DRN-4483973

The complaint

Mrs B has complained about the management of her discretionary investment portfolio she held with Brewin Dolphin Limited ('Brewin'). Mrs B says she was unsuitability advised to invest at a vulnerable time in her life which exposed her to excessive risk. Mrs B has lost out financially and wants that returned to her.

What happened

Mrs B met with Brewin in November 2020 after the sudden death of her husband earlier in the year. Mrs B inherited a significant amount of money, £700,000 of which she invested upon the advice of Brewin in August 2021.

The value of Mrs B's portfolio fell, and Mrs B raised concerns with Brewin but didn't receive sufficient reassurance and wasn't provided with the information she asked for. As a result, Mrs B withdrew her funds in May 2023.

In June 2023 Mrs B raised a complaint with Brewin. In its response to the complaint, it said;

- It accepted that Mrs B was initially vulnerable after the sudden death of her husband, but this was considered. The adviser was satisfied Mrs B had sufficient knowledge and understanding and was in a position where she could make an informed decision about the investments and risk etc.
- Mrs B had withdrawn her investments after being with Brewin for two years which was shorter than the ten years expected at the outset. Risk was discussed and agreed, and the portfolio had been aligned to the level of risk Mrs B was willing to take but the performance of the portfolio had suffered during 2022 due to stockmarket pressures and other external factors. But the investments weren't unsuitable.
- When assessing the portfolio, it would reflect movements such as withdrawals etc to provide clearer information rather than an absolute figures but that should have been readily available to Mrs B as requested. While this was being given a system error didn't provide a correct valuation of Mrs B's portfolio and it apologised for the stress and worry this had caused.
- Overall, it didn't believe the investment was mis-sold, the performance wasn't below acceptable standards, but communication could have been better and the error in the valuation shouldn't have happened, so it offered £300 for the impact of this.

Mrs B wasn't happy with the outcome so brought her complaint to the Financial Ombudsman Service. Our investigator who considered the complaint didn't think Brewin needed to do anything more. He said;

- Brewin couldn't control the performance of the investments, but the investigator was satisfied with the advice she received, and the portfolio was appropriately invested within the agreed medium risk profile. Mrs B had agreed to invest for ten years and was made aware her capital was at risk and returns couldn't be guaranteed. He was unable to uphold Mrs B's complaint about the performance.

- It was recorded that Mrs B had made good progress since the death of her husband, but that Brewin was aware of her difficult and vulnerable position. He was persuaded that Brewin had provided appropriate support and gave her sufficient time for her to consider how she wanted to proceed.
- He was also satisfied that Mrs B's suitability had been appropriately assessed and her attitude to risk was reduced to medium risk after discussion. He was also satisfied that her capital and attitude to risk was adequately assessed and appropriately disclosed to Mrs B and that the funds were invested in line with her agreed risk profile.
- The discretionary service was recommended to Mrs B, and she preferred this approach because she didn't have the time and expertise to do this herself. The reasons why were disclosed in the August 2021 Suitability Report. Overall, he thought the recommendations were suitable and didn't uphold this part of the complaint.
- Mrs B had experienced shortcomings in the communication and received an incorrect valuation. But Brewin had offered its apologies and offered £300 which he thought was fair.

Mrs B didn't agree with the outcome. In response she said;

- Other financial advisers had looked at the portfolio and said it operated at a higher risk than was agreed, sales were rushed and the potential to limit losses wasn't considered. She had agreed to accept risk because Brewin convinced her at a time she wasn't fit to make that decision.
- One of Mrs B's main priorities was to retain her family home which was difficult on one income. The portfolio was never able to generate an income whereas a fixed bond could have done. The advice to invest into stocks and shares was poor and only benefitted Brewin while not meeting Mrs B's objectives.
- Brewin didn't have the relevant experience in bereavement or mental health and no internal validation or reassurance was sought before her being judged as not vulnerable. Mrs B didn't think the investigator had taken sufficient account of her huge personal turmoil.
- Brewin should not have advised her to take on the investment risk and other options should have been discussed. One-, two- or three-year fixed rate bonds were a more secure option, and a managed portfolio could have been built up after her circumstances stabilised.
- She agreed with the offer of £300 for the miscommunication about the value of the portfolio but wasn't willing to accept it until the whole complaint was given further consideration.

Mrs B's comments didn't change the investigator's opinion.
As the complaint remains unresolved, it has been passed to me for a decision in my role as ombudsman.

What I've decided – and why

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

After doing so, I've reached the same conclusions as the investigator and broadly for the same reasons. I'll explain why.

Mrs B has also complained about the pensions advice she received. That is being dealt with in a separate complaint. This decision relates solely to the investment portfolio.

<u>Mrs B’s vulnerability</u>

Mrs B’s husband died under tragic and sudden circumstances in late 2020. Mrs B has kindly provided a detailed account of what happened and the impact that had on her and her family as well as the changes to her financial circumstances. I am very sorry to hear of the circumstances that Mrs B found herself in and appreciate she must have struggled through such a difficult time.

I understand that Mrs B initially met her Brewin financial adviser in November 2020 not long after her husband’s death. Mrs B has said that during this time she had had to deal with her late husband’s funeral, her children’s grief and the probate along with an investigation into her husband’s death as well as working. She said she was ‘putting a brave face on’ but she says her financial adviser was fully aware of the circumstances during this time. I understand he was helpful to Mrs B, and she has expressed her thanks for that.

The relationship continued through to 2021. I’ve listened to the Teams calls of 13 January 2021 and 2 March 2021.

The call of 13 January 2021 discusses the administration of the probate, repayment of the mortgage via the mortgage protection policy, Mrs B’s late husband’s pensions and life assurance policy, NS&I, inheritance tax, bank accounts, tax return and funeral costs. Clearly, I can’t fully appreciate the difficulty of Mrs B’s circumstances but after listening to the calls and the 2 March call in particular, Mrs B presents as very capable and efficiently dealing with a lot of different administrative processes. And the meeting notes of 2 March 2021 state;

> ‘I have been assisting through the difficult process of gathering and understanding her position over the past 6 months and she is now in a position to start considering investing.
>
> …
>
> Although clearly difficult and potentially in a vulnerable position back in Nov, [Mrs B] is now switched on and quite clear in her thinking. The March meeting and subsequent call/emails shows how well this has progressed her thoughts and decisions.’

The above note suggests to me that Mrs B’s financial adviser was very aware of her circumstances and was sympathetic to them and was assisting in with the practicalities that needed to be carried. During that call discussions were had about what Mrs B could potentially do with the funds such investing in property or the stock market.

After the meeting held on 23 July 2021 its recorded that Mrs B was ‘very keen to progress at pace and feels we have waited long enough, and the funds are doing nothing.’

While I understand Mrs B’s comment that she was putting on a brave face I equally recognise how Mrs B presented herself and also that she had to make some decisions about how she was going to move forward financially. She had come into a significant sum of money under unfortunate circumstances and had no investment experience.

But overall, I find that the above meeting notes are a reflection of Mrs B’s specific and general circumstances and it’s clear that Mrs B did need to take some action with the funds she had received, and I’m satisfied she was engaged in the decision-making process.

The regulator, the Financial Conduct Authority ('FCA'), has guidance in place – 'FG21/1 Guidance for firms on the fair treatment of vulnerable customers' about the expectations for how a firm should identify vulnerable customers. It includes what it expects a firm to provide its customer and the level of care that is appropriate under the individual circumstances. From the information and evidence presented to me there's nothing to suggest that Brewin didn't comply with the principles of the guidance.

So, while I have sympathy with Mrs B's situation and her opinion that she wasn't ready to make such decisions, I don't find that she was taken advantage of by Brewin or that it didn't take sufficient account of her vulnerability. Her engagement during the calls and subsequent meeting indicate to me that she was capable of making such decisions. I haven't seen anything to suggest that Brewin rushed Mrs B into making any investment decisions and equally her attitude during the calls suggest to me that she was capable of asking for more time or for a postponement on making any decisions if she had wanted to.

<u>Mrs B's circumstances</u>

As well as the testimony Mrs B has given, I have also taken account of her circumstances as recorded in the various meeting notes and Suitability Report of 16 August 2021 which was provided after her meeting with her financial adviser on 23 July 2021.

The overview of that report included investments, pensions, estate planning (which hadn't been addressed) and life assurance. By this time Mrs B had received the proceeds from her late husband's life insurance plans.

Mrs B was aged 56 years of age, in good health and employed. Mrs B's children were in higher education and were both dependent upon her.

Mrs B owned her principal property valued at around £810,000 (including an onsite flat) as well as a buy to let property valued at around £130,000 which she was in the process of selling. Mrs B's then current annual income was just under £34,000 (which would be reduced by just under £5,500 when the buy to let property was sold) and an annual expenditure of £40,000. It's recorded the deficit was funded by cash reserves.

Mrs B was planning some home improvements which would be covered by cash reserves of around £1m. She was also to retain around £100,000 as cash for unforeseen costs. Including her properties Mrs B had total assets of £2.2m of which 46% was in cash. Mrs B didn't foresee any significant changes in the foreseeable future.

<u>Attitude to risk</u>

Mrs B has complained that she was exposed to a too high a risk. For the investment recommendations made I have considered how Mrs B's attitude to risk was established and how Brewin made Mrs B aware of the varying levels of risk implicit in different investments, particularly bearing in mind she was a novice investor. Mrs B was seeking advice because she didn't have the knowledge or experience to make such an investment decision unaided. So, Brewin needs to demonstrate that it gave suitable advice taking into account Mrs B's circumstances, understanding and knowledge after ascertaining her attitude to risk.

At the 23 July 2021 meeting it was recorded that a Client Risk Profiler questionnaire had been sent to Mrs B which she was to complete to confirm the final picture. The risk was also 'manually' discussed, and while Mrs B was also to complete the Client Risk Profiler questionnaire online, but it was 'agreed RC5 balance' (Risk Category 5) and the adviser was to check this outcome against Mrs B's online questionnaire 'and let [Mrs B] know if very different from discussion.'

I've seen a copy of the Client Risk Profiler of 23 July 2021 in which Mrs B answered 19 questions from a selection of four possible answers – 'strongly disagree' and, 'disagree' through to 'agree and 'strongly agree'. The assessment outcome gave Mrs B a score of 63 and gave her a category of 'D – High-Medium risk Tolerance' which was described as being;

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

However, as mentioned above, Mrs B's attitude to risk was discussed in the Suitability Report of 16 August 2021;

> 'Based on your risk tolerance and long term time horizon of more than 10 years, the output from the questionnaire suggest that a Risk Category 7 would be most appropriate.
>
> We discussed how the asset allocation and volatility of different risk categories using our Brewin Dolphin Risk Guide and I explained how our lower risk categories have greater exposure to fix interest and alternatives that help to reduce the volatility of the portfolio. I asked whether you felt the outcome of the risk questionnaire was an accurate summary of your feelings on investment risk and you felt that a Risk Category 7 was too high risk given your limited experience of investing. You would prefer to start investing more cautiously and we looked at both a Risk Category 5 and a Risk Category 6 portfolio. Your felt more comfortable with the composition of a Risk Category 5 and we have therefore agreed to manage your pensions and investments on a Risk Category 5 although you may consider increasing this to a Risk Category 6 at some point in the future.'

The Suitability Report further recorded it was discussed that;

> '…in order to achieve greater returns than those available on cash deposits you must be willing to accept greater risk. You are comfortable with the fact that the investments will be higher risk than your cash reserves and I am therefore happy that you understand the investment approach and the risks involved with my recommendations.'

I also note the Suitability Report said 'A full description of the risk categories used by Brewin Dolphin can be found in the 'Risk guide: Understanding risk' brochure I gave you.'

The meeting notes of 18 August 2022 show that risk was reviewed but that Mrs B 'confirmed wish to stay where she is. There was a long conversation last year, mainly around 5 v 6. Agreed no change, as it only seems a very short time and … still getting used to it all.'

Taking all of the above into account, I think there is sufficient evidence to show that the different levels of risk were discussed in a lot of detail and agreed. While I accept that Mrs B had very limited investment experience – that's clear from the phone calls I have listened to and as recorded in the Suitability Report – taking into account her ability to understand investment risk and clarification of her experience or knowledge to understand the risk involved, I think she reasonably understood the risk of the investment.

I say this partly because it's clear from the above that the differing outcomes from the 'manual' and the online risk questionnaire were discussed and it was agreed that the latter didn't fairly reflect Mrs B's more cautious attitude to risk out of the two different risk category outcomes.

So, taking all of this into account, I think the levels of risk implicit in investing were explained to and discussed with Mrs B and she was content to expose her investment money to a Risk Category 5 level of risk in order to achieve the potential of capital growth over the longer term.

<u>The suitability of the advice</u>

While I'm satisfied it was most likely the case that Mrs B's attitude to risk was assessed by the financial adviser, I've considered whether what was recommended to her was right for her circumstances and financial objectives. As I've said above, without any investment experience Mrs B would have been totally reliant upon the advice given to her. And I've borne in mind what this was a new and significant sum of money – a situation that she hadn't been in before – and previously she only had experience of putting her funds in a risk-free environment in a bank account.

The meeting notes of 2 March 2021 note that Mrs B's life goals were 'To continue to be able to live comfortably in her current house and support the children, as needed, whilst ensuring her own long term financial security.' And it's recorded in the Suitability Report that Mrs B's investment objective was to 'grow your wealth' and for 'long term income generation and capital growth'.

Mrs B's investment objectives were;

> '…generate income and capital growth on your pensions and investments over the long term (10+ years)'.

The outcome of Mrs B's responses to the online Client Risk Profiler questionnaire around risk suggested a 'Risk Category 7', however Mrs B felt more comfortable with a 'Risk Category 5.' This was out of Brewin's risk categories one to ten with one being the lowest risk, so in the middle. The description of a 'Risk Category 5' investor was;

> 'You are looking to maintain the real value of your investments by achieving returns above inflation. Preserving the value of your investment remains important, but you are willing to accept short term volatility to generate potentially higher long-term investment returns. The portfolio will be more evenly balanced between equities and the combined asset classes of cash, fixed interest and alternatives.'

And it was discussed that Mrs B would be 'happy if you achieved a minimum return in excess of the interest rates available on cash reserves plus inflation after all the costs are deducted' but that it was 'important to note returns are not guaranteed.'

Mrs B's ability to absorb losses, emergency funds and long and short term needs were discussed and recorded.

So, it seems likely that Mrs B did want to explore the opportunity to make her money grow more than it had done while in her bank account and Mrs B did refer to the wasted opportunity of keeping her money in the bank during one the calls she had with her financial adviser. This is understandable considering the sum of money involved, that it was for the longer-term growth and to finance her own and her children's futures. So, taking everything into consideration I'm persuaded it was more likely that Mr C was willing to take some risk with her money.

As I've said above, it's recorded in the Suitability Report that Mrs B's main objective was to 'grow your wealth'. Mrs B had received the proceeds from her late husband's life insurance plans and wanted to invest £800,000 of that money to for 'long term income generation and capital growth.' Long term was recorded as being ten years plus.

The Suitability Report recorded that for Risk Category 5 investor the portfolio asset mix at the time was 52.5% in equities, 25% in fixed income, 20% in alternatives and 2.5% in cash. Mrs B was advised to invested £780,000 into a GIA ('General Investment Account) and £20,000 into an ISA to be managed on a discretionary basis. Subsequent to the above the amount to be invested was amended in September 2021 to reflect that Mrs B only wanted to invest £700,000.

Mrs B would still have around £110,000 as emergency funds and which didn't include the sale proceeds from the buy to let property. Mrs B didn't need to access the capital so the portfolio could be left to grow over the longer term. The income – which I note was just under 3% – was to be reinvested as its recorded that Mrs B didn't have a current need for income. Mrs B was to use her ISA allowance each year.

The discretionary service would provide ongoing financial advice to ensure Mrs B's investment objectives were being met. The report outlined the benefits of discretionary management and also the advantages and disadvantages of the recommendations. The advantages were that Mrs B would have a bespoke managed fund with direct access to an investment manager. The disadvantages would be that it would incur initial and ongoing costs and an increase in costs as Mrs B's funds were currently held in cash.

Taking all of the above into account I don't find the advice given to Mrs B was unsuitable. At the time she had a large pot of cash that she wanted to invest for the longer term. The investments were split between equities and alternatives which would provide the opportunity for capital growth as well as some income. And the fixed interest investments would provide a more secure stream of income. Mrs B's financial circumstances also suggest that the investments were affordable for her, her short-term needs had been considered as well as funds for emergencies.

The advice to use the discretionary service also seems right for Mrs B. She had no investment knowledge so wouldn't have had the skill or the time to have managed the funds herself. I appreciate Mrs B has mentioned lower risk fixed rate bonds as an alternative but the outcome of the conversations with her financial adviser about her circumstances and objectives would suggest that for the longer term more active management of her funds would be more appropriate.

Clearly the timing of Mrs B's investment was unfortunate, and she suffered losses before withdrawing her funds. But I note that she withdrew her funds less than two years after investing whereas it was agreed at the outset that she was investing for the longer term of ten years plus which would have reduced her exposure to the short-term volatility that she experienced.

In conclusion, I don't find that Mrs B was misadvised by Brewin Dolphin to invest her funds or that the advice given was unsuitable.

<u>The performance</u>

Mrs B doesn't believe she was appropriately supported by Brewin in making decisions at such a difficult time in her life and wasn't prevented from making decisions that cost her twice her annual salary in investment losses. While I can't consider performance in and itself, but I can consider whether the portfolio was unsuitable for Mrs B or whether it's been mismanaged.

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

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

While I can understand why Mr B is not happy with the performance of the portfolio – she has lost money that is precious to her – but the issue of portfolio performance is not straightforward in that it is actively managed. This means the money is invested in specific assets or funds chosen by Mrs B's investment manager. If the portfolio poorly performed that's because the investment manager had taken certain decisions that hadn't been successful. That's disappointing, of course, but reflects the performance of the stock market and the investment manager exercising his judgment – which he was supposed to do. It doesn't mean the investment manager had been negligent or failed in his duty of care. And it doesn't mean the investment manager's decisions won't prove to be successful over the longer term.

I do appreciate that there were probably lower than Risk Category 5 options available to Mrs B at the time that could have potentially offered her better returns than savings – in particular she has referred to one- two- or three-year fixed rate bonds. But my role isn't to re-visit the advice that she was given and what other options were potentially available to her. Rather it's to consider whether the advice that was given to Mrs B was suitable for her at the time and as identified prior to the investment and whether it was sufficiently explained to her. And I am satisfied that the investment recommendations weren't unsuitable for Mrs B and the risks were explained to her.

Mrs B also complained about an incorrect valuation and poor communication. Brewin has already accepted this and apologised and offered £300 because of that (for this and the pension complaint). That seems fair and reasonable to me. Mrs B has told us that she will accept that offer pending the outcome of her complaint overall.

Taking all of the above into consideration, and in the individual circumstances of this complaint, I don't find that the advice given to Mrs B was unsuitable for her bearing in mind her personal and financial circumstances, her attitude to risk and her investment requirements. It follows that I don't uphold Mr B's complaint with the exception of the payment of £300 which Brewin has already offered.

No doubt Mrs B will be disappointed with my conclusion. She's been through a difficult time, and I appreciate how upset she must have been to see the fall in value of her investments particularly as the funds came about as a result of the death of her husband. But I hope I have been able to explain how and why I have reached the decision that I have.

My final decision

For the reasons given, I don't uphold Mrs B's complaint about Brewin Dolphin Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs B to accept or reject my decision before 25 October 2024.

Catherine Langley
Ombudsman