

The complaint

R is represented by her solicitor ('S').

She says Brewin Dolphin Limited trading as RBC Brewin Dolphin ('Brewin') gave her unsuitable advice in 2014 (implemented in 2015) to set up an Absolute Trust ('AT'), to place it in a Discounted Gift Trust ('DGT') and to invest/gift £500,000 in an Offshore Bond ('the bond') held within the arrangement.

Brewin says it was engaged in Inheritance Tax ('IHT') planning for R to mitigate her estate's potential IHT liability of around £1.85 million, so in this context and based on her circumstances the recommendations were suitable.

What happened

I issued a Provisional Decision ('PD') for the complaint on 26 January 2026. In it, the complaint's background was set out as follows –

"In 2014 R was a retired widow in her early 70s. Her annual income, as confirmed in Brewin's August 2014 IHT planning report, included gross pension income of around £150,000 and gross investment income of around £70,000. S says there was also annual state pension income of about £12,000.

With regards to her total annual expenditure, the report does not provide details, but it confirms that her expenditure was well within her income. Record of a review meeting between the parties in January 2014, when the IHT planning objective appears to have first been raised that year, states that her annual expenditure was around £100,000.

Based on the same August 2014 report, R had the following assets – financial investments worth a total of around £2.1 million, non-financial assets worth a total of around £2.85 million, and £100,000 cash reserve. R had no liabilities.

R was an existing Brewin client. It already managed her main portfolio of investments, and had done so for many years. They held a number of meetings in 2014 to discuss the IHT planning objective (culminating in the aforementioned recommendations), with associated correspondence in between. The Nil Rate Band ('NRB') available to her was confirmed as £325,000, but S says Brewin wrongly failed to consider whether (or not) there was an additional NRB available to her from her late husband's entitlement. The estate's potential IHT liability was calculated, by Brewin, on its value beyond this NRB.

R had a will, with seven beneficiaries for the main wealth in her estate, and some secondary beneficiaries for the rest. The IHT planning related to the seven primary beneficiaries ('the beneficiaries'). The recommended AT meant, in broad terms, the beneficiaries were fixed and could not be revised in the future.

Some aspects of the recommended arrangement were revised after the August 2014 report, but the report was the main result of Brewin's considerations and advice on the IHT planning objective. With regards to its recommendation, the report included the following –

- *A summary of the objective's components, including IHT mitigation, ongoing reviews, and access to a fixed annual income for life of £15,000.*
- *The discounting of alternative solutions, such as outright gifting, gift trusts, and business property relief schemes, in favour of the recommended AT/DGT/bond solution. Plus information on the benefits of the AT, the DGT and the bond (including potential disadvantages of the DGT).*
- *Information on how ATs and DGTs work, including explanations about the workings of Potentially Exempt Transfers ('PETs') within them and about growth in the DGT falling outside the estate.*
- *Estimation that the recommended solution would potentially reduce the estate's IHT liability by £200,000 (the IHT, at 40%, due on £500,000), including the immediate DGT based discount benefit of £171,105 (which was slightly revised by the time of the 2015 implementation).*
- *Explanation about the fixed £15,000 per year capital withdrawal from the DGT as income for R (3% per year of the initial invested sum), with no immediate income tax liability (instead deferred).*
- *The following costs – 1% (£5,000) initial advice fee (to Brewin), added to the invested sum; 0.5% of the initial invested sum (£2,500) per year (to Brewin) for ongoing advice; 0.5% (£2,500) initial administration fee (to the bond provider); £100 per quarter ongoing administration fee (to the bond provider); 0.5% per year discretionary management fee (to Brewin); and a Total Expenses Ratio of 1.91% per year for all charges related to the underlying investments within the bond.*
- *Investment advice for the bond.*

The £500,000 sum was to be derived mainly from her existing investment portfolio.

Additional advice to R in September 2014 included the following –

"In the event of you using an Absolute Trust, the gift element of the investment will be treated as Potentially Exempt Transfer (PET), regardless of the investment amount. This means that inheritance tax would only become payable in the event of your death within seven years of the date of the Trust.

However, if you were to use a Discretionary Trust, the gift element would be treated as a Chargeable Lifetime Transfer (CLT) and any amount of the gift in excess of the Nil-Rate Band (£325,000) would be immediately liable to inheritance tax at the lifetime rate."

Furthermore, Brewin's complaint response to R said –

"The overarching theme to all the documents and advice was to try reducing the amount of IHT potentially owed by your beneficiaries and to give you a regular income. The DGT was just one of a number of ways ... suggested.

An Absolute Trust was chosen because the beneficiaries were known and unlikely to change. It allowed you to gift more than £325,000 (net of any discount) into trust without incurring a tax charge – gifts over £325,000 into a discretionary trust suffer a tax charge of

20%. The amount of £500,000 was a meaningful amount for the purposes of reducing IHT exposure and it was also affordable.”

S has made lengthy submissions for the complaint. The main points within them allege wrongdoings by Brewin in its approach towards R at the outset and towards the IHT objective, in its introduction of a non-existent and unrequired income objective, in its considerations of potential IHT mitigation solutions and in the unsuitability of the solution it recommended.

S says –

- *R never initiated the idea of IHT planning. Her previous and ongoing engagement with Brewin had been for the management of her investment portfolio. Brewin raised the idea of IHT planning and steered her towards undertaking a separate service, at separate and additional costs, for that purpose. Therefore, the objective was imposed upon her, as opposed to something she wanted.*
- *There is ample evidence that R never had an objective to raise additional income. This was repeatedly affirmed by Brewin in 2014 (and before). She already had much more income, secured for life, than she required. She also did not need a new form of investment for the £500,000 capital.*
- *Without a need for income or investment, and as IHT mitigation was meant to be the main consideration, the natural solution would have been gifting. The same PETs effect would have applied to gifting. R was in good health. In 2014 she could have gifted the total of £500,000 to the beneficiaries, the gifts would have been PETs, and seven years thereafter the gifts would have been free of IHT liability. All this could and would have been achieved without the costs, complexities and trouble of the recommended AT/DGT/bond solution.*
- *With regards to costs, R sought to negotiate aggregation of fees with Brewin, given that it already managed her investments, but it refused to do so. Therefore, all fees to Brewin associated with the recommendation were separate from those she was already paying for its service to her portfolio.*
- *Also with regards to costs, the recommendation was not cost-efficient. The immediate IHT benefit to R from use of the DGT was the discount element, which immediately fell out of her estate and remained as such only if she survived the following seven years. Based on the £171,105 discount figure the potential IHT (at 40%) saved on this amount equated to around £68,000. The ongoing costs of the arrangement defeated this saving. Almost half of the £15,000 annual drawings were consumed by fees to Brewin alone (and in later years the level of total annual fees exceeded the annual drawings). Since 2014 the total of fee payments in the arrangement has exceeded £68,000, and the fees continue on a compounding basis. R's loss presently stands above £100,000.*
- *The recommendation was fundamentally flawed because it failed to consider the beneficiaries' circumstances. The eldest was older than R, so it was foreseeable that R might outlive her. In fact, R did outlive her. Due to the AT, her share of the gift within the DGT became part of her estate. Her estate has been exposed to IHT on her share even though the estate is yet to receive it, and will not do so until R's death. With a simple gift to this beneficiary in 2014 her estate would at least have had the value of the gift since then. Brewin applied no foresight to this likely scenario. There is a risk of the same scenario playing out for another beneficiary. The use of*

an AT was misconceived. A discretionary trust would have made more sense.

S has also set out a list of 24 alleged wrongdoings committed by Brewin in the entire affair (including references to its complaint handling and to some desired outcomes)."

My provisional findings were mainly as follows –

"On balance, and in a nutshell, I consider that Brewin probably over complicated its approach towards the IHT planning objective, R's circumstances did not require the AT/DGT/bond solution (with its associated costs), instead they were circumstances in which gifts as PETs would probably have sufficed (without associated costs). For these reasons, the recommendation did not stand to benefit R, and Brewin's advice to her was unsuitable."

"The IHT planning objective

S says this objective was imposed upon R by Brewin.

There is an 11 January 2014 post-meeting email from R to her Brewin portfolio manager agreeing to his colleague – who seems to have been an IHT planning specialist – writing to her with information on the DGT (as a product). My reading of the email, and of the notes of the 8 January 2014 meeting it followed, is that the ideas of IHT planning and of a DGT were indeed initiated by Brewin and put to her at the meeting.

Brewin's notes for the meeting include – "... we had a good discussion about inheritance tax. This is something which we have raised with her before but she has never been particularly interested in doing anything about this as she doesn't have any direct family."

The notes say that her plan for her estate had been to simply bequeath its components to the relevant beneficiaries, but she had become "... aware of the implications of inheritance tax and is now open to at least thinking about other options", so the portfolio manager "... outlined the concept of a Discounted Gift Trust and the potential way this would work ...". His notes also confirm the £500,000 figure, and his suggestion of having the IHT planning specialist involved in the discussion.

S is correct in saying IHT planning was not something R asked for or wanted. As quoted above, Brewin acknowledged history of her reluctance towards it. She appears to have been content with the idea of gifting. Even as of January 2014, and even after Brewin's renewed attempt to encourage her to consider other options, she seems to have been prepared to do no more than at least think about those options.

Having said the above, it is not uncommon for financial advisers, with the knowledge, expertise and experience they have, to offer their clients the benefits of such knowledge, expertise and experience by initiating ideas and suggestions aimed at improving their position in a specific way.

In the present case, Brewin's approach appears to have been aimed at considering whether (or not) wider IHT planning options could improve R's position. Such consideration was not unreasonable, so long as it maintained, throughout, R's best interests. I do not find any unsuitability in terms of raising the subject for R's consideration. In 2014 she was a retired High Net Worth ('HNW') individual in her early 70s. In general terms, consideration of whether (or not) to look into IHT planning options in these circumstances would not have been unusual.

The income objective

On balance and based on available evidence, I consider that this never existed. R never wanted or asked for additional income. It seems clear that she did not need additional income at the time, and that the prospects of her needing additional income in the future were distinctly unlikely.

I referred to her annual incomings and expenditure, at the time, earlier. The former amounted to at least a total of around £220,000 (gross), or around £232,000 (gross) including her state pension.

I do not have enough information about the net equivalents of her personal pension, portfolio and state pension incomes, but applying a higher rate 40% deduction to £232,000 to reach a simplified net result gives a total net income of around £140,000. The 8 January meeting notes confirm that her annual expenditure was around £100,000. This means she probably had around £40,000 per year in net disposable income. In this context, and in the absence of any other factor to consider, it is quite inconceivable that she would have wanted or asked for additional annual income of £15,000.

I am aware that the meeting notes conclude with the portfolio manager saying, amongst other things, "... she liked the idea of saving tax now and also receiving an income". However, this statement, with regards to income, is conflicted by the fact that the same notes confirm, earlier, that R's income was covering her needs. Therefore, I do not find the statement to be reliable.

R met with her portfolio manager and his IHT planning specialist colleague on 25 May 2014, and there are notes for this meeting too. Incidentally, the notes show that she repeated her gifting preference for the estate. They also refer to a letter (about the DGT idea) the specialist sent her in January, and confirm that the meeting was to build upon that letter.

There is reference to an 'income for life', and a '3% regular monthly withdrawal', from the proposed £500,000 based DGT, but no reasoning is given for this, especially as it had previously been established, in January, that R's expenditures were covered by her income. She did not need additional income. This omission was never corrected.

Even as of Brewin's IHT planning report of 8 August, which formally recommended the AT/DGT/bond solution, it could not avoid acknowledging, again, that R did not need additional income. The report includes – "You have confirmed that your current income comfortably meets your existing expenditure". Despite this statement, and without a needs based reason for doing so, the report proceeds to recommend the £15,000 withdrawal from the DGT.

Overall, on balance and for the above reasons, I find that, at the time of advice, R had no objective and no need for additional income in general and/or in the context of IHT planning.

IHT planning

Thus far, I have established that R's preferred approach to IHT planning was gifting, that she had historically been reluctant to consider any other options and that, in 2014, she remained reluctant to do so, but was persuaded otherwise by Brewin. As I said above, there was nothing wrong in her considering whether (or not) to look into other IHT planning options.

I have also established that she did not need additional income.

The regulator's Principles for Businesses, at principle 6, required firms to uphold their customers' interests and treat them fairly. Furthermore, the Conduct of Business Sourcebook ('COBS') section of the regulator's Handbook contains (at COBS 2.1.1R) the

client's best interests rule. As the title suggests, it requires firms to uphold their clients' best interests. The sum of these requirements meant that any IHT planning options considered by Brewin for R had to be considered in the context of what would be in her best interests.

The entire purpose of the considerations was to help the estate and its beneficiaries save money, by mitigating and/or avoiding IHT. The point to note here is about 'saving money'. A solution with potential costs that could not be justified by the potential savings, or with potential costs likely to be greater than potential savings was arguably unsuitable, unless there were other beneficial factors that outweighed the cost aspect.

A solution involving investment products and investment services was bound to involve some costs – charges for initial advice and implementation, for any agreed ongoing advice, and the initial and/or ongoing charges within or associated with the investment product(s). There could be scope to justify such solutions where there is an investment objective associated with the IHT planning or where an investment basis is suitable for or compatible with the relevant plan. However, there is arguably less, if any, scope to justify undertaking a new investment-based solution for IHT planning where neither is the case.

Sometimes particular aspects of a person's circumstances can make things like trusts and trust-based investment solutions worthwhile considerations for IHT planning, but sometimes those circumstances can also show, quite clearly, otherwise. Examples can be found in consideration of the DGT recommended by Brewin.

In broad terms, the DGT is set up and, as in R's case, invested; the discount element is calculated on the total value of the income/capital to be withdrawn from the fund during the seven years qualifying period; the discount element is immediately removed from the estate at the outset; the settlor gets an ongoing source of income from the DGT during the seven years; at the end of the arrangement and if the settlor dies after the seven years period the remainder value (for the beneficiaries) leaves the estate and is IHT free.

As summarised above, and as recommended to R, the solution potentially achieves investment, income generation and IHT planning objectives, all in one. For a person with all such objectives the arrangement could be suitable. In R's case, all the above begs the question – did she need, and/or would she have benefited from, new investment and income in addition to, or as part of IHT planning?

She did not need income, as I have already addressed. She also did not need a new investment, with or without IHT planning. The £505,000 invested in the DGT (which included the addition of Brewin's £5,000 initial advice fee) was mainly derived from her existing invested portfolio. As confirmed by Brewin – "£40,000 was used from the clients cash reserves with the remaining balance being taken from her existing investments".

Therefore, the bulk of the money was already invested. It was not new or idle cash in need of investment (as part of IHT planning). Instead, the majority portion of £465,000 was cash liquidated from pre-existing investments solely for the purpose of being used in Brewin's recommendation. To complete the picture, the additional £40,000 was taken from R's cash reserve (of £100,000) which existed as her safety net. Based on available evidence, she neither needed nor planned to use the cash reserve for investments. She already had invested assets worth over £2 million. In a sense, and disregarding her cash reserve, R's capital wealth was already fully invested.

R's circumstances did not automatically lend themselves to consideration of a DGT. I anticipate that Brewin will highlight the immediate discount and the IHT saved from that discount at the outset as being notable benefits. However, I am persuaded by S' arguments about the costs. Even without his argument, this drawback stands out from the facts.

There was a total initial outlay of £7,500 (covering Brewin's initial advice fee and the bond holder's initial administration fee). Then, in terms of ongoing costs, 0.5% or £2,500 per year was payable for Brewin's ongoing advice, 0.5% per year of the fund's value was payable to Brewin to meet its discretionary management fee, £400 per year was payable to meet the bond holder's ongoing administration fee and there was a likely ongoing cost of 1.91% per year to meet all the charges related to the fund's underlying investments.

Excluding, momentarily, the initial outlay, the recommendation stood to cost R, in percentage terms, total fees of around 3% per year.

I appreciate that fluctuating fund values (due to fee deductions, capital withdrawals and performance over time) would be relevant factors in calculating the overall real costs (based on 3% of the changing fund values). However, my ballpark calculation suggests that, at the 3% per year rate and based on the initial £500,000 investment, the ongoing costs to R could be foreseen as potentially averaging somewhere around £10,000 per year. Using the seven years qualification period as an illustrative calculation basis, this means a total of around £70,000 after seven years. In addition to the initial outlay, there was a likely grand total cost, over seven years, of around £77,500.

Using the discount of £171,105 confirmed in the August report, the IHT (at 40%) saved on it would have been £68,442. The total cost I estimated above is greater than this saving.

Extending the above analysis to the overall IHT saving of £200,000 mentioned in the August report, that potential saving would already have been reduced by around £77,500 (almost 40%) in costs after seven years. The ongoing costs meant it would have been reduced even further with every year that followed, and the above is without considering investment performance risks. In the event of poor performance, there could be a loss in the fund, at any time, that reduced its value beyond the 3% per year rate that I have used.

Given the above reasons, I am not persuaded that the immediate discount made the recommendation worthwhile.

For IHT mitigation, R's circumstances appear to have called for a simple approach. She did not want anything complex, hence the reluctance her portfolio manager said she had in the past (in terms of considering anything other than gifting). That reluctance remained in early 2014. It does not appear that she needed anything complex, and it defeated the IHT mitigation purpose (in terms of saving money for the estate and its beneficiaries) if an unduly complex solution also meant an unsuitably costly solution. That was not in her best interest.

The £5,000 initial advice fee was 1% of the £500,000 invested amount. The fee covered Brewin's advice and implementation work, both conducted by the specialist. There seems to be an argument open to R to say all or most of this fee would have been avoided, but for the nature of the recommendation. I appreciate that Brewin would have been entitled to charge for its advisory work. It could counter argue that there would have been a cost of advice in any case, but for the reasons I address next I find it more likely (than not) that something markedly different would have happened if the DGT based recommendation was not Brewin's advice.

If its advice was in line with R's gifting preference this could and should have been resolved between her and her portfolio manager. That would have happened under the advisory service he was already providing to her and her portfolio. A separate advice service, and charge, from his specialist colleague would not have been necessary.

I repeat – Brewin initiated the IHT planning objective at the 8 January meeting; the £500,000

amount was identified for this purpose at the meeting; the portfolio manager was familiar with R's gifting preference, which she retained at the meeting; he knew she did not need income and that her estate's capital was already fully invested (excluding the cash reserve), so she did not have a separate investment requirement; and the beneficiaries were also known at the meeting.

Given that it was within the portfolio manager's remit to discuss IHT mitigation as part of the service he delivered to R – because that is exactly what he did on 8 January – the matter could have remained within that remit, and both sides had all they needed to deal with it at the meeting. It is reasonably clear from the meeting notes, associated correspondence and from the notes of the 25 May meeting that the only reason the specialist referral happened was because the portfolio manager believed the DGT was the way forward for R and his specialist colleague was better placed to advise on DGTs. Without that view, there would have been no need for the referral.

There was enough information available to the portfolio manager to conclude that R's gifting preference was a suitable way forward for her. The £500,000 total gifting amount had already been identified, as were the beneficiaries. The arrangements to put together the £500,000 were also within his remit – he made those arrangements as part of the implementation of the DGT solution.

A PET applied to the gifts in a way that was akin to the CLT in the DGT – in the sense that they both required R to survive the seven years qualifying period to achieve freedom from IHT – and I have already explained why I have not been persuaded by the discount element of the DGT. As S has argued, an inherent advantage of the gifts would have been that the beneficiaries received their immediate benefits. In some cases there can be reservations about this – for example, where a settlor is concerned about a beneficiary accessing the gift before a specific age – but nothing in R's case says she had such a concern.

Brewin might argue that seven years qualifying period requirement in the DGT was slightly more favourable, because of the tapering of the IHT rate that could have been applied if R passed away after three years but within the seven years period. I acknowledge this, but there is no evidence that her life expectancy was in doubt in 2014. Such things cannot be predicted, of course, but available evidence says she was in good health, so, whilst it could not have been guaranteed, there appears to have been no foreseeable reason why she would not have looked forward to surviving the full seven years.

The above plan could have been implemented between R and her portfolio manager, under the latter's existing ongoing service, with minor to average effort and without any additional advice costs. The plan would also have been suitable. It achieved the gifts R wanted to give the beneficiaries and it achieved IHT mitigation with regards to the gifts being PETs and being potentially IHT free (after seven years).

This also means there would have been no separate £5,000 initial advice fee arising from the specialist's work. The matter would have been dealt with between R and her portfolio manager as part of his service to her.

There would have been no need for investment and no 1.91% investment costs per year. The same, for the same reason, applies to the 0.5% per year ongoing advice fee and 0.5% per year discretionary management fee to Brewin. There would have been no bond, so the 0.5% initial administration fee and £100 per quarter ongoing administration fee to the bond provider would also be absent.

In other words, if R had gifted £500,000 in 2014, she would have suitably mitigated IHT on it without all the costs in Brewin's recommendation. For all the reasons given above, my

provisional conclusions are that it was reasonable for R to mitigate IHT on the £500,000 amount, but Brewin's advice to her for that purpose was unsuitable."

I also shared a draft of the redress provisions I considered likely to be used if the provisional findings and outcome were retained in a final decision. I explained the following to the parties –

"Both sides are invited to consider my provisional findings carefully and to provide their comments, if any, in response. If, after considering those comments, I retain the same findings, my final decision will reflect them and will likely use the provisions below for compensating R and for redressing her financial loss. It is important that the parties also consider the draft below carefully, and that they share with me any comments they have on it and/or any aspects of it they anticipate being problematic or incomplete in practice. Before a final decision, I can still deal with such feedback, but after a final decision my consideration of the complaint comes to an end and no revision can be made to the decision.

S says Brewin has confirmed that the DGT arrangement cannot be deconstructed, and the same is my understanding of such arrangements. If Brewin disagrees and believes there is a method to deconstruct R's DGT arrangement it should say so and explain the method in response to this PD. If this is the case, my redress provisions might change. Otherwise, as drafted below, redress will be premised on the DGT remaining in place as it is because it cannot be deconstructed."

S confirmed, on R's behalf, acceptance of the PD in principle, subject to – any confirmation from Brewin as to whether (or not) the DGT can be deconstructed, a request for R's costs in pursuing the complaint to be incorporated into redress, and Brewin's response to the PD.

Brewin disagreed with the PD. First, it raised a challenge against our jurisdiction to determine the complaint, on the basis that it considers the complaint to have been made out of time. In short, it said R's 2024 complaint happened more than six years after the 2014 advice, and that she was and ought to have been aware, from the outset, of the same facts that feature in her present complaint. For these reasons, it says the complaint is outside the regulator's six years (from the complaint event) and three years (from awareness of cause for complaint) time limits for complaints.

On merits, Brewin maintains that its recommendations to R were suitable. In this respect, it addressed the PD's findings on 'the income objective' and 'IHT planning'.

Brewin says there is evidence that goes against the PD's conclusion that R did not require additional income. It says this exists in the advice report and that notes for two meetings with R in May 2014 include – *"However the principle of drawing an income was considered very sensible and useful"* and *"The client instructed that we pursue this on the basis of a £500,000 initial investment into the DGT with a 3% regular monthly withdrawal and written in absolute trust..."*.

It also says the £500,000 capital withdrawn from R's investment portfolio for the DGT meant her annual income of around £70,000, from the portfolio, was bound to be reduced, so the resulting gap was covered by income from the DGT; and that there is evidence of a considered approach towards R's income needs because she could have taken the maximum of 5% withdrawals from the DGT, but only 3% withdrawals were recommended upon discussion with her, and with her accountant's agreement.

On the matter of IHT planning, Brewin says R's previous reluctance towards discussing it changed in 2014, hence the events that followed, and that gifting was discussed but discounted because she wanted to maintain an income for life from the arrangement.

It also noted the following –

“I disagree with your assertion that the only reason the meeting occurred was due to the portfolio manager believing that a DGT was required.”

“As you have pointed out the client was fully invested, which would mean that the portfolio would have received charges. To maintain the same level of withdrawals would still have encountered charges irrespective of the client gifting the invested assets or placing it into a DGT. You have commented that the DGT would have had risk, but this is the same for any investment, however, in the case the portfolio grew, the growth would also fall outside of the clients [sic] estate. Ultimately there is no way to predict the movements of the portfolio without the benefit of hindsight.”

Brewin’s challenge against our jurisdiction was new, it had not been previously raised, so I addressed it in an email directly to it, and I invited its comments in response. I explained that if its comments did not change my mind, the view expressed in the email will likely be the same expressed in this decision. That view was mainly as follows –

“I do not find that the complaint has been made out of time.

I accept that the 2014 advice happened more than six years before the 2024 complaint, so the complaint was made outside the six years time limit. However, I am satisfied that it was made within three years of when the complainant knew or ought reasonably to have known of cause for complaint (in other words, it was made within the three years time limit).

As Brewin will be aware, the complainant instructed her solicitor in 2024 and his enquiries (about the 2014 advice) in March that year developed into the complaint on her behalf. Brewin will also be aware that the complaint and challenges he pursued were of a technical nature, probing and disputing technical aspects of the IHT planning approach, the rationale behind the AT and the demerits of the DGT. The complaint also includes his costs/benefits analysis on the complainant's behalf. All these aspects were and remain components of the complaint.

I understand your point about the complainant already being aware of the facts of the advice from the outset. The facts of the advice she received are reflected in available documentation, so I do not consider that there is a denial of those facts. Instead, and distinct from awareness of those facts, her complaint has been professionally presented with a specific focus on the aforementioned technical issues and costs issues which are alleged to have rendered the advice unsuitable. The complainant is a lay person. I am not persuaded that she would have known, or that she ought reasonably to have known, about these technical arguments before she was advised about them. I consider that the same applies to the overall costs/benefits analysis conducted by the solicitor, which has produced a key component of the complaint. It is not uncommon for complaints to be pursued on the basis of a cause, or causes, for complaint discovered only after receipt of professional advice, and I consider this is what has happened in the present case.

For the above reasons, I am satisfied that the complainant's awareness of cause for complaint arose from the advice she received in 2024, her complaint was made in the same year, so it was made within three years of her awareness and is in time; and I do not consider that she ought reasonably to have had that awareness earlier.”

Brewin responded and disagreed with the view. It said –

“I agree that the client is a lay person and it is clear that her current solicitors have led this

complaint, however, I do disagree with the conclusion you reached here. Throughout the relationship, the client has actively used and brought her previous solicitors and tax advisors into meetings who have provided their professional guidance to the client this includes before, during and immediately after the DGT was established. The client has repeatedly discussed the DGT, income that she has drawn and ongoing IHT planning some of which was taken up while gifting which was declined on several occasions. This information was presented to the client and her professional representatives at the time (and she had confirmed discussing various options with them) which given the client via her representatives have now concluded their [sic] was no need for the income and gifting would have been better, this would have been known or reasonably should have been known at the time.”

What I've decided – and why

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

I have also considered both parties' submissions after the PD. Having done so, I am not persuaded to depart from the findings and conclusions in the PD. I retain them and I incorporate them into this decision. I uphold R's complaint.

Jurisdiction

I maintain the view I expressed to Brewin, and I do not find that its response makes any difference to that view.

The implication arising from the technical nature of R's 2024 complaint alongside her lay characteristics is essentially that what she previously considered to be the right advice from Brewin looked different after her receipt of advice in that year on the technical grounds on which she was told the advice was unsuitable. Technical grounds she did not previously know of and had no reason to know of.

Brewin seems to argue that she had people around her who could have given her such technical advice much earlier. However, I do not have evidence on any professional appraisal of the 2014 advice given to her prior to that in 2024, so the argument appears to be unsupported. What, if anything, her previous solicitors told her about the advice is unknown. Furthermore, R's conduct in pursuing the complaint after receiving advice on reasons to do so would indicate that if she had received such advice earlier she would probably have complained earlier. The fact that she complained in 2024 would suggest this was the year in which she was first advised about the DGT's unsuitability.

For the reasons given in my view to Brewin, and those above, R's complaint was made in time and we have jurisdiction to address its merits.

Merits

I maintain the PD's findings on merits.

The PD acknowledged evidence in which there was reference to 'income for life' and to the 3% withdrawal arrangement, but it also addressed how those references conflicted with repeated confirmations, in the same body of evidence, that R did not need additional income. I have not seen enough associated with the 'income for life' reference(s) to explain it in the context of these confirmations and/or to clarify how such an alleged need was determined despite the conflicting confirmations.

I am not persuaded by what seems to be Brewin's assertion that the capital withdrawal from the portfolio resulted in an income gap that the DGT income withdrawals covered. As stated in the PD, R was previously receiving total annual income that was significantly more than her outgoings – by a surplus of around £40,000 (net) per year. This eclipsed the £15,000 per year income that was withdrawn from the DGT. Even if the capital withdrawal resulted in a £15,000 drop in annual income, she would have still had around £25,000 surplus annual income from her pension and investment portfolio, and she would have still been without a need for any additional income.

I am also not persuaded by what seems to be Brewin's argument against the notion that R could have avoided the initial advice cost of the DGT advice, by avoiding consideration of the DGT and the referral to the specialist who gave that advice. The relevant PD findings, as quoted above, include –

“I repeat – Brewin initiated the IHT planning objective at the 8 January meeting; the £500,000 amount was identified for this purpose at the meeting; the portfolio manager was familiar with R's gifting preference, which she retained at the meeting; he knew she did not need income and that her estate's capital was already fully invested (excluding the cash reserve), so she did not have a separate investment requirement; and the beneficiaries were also known at the meeting.

Given that it was within the portfolio manager's remit to discuss IHT mitigation as part of the service he delivered to R – because that is exactly what he did on 8 January – the matter could have remained within that remit, and both sides had all they needed to deal with it at the meeting. It is reasonably clear from the meeting notes, associated correspondence and from the notes of the 25 May meeting that the only reason the specialist referral happened was because the portfolio manager believed the DGT was the way forward for R and his specialist colleague was better placed to advise on DGTs. Without that view, there would have been no need for the referral.

There was enough information available to the portfolio manager to conclude that R's gifting preference was a suitable way forward for her. The £500,000 total gifting amount had already been identified, as were the beneficiaries. The arrangements to put together the £500,000 were also within his remit – he made those arrangements as part of the implementation of the DGT solution.”

The PD proceeded to explain how the matter could and should have been concluded, without any exposure of R to the costs she incurred in the DGT arrangement (the initial advice cost and the other costs). I have not seen evidence that casts any of the above findings into doubt. Any charges that existed within R's investment portfolio, or in relation to her portfolio manager's service, are a separate matter. The DGT advice and arrangement had a set of distinct charges associated with it. I set them out in the PD, and they are the costs that R could and should have avoided, with suitable advice.

With regards to Brewin's comment about investment risks, it might have misunderstood the point the PD sought to make. That point was in the following finding –

“Using the discount of £171,105 confirmed in the August report, the IHT (at 40%) saved on it would have been £68,442. The total cost I estimated above is greater than this saving.

Extending the above analysis to the overall IHT saving of £200,000 mentioned in the August report, that potential saving would already have been reduced by around £77,500 (almost 40%) in costs after seven years. The ongoing costs meant it would have been reduced even further with every year that followed, and the above is without considering investment performance risks. In the event of poor performance, there could be a loss in the fund, at any

time, that reduced its value beyond the 3% per year rate that I have used.”

The point related to the £500,000 sum that was to be bequeathed. The DGT exposed it to investment risks, whereas gifting, from R’s perspective, would not have involved such exposure.

Putting things right

I understand R’s request for an award for her costs in pursuing the complaint, but such awards are not the norm for our service. I appreciate that she has been legally represented by S in the matter, and I acknowledge the considerable work and effort S has put into pursuing the case on her behalf.

However, as a relatively less formal service and given our inquisitorial remit, we would have addressed her complaint to a fair and reasonable conclusion even if she was unrepresented. This does not mean there was no added value in the case presentation by S. There was, and his input has been helpful, but it remains the case that we would still have dealt with the complaint to its conclusion in the absence of such input. For these reasons, I do not find grounds to make an award for R’s costs in pursuing the complaint.

On the matter of deconstruction of the DGT, Brewin has not said this is possible, so the provisions below, which I shared in the PD, remain on the basis that it cannot be deconstructed.

fair compensation

My aim is to put R into the position she would be in but for Brewin’s unsuitable advice, and the position she would be in if she had gifted the total of £500,000 as a PET in 2014.

The individual gifts to the beneficiaries would have been made in 2014. She has survived to date, so the gifts would have left her estate in 2021 and they would have been free of IHT since. I have not considered the individual estates of each beneficiary, so I do not address the consequences alleged by S with regards to one of those estates. R alone is the complainant, so compensation and redress to her is the only matter I am dealing with.

Based on the conclusions that IHT mitigation on the £500,000 was reasonable and that it should have been done through gifting, I have not considered any lost investment returns related to the £465,000 withdrawn from her investment portfolio. I am satisfied that, with suitable advice, the withdrawal would still have happened. The same applies to any lost interest on the £40,000 withdrawn from her cash reserve.

S confirms that R has terminated her relationship with Brewin, so her investments are now managed by a new investment manager and, separately, she has in place new financial advisers.

Past loss to R will be all the costs she incurred in the implementation of Brewin’s recommendation, all the ongoing costs of the DGT based arrangement beginning on the date the arrangement was set up (the ‘start date’) and ending on the date redress is settled (the ‘settlement date’, which is further defined below), and any crystallised loss of value (due to investment performance) in the invested amount from the start date to the end of Brewin’s management of the DGT’s fund (the ‘performance end date’).

No interest – to compensate R for being deprived of the refunded costs during the calculation periods – will be added, because the premise is that the £500,000 would have been gifted in 2014. Therefore, with suitable advice, R would not have had the money

thereafter.

After the performance end date Brewin no longer managed the DGT's fund, R's new advisers and/or investment manager took over that role. If R can show that the fund's underlying investments were rebalanced, and that losses were crystallised, at this point, this will be the basis on which losses up to the performance end date are Brewin's responsibility to redress. If R cannot show this, I do not consider it fair to redress uncrystallised losses, because they can change and be potentially recovered in the life of the investment(s). If, instead, there has been a crystallised gain, it would be fair for Brewin to offset it against the redress payments. Such gain would not have happened if R gifted the £500,000. However, this will not apply to an uncrystallised gain because it too could change and potentially reverse in the life of the investment(s).

As I understand it, the DGT remains invested and in place at present, so all the continuing ongoing costs associated with it will be R's future loss. But for Brewin's unsuitable advice it would not exist. R would probably have gifted £500,000 in 2014 and there would have been no arrangement in place with ongoing costs. S says the DGT cannot be deconstructed, and I have the same understanding about DGTs. For these reasons, the ongoing costs associated with the arrangement continue to be Brewin's responsibility.

Tax on the annual income/capital withdrawals from the DGT/bond was deferred. I do not have enough information to determine what the deferred amount will be at the point it becomes due, but I will make a provision for both parties to engage with each other to deal with this. The reason being that, with suitable advice, the £500,000 would have been gifted in 2014, so there would have been no income withdrawals and no deferred tax.

R is ordered to engage meaningfully and cooperatively with Brewin in order to provide it with any information it reasonably requires for the calculation of redress that it does not already have.

Our service can make awards to complainants for the trouble, distress and inconvenience they have faced (and/or are likely to continue facing) in the complaint matter. Guidance on how we approach the awards is in our website, at the following link – <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience>.

Under this guidance, the following can be found –

“An award of over £1,500 and up to around £5,000 is appropriate where the mistakes cause sustained distress, potentially affecting someone's health, or severe disruption to daily life typically lasting more than a year. A mistake that has an extremely serious short-term impact could also warrant this level of compensation, but usually you'd expect some ongoing or lasting effects.

Examples at the higher end could include where the effects of the mistake are irreversible or have a lasting impact on someone's health or even resulted in a personal injury.”

Some of the above criteria apply to R and some do not. As examples of the latter, I have not seen evidence of damage to her health or personal injury resulting from Brewin's unsuitable advice. However, it is fair to say that she has had, and will continue to have, a relatively complex DGT arrangement that she did not need or want. There is a lasting effect in this respect, and the arrangement appears to be irreversible. Her ongoing attention to it has lasted from 2015 to date and will continue, because it is something her adviser or investment manager will report on periodically and, from time to time, her consideration of issues arising from it, or decisions for it, could be called for.

Overall, the trouble and inconvenience caused to her in having an arrangement she neither needed nor asked for has lasted over 10 years and will continue. However, this must be balanced by the fact that the arrangement was professionally managed, on a discretionary basis, by Brewin, so that would have mitigated the level of direct trouble and inconvenience it caused her. It seems that she has the same set-up in place with her new advisers and investment manager, and will have that into the future, so the same mitigation would continue to apply.

Considering all the above, I find that a £1,500 award to R for trouble and inconvenience is reasonable.

what must Brewin do?

To compensate R fairly, Brewin must do the following –

Compensation

- Pay R £1,500 compensation for the trouble and inconvenience caused to her.

Redress

- Pay R a refund of the £5,000 initial advice fee that was added to the £500,000 investment amount.
- Pay R £2,500 as compensation for the initial administration fee paid to the bond holder.
- Calculate the total of all ongoing fees/charges paid out from the DGT arrangement between the start date and the settlement date. Pay the result to R.
- Calculate whether (or not) there has been a crystallised loss of value in the £500,000 invested in the DGT/bond due to investment performance between the start date and the performance end date. If there has been such loss, this is a loss that would not have happened but for Brewin's unsuitable advice, so R must be compensated in the value of the total loss amount. If there has been no such loss, and if instead there has been a crystallised gain in value due to investment performance between both dates, Brewin can offset the total crystallised gain against the aforementioned redress payments. This does not apply to any uncrystallised gain.

All the payments above are payable on the settlement date. The settlement date is any date within 28 days of Brewin being told that R has accepted this final decision. If the payments are not made during this period, interest on each of the payments must be applied and paid to R, at the rate of 8% simple per year from the date of this decision to the date the payments are eventually made. This is to compensate R if the payments are unduly delayed.

- Arrange and agree with R a legal undertaking, to be drawn up at Brewin's expense, for Brewin to annually reimburse R (starting on a date agreed within the undertaking and continuing on the anniversaries of that date) with all ongoing fees/charges paid out from the DGT arrangement in the future and until the arrangement comes to an end. This includes the costs of any ongoing advice and fund management provided by her new advisers and/or investment manager, capped at the rates that Brewin applied when it had agency for the DGT/bond. In this respect, the undertaking should include the necessary arrangements for Brewin to receive from R and/or her advisers

and/or her investment manager all information required to calculate and reimburse these costs.

- Engage with R and, if she consents, with her advisers and/or her accountants, in order to determine whether (or not) there will be a loss to her with regards to deferred tax on the 3% annual income/capital withdrawals from the DGT/bond. If this can be calculated at present Brewin must make the necessary arrangements, and must undertake any associated expenses, to have the loss calculated. If there is such a loss, Brewin must pay the loss amount to R on the settlement date (with the interest provisions for delayed payment, as stated above, applying). If this cannot be calculated at present, Brewin and R should include and agree arrangements, in the aforementioned legal undertaking, to determine this potential head of loss at the end of the DGT arrangement, or at any point in the future that it can be calculated.

Brewin must provide a copy of all calculations to R in a clear and simple format.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £170,000, £190,000, £195,000, £200,000, £350,000, £355,000, £375,000, £415,000, £430,000 or £445,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In R's case, the complaint event happened before 1 April 2019 and the complaint was referred to us after 1 April 2024 but before 1 April 2025, so the applicable compensation limit would be £195,000.

My final decision

I uphold R's complaint and I order Brewin Dolphin Limited trading as RBC Brewin Dolphin to calculate and pay her redress and compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 23 March 2026.

Roy Kuku
Ombudsman