

## The complaint

X has complained about the negligence and poor advice he has received from Brewin Dolphin Limited ('Brewin Dolphin') about estate planning which has led to a significant inheritance tax liability ('IHT').

## What happened

X transferred his portfolio and SIPP to Brewin Dolphin in 2008. X was a discretionary client of Brewin Dolphin who was also to manage his investments and provide estate planning advice.

In February 2012 X was advised to take a Whole of Life policy to cover a potential IHT liability of £250,000. X says he wasn't given the details of the drawbacks of the policy.

In March 2012 X was advised to invest into a Business Premises Renovation Allowance ('BPRA') scheme. This resulted in a tax bill from HMRC in 2015 which X wasn't expecting.

X had given assets to his two daughters in 2014 and 2017 at his own initiative in order to limit further IHT. He wanted to gift further assets in 2020 and sought advice from Brewin Dolphin. But X says detailed advice wasn't received.

In March 2021 X was advised to invest £150,000 in a Business Relief qualifying investment. He says this was too high risk for him and didn't align to his risk profile.

X says that as a result of Brewin Dolphin's poor advice, he has a current IHT liability of over £400,000. He holds Brewin Dolphin responsible for the negligent and poor advice he has received which has led to psychological distress for X and his wife. He is retired, aged 80 years old and his wife is unfortunately unwell.

X complained to Brewin Dolphin in August 2021. In its response, Brewin Dolphin didn't uphold the complaint. It said;

- The tax due on the BPRA could not have been foreseen. X had been advised about the risks involved.
- The Whole of Life policy was a solution to cover a proportion of future IHT liabilities. The advantages of all available insurance policies were considered and discussed in 2012 as was the possibility of an increase in the premiums.
- X's assets had increased overall, and this increased the likelihood of higher IHT. The position had been managed appropriately and 2021 IHT computations showed X's IHT liability would be significantly reduced.
- It didn't uphold X's complaint but offered £250 for the time taken for it to respond to X's complaint.

Our investigator who considered the complaint didn't think it should be upheld;

- He didn't think X's complaint about the BPRA had been brought to this service within

the time limits that apply so couldn't be considered.

- He did think X's complaint about the Whole of Life policy was brought in time but was satisfied X was given sufficient information about the different types of policy and X had chosen which policy was most suitable for him at the time.
- Brewin Dolphin had provided the service in line with the terms of the client agreement.
- Brewin Dolphin did recommend the BPRA investment in 2021 but as X didn't accept that advice, he hadn't suffered any losses.

X didn't agree with the outcome and asked for it to be considered by an ombudsman, so it has been passed to me to decide. X provided further comment for my consideration;

- X didn't think the complaint about the BPRA was brought out of time. X was waiting for HMRC's investigation as it considered the investment a Tax Avoidance Scheme in 2015.
- X took out the Whole of Life policy as he was advised to take out a low-cost option and this policy would allow Brewin Dolphin to sort out his estate to ensure any IHT liability would be minimal. He now must keep servicing the policy and the premiums are only going to increase significantly.
- He holds Brewin Dolphin responsible for any poor estate planning.

Brewin Dolphin didn't have anything further to add.

### **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 have reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

But I must first consider whether I can look at all of the elements of the complaint brought by X and whether they were made within the time limits I have to abide by. X doesn't agree with the investigator that the complaint about the BPRA was brought too late.

The key to deciding whether this complaint has been made in time, is defining the event complained about and whether X was aware – or should have been aware – he had cause for complaint.

### Jurisdiction rules

The rules under which we operate are set out in the Dispute Resolution ('DISP') rules in the Financial Conduct Authority's handbook. DISP 2.8.2 states:

*'The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

*(1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication; or*

*(2) more than:*

*(a) six years after the event complained of; or (if later)*

*(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint; unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received.'*

Brewin Dolphin issued its final response to the complaint on 29 November 2021. X brought the complaint to this service within six months of this. But Brewin Dolphin doesn't agree we can consider certain aspect of X's complaint because of the other time limits that apply – the six- and three-year rules.

The complaint was made to Brewin Dolphin in August 2021. This is more than six years after X received the advice in 2012 about the advice to invest into the BPRA which is the event he is complaining about here.

So, I need to think about whether the complaint about the BPRA was made within three years of when X became aware – or should reasonably have been aware – he had cause to complain. As the complaint was raised in August 2021, I have to consider whether X should have known or reasonably been aware he had cause for complaint prior to August 2018 – three years before he made the complaint.

X was advised to make the investment into the BPRA in February 2012. In 2015 it became clear that there was a dispute with HMRC over the amount of tax relief allowable on the BPRA. On 13 February 2015 X was provided with a tax payment notice from HMRC and X had to pay £6,462.95. X says he didn't recall receiving any advice that such a tax bill could arise from this investment.

In his submission for my consideration X has said to raise a complaint against a firm and still be client wouldn't be right – he was in a difficult situation. He felt it was the right course of action to wait until the outcome of HMRC's investigation. he was waiting for HMRC's investigation.

However, I don't agree. X's complaint is that he wasn't made aware of the potential of such a tax liability of investing in the BPRA and I think by X receiving a tax bill as early as 2015 about which X was unhappy and which is now part of his complaint – would have made him aware, or he should reasonably have been aware he had cause for complaint. While it might have been uncomfortable for X to have raised a complaint with Brewin Dolphin when he was still a client, I don't think this is a sufficient reason for him not to have made that complaint. It was clearly something that concerned him. And it would have been in 2015 that he was of the opinion that he hadn't been made of aware of the potential tax payable – the reason for his complaint. So I don't think this element of X's complaint is one that I can consider.

I can consider whether exceptional circumstances apply to the delay with which the complaint about this investment was made, but nothing X has said has shown me that this was the case.

As such, I'm satisfied the complaint about the advice to invest into the BPRA received in 2012 has been brought out of time. It is not one this service can consider.

#### The Whole of Life Policy

Our investigator concluded that X's complaint about the Whole of Life policy was brought within the time limits that apply. Brewin Dolphin hasn't disagreed with that conclusion and

didn't have anything further to add about the jurisdiction, so I don't address it further here and have gone on to consider the merits of the complaint.

X was advised about the Whole of Life policy in Brewin Dolphin's letter of 8 February 2012. It was included within a seven-page letter entitled 'Inheritance Tax Planning' under the 'Using Income for IHT Mitigation' section. The policy was to provide cover for a potential IHT liability of £250,000. X has said that he wasn't made aware of the drawbacks of this policy. It hadn't been made clear to him that the premiums could increase so significantly. X is now in the position where he has to keep paying those premiums otherwise the policy will lapse. X has said that he should have been advised to take standard cover for the Whole of Life policy and not maximum cover which is what he did take. With reference to this point the letter said;

'There are typically two levels of premium basis when considering a whole of life policy' standard and maximum basis.

Standard/Balanced Cover Basis: Although the level of life assurance (i.e. sum assured) selected is guaranteed for life, the premiums are normally reviewable after ten years, and every five thereafter. Depending on investment performance and the future cost of life assurance, the premium may increase. Contracts set up on this basis are usually structured so that there should be no need for premiums to alter significantly throughout the life of the plan (although there is no guarantee).

Maximum Cover Basis: Alternatively, it is possible to set up the plan on a maximum cover basis, whereby a smaller proportion of the premium is invested after the life assurance costs have been deducted. The premiums are normally reviewable after ten years, and every five thereafter, but unlike the balanced cover plans, it is more likely that the premiums will alter substantially at each review. It is often used where whole of life cover is required, but where budgets are limited and higher levels of life cover are only needed for shorter periods, typically less than ten years, where after the sum assured will decrease or premium increase.'

The approximate costs of both types of policy were provided – set up on a joint life, second death basis. The standard/balanced cover would cost £344.49 per month and the maximum cover basis £59.38 per month. The letter continues with further policy information and other types of cover and explains that the;

'whole of life cover on a guaranteed or balanced cover basis is the most expensive to establish, but the one least likely to change in cost over time, where cover is provided for life. That is with the exception of the maximum basis cover which has a cheap starting premium, but that is very likely to increase after ten years by an unknown amount as the investment content is so small.'

The letter was followed up by a meeting at with X and his wife on 15 February 2012. The file note of the meeting says;

'Having received my reasons why letter, they confirmed that temporary cover is preferred, and view whole of life assurance with maximum cover as the perfect compromise. We agreed that the sum assured should be kept at £250,000 to allow for asset growth between now and 10 years, at which point in time they are likely to undertake a significant IHT plan.'

And on 15 March 2012 in the Protection Options report provided by Brewin Dolphin it said;

'The features of the plan are explained in detail in the Key Features Document which I have enclosed with this review....However, please could I draw your attention to the fact that although the whole of life maximum cover is much cheaper to start with – when compared with a balanced cover basis policy – it is unlikely to be so comparatively cheap after the initial review...'

Taking all of the above into account, I am satisfied that the potential for the premiums to 'alter substantially at each review' and 'very likely to increase after ten years by an unknown amount' was made clear. And because of that and the other information given, I am further satisfied X made a fully informed investment decision about which type of policy would be most suitable for him. So, I am not upholding this element of X's complaint. But I have gone on to consider what other IHT mitigation advice he was given over the following ten years as that was clearly X's intention.

### The advice and service

As explained above, there are certain elements of this complaint that I can't consider because of the time limits that apply. As a general overview though, I can see that Brewin Dolphin provided valuations on a regular basis and I've also seen meeting file notes and emails suggesting the relationship was ongoing and discussions were had as and when needed.

X has made particular reference to the response he received when he asked for further advice on IHT planning on 17 August 2020. At that time X wanted an IHT computation to know where he stood and said he had decided not to purchase any further property – an earlier consideration – but to gift both of their daughters £100,000. Brewin Dolphin responded on 3 September with some comments and the IHT computation and the adviser confirmed he was happy to discuss in more detail. X says this response was vague.

While I agree that the response didn't directly provide advice further to X's final point about the way forward for gifting to X's daughters, I note it finished with the following comment;

'I am very happy to discuss the above in more detail, especially around the use of the gift from net excess income rule which may further reduce the value of the gifts made, and particularly the impact of the above on your planning to make additional gifts. I can also provide other figures accounting for the life cover or further gifts if that helps.'

So, while X may not have been happy with that response and it not giving advice there and then, I don't find Brewin Dolphin's response to be unreasonable. It provided the IHT computation and some general comment about the current IHT position and was happy to provide further detail about the impact on any additional gifts if X wished to take this forward. So, I can't find that Brewin Dolphin has done anything wrong here. It responded appropriately to X's request and offered to discuss the additional gifting if X were to proceed.

As X wasn't happy with the advice he had received from Brewin Dolphin in February 2021 he sought estate planning advice from another provider. As a result, two properties were to be put into trust for X's daughters and he sought advice from Brewin Dolphin about the remaining assets. Brewin Dolphin commented on the recommendations that were given to X by the other provider and referred to previous action taken throughout their relationship and that the emphasis of the new report was a 'shift from the planning thoughts that we had in November and December in that it seems that you are now more concerned about making significant gifts now' and that the recommendations were tax led.

This suggests to me that X was taking a different course of action than had previously been discussed. And I note that in his response – X says, ‘It was after discussion with our daughters that we decided to set up the trusts and transfer the properties into them’. So, it does appear that X’s objectives had changed.

I see from the file that prior to that and further to a meeting held with X the ‘gifts from net excess income’ rule was discussed in September/October/November 2020 or potentially exempt transfers (‘PETs’) as an alternative. X provided tax returns for six years and additional gift information which resulted in a reworking of the IHT liability calculations. I can see this was followed up by a phone call which was to take place on 4 December, but I don’t have a note of what was discussed. While the reworking of the IHT calculations might have taken longer than X liked, this information was provided to him and it looks likely further discussion was had.

Taking all of the above into account, I can’t agree that Brewin Dolphin was negligent in the service it provided here.

There was a meeting on 15 February 2021 and following on from X’s email of 26 February, on 18 March 2021 emailed X with the suggestion of looking at utilising excess cash to invest in a Business Relief qualifying investment. Some brief details were given and it continued ‘I would be looking at reducing the value of the estate to £1m or less, so would suggest investment of at least £150,000 in to this type of scheme, if not a little more to account for the PETs made.’ Further information and discussion were offered if X was interested.

X isn’t happy with this recommendation. He says it was a ‘knee jerk reaction to mitigate my IHT liability which has resulted from mismanagement of my estate’. And the recommendation shouldn’t have been made to him as it was too high risk.

X may be of the opinion that the recommendation was too high risk for him, and I agree with him that it probably was. But Brewin Dolphin explained that while this was a high-risk investment it was largely invested in Government backed businesses and offered higher returns. And it was partly suggested because of X’s objective of IHT planning. While this may have been a high-risk recommendation – and too high risk for X’s appetite for risk – I note X didn’t act on that advice and hasn’t suffered any financial loss as a consequence for me to consider.

An IHT computation was provided to X in April 2021. The information contained was incorrect as it hadn’t taken into account that the gifts made by X and his wife – which would fall out of the estate – were made jointly. No doubt this was very frustrating for X, but I see that on 27 April 2021 a follow up email was sent with a new computation based on the assumption that the gifts that had been made were done so jointly. I note that Brewin Dolphin has apologised for this error and X was given the correct information shortly after the original error. So, while it was clear Brewin Dolphin didn’t originally provide a correct IHT calculation, it did shortly afterwards and offered its apologies. With the exception of X’s concerns and frustrations, I can’t find that this error caused X any financial loss.

It’s clear that X isn’t happy with the advice or the service he received over the years. And by him seeking estate planning advice from another adviser suggests X had lost confidence in Brewin Dolphin and the relationship had broken down. X was clearly frustrated and no doubt disappointed by that.

But taking all of the above into account, I can’t agree that Brewin Dolphin has done anything wrong. From the information I have reviewed, the advice given by Brewin Dolphin seems to be thorough and generally accurate. Overall, I can’t agree that it has acted negligently of the management of X’s assets and in giving the advice it has done. And while it’s inevitable a

different estate planner may offer different advice; it doesn't necessarily mean the advice that Brewin Dolphin did give was wrong.

In some instances, X didn't take the advice provided by Brewin Dolphin and also made gifts without any advice and any gifts would clearly impact on his potential IHT liability. The IHT liability would vary over time depending upon the value of the underlying assets in the estate and any gifting or other planning which had taken place. While Brewin Dolphin may not have been as proactive as X would have liked I'm satisfied it responded appropriate to any questions X asked and did provide on-going advice in line with the agreement X had with it.

Overall, I don't find that any of Brewin Dolphin's recommendations or actions I have seen have caused detriment to X and I don't uphold his complaint about that. And I can't agree that Brewin Dolphin has provided poor or negligent advice. It follows that I don't uphold X's complaint.

In Brewin Dolphin's response to X's complaint it offered £250.00 for the delay in providing that response. I understand that offer is still open to X and it is now for him to decide whether to accept it.

No doubt X will be disappointed with the outcome I have reached. Its clear he feels strongly about his complaint and I think him for the efforts he has made in bringing it. But I hope I have been able to explain how and while I have reached the outcome to his complaint that I have.

### **My final decision**

For the reasons give, I do not uphold X's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 18 August 2023.

Catherine Langley  
**Ombudsman**