledge and experience. Ms B questioned whether they could've paid a lower flat fee. She has also

complained about how BD hasn't treated them as individuals throughout the relationship. For example, after Mr R became a client of BD, Ms B says BD didn't consider her individual attitude to risk and copied across Mr R's responses as her own.

Ms B also complained that annual reviews didn't take place as they were often cancelled at short notice by Mr E.
Ms B later added that BD failed to use her CGT allowance in 2023 and failed to sell two assets which couldn't be transferred to her new provider in 2024. She also complained about an imbalance of assets held within her ISA.

BD offered £1,576.79 to put Ms B back into the position she would've been in had the CGT issue and the late sale of the assets not happened. It also offered her £200 to reflect the distress and inconvenience these matters had caused. However, it didn't uphold the complaint about the other concerns raised. It didn't consider BD had acted unfairly by not offering advice on investing Ms B and Mr R's excess cash funds or opening a SIPP as Mr E was not a financial planner, he was an investment manager. BD was satisfied Mr E had made Ms B and Mr R aware they could speak with a financial planner if they needed to, and this included advice to mitigate future IHT liabilities, but they didn't wish to discuss this.

BD said Ms B was moved to the DFM service following a meeting with Mr E in 2014, where the fees were discussed. It said the fees were discussed again in 2017 with her and Mr R. BD explained that alternatively BD could've charged a flat fee of 1.3% plus Value Added Tax ('VAT') but she'd been charged less than this on the DFM service. BD recognised that there had been occasions where Mr E had cancelled meetings, but he gave reasons for this and offered alternative dates each time. BD agreed it could've made Ms B and Mr R aware of being able to access MyBrewin sooner, but it was satisfied they received performance information from Mr E and valuation packs regularly.

BD was satisfied that the asset allocation within Ms B and Mr R's portfolio had largely been in line with a risk level 7 portfolio over a 10 year period, but ultimately Mr E made changes as necessary in line with their objectives and taking account of external market conditions. BD said that benchmarks are used for comparison only and are not a threshold for growth that BD must hit or exceed. BD acknowledged Ms B's comments about the information provided by Mr E about performance being confusing but said it could provide a valuation pack if further clarification was needed. Ultimately, BD said the portfolio had been invested appropriately, and in line with their circumstances, objectives and attitude towards risk.

Ms B and Mr R referred their complaint to the Financial Ombudsman Service.

While Ms B considered that the compensation offered by BD in relation to the CGT issue and failing to sell the assets was fair, she wasn't prepared to accept this to resolve her complaint. That's because she didn't think BD had adequately addressed her other concerns.

Ms B asserts that the complaint isn't necessarily focused on the performance of their portfolio, although they want to be assured it has been invested appropriately, but rather it is about being fed incorrect information about performance against benchmarks. Ms B said that if she and Mr R had been made aware the portfolio was underperforming against the benchmark in 2018 (as opposed to being assured it would outperform it) they would have transferred the portfolio away from BD. Ms B says the fact they moved their assets away from BD after becoming aware of the underperformance is evidence that they would have done so in 2018. Ms B has explained how their funds would have been invested as the basis for compensation. Ms B added that she was unhappy with how BD had handled the complaint overall.

Ms B's and Mr R's account was subsequently closed and moved to a new provider by January 2025. BD also provided a further response to Ms B and Mr R in January 2025 regarding the query Ms B had raised about the ISA imbalance, explaining that her accounts are managed as one portfolio under the same level of risk. As such, it was the overall asset allocation of the combined portfolio that should be considered rather than the ISA in isolation.

The Investigator considered the complaint as one and made the following findings:

- Ms B had made her complaint about the suitability of the DFM service and not being told about the costs payable for the service too late under the Regulator's Dispute Resolution ('DISP') rules. He thought she was aware the DFM service had been recommended and the costs involved by November 2014. And as she hadn't complained about this until September 2024, this was more than six years after the DFM service had been implemented in January 2014, and more than three years after she ought reasonably to have been aware of her cause for complaint.
- He also considered that the complaint about any missed annual reviews due before September 2018 had also been made too late, as Ms B and Mr R would've been aware by the end of the year that they hadn't had an annual review. So, any complaint about reviews due in 2015, 2017 and 2018 (he was satisfied a review took place in 2016) ought to have been made by the start of 2019, 2021 and 2022 respectively.
- Ms B was told in the November 2016 review that her and Mr R's investments would be managed as one profile using one investment risk profile and she accepted this. They received valuation reports thereafter confirming the one risk profile approach to the portfolio, so they'd also complained more than six years after the risk profile strategy had been put in place, and more than three years after she ought reasonably to have been aware of this.
- As the Investigator hadn't been made aware of any exceptional circumstances explaining the delay, he couldn't consider these aspects of the complaint.
- He wasn't persuaded that Ms B or Mr R had been misled by Mr E in 2018 that the portfolio would outperform the benchmark.
- He didn't uphold the complaint about not being told they could invest in JISAs, pensions or alternative products or how to mitigate IHT as BD wasn't providing a holistic financial planning service. The Investigator said Ms B and Mr R were told on multiple occasions that if advice in these areas was required, he could refer them to a financial planner.
- The Investigator noted the potential for performance figures to be confused or inconsistent given they can be expressed in different ways. However, Ms B and Mr R were provided regular valuations which contained the performance figures and these could be relied upon. And since 2019, they had received an Annual Summary of Fees and Charges document which included performance figures.
- He was also satisfied the portfolio had been invested in line with the investment mandate since the changes were made in March 2017.
- The Investigator was satisfied that annual reviews were provided in 2019, 2020, 2022, 2023 and 2024. While he wasn't satisfied a review had been carried out in 2021, he didn't think there was any detriment as no separate fee was being paid for annual reviews. He also didn't think this would've had any impact on the portfolio because the investment mandate remained the same in 2022 as 2020, so it was unlikely any changes would've been made had a review been carried out in 2021.
- He recognised that it would have been useful had BD actively promoted the MyBrewin platform to Ms B and Mr R but ultimately they were receiving information about the portfolio via regular valuations so there wasn't any detriment.

- The Investigator thought BD had provided reasonable compensation for the CGT and asset sales issue so he recommended BD should pay this to put things right.

Ms B didn't agree with the Investigator's findings and made the following comments on her and Mr R's behalf:

- Mr E had misrepresented the performance of the portfolio when he told her in December 2018 that it was performing in line with the benchmark. He told her the portfolio he'd inherited in 2013 had underperformed and it had since outperformed the benchmark. But Ms B believes the portfolio she transferred in had outperformed the benchmark and it only started to underperform when Mr E started to make changes.
- Ms B trusted what Mr E told her over what she saw in her valuation statements. Mr E admitted this error in an email of 28 November 2024. This hasn't been addressed.
- This underlines their key complaint point, that if they'd understood the true position and hadn't been misled, they could've made an informed decision to leave or not. They also chose not to invest cash savings based on Mr E's information.
- Mr E gave an assurance that the portfolio would outperform benchmarks in a rising market – this is not open to interpretation.
- Ms B maintained that she wasn't advised on the DFM service in 2013 or told about alternatives or the costs. She didn't recall receiving the November 2014 report. Mr R also hadn't been given advice in respect of using the DFM service or the costs involved. They'd just become aware of an article on BD's website about passive vs active investing and asked why a 100% equities passive fund hadn't been recommended given their objective was noted as returns consistent with the equity market.
- Ms B now understood that Mr E was required to consider the suitability of the investment for their objectives and provide annual reviews where the ongoing suitability of the DFM service should've been reviewed.
- Ms B wasn't aware she was supposed to have a suitability assessment annually. She didn't receive the January 2014 letter – during that time, her brother-in-law was very unwell and he died in April 2014. This is an exceptional circumstance.
- Ms B doesn't accept that the point about them not being treated as individuals is time-barred. Multiple errors were made in the client reviews about their finances, which were listed jointly – BD didn't understand their individual finances and circumstances.
- BD assessed Ms B's risk appetite as level 7 and Mr R's as level 8. While BD asked for their consent to manage the portfolio as a whole as risk level 7, Mr E didn't explain what this meant so they couldn't give informed consent to this.
- Mr E did on occasion offer advice in respect of investing cash so it isn't correct to say that he couldn't have advised on investing in a pension, JISA or other products. Ms B and Mr R should be compensated for BD failing to advise on how cash should be invested.
- Mr E advised them that they didn't need to address their IHT liability, this didn't come from Ms B or Mr R.
- It was hard to challenge Mr E's view that they didn't need advice in particular areas such as pension planning. He ought to have made it clear that they should speak to a financial planner.
- The imbalance in her ISA weighting (overweight in UK equities which have made less gains than US equities) meant that big gains have been achieved outside of the ISA wrapper. A more competent approach would've been to have some UK and some US equities both within and outside the ISA wrapper.
- Ms B was willing to accept the compensation offered in respect of the CGT and asset sale issue but not if it meant she had to accept the findings in full.

The Investigator made some further comments in respect of performance. He said during the period 6 January 2015 to 21 March 2017 (around 26 months) the cumulative performance of the portfolio was 20.94%. Ignoring short term annual fluctuations this would average out at around 9.7% per annum. And during the period 22 March 2017 to 21 November 2024 (around 92 months) the cumulative performance of the portfolio was 58.26%. Ignoring short term annual fluctuations this would average out at around 7.6% per annum. So, the Investigator said over the period 6 January 2015 to 21 November 2024 the average annual performance has been around 8%. So, he wasn't persuaded Mr E had misled them about the performance.

The Investigator added that he'd also looked at the actual fund values. On 31 December 2018 the value of the portfolio was £906,658.67. And on 5 April 2024 the value of the portfolio was £1,286,821, showing a gain of £380,162.33 (cumulative performance 42%). This was a period of 5.25 years, so he explained the average annual performance was around 8%, which was around what BD said it expected the performance to be.

Ms B said that whether the portfolio outperformed the benchmark wasn't the key issue it was whether the DFM arrangement was suitable for them, and she felt that a passive fund would've met her and Mr R's needs, and cost them less.

As the Investigator wasn't persuaded to change their view on the matter, the complaint was passed to me to make a decision.

I explained that Ms B and Mr R's complaints should be separated given they held individual investments.

I also asked BD whether it would be prepared to pay Ms B the compensation it had offered to her in respect of the CGT and asset sale issue so as to allow me to focus my decision on the issues that remain in dispute. BD agreed to this and Ms B accepted it.

I issued a provisional decision on 23 October 2025 explaining that I wasn't intending to uphold Ms B's complaint. I said that I didn't think I could consider Ms B's complaint about the sale of the DFM service or any annual reviews that were due more than six years before she made her complaint as these complaints had been made too late. I said I also couldn't consider the management of the portfolio under one risk strategy as this complaint had also been made too late. I made the following provisional findings on the merits of the complaint:

- BD wasn't contracted to provide Ms B with a holistic financial planning service.
- BD wasn't obliged to advise Ms B on investing cash held outside of the investment portfolio, to provide advice on alternative financial products such as SIPPs or tax-efficient savings products to mitigate IHT.
- As part of the DFM service BD said it would review the suitability of the investments in her portfolio on an annual basis; I was satisfied it had provided reviews in each year until she moved her portfolio away from BD in late 2024.
- BD didn't provide a review in 2021 but I wasn't persuaded that any changes would've been made had the review gone ahead.
- I wasn't persuaded that Ms B was told her portfolio was guaranteed to outperform benchmarks in a rising market.
- It was regrettable that a mistake was made by Mr E in December 2018 when he described the performance of the portfolio between 2013 and 2015 as underperforming the benchmark. But I wasn't persuaded that Ms B would've transferred away from BD if the performance had been described accurately as I

was still satisfied she was aware that the portfolio was underperforming at the time overall.
- I didn't think Ms B had suffered any detriment by not being told about MyBrewin sooner.
- I wasn't persuaded that BD had made a mistake in relation to the distribution of assets within her ISA compared with her GIA.

Ms B didn't agree and said the following points hadn't been addressed:

- The performance figures still don't add up – the risk guide shows a compound annual growth rate ('CAGR') of 149% for a risk level 7 investor over 10 years but theirs was only 54% over 11 years. Such underperformance compared with the benchmark hasn't been explained.
- The investment strategy wasn't suitable for them given their objective to achieve returns consistent with the equity market. However, the assets within the risk level 7 strategy contained assets likely to generate lower returns than the equity market.
- It was agreed at the outset that BD should not invest in anything other than equities. Emails sent in 2014 confirm this.
- She believed that the reason why BD may have believed the performance was in line with the benchmark was because it was mistakenly using the benchmark for risk level 5 rather than risk level 7.
- Ms B and Mr R could only have made a decision to move away from BD if they were given correct information and given that they were told the portfolio was achieving their objectives (returns consistent with the equity market), they decided to stay.
- Ms B has calculated a CAGR of only around 3 to 4%. If they had been told the portfolio was significantly underperforming compared with the benchmark, they would have moved away from BD sooner. Instead, they were led to believe this was normal and they wouldn't get better elsewhere. Even if this was a mistake, they were still misled and should be compensated.
- Ms B accepts that she knew she had been moved to the DFM service and the costs associated with it by November 2014. But she doesn't consider that her complaint about the suitability of the product should be time-barred because she wasn't aware it had caused any loss until 2024.
- Ms B says that she wasn't aware that the recommendation to invest their portfolio in line with risk level 7 was unsuitable because she was led to believe it would produce returns in line with the equities market but she now knows it contained lower-risk assets, not just equities, which is what they'd asked for.
- Ms B maintained there was no suitability assessment prior to November 2014 so she and Mr R were shoehorned into an unsuitable product that had already been set up. The decision does not address that the investments were continuously unsuitable for their objectives. BD had an ongoing duty to assess this every year and as such, this aspect cannot be time-barred.
- Ms B maintains that she was misled in 2018 and it was fair for her to assume that the earlier underperformance was the reason for the underperformance overall. If they had been given the correct figures they would have left BD. The fact Ms B expressed concern at the underperformance shows that she was already considering leaving.
- The figures provided in December 2018 were incorrect in any event, based on the performance date provided by BD in 2024.
- BD had a duty of care to advise them on their wider financial needs. Mr E never offered them the services of a financial planner in person, this was only ever written in reports after the fact. He didn't explain what a financial planner was and what their role was.
- Ms B added that contrary to what the Investigator said, BD hadn't told them what performance to expect – if it had Ms B said they wouldn't be in this position.

BD provided the following comments in response to Ms B's response to the provisional decision. It said:

"The potential growth outlined in the risk guide is a representation of past performance and is caveated to confirm that past performance is not an indication of future performance. It also explains that the performance does not factor in fees, charges, levies etc. I would also like to point out that the calculation of compound interest does not align with how investment growth works or is calculated.

In relation to the clients not being told about the performance, I would set out that in the quarterly valuation reports (please note that older reports were half yearly), the actual performance was provided to the client under the section Performance Summary for the performance period. This would have allowed the client to see how much the portfolios changed since the last report. A simple comparison against any returns which was expected would have highlighted any potential under/over performance.

The client is repeatedly referring to the benchmark and performance against the benchmark. As the Ombudsman has pointed out, benchmark is a way to measure performance. It is not an absolute measure to achieve in order to say the performance is good and failure to meet this means poor performance. The client is also overlapping performance with suitability, i.e. for a product to be suitable it must perform at a certain level otherwise the product was not suitable which I do not believe is reasonable as the advice is looking at potential future returns, while performance is looking backwards at what was achieved.

I note that the client has referenced [a final decision]. Having reviewed the decision, this is fundamentally different from this situation. In the decision, the crux of the issue was about a Financial Advisor firm limiting the nature of the advice. Effectively, the conclusion was they should not have limited the advice so were responsible as if they had provided advice on the full investment.

In this scenario, we were never appointed to provide Financial Advice but Discretionary Fund Management. This means that we are responsible for reviewing the suitability of the products we have been asked to look into but not the wider remit which would be covered as part of a Financial Advisory relationship. As the Ombudsman pointed out, we have suggested to the client that Financial Advice may be beneficial, but this was declined by the client."

I also asked BD for further comments about performance and how this had been calculated, as well as the suitability of the investments within the portfolio. BD responded as follows:

"*The client has mentioned the use of compound interest, which is used to calculate the increase of savings products rather than investments. While the CAGR methodology can be used to factor in the rate of return of an investment over time, this does not take into account the impact of charges, credits or withdrawals and uses a linier start point and end point for the purposes of comparison. I note that part way through* [Ms B's] *investment, funds were sent over to* [Mr R's] *portfolio which would have reduced the end figure of* [Ms B's] *portfolio and does not demonstrate the true rate of growth.*

A more appropriate measure would be to look at the actual growth rate over the term of the portfolio and divide this against the term of the investment which will give the actual rate the portfolio grew on an average annualised basis. In her response [Ms B] *has mentioned a number of different time periods but for ease of calculation, I have used 11 years from November 2013 to November 2024 to compare* [Ms B's] *growth on her portfolios.*

As you can see, [Ms B's] *combined portfolio (ISA and GIA) had a total of £594,785.69 on 1 November 2013. The gross growth rate she received over this period was 68.68% (6.2436% pa), Net 56.739853% (5.15817%pa). She contributed an additional £110,023.27 to her portfolio while having £627,980.73 taken out during this time, which would have impacted the growth she received.*

Looking at [Mr R's] *portfolios, on 1 April 2017, he had £197,328.71 in his combined portfolio (ISA and GIA). The gross growth rate he received during this period was 63.36% (8.175484% pro rata annualised performance based on 93 months investment) net 54.84071% (7.0762% pro rata annualised performance). He received an additional £577,222.87 during this period and had £201,839.45 taken out of the portfolio during this time.*

The average total return looks at a range of similarly aligned portfolios and the average return from them using historical data for a defined period of time. This is excluding charges and deductions and calculating that the performance would be with no changes to the underlying investments or withdrawals. I would also point out that the portfolios [Ms B] *and* [Mr R] *have are bespoke and performance is not guaranteed, nor is past performance a measure for future performance.*

The suitability reports which I have previously provided contain detailed explanations as to why the risk category 7 was recommended. This is especially true in the 2020 and 2022 reports where significant discussions were made at the time. While the clients do have traits that would indicate that a level 8 portfolio could also be suitable, as you are aware there are a number of factors which also come into play and in this case, taking into account the combined risk approach of [Mr R] *and* [Ms B] *it was agreed with the clients to manage the portfolio in line with the risk level 7 mandate. It is important to note that Risk 7 and 8 are both considered high risk portfolio's and would be suitable for the client's needs.*

I have been unable to locate any record that the client wanted to invest only in equities. In the 2020 suitability report it states:

"Having considered all of these factor we returned to the risk strategy within the portfolio. Whilst you both have a high-risk tolerance it was agreed that there was no need or desire to "bet it all on black". We have therefore agreed to continue managing the portfolio under Brewin Dolphin risk category 7. This has the potential to deliver lower returns that risk category 8 indicated by the questionnaires. However, as stated previously risk category 8 has higher potential volatility which may be detrimental.

In the light of our discussion, your current circumstances, and objectives I believe that Brewin Dolphin risk category 7 remains most suitable for the portfolio at this stage".

The advisor then goes on to set out the risk breakdown for a level 7 portfolio. Ultimately, the client was fully aware, and detailed discussions were made on the structure of the portfolio. I have not found any mention that the client wanted to move to a fully equity-based portfolio and this assertion seem to contradict the conversations which were completed at the reviews."

I also asked BD for some further explanation of the five year performance figures Mr E referred to in his 31 December 2018 email. I told BD that the figures were hard to reconcile, as the cumulative growth figures from 31 December 2013 to 31 December 2018, showed the portfolio achieved total cumulative growth of 24.19%, compared with cumulative benchmark growth of 35.72%.

BD put this question to Mr E and he responded as follows:

"I have also looked back through the email exchange with [Ms B] *in December 2018. I can see why the Ombudsman will find it hard to reconcile taking start date as 31st December 2013. I confused matters by referring to the 5 years to date instead of this being the 5 plus years since taking over discretionary management of the portfolio in September 2013.*

The explanation of the underperformance in previous years details the composition of the portfolio in 2013 and changes made subsequently. I concede that the reference to 5 years could have been clearer. Buth the rest of the text clear reference the period during 2013.

Looking at the performance in Eximius it would make sense that at the time I would have referred to performance from September 2013 rather than 31st December 2013. I agree that the 5 year total return up to 31st December 2018 is so far off that it seems inconceivable that this was the comparison contained in my email. Rather than seeking to mislead the email was an attempt to explain the performance over a number of years and underlines the fact that there had been underperformance and the reasons for this fact.

We have managed to get back into the closed account to check the performance figures. I have attached a chart and the spreadsheet detailing the performance from 26th September 2013 to 28th December 2018. Assuming I wrote the reply to [Ms B] *on Monday 31st December 2018 the system would have been showing prices as at the close of business on Friday 28th December. Performance illustrated in November 2024 would show prices as at close on 31st December.*

We have tried a number of dates around 26th September 2013 to the end of December 2018 and not managed to replicate the 33.13% referred to in the email. I am not aware of anything other than the dates selecting accounting for this difference. The original performance schedule in 2018 was not saved to dms. Finally I am sure that in providing a comparison to the benchmark then gross figures would have been provided in 2018".

I asked Ms B for her comments on this and she made the following points:

- She specifically asked about the performance of the portfolio after the last five years and there is no legitimate reason from Mr E to have measured performance from September 2013 to December 2018. This was a deliberate misrepresentation.
- She and Mr R wanted low cost access to the equity market and they were misled into believing the DFM arrangement was a low cost option. She maintains that she and Mr R told Mr E they wanted returns in line with the equity market. A tracker fund would have met this need.
- The DFM was not suitable for them and it appears it had been established without any mandate in place.
- BD clearly take account of compounding when calculating investment growth, as per their risk guide.
- Ms B maintains the complaint is not about performance it is about continuously being misled about performance, which denied them the opportunity to move away from BD. It is clear from BD's recent figures that their portfolio underperformed the benchmark significantly.
- Had she been told the true performance she would have left BD in 2016 and Mr R would not have invested with BD whatsoever.
- Ms B provided examples of occasions where Mr B had told them that performance was in line or exceeded the benchmark.

- Ms B feels that she was misled about the fees payable in 2020; she asked whether there was any other way to access the equity market and pay lower fees. Mr E only mentioned execution-only, rather than passive funds.
- Ms B has concerns that money may have gone missing from her account as the figures mentioned by BD about the amounts transferred in don't tally up. In particular, she has since found that assets were still being transferred from a previous provider in May 2014, when she had been told this completed in November 2013.
- She has also now questioned the suitability of the investments made between 2006 and 2013 regarding investments she'd inherited from her grandmother.

As both parties made substantial representations and Ms B raised some additional concerns, I provided a second provisional decision for clarity on 26 January 2026. My second provisional decision did not substantially depart from my first, but I said I agreed that I could consider the complaint about managing the portfolio under one risk strategy after September 2018. However, I didn't go on to uphold this aspect of the complaint. I wasn't persuaded that Ms B had instructed BD to only invest in equities and I still wasn't persuaded that Ms B had been deliberately misled about the performance of her portfolio such that she would've decided to leave BD before 2024.

BD accepted the provisional decision but Ms B made the following points:

- Ms B still does not think she has made her complaint about the suitability of the DFM service too late; she understood the fees were high but didn't know that there were other ways of investing such that she should've questioned the DFM arrangement. Ms B was reassured by the comments made by Mr E in 2020.
- Ms B and Mr R's objective was always to achieve returns consistent with the equities market, not outperforming a benchmark.
- Ms B and Mr R were not concerned about underperformance over a quarter but wanted to understand the long-term performance. If they'd known the degree of underperformance over the last five years in December 2018, particularly after the deduction of fees, they would've left BD. Mr E made statements that gave comfort at the time but were actually misleading based on the figures.
- Risk level 7 was not an appropriate strategy to meet their objective of returns consistent with the equity market.
- Her complaint about using a combined risk strategy has been misunderstood; this wasn't really what she was complaining about and can be considered withdrawn.
- Mr E invested in assets that sought to outperform the market, which introduced unnecessary risk that they were not willing to take.
- Mr E also invested in a significant amount of 'alternative' assets, which Ms B and Mr R did not want to invest in.
- Ms B understood that BD couldn't guarantee a level of performance, but Mr E could've recommended that they purchase a fund that tracked a benchmark.

As both parties to the complaint have responded, I'm now providing my final decision on the matter.

What I've decided – and why

Jurisdiction

Our Service isn't free to consider every complaint that is brought to us. We are bound by the DISP rules, set out in the Financial Conduct Authority's Handbook which can be found online.

DISP 2.8.2R says that, where a business doesn't consent, I can't consider a complaint made more than six years after the event complained of, or if later, more than three years after the complainant was aware, or ought reasonably to have been aware, of their cause for complaint.

The rules don't say that Ms B needs to know exactly what's gone wrong to bring a complaint – only that she needs to have a reasonable awareness something might have gone wrong.

If a complaint is brought outside of the time limits set out in the rules, we'd only be able to consider it if BD has consented – which it hasn't – or if the complaint was brought late due to exceptional circumstances. The FCA gives an example of exceptional circumstances as being incapacitated.

Sale of the DFM service

Although I can see that the DFM service was introduced to Ms B as early as January 2013, Ms B says that BD told her she should be moved to the DFM service in November 2013. She said she wasn't told how much this would cost or what she could expect from this service. Ms B's questioned whether it was suitable for her and whether other solutions, such as investing in a passive equities fund, would have also met her objectives. Ms B says she wasn't aware of the alternatives until she had cause to raise her complaint in 2024. She says she also wasn't aware of the degree of underperformance of her portfolio until then, which led to her concerns about the suitability of the arrangement.

Despite some documents being signed in 2013, BD confirmed to Ms B that she had been moved to the DFM service in a letter dated 29 January 2014. So, I think the date of the event complained about here is 29 January 2014. Ms B did not complain about this until September 2024, so the event complained about took place more than six years before Ms B complained to BD.

As such, I've had to consider the second part of the rule; whether Ms B became aware or ought reasonably to have become aware of a cause for this complaint more than three years before she made her complaint to BD in September 2024. This means that if Ms B ought reasonably to have been aware of her cause for complaint before September 2021, she has made this complaint too late.

I can see that BD provided a Client Service Review report to Ms B on 24 November 2014. This report said that the reason for the meeting (which took place in October 2014) was to explain BD's new investment framework and the impact it would have on her as a client. The report set out that Ms B's portfolio was being managed under the DFM service and set out the costs payable for it. As such, I'm satisfied that Ms B ought to have been aware she had been moved on to the DFM service and the costs involved by November 2014. And if this wasn't what she had been expecting, if she had any concerns about whether this was suitable for her or she wasn't happy with the cost of the service being provided, I think she was in a position to raise concerns about this at this point in time.

Although I think the report was most likely provided to Ms B, I note that it wasn't signed. So, it's possible that Ms B didn't see a copy of this report at the time and Ms B has told us she doesn't recall seeing it. However, this information was repeated in a Client Service Review report dated 30 November 2016, which Ms B signed on 31 March 2017. As such, if Ms B hadn't seen the report from 2014, I'm satisfied she saw and signed to confirm she understood the service being provided to her by 31 March 2017. Although Ms B has pointed out that she crossed out some details in the report from November 2016 because of inaccuracies, I'm still satisfied she saw it and would've understood she was using the DFM

service and the costs involved. And she saw the report more than three years before she complained to BD about this in 2024.

I've carefully considered what Ms B has said about not having any basis for comparing the fees payable for the DFM against any other type of investment management. And that she didn't have cause for concern about the DFM service not being suitable for her until she recently found out how her portfolio had underperformed. But Ms B said from the outset that she wasn't informed about what the DFM service involved or how much it would cost her. And as I've said above, Ms B didn't need to know exactly what had gone wrong to be aware of her cause for her complaint, only that something might not be right with the arrangement. I think not having been given an explanation of a service that had been sold to her, which resulted in substantial fees being charged, ought reasonably to have given her cause to consider the suitability of the arrangement for her needs.

I'm also mindful that in a review that took place in July 2020 that Ms B again questioned the arrangement, asking whether it was the right way to manage her investments. She has told us that she could see from statements provided around this time that the fees were 'enormous', which is what prompted her question to Mr E. The fees were again explained, and Mr E informed her that there was another way for her investments to be managed within the service she had, which was execution-only.

I accept the adviser explained that he didn't think the execution-only service would be ideal for them because he'd only be able to act on her instruction, and Ms B was reassured by this. But it remains that he told her there was an alternative way to manage the investments. So, by July 2020 at the very latest Ms B still had concerns about the DFM service and questioned whether it was right for her, and she was aware there was an alternative way to do things. I don't think she needed to know specifically about passive or tracker funds, just that using the DFM service wasn't the only way to invest. So, I think she ought reasonably to have been aware of her cause for complaint by this time; and this was more than three years before she complained. As such, I'm still satisfied this complaint was made too late.

Ms B says that her brother-in-law passed away in early 2014 – I'm very sorry to hear this. While I don't doubt that this was a very difficult time for her family, Ms B had three years from July 2020 to raise her concerns about the suitability and cost of the DFM service to BD. And I think it's clear from the evidence I've seen that Ms B engaged with BD about her investments each year since they were sold in 2014. So, I don't think this explains the delay in referring this complaint to BD. As such, I don't think I can consider this complaint as it has been made too late under the Regulator's rules.

Annual reviews

BD says reviews were completed on an 18 month cycle, or where possible between 18 and 24 months, but the reviews became annual in 2022. It therefore says no reviews were missed.

Ms B says that she only recently became aware that she was supposed to receive annual reviews and believes several were missed between 2015 and 2024.

However, in the letter issued to Ms B on 29 January 2014, Mr E said:

"Financial Information and Suitability of Investment Objective and Risk

It is important that you keep me informed of any significant changes in your circumstances, as this could impact on the suitability of service and the investment decisions we make lor you. Each year we will ask you to confirm whether your circumstances have changed and

carry out a lull review of the investments held within the portfolio to ensure that they still meet your investment objective and risk profile.

We will carry out a detailed suitability review at least every year, to ensure that the stated investment objective remains suitable lor your circumstances. Where we become aware of a significant change in your circumstances, these reviews will be brought forward as necessary."

So, I do think that BD told Ms B she would receive annual reviews. And I think they would be due around January each year. However, I think it is fair to say that some reviews might take place a little early or a little later depending on the circumstances.

Ms B says she doesn't recall seeing this letter, but I think it was most likely sent to her and it was addressed correctly. Also, Ms B has complained about not receiving annual reviews, so it follows that she understood that BD would provide these reviews each year.

I can consider a complaint about missed annual reviews that were due after 25 September 2018 because these events would be within six years of Ms B having made her complaint. But I can only consider the reviews Ms B says were missed before this if Ms B's complaint was made within three years of her being aware or when she ought reasonably to have been aware of her cause for complaint.

Overall, I think after receiving the letter in January 2014, Ms B ought reasonably to have known to expect annual contact from BD with the purpose of arranging a review. I think the review that took place in November 2014 would reasonably be considered as the review due by January 2015, particularly as BD was changing its investment approach, thereby bringing the need for a review forwards. So, that would leave the reviews due by January 2016, January 2017 and January 2018.

Ultimately, when Ms B didn't receive a review, or contact to arrange one, by January 2016, January 2017 and January 2018, she ought reasonably to have known she had cause for the complaint she's making now. For this reason, I think Ms B's complaint to BD about the lack of reviews during this period was made out of time. As above, the rules say I can consider a complaint that's been made too late, if I'm satisfied the failure to comply with the time limits is due to exceptional circumstances. But I've seen nothing to suggest this is the case here. So, I don't think I can consider this complaint as it has been made too late under the Regulator's rules.

Managing the portfolio as one risk strategy

Ms B has complained that BD didn't treat her as a separate person to Mr R, despite it assessing their individual attitudes to risk and finding that she had a slightly lower risk approach to her investments than Mr R. Ms B said that BD asked for their consent to manage the whole portfolio under the same risk approach (risk level 7) but without explaining why. As such, they couldn't have provided informed consent. While Ms B has said that this isn't what she was really complaining about, and can be withdrawn, I'm still providing my decision about this issue for completeness.

BD proposed that Ms B's and Mr R's investments should be managed as one portfolio under the same risk approach in November 2016 and this continued throughout their relationship; Ms B and Mr R accepted this on 31 March 2017. As such, the date of the event she's complaining about here is 31 March 2017. As Ms B didn't complain about this until September 2024, she didn't complain within six years of the event.

As such, I've had to consider the second part of the rule; if Ms B ought reasonably to have been aware of her cause for complaint before September 2021, she has made this complaint too late.

BD sent Ms B and Mr R a Client Service Review report dated 12 August 2020, which followed a call on 31 July 2020. A recording of this call has been provided. It is clear from the call and the report that Ms B and Mr R had each completed a risk questionnaire and Mr E explained that although their risk profiles were different, that the whole portfolio was being managed using the level 7 risk approach. So, by this point I think Ms B could be left with no doubt that the portfolio was being managed as one with one risk approach and if she wasn't happy with this, or didn't understand why that had been recommended, I think she ought reasonably to have been aware of her cause for complaint by then. As Ms B didn't complain about this within three years of this date, I don't think I can consider BD's decision to manage the portfolio as one in November 2016.

Ms B says that BD had an obligation to reconsider this approach at each review and therefore it isn't reasonable to say that her complaint about this strategy has been made too late. She says BD had an ongoing obligation to consider her individual attitude to risk, as well as Mr R's, at each review and this continued to inform the investment strategy. I agree with Ms B on this point. For the same reasons given above relating to the missed annual reviews, I'm satisfied that Ms B has complained too late about the decision to employ a combined risk profile investment strategy before September 2018. But I think that any complaint about reviews that took place after this point, where the combined risk profile investment strategy was affirmed, has been made in time because these events would've taken place within six years of Ms B having raised her complaint to BD.

Merits of the complaint

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The parties to this complaint have provided detailed submissions to support their position and I'm grateful to them for doing so. I've reconsidered these submissions in their entirety as well as the additional submissions sent since my first and second provisional decisions. However, I trust that they won't take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. To be clear, the purpose of this decision isn't to comment on every individual point or question the parties have made, rather it's to set out my findings and reasons for reaching them.

Having considered the issues that I think fall within our jurisdiction, I'm still not upholding Ms B's complaint. I appreciate this will be very disappointing to hear.

Nature of the service BD provided to Ms B

I think it is still important to clarify the relationship Ms B had with BD/Mr E, as the nature of the relationship has informed my findings on some of the complaint points Ms B has raised.

It appears that Ms B may have originally had an advisory relationship with BD in relation to her investment portfolio. I say this based on the email Mr E sent to her on 1 November 2013, in which he said:

"3. The portfolio was managed under Advisory management which required me to write before making changes to the portfolio. If you are in agreement I suggest that in future the investments be run on a discretionary basis. This will allow me to make alterations to the portfolio without having to trouble you on every occasion. Under this arrangement I would

report regularly on the changes to and performance of the investments. The cost of this arrangement is slightly less than Advisory management but the main advantage is that it reduces the burden on your time and allows me to respond quickly to events both good and bad."

But it's evident that the relationship changed to a discretionary service. This was further explained in a letter dated 29 January 2014, where Mr E said:

"Scope of Advice

For our Private Clients we offer both Investment Management and Financial Planning. We normally recommend that clients consider having a financial review with one of our Financial Planning Managers before making investments into the stock market so that we can ensure that this is the best course of action for their funds. The current service we have been asked to provide relates to the investment management of the portfolio only.

Service Category

The investment management of your portfolio is undertaken on a Discretionary Management basis. This service allows us to execute appropriate transactions without prior reference but requires us to exercise a duty of care to ensure that any transactions remain suitable lor your objectives and keeps the portfolio within the agreed risk parameters."

Further in the letter it said:

"Financial Information and Suitability of Investment Objective and Risk

It is important that you keep me informed of any significant changes in your circumstances, as this could impact on the suitability of service and the investment decisions we make for you. Each year we will ask you to confirm whether your circumstances have changed and carry out a full review of the investments held within the portfolio to ensure that they still meet your investment objective and risk profile.

We will carry out a detailed suitability review at least every year, to ensure that the stated investment objective remains suitable for your circumstances. Where we become aware of a significant change in your circumstances, these reviews will be brought forward as necessary."

So, I think that this letter made it clear that BD was only contracted to provide discretionary management of Ms B's investment portfolio. While BD also provided a financial planning service, for which additional fees would be payable, it had not been contracted to provide this service to Ms B.

The letter further explained that BD would carry out a review each year to ensure that the investments within the portfolio remained suitable for her in view of her risk profile and investment objectives. To be clear, this was an assessment of the investments held within the portfolio; the review was not a holistic view of Ms B's wider financial circumstances and assets held outside of the investment portfolio where BD would provide advice on those assets. Mr E was only required to consider whether the investments held in the portfolio remained suitable for Ms B. I know Ms B believes that this also meant Mr E was required to consider the ongoing suitability of the DFM arrangement for her needs but I don't agree. I'm satisfied that considering the suitability of the DFM arrangement would've instead formed part of an assessment of her full financial circumstances and objectives. This would be the role of a financial planner, not an investment manager.

This means that I don't think BD had any obligation to advise Ms B on investing cash held outside of the investment portfolio, or to provide advice on alternative financial products such as SIPPs or tax-efficient savings products to mitigate IHT. Advice of this nature could only be provided as part of a financial planning service and I'm satisfied that Ms B was made aware of this when the reviews were carried out. For example, Mr E told her in the Client Service Review reports from November 2016, August 2020 and May 2022 that he would put her in touch with one of BD's financial planners if she needed advice in these areas.

I appreciate that Ms B says that she felt Mr E was telling her on those occasions that no advice was needed in those specific areas and it was difficult to challenge him. But I see no reason why Mr E would not have referred Ms B for financial planning advice if she wanted it or thought it was needed. I don't think Mr E could've been expected to refer Ms B to a financial planner without her agreement, particularly as this would involve her incurring additional costs. I also think that Ms B would've understood that she had a significant sum of cash held in savings that could potentially be earning returns if it was invested. And I think it was for Ms B to say so if she wanted those monies to be invested.

I appreciate that Mr E did make Ms B and Mr R aware in 2023 that they could open JISAs for their children, but I still don't think this was advice; instead, I think Mr E was drawing their attention to a product that could be of interest.

Annual reviews

As I've explained above, BD says reviews were completed on an 18 month cycle or where possible between 18 and 24 months and this only became annual in 2022. But I think BD told Ms B it would provide her with annual reviews.

I can consider whether BD missed any reviews after 25 September 2018.

Based on the service BD described, I would expect a review to consist of BD reassessing Ms B's attitude to risk and considering whether the investments in the portfolio remained suitable for her risk appetite. If Ms B's risk appetite changed, I would expect BD to consider changing the investment strategy within the portfolio. I don't think this review would be required to be done in person.

With this in mind, I'm satisfied that reviews were carried out in 2019, 2020, 2022, 2023 and 2024.

I've considered what Ms B has said about the attitude to risk assessments and the suitability of the investments during those reviews. Ms B complains that in each review, Mr E decided that their investment portfolio should be managed as one under one risk profile. But I'm satisfied that BD carried out individual assessments of Ms B and Mr R's attitude to risk on each occasion and Mr E explained his reasons for managing their investments together under risk level 7.

Importantly, I think Mr E made it clear that while the answers they had given could lead him to recommend investment in line with risk level 8 (the highest of level of risk that could be taken through the DFM arrangement), this had a higher potential for volatility. He also noted that whilst Ms B and Mr R had significant wealth, they were not prepared to "bet it all on black" or risk significant losses, which taking higher risk could lead to. So, Mr E recommended that they continue to invest in line with risk level 7. Ms B and Mr R accepted this.

I've noted what Ms B has said about the "bet it all on black" comment – she says they didn't say this but remembers Mr R saying something along the lines of them being happy with risk

but that they didn't want to spend all of their money on lottery tickets. She doesn't believe that a portfolio fully invested in equities could be described as the same thing as outright gambling. I agree that investing fully in equities is not the same as gambling, but I think it was simply a turn of phrase used to signify that risk level 8 was an extremely high risk strategy. And that Ms B and Mr R ultimately agreed that they did not wish to take that much risk with their funds.

I recognise that BD noted in the annual review letters that Ms B and Mr R's objectives were to deliver higher returns that were consistent with the equity market. And this objective more closely matched risk level 8 rather than risk level 7. Ms B says that Mr E should've instead told them that he couldn't deliver their objective based on a risk level 7 approach.

But ultimately Mr E's role here was to make an assessment of Ms B and Mr R's attitude towards risk and their capacity for loss and recommend an investment strategy based on this assessment. Mr E wasn't simply required to execute Ms B's or Mr R's instructions or put in place a strategy to meet a particular objective regardless of their attitude to risk. It wouldn't be reasonable to expect him to make a recommendation to increase the level of risk to be taken if he didn't consider that to be suitable for Ms B or Mr R. Ultimately Ms B and Mr R accepted Mr E's view, as expressed in the Client Investment Proposal dated 30 November 2016, that investing in line with risk level 7 was suitable for them because it had the potential to deliver the returns they wanted to target whilst exposing them to a level of risk they were comfortable with. Ms B and Mr R were free to reject this advice, if on reflection they were comfortable with taking more risk to achieve their objective.

I also note that another discussion about the risk strategy was covered in the Client Service Review report dated 12 August 2020. Mr E said:

"Having considered all of these factors we returned to the risk strategy within the portfolio. Whilst you both have a high-risk tolerance it was agreed that there was no need or desire to "bet it all on black". We have therefore agreed to continue managing the portfolio under Brewin Dolphin risk category 7. This has the potential to deliver lower returns than risk category 8 indicated by the questionnaires. However as stated previously risk category 8 has higher potential volatility which may be detrimental.

In the light of our discussion, your current circumstances, and objectives I believe that Brewin Dolphin risk category 7 remains most suitable for the portfolio at this stage."

"As a reminder a typical risk category 7 portfolio consists of approximately: 86% in equities, which have the potential to generate appreciation in both capital and income, but which can be volatile; 5% in lower risk and less volatile fixed interest investments, which pay a steady level of income, but which are not designed to generate capital growth; 5.5% in alternatives, comprising commercial property, infrastructure and absolute return funds, all of which can generate returns that are uncorrelated to other asset classes; and a small balance in cash.

Currently your portfolio is in line with the benchmarks of a risk category 7 portfolio, however, we will continue to monitor the portfolio and make amendments where needed to ensure that the asset allocation remains suitable in the future."

Again, Ms B and Mr R had the opportunity to query this but they accepted it at the time.

I haven't been provided with evidence of a review taking place in 2021. Ms B wasn't paying a separate fee for this service, so there isn't a fee that ought to be refunded for the lack of review in this year. However, I've considered whether the missed review was likely to have caused any other detriment. Based on the evidence I've seen, I'm not persuaded that any changes would've been made to Ms B's risk profile or investment strategy given that the

same risk profile and investment strategy was noted at the reviews in 2020 and 2022. So, I don't think there's been any detriment here. Furthermore, I'm mindful that Ms B could've contacted Mr E if she had any concerns about her portfolio.

Ms B says that she was misled about the fees payable during the review in 2020; she says she asked whether there was any other way to access the equity market and pay lower fees. However, she said Mr E only mentioned execution-only, rather than being able to instead invest in passive funds. I've listened to this call and read the transcript provided, but I don't think Ms B specifically asked about different ways to access the equity market or pay lower fees. Ms B actually asked whether she was on the right fee structure for how Mr E managed her funds. Mr E responded that he could either manage it on a discretionary basis or execution-only basis, meaning he would only buy and sell at her request. Ms B asked whether these were the only ways and Mr E replied that these were the options in the service that she had. I think this was a reasonable explanation of the ways Mr E (specifically as an investment manager with BD) could manage her funds.

I don't think it would've been reasonable to expect Mr E to explain the various types of financial advice or investment management that other firms might be able to provide Ms B with. Ultimately, if Ms B wanted to know whether there were other options or businesses that charged lower fees for the same type of service, or provide different services that also might meet her needs, I think it was incumbent on her to seek this out through independent sources or to speak to a financial planner.

Portfolio make-up

In response to each of my provisional decisions, Ms B says that regardless of the agreed level of risk being taken in the portfolio, Mr E was instructed to only invest their monies in equities. Ms B has provided copies of communications in support of this. Ms B added that she and Mr R wanted low cost access to the equities market and that a tracker fund would have achieved this.

As I have said above, I can't consider any complaint about the original sale of the DFM service because it was made too late. This means I can't look at whether the DFM arrangement met Ms B's needs or whether an alternative way of investing would've achieved her aims instead. I also can't consider whether Ms B or Mr R should've been advised to move away from the DFM arrangement into something else, such as a tracker fund, to meet their objectives. Mr E was only contracted to manage the investments within the portfolio on a discretionary basis. As such, he was not required to consider any alternative investment strategies.

I've considered carefully whether Mr E was instructed to only invest in equities within the DFM portfolio, but I'm not persuaded that the evidence supports this.

The letter sent to Ms B on 29 March 2014 explained the asset allocation within her portfolio as follows:

"The asset allocation of the portfolio differs from that of the benchmark in a number of areas and these are explained in more detail below. Importantly this position has not had a negative impact on performance in recent months. The most striking difference is the concentration in the UK equity market which is to some extent a reflection of the very good performance in this area over a longer period. In particular the large holdings of Prudential, National Grid, SSE, GlaxoSmithKline and Smith & Nephew have delivered impressive returns in recent years. In the short term I do not feel that radical change is needed but it is likely that changes will be made to the portfolio to provide a greater spread in different asset classes.

Fixed Interest

This sector offers stable and regular returns, greater capital protection, reduced volatility and should provide a hedge against equity markets. I am aware that you have reservations about investing in this area and therefore for the time being I have not added to your exposure in this area. I would welcome the opportunity to discuss this in more detail at a convenient point in the future."

I've also seen emails from March 2014 where Ms B told Mr E that she wasn't keen on fixed-interest as she was more interested in achieving capital growth. But that isn't the same as directing Mr E to only invest in equities. And I'm satisfied that Mr E took account of this preference when managing the portfolio; BD has provided evidence demonstrating that the portfolio didn't hold any fixed-interest securities until 2022. By December 2022, the portfolio contained 0.71% fixed-income securities. This increased to 3.64% and 3.86% by December 2023 and November 2024.

As I've said above, Mr E was contracted to manage the investments under his discretion. This was in accordance with a risk level 7 mandate, which would usually include up to 6.5% investment in fixed-interest securities. As such, a level of diversification across asset classes was required to balance the risk whilst also taking account of market conditions. I appreciate that Ms B told Mr E she wasn't keen on fixed-interest securities, but that isn't the same as expressly forbidding investment in these assets and Mr E did not say that he would not ever include fixed-interest securities in the portfolio. Ultimately, I think Mr E managed the portfolio as far as possible in accordance with Ms B's wishes, bearing in mind the investment mandate and market conditions. And even when some investment started to be made in fixed-interest securities from 2022, the weighting towards this was under the proportion of fixed-interest securities held in an average risk level 7 portfolio. So, I don't think she's been treated unfairly here.

I've considered Ms B's comments about alternatives investments and the equities purchased within the portfolio being unsuitable and exposing her to unnecessary risk. I've also noted what she's said about Mr E making some investment in the tracker funds she said would've been suitable, thereby showing that he was aware this was a suitable option for them. But the key aspect of the DFM service is that the investment manager has discretion as to the investments made. Furthermore, a key principle of investment is diversification. So, it isn't surprising that a range of investments were made, some in higher-risk assets and some in lower-risk assets, to ensure that the portfolio was balanced in line with the overall risk mandate. I'm still not persuaded that the investments made were ultimately unsuitable.

How performance against benchmark has been described

Ms B has told us that one of her main concerns revolved around events in December 2018. At this time, she says she was told that the portfolio would outperform the benchmark in a rising market (which hasn't happened). Furthermore, that Mr E misrepresented the performance of the portfolio over the previous five years, misleading her into believing that it was outperforming the benchmark in the more recent years which was making up for underperformance between 2013 and 2015. Ms B stressed to us that it isn't the performance that is the concern; rather it is that they were misled about the actual performance in 2018 which meant they'd stayed with BD when they could have transferred away from it sooner.

Ms B has since qualified in response to my first provisional decision that she was also misled about performance in 2015/2016 and if Mr E had been clear with her about what performance to expect and how her portfolio was performing compared with this, she would've left BD then and Mr R would not have invested at all.

I'll first address Ms B's new comments about being misled about performance in 2015/2016.

I don't think Mr E would've likely told Ms B what performance to expect when she first took out the DFM service, because performance couldn't be guaranteed. But I think Ms B was familiar with the use of benchmarks to track and compare performance. I say this because the letter sent to her on 29 January 2014 confirming the DFM service said:

"Please find overleaf the performance of your portfolio against your respective benchmark. The performance of the portfolio is calculated on a total return basis (taking into consideration both income and capital generated) and also allows for any monies withdrawn or added, although excludes any management fees charged."

The letter explained the performance of her portfolio between 1 January 2013 and 31 December 2013 was 19.38% compared with the benchmark performance of 16.99%. So, I think Ms B understood that she could track the performance of her portfolio against the benchmark and this would give her an idea of whether it was underperforming or overperforming it. So, overall, I think she would've understood what measure of performance her portfolio was being tracked against in the years before Mr R made his investment. Furthermore, Ms B and Mr R continued to receive regular statements that compared the performance of their portfolio against a benchmark.

Ms B hasn't provided us with evidence of her being misled about the performance prior to Mr R investing in late 2016/early 2017. But she's said that if she'd had a meeting with Mr E in 2015 or early 2016 and had been given the correct information about performance she wouldn't have continued with BD. I don't think it's fair to speculate what Ms B would or wouldn't have done in late 2015/2016 as I haven't seen any evidence to persuade me that she was misled, or that if she had specifically asked about performance against the benchmark that she would have been misled. So, I'm not persuaded she would've left BD before Mr R invested.

In December 2018 Ms B was in contact with Mr E to arrange a review meeting in January 2019. The email chain continued as follows.

Ms B – 22 December 2018:

"…We've just received the letter saying our portfolio has lost more than 10% in value this quarter. Whilst I appreciate that this is an investment that should be looked at in much longer terms than quarters, it is still concerning. I also noticed a few quarters ago we lost approx. £50k in one quarter and this was worse than what would be expected for somebody in our risk category. How has this last quarter compared with what would be expected/average for somebody in our risk category?"

Mr E – 31 December 2018:

"The current period of high market volatility is symptomatic of the concerns about global trade and the stand-off between the US and China. Markets have also been adjusting to the outlook for interest rates in the US.

The year to date has been characterized by extreme levels of volatility. Equity markets around the world reached all time highs in December 2017 and into January 2018 before falling to 12 month lows in April 2018. The valuation report you received in April 2018 reflected this fall from an all time high. The capital depreciation was £57,472 however the performance was in line with the linked benchmark in the subsequent quarter, the figure for

capital appreciation of your portfolio was £66,318 and more than offsetting the losses from previous quarter.

The capital depreciation of your portfolio in current quarter to date is -8.67% compared with benchmark which is -6.95%. The markets staged a small recovery at end of last week and since the date you were issued with +10% notification.

I agree that in short term these movements are concerning but do not take away from medium/long term very positive returns from portfolio. We have experienced periods of volatility previously in 2011 and 2016 and no doubt we will emerge from current turmoil.

I hope that this provides some reassurance during what is an eventful time for markets and wider geopolitical landscape. I will be very happy to discuss risk strategy and performance within portfolio when we meet on 18th January if meantime you have any queries please let me know."

Ms B – 31 December 2018:

"Many thanks for your email. It is concerning that it often seems to perform worse than the benchmark – is this just my impression or is this the case over the past say 5 years?"

Mr E – 31 December 2018:

"In recent years the performance has for the most part been in line with the benchmark with a few quarters of outperformance.

During the period 2013–2015 the portfolio was heavily overweight UK equities which did result in some deviation from the benchmark. However, during the intervening period we have been able to reduce exposure to the UK equity market in favour of more international exposure and this has improved the performance overall. This process was slightly hampered by the constraints of annual capital gains tax allowance but the portfolio is now broadly in line.

The total return of the portfolio in 5 years to date is 33.13% vs benchmark return of 36.99%. The underperformance traces back to initial period in 2013–15 when portfolio was overweight UK equities.

To a lesser extent, portfolio is underweight in exposure to lower risk fixed interest assets such as bonds. The portfolio holds approximately 3.5% vs benchmark weighting 6%. This followed our discussion in 2014 that you preferred not to have significant amounts in bonds due to cash deposits you hold elsewhere. This underweight position does slightly increase volatility. In a rising market this will result in outperformance but falling market opposite. This underweight position is still within tolerance we would have for a portfolio this risk category and so I am happy maintain this position.

I hope that helps put into context performance overall but very happy discuss more detail."

I will first deal with the 'rising market' comment. Ms B and Mr R interpreted the comment as meaning that their portfolio would outperform benchmarks in a rising market. But I think the comment was more specifically related to volatility. Mr E explained that the lower exposure to fixed interest assets slightly increased the volatility within the portfolio. Mr E said this (the slightly increased volatility) will result in outperformance in a rising market but the opposite in a falling market.

I don't think this comment can fairly be described as a guarantee that Ms B and Mr R's portfolio would outperform benchmarks. I think he was simply explaining that lower exposure to fixed interest assets within the portfolio increased volatility and this would be positive in a rising market and negative in a falling market. I think Ms B and Mr R would've understood that neither Mr E, nor anyone else, could guarantee performance at any level.

Ms B and Mr R are concerned that Mr E misrepresented the performance of the portfolio as a whole by blaming the underperformance on the earlier period of investment before he started to make significant changes. They said this made them believe that the current performance was better than it actually was and it meant that they remained with BD when they would have transferred elsewhere had they understood the true position.

First I think it is important to acknowledge that Ms B and Mr R understood in December 2018 that the portfolio was underperforming compared with the benchmark. Ms B questioned Mr E on losses experienced over the last year and Mr E clearly stated that in the current quarter, the portfolio performance was -8.67% compared to the benchmark of -6.95%. Mr E acknowledged that the short-term movements were concerning, but said the medium/long-term returns were very positive. So, while Ms B was asked to look at performance over a longer period, she was clearly told the portfolio was underperforming the benchmark at that point. I accept Ms B's point that she wasn't concerned about quarterly performance and that knowing the portfolio was underperforming the benchmark in a particular quarter wasn't of concern. But it's evident that underperformance over a couple of quarters, if significant, can have an impact on long-term performance figures.

Ms B says that Mr E told her that in recent years the performance of the portfolio had for the most part been in line with the benchmark with a few quarters of outperformance. Ms B provided figures for the quarterly performance between January 2016 and October 2018 and says that even this statement was misleading, because during that period there were only two quarters of outperformance. But having reviewed the figures provided by Ms B, I don't think they are inconsistent with what Mr E said, particularly as he wasn't prescriptive about the time period he was referring to.

Ms B told Mr E that the portfolio often seemed to be performing worse than the benchmark. Mr E responded saying that the total return of the portfolio over five years was 33.13% compared to the benchmark return of 36.99%. So again, Ms B was told that the portfolio was underperforming compared with the benchmark.

I appreciate that Mr E told Ms B that the underperformance traced back to the initial period in 2013 to 2015 when portfolio was overweight in UK equities. Ms B says that the inference here was that the portfolio had since performed in line with the benchmark or outperformed it. However, when BD sent Ms B and Mr R the performance figures, it showed that the portfolio had actually outperformed the benchmark between September 2013 and January 2015 and Mr E had noted this in an email of 28 November 2024.

I appreciate that Ms B was misinformed about the performance between 2013 and 2015. But I'm not persuaded this was deliberate on Mr E's part, particularly as Mr E had been managing the portfolio since 2013, so if it was underperforming the benchmark between 2013 and 2015 this would still be attributable to him/BD. And I don't think it was incorrect to say that the cumulative performance since then had been in line with the benchmark – while there was clearly some variance over that time, before the period of losses experienced from October 2018, the cumulative performance over the previous six months had been within 1% of the benchmark.

Following comments in response to my first provisional decision, I made further enquiries with BD about the five year performance figures. I explained that Mr E told Ms B that the

total return of the portfolio over the five years was 33.13% compared with a benchmark return of 36.99%. But based on evidence provided to Ms B in November 2024, her portfolio had actually only grown by 24.19% between December 2013 and December 2018 compared with the cumulative benchmark growth of 35.72%.

As detailed above, BD accepts that those specific figures can't now be reconciled, despite BD's attempts using various dates. However, BD thought the five year performance figures most likely related to a period of just over five years, from September 2013 to December 2018. In that period, the cumulative portfolio growth was 34.26% and the benchmark cumulative growth was 38.58%. Having considered this carefully I also think Mr E was most likely describing the growth achieved since September 2013 to December 2018. Although the growth figures I've seen over this period don't match exactly, they are more consistent with the figures Mr E gave and show that the benchmark growth was around 4.3% more than the cumulative portfolio growth. The figures Mr E gave were 3.86% apart; I don't think this difference is material.

Ms B believes that this was a deliberate misrepresentation because she specifically asked for performance over the last five years, not five years and three months. And the period between September 2013 and November 2013 concerns a different product so isn't relevant. But I think this was most likely an honest mistake on Mr E's part. Ms B says that she would asked again for the performance figures over exactly five years and would have been concerned because of the difference of over 11%. She says this would've been of such concern that she and Mr R would have left BD.

To be clear, Mr E didn't discuss the performance between March 2016 and March 2017 with Ms B and Mr R. But had Mr E given them the exact performance figures over five years (where there was a difference of around 11%) I think it's most likely that Mr E would've explained that the period which resulted in the most variance was from around March 2016 to March 2017, and that since then, performance had more or less been in line with the benchmark. I still think Ms B and Mr R would've most likely been reassured by this. Particularly as Ms B says she was more concerned with long-term performance rather than short-term performance. Given for how long Ms B expected to invest these funds, I'm not persuaded that underperformance for a period of a year, followed by performance in line with the benchmark would've been significant enough to move away from BD. I think this is also evidenced by the call that took place in March 2023, where Ms B and Mr R were told they had significantly underperformed the benchmark over the last 12 months, and still stayed with BD.

Ultimately, I'm not persuaded that Ms B or Mr R would have done anything differently in December 2018 had they known that the period between 2013 and 2015 represented outperformance rather than underperformance compared to the benchmark or if they'd known the exact performance figures for the past five years. Overall, I think they were aware that the portfolio was underperforming compared with the benchmark at that point in time, and that it had underperformed the benchmark generally. If performance in line with the benchmark was important to Ms B and Mr R, then I think they were in an informed position to make a decision to move away from BD. It's evident that they didn't take any action to move their assets away from BD despite being aware it was underperforming compared with the benchmark, so I'm not persuaded that they would've done so if Mr E hadn't made the mistake in relation to the period from 2013 to 2015 or in relation to the five-year performance.

I've taken on board Ms B's point that the performance figures she was given compared to the benchmark didn't take account of fees they were paying – so their performance was lower than they were led to believe. But I don't think that it was unreasonable to provide figures comparing the performance of their investments before fees were taken to the

benchmark, given the benchmark also didn't take account of fees. They were provided with statements showing the gross return and the net return after fees.

Ms B has raised concerns about other times where performance has not, in her view, been accurately described. She says she was led to believe that performance was in line with equity returns and she couldn't have achieved better returns elsewhere, which meant she remained longer with BD than she otherwise would have. Ms B has raised the point more generally about how her portfolio has performed from inception to the date they left BD compared to the benchmark. Ms B also doesn't feel that BD has adequately explained why their performance is so much lower than the benchmark.

I have considered the other instances where Ms B says they were misled about the performance compared to the benchmark. She says performance was discussed at the meeting in 2019, and they were misled, but she doesn't have a call recording. She has provided evidence of being misled in a call in March 2023 and in email correspondence in late 2024. But I'm not persuaded that the performance was materially misrepresented such that it would've led to Ms B or Mr R to leave BD before they did, notwithstanding that the way performance was communicated to them in late 2024 did in fact lead them to leave BD at this point. In my view, based on the phone calls provided and written review reports, Mr E told Ms B and Mr R that performance was line with what BD expected given the various world events that had continued to impact investment returns since the covid pandemic in 2020.

Based on the performance figures provided to Ms B and Mr R in November 2024, it's clear that the portfolio had more or less tracked the benchmark from March 2017 (with sporadic variance below the benchmark of up 3%) until September 2020 when it started to outperform it. This continued until January 2022 when performance started to dip below the benchmark. In the March 2023 call Mr E explained this, saying that from the high point of 2022 the portfolio was down around 11% and explained the reasons for this including the war in Ukraine, high inflation and interest rates. He said clearly that over the last 12 months the portfolio was underperforming the benchmark, but up until that the portfolio was outperforming. Based on the performance figures I've seen, I don't think Mr E mislead Ms B or Mr R about this. I appreciate that he was optimistic that things would turn around throughout 2023, and that unfortunately that wasn't the case, but I don't think this was misleading.

I appreciate that Ms B says that they didn't understand what was meant by 'expected'. She says that they interpreted this as meaning that they couldn't have achieved better returns elsewhere but I don't think that's reasonable assumption. Ms B and Mr R were dealing with a BD investment manager and so I think they ought to have understood that Mr E would temper performance figures with reasons to be optimistic that they would improve. Furthermore, the benchmark BD had chosen to measure Ms B and Mr R's portfolio performance against was simply a means of comparison which BD felt was appropriate. The benchmark wasn't necessarily indicative of what Ms B or Mr R could achieve elsewhere.

Overall, I don't think anything Mr E said could've reasonably been taken as meaning that Ms B and Mr R couldn't achieve better elsewhere. And in any event, Mr E was not an independent financial adviser, so he couldn't have commented on what returns they could achieve elsewhere. If Ms B and Mr R wanted to know how their performance compared with other investment managers or investment strategies then I think they ought reasonably to have known to seek that information from an independent source.

Lastly, I still think that it's important to emphasise that comparing growth with a benchmark is simply a means of comparison. And BD's benchmarks were comprised of a range of indices, based upon the average asset weighting within each risk category. The indices used also

change over time. Performance of a portfolio was never guaranteed to be in line with the benchmark, particularly as the makeup of Ms B and Mr R's portfolio wasn't directly comparable. I ultimately think Ms B and Mr R understood this. And if Ms B or Mr R were unhappy with the performance of their portfolio then it was for them to make a decision to change their arrangements.

I recognise that, looking back, Ms B and Mr R are unhappy with the overall performance of their portfolio compared to the benchmark as described in the risk guide, but I don't think any further explanation is required. Whilst performance in line with or above a benchmark is what BD targeted, it wasn't guaranteed. Furthermore, the benchmark doesn't take account of fees and it doesn't contain the same assets so the portfolio it isn't directly comparable. I also note that for the first couple of years Ms B's portfolio was tracked against a different benchmark so again the figures in the risk guide aren't directly comparable.

I don't intend to provide any additional comments about how the performance figures are expressed or calculated as ultimately this wouldn't have had an impact on Ms B or Mr R's decision to remain with BD as per my explanations above.

MyBrewin

I understand that Ms B and Mr R have only learned of MyBrewin recently and believes that they should've been made aware of this sooner. While having access to the information on the platform sooner would've been useful to Ms B and Mr R, I'm satisfied they were provided with information about the value and performance of their portfolio regularly. And where they have asked for further explanation or guidance, Mr E has been available to provide it. So, I don't think this has caused any detriment.

ISA imbalance

Ms B is unhappy that BD did not evenly construct her portfolio across the GIA and ISA, which she says has meant that most of the assets that have made gains are sitting outside of her ISA wrapper.

I appreciate that with hindsight, Ms B would have preferred that there was a more even spread of assets that made gains held within her ISA, where the gains are sheltered from tax, compared with her GIA. Specifically, Ms B said that the ISA was weighted in favour of UK equities, when US equities had performed better. But I'm not persuaded that BD has made a mistake here – given Ms B's ISA and GIA were being managed together under the same risk approach, I don't think the assets held within each account needed to be a mirror image of each other. And while I appreciate that US equities have fared better more recently, that hasn't always been the case and there were likely occasions where Ms B has benefitted from the weighting in favour of UK equities within the ISA. Ultimately, I don't think identifying which assets make gains is something that the investment manager could've predicted and trying to anticipate that could've led to a worse outcome for Ms B.

CGT allowance and asset sales

BD has agreed to pay Ms B the compensation offered in its final response letter given that she was happy to accept it resolve this particular complaint point. So, I'm not considering this any further.

Ms B has since added that BD has responded to a new complaint made about it not always using her CGT allowance. Although Ms B says she has received a final response from BD about this I can't consider it as part of this complaint. If she wishes to refer the complaint to our Service, she will need to register it with us as a new complaint.

Missing monies

In response to my first provisional decision, Ms B raised concerns that money may have gone missing from her account as the figures mentioned by BD about the amounts transferred into her portfolio don't tally up. In particular, she has since found that assets were still being transferred from a previous provider in May 2014, when she had been told this completed in November 2013.

As this is a new issue that BD hasn't previously been asked to address, this should be referred to BD as a new complaint – it isn't something I can consider here.

Suitability of the investments made between 2006 and 2013

Ms B has also questioned the suitability of the arrangements made between 2006 and 2013 regarding investments she'd inherited from her grandmother.

As above, this is a new issue and so should be referred to BD as a new complaint in the first instance.

My final decision

For the reasons set out above, I'm not upholding Ms B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 17 March 2026.

Hannah Wise
Ombudsman