

The complaint

Mr D complains about the advice and service provided by Brewin Dolphin Limited, referred to as “BD” or “*the business*”.

In summary, he says:

- He’s unhappy about the service provided when he moved his investments from execution only to discretionary.
- His portfolio performed badly and when he added additional sums they weren’t allocated as quickly as he would’ve liked.
- He’s unhappy about the issues experienced using the “MyBrewin” portal.
- He’s unhappy BD decided to end the relationship.
- He doesn’t think the portfolio has been managed well because it made a loss despite the markets performing well.
- He wasn’t sure where his funds were, and BD didn’t provide him with the relevant information required.

To put things right, he’d like compensation for financial losses suffered and compensation for the distress and inconvenience caused.

What happened

Mr D explained that he was previously an execution only client. However, in 2015 he decided to move his account over to the discretionary service.

Mr D invested into an Individual Savings Account (ISA) and a share account – General Investment Account (GIA) – with BD.

In December 2014, Mr D completed a risk questionnaire in order to enable BD to make a suitable investment recommendation. In January 2015, BD said that Mr D’s answers revealed that he indicated a medium risk.

On 7 January 2015, BD recommended that Mr D invest £300,000 into a discretionary portfolio with the objective of capital growth over the longer-term (10 years) to allow Mr D to accumulate money to live off in retirement.

BD said that Mr D’s investment horizon mapped into a level five moderate to low investment risk portfolio. But after discussion, a category six moderate risk portfolio was more desirable. BD said that a mandate of 6G (growth) – moderate risk was suitable for Mr D and his objectives. BD also said that the portfolio would have a higher level of equity exposure (around 67%) which Mr D understood and accepted.

Mr D explained that BD was responsible for the management of his portfolio that he’d transferred his equities into, but he was disappointed with the performance of his investment.

In 2020, Mr D added further funds to his account over a three-month period, at which point he also became concerned with the “MyBrewin” platform. A £20,000 transaction that he

added was almost entirely not registered, leading him to raise concerns with his wealth manager. He was told that issues relating to poor performance was due to market conditions. After paying closer attention Mr D noticed other issues relating to his valuations.

On 25 January 2022, Mr D complained to the business. In a Final Response Letter (FRL) dated 11 February 2022, BD rejected the complaint. Because Mr D remained unhappy, it issued another FRL dated 15 March 2022 addressing his additional concerns. It maintained that notwithstanding any market volatility the portfolio was suitable for him as a medium risk investor, however it apologised for any issues he was having regarding the portal.

On 23 March 2022, BD sent Mr D confirmation that it was ending the relationship and that he had 30 days to find a new provider. Despite being unhappy that this was done without any prior consultation or engagement with him, he complied and moved his account to a new provider (also referred to in this decision as the transferee). The process had issues of its own, including the missing “FTF” fund with a reported value of £7,000 (according to the January to April 2022 report).

On 30 May 2022, Mr D complained to BD summarising all of his issues. Unhappy with its response he contacted our service. Following another FRL dated 21 June 2022 (rejecting the complaint) he asked us to investigate the complaint.

One of our investigators considered the complaint as a whole but didn’t think it should be upheld. In summary, he said:

- Mr D’s response to the risk questionnaire indicated that he was a medium risk investor, defined as the following:
 - *“You are prepared to have a greater proportion of your investment held in equities with the aim of achieving higher investment return over the long-term. The greater allocation to equities means the portfolio may experience heightened levels of volatility over the investment term. The portfolio will typically include two thirds of the assets invested in equities whilst the remainder will be split between cash, fixed income and alternatives. You are prepared to accept fluctuations in the value of the portfolio to achieve your investment goals.”*
- BD reported that Mr D had a high capacity for loss and a sizeable cash reserve. It was recorded that his risk score was a “C” – which is a risk category five portfolio. However, following discussions, Mr D and BD decided that category six was more appropriate.
- Despite Mr D’s complaint about the performance of his portfolio over the last five years – and more specifically from October 2020 – this isn’t something we can consider because the business can’t predict or control how an investment is likely to perform. And, as this complaint isn’t about “suitability”, there’s not much more to consider on the point.
- Having considered whether BD mismanaged the portfolio he can’t say that it has, because he’s satisfied that it has operated within its portfolio agreement.
- Mr D held a GIA and an ISA. The asset allocation (over the past five years) was in line with his risk attitude and objectives. The overall exposure to equities remained around 67%, as mentioned in the recommendation letter – within level six on the tolerance panel.
- The discretionary portfolio is managed by BD – on a day-to-day basis – which enables it to maintain the most appropriate mix of assets whilst maintaining risk in line with the authority given to it by Mr D to manage his account – at the manager’s discretion without his prior acknowledgement as long as it’s within his attitude to risk and objective.

- In January 2020, Mr D's portfolio was valued at £332,472. In April 2020 it was valued at £266,002. This was likely to have been as a result of high levels of volatility across the global stock market when the Covid-19 pandemic is likely to have had an impact.
- In July 2020 the portfolio was valued at £316,089. In October 2020 it was valued at £329,539. Although Mr D explained that he added around £100,000 to the portfolio between October 2020 and February 2021, it had already begun to increase prior to his addition.
- Despite what Mr D says, BD hasn't mismanaged the portfolio by doing what it did. In other words, deciding – under its discretionary powers – to stay put rather than encash.
- Despite what Mr D says – about there being no management from when the relationship was terminated (between October 2021 to March 2022) – the value of the investment went from £463,818 (in October 2021) to £480,820 (January 2022). Although there might not have been any trading, there were still transactions that were happening. BD didn't have to buy/sell if it didn't think there was a need to.
- The recommendation letter made clear the fees involved. Under the heading, "Our Pricing/Fee structure" it said:
 - *"Set out below is a breakdown of your current fee structure. Please see our website www.brewin.co.uk for full details of applicable sundry charges. Annual management fee: first £1 million – 1.3%, next £1 million – 0.9%, next £3 million – 0.6%
Balance – fees available on request. Minimum quarterly fee is £250.00.
Transaction charge: per trade - £20.00.
UK VAT is applied on fees and charges in line with applicable legislation.
The above recommendations have taken into account your current financial position, your investment objectives, investment priorities, your attitude to risk and your capacity to take risk. They have been developed to meet your current needs and your known future requirements. If you have any questions about the content of this document, or if you feel any of the above in any way inaccurate, it is important that you contact me as soon as possible."*
- BD was entitled to charge for services provided and made clear the fees that applied.
- Despite Mr D's concerns about the "MyBrewin" portal – regarding valuation changes within hours, and even days when the markets were closed – the portal is for guidance purposes only. It wasn't used for managing Mr D's portfolio. However, Mr D's feedback regarding the challenges he faced has been noted.
- The terms and conditions make clear the discretionary management and what it's likely to entail. This includes authority to enter into any kind of transaction or arrangement, subject to the agreement and without reference to Mr D.
- In the circumstances, BD has behaved in line with its terms and conditions and hasn't behaved unreasonably by terminating the relationship with Mr B.
- Despite Mr D feeling anxious and in a low-mood, the investigator is unable to say that this was as a result of what BD did. BD has responded to Mr D's concerns and did so within the time limits set by the industry regulator.
- Despite Mr D's concerns about the way BD managed the transfer of his portfolio – namely that he wasn't kept updated and was left unsure where his ISA fund were – he can't say that BD is responsible for any losses or that it didn't behave reasonably.
- In terms of chronology, the investigator – based on the transferee's timeline - set out the following:
 - 19 April 2022 – the transferee received a valuation of Mr D's account stating that Ferguson shares were due to be delivered using the UK crest markets.
 - 22 April 2022 – BD sent a chaser.
 - 25 April 2022 – the transferee responded by asking for the reference number which was supplied by BD the same day.
 - 26 April 2022 – the transferee explained to BD that it would be in touch as

- soon as it could but there were shares that it couldn't hold.
- 5 May 2022 – the transferee requested confirmation from BD as to which shares would be transferred and through which market.
- 6 May 2022 – the transferee said that it attempted to arrange transfer dates but was asked to wait until BD was able to transfer all the shares using the same dates.
 - BD offered dates later the same day. But the new provider said it had provided incorrect information regarding the Industria de Diseno stock from the Spanish market to the UK crest market.
- 9 May 2022 – the new provider queried this, and BD confirmed that the transfer from Spanish market to the UK market would be attempted even though it was unusual.
- 17 May 2022 – three further fund conversions took place.
- 19 May 2022 – an undated valuation was received.
- 10 June 2022 – BD stated that the Ferguson corporate action took place and explained that the shares were held in the US DTC market. It requested the transfer using the market. The transferee requested the full international securities identification number (ISIN) to check the market availability which was provided by BD the same day.
- *In a FRL to Mr D dated 13 June 2022, BD made clear that there were three stocks remaining, namely Baillie Gifford, JP Morgan and Ferguson.*
 - *Baillie Gifford had just settled and would be sent to the new provider, but there were complications with JP Morgan stocks as the new provider was unable to hold them. And the corporate action on Ferguson ended 8 June 2022 resulting in a new stock exchange list code which it sent to the new provider.*
- 15 June 2022 – the transferee confirmed that it was unable to accept the stock in the US market, so BD confirmed that it would attempt to move it to the UK market, but this would incur additional charges as it wasn't standard practice.
- 17 June 2022 – BD confirmed that it was unable to deliver in the UK market, and sadly the transferee was unable to accept on the US market.
- 21 June 2022 – BD offered to liquidate the stock and the transferee then contacted Mr D to seek his instructions. BD also issued an FRL the same day.
- BD offered to provide periodic updates on the progress of the transfer but couldn't provide real time updates because another party was also involved. Despite Mr D chasing for updates, its overall response wasn't unreasonable, and it responded to Mr D, albeit not always with positive news.
- On 22 June 2022, Mr D emailed BD to say the transfer still hadn't completed. On 5 August 2022, the business notified him that there were no outstanding assets to be transferred.
- On 10 August 2022 Mr D emailed BD asking if he'd receive the ISA asset valuation and transaction report (as promised) by 12 August. He feels he's paid enough and has been patient. Having received the documentation, he responded requesting closer audit of the figures based on perceived losses. He couldn't understand the cost verses the losses.
- On 16 August 2022 Mr D responded by asking why there was a capital loss of around £64,000 since January 2022, to which the business explained what had gone on in the lead up to the transfer.
 - The business also explained that this was an in-specie transfer and therefore his investments had remained invested throughout the process.

Mr D disagreed with the investigator's view and asked for an ombudsman's decision. In summary, he said he disagreed with the decision for the following reasons:

- He doesn't agree with BD's view that he had a large capacity for loss and therefore was willing to take a greater risk.
- BD was negligent in allowing a £30,000 loss in Q1 – and then allowing a subsequent loss of another £30,000 – with no adequate explanation in breach of its obligation to advise of such a large devaluation.
- The transfer was without any adequate communication. He was left wondering where his money was.
- There was no explanation or due diligence at all.

Having considered the additional points, the investigator wasn't persuaded to change his mind. In summary, he said:

- Mr D was willing to take a greater risk for a potentially greater reward. He wasn't saying that £60,000 is an acceptable loss but explained why it happened. In other words, having a high capacity for loss means a high ability to absorb falls in the value of the investment.
- Given that Mr D was willing to invest in a category six moderate investment, it's unlikely he wasn't willing to experience losses.
- Mr D was happy to invest into the portfolio which he was aware was made up of around 67% equities.
- The £60,000 loss is as result of a multitude of factors. BD isn't responsible for the performance of the investments.

As no agreement has been reached the matter has been passed to me for review.

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.

Having done so, I agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr D says I'm unable to safely say that BD behaved unreasonably such that this complaint should be upheld.

Before I explain why this is the case, I think it's important for me to note I very much recognise Mr D's strength of feeling about this matter. He has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. In other words, I don't have to comment upon every single point made. My role is to consider the evidence presented by Mr D and BD, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case. In the circumstances, I don't need any further evidence to make my decision.

I don't uphold this complaint, in summary, for the following key reasons:

- On the face of the evidence, and on balance, I think Mr D was prepared to take a medium risk with his money. I think he was aware (or ought reasonably to have been aware) that he was investing a greater proportion of his funds in equities, with the aim of achieving higher investment return over the long term. This may explain why following discussions with BD, Mr D chose to take a greater risk.
- On balance, based on what BD says, I'm satisfied that Mr D was involved in discussing and working out his appetite for risk with BD, and that it was decided that a risk category six was more suitable for him.
- I appreciate that Mr D is unhappy about the performance of the investment, but that's not something I can blame BD for. I note that BD gave no guarantees about what he might receive by way of returns. Besides, BD couldn't predict or control how the investment was likely to perform, that was dependent on several external factors – including the financial markets – which BD isn't responsible for.
- On balance, I'm satisfied that the overall portfolio was in line with Mr D's appetite for risk and objective for growth. I note that his portfolio was invested fairly heavily in equities, but I'm persuaded that this was in line with what he was told, and what he was content with.
- I note Mr D's concerned that he wasn't notified about certain changes regarding his investment but BD wasn't obliged to – by virtue of him giving BD authority to manage his account – unless it was doing something that was outside of his risk appetite. So, in the circumstances, I don't think it has done anything wrong by not notifying him – and/or seeking his approval – before making a move, because it wasn't obliged to.
- I'm satisfied that the terms and conditions made reasonably clear how the discretionary management worked, including the following:
 - *“Discretionary management process*
 - *175 We shall have full authority to manage the composition of your account and to enter into any kind of transaction or arrangement in respect of investments as agent on your behalf, subject to our Agreement, at our discretion and without reference to you. 176 As part of the account opening process and thereafter in your regular service review, we will assess your requirements and agree with you an Investment Objective and your Risk Category.*
 - *177 We will also agree with you a specific benchmark against which we will measure the performance of your account. The valuation report we send you will include a comparison of your account's performance against the applicable benchmark. 178 Your Investment Objective, Risk Category and the appropriate benchmark will be notified to you in writing and may be amended from time to time with your consent. You acknowledge that changing from one Investment Objective or Risk Category to another may involve a temporary period of alignment during which your investments may not match a specific Investment Objective or Risk Category. A temporary period of alignment may also occur for new clients before receipt of the signed Initial Proposal where an Investment Objective or Risk Category is set. Please note that any assets held by us will not be managed during this period.”*
- I'm satisfied the terms and conditions were fairly comprehensive in the way that they detailed what discretionary management might mean.
- Despite what Mr D says about adding additional funds, his portfolio had begun to improve. In any case, Mr D choosing to encash/transfer his funds means that the investment wasn't in place for its envisaged (advised) timeframe and therefore was likely to experience changes that BD can't be held responsible for.
- Maintaining the investment was an available option to BD, and a strategy which it legitimately decided to implement based on its own assessment of the situation. This isn't something that I can criticise the business for. There was nothing to suggest that the markets wouldn't recover and/or that Mr D's portfolio couldn't ride out any

volatility caused by extraneous factors.

- Without the benefit of hindsight, BD couldn't have known which option was likely to have been more financially viable, and therefore I can't blame BD because Mr D suffered a loss. In other words, in the circumstances I'm unable to say that BD behaved unreasonably by doing what it did or that it mismanaged the portfolio by perusing the course of action that it did just because there was drop in value of the portfolio.
- I also note the investment grew between October 2021 and January 2022, and BD wasn't (automatically) obliged to buy and sell, so not doing so didn't of itself mean that BD wasn't managing things properly.
- On balance, I can't safely say that BD was obliged to manage the portfolio once the relationship had terminated.
- I don't think Mr D expected BD to provide a service for free, as it was entitled to charge for services rendered. And, providing the fees were made clear a financial business is entitled – in the reasonable exercise of its commercial judgement – to set its own fees.
- On the face of the evidence, and on balance, despite what Mr D says I'm satisfied that the fees were made clear within the key documentation provided, including the recommendation letter, and BD's website. If Mr D didn't understand something he could've sought clarification.
- Despite Mr D's concerns about the "MyBrewin" portal, I understand that it was for guidance purposes only so far as his investment values were concerned, and notwithstanding his concerns it wasn't used for the underlying management of his portfolio or to make financial decisions.
- I note BD confirmed that "MyBrewin" is maintained on a rolling basis and is updated every day, so the valuation will show the most recent prices following the previous update. This means that if Mr D wanted time sensitive prices to be able to carry out specific calculations they can, and ought to, be obtained through the investment manager.
- The terms and conditions regarding termination, made clear that as well as Mr D choosing to cancel the contract BD can too, providing certain conditions were met. The important thing is that BD doesn't need Mr D's acquiescence and doesn't need to provide a reason, so it hasn't done anything wrong by not doing so. I note that on 23 March 2022 it gave him the 30-day notice as it was entitled to, so he had until 22 April 2022 to transfer the investments.
- Despite Mr D's concerns and how he says he's been made to feel by BD, I can't say that BD is to blame for this. It has addressed his issues and done so within a reasonable amount of time. I'm mindful that Mr D has had a number of issues to deal with and BD has endeavoured to address all of his concerns.
- So far as the transfer is concerned, I'm aware that there were issues that were dealt with by BD. I can't hold it responsible for the actions of the transferee and its inability to hold certain stocks. Nevertheless, BD endeavoured to assist with the transfer by trying various options – even when they weren't conventional methods – before suggesting liquidation for example as the final option involving Ferguson shares.
- Despite BD not doing what Mr D would've liked, I can't say that it behaved unreasonably. It responded to most if not all of his queries but not always with good news which I understand would've been upsetting to Mr D. In the circumstances, I don't feel it necessary to go through the chronology as set out in the background section of this decision.
- Despite what Mr D says, the fees charged aren't linked to portfolio performance. So, I can't say the BD has done anything wrong by charging fees, even though his portfolio might not have performed as well or lost out in value. There's no correlation between the two issues.
- Despite Mr D raising concerns about losses to his portfolio, I note BD in a response

dated 16 August 2022 explained the following:

- *“The fall you mention is a decline of 13.8% based on the portfolio value as at 5 January 2022. As I noted in my email the other day, markets around the world have suffered, with the US and other overseas markets falling much more than this. Granted, the UK has performed much better due to its high exposure to oil and utilities, but this has not been the case for many years beforehand. I also highlighted how safer assets had performed poorly – gilts are down 14.5% and index linked gilts down nearly 20% from January to July, so if all of your money had been in ‘safer’ government bonds, it would have declined more. Our portfolios have recovered well since 5 July and I’m sure you will have seen an uptick in the values transferred to HL and what remains with us over the past six weeks. You have previously said you would not sell the remaining investments with us until they had returned to profit. Whilst some holdings are still showing a loss, collectively they are now showing a profit. Your ISA book cost is £82,176 vs current value of £88,592. Your GIA is £16,929 compared with a current value of £15,532. In total, the gain is around £5,000. I would therefore suggest selling the holdings transferring the cash to HL so you can invest in whatever you want. You will also then avoid the Brewin Dolphin administration charge of £250 plus VAT per quarter.”*
- In summary, I’m not persuaded that BD is responsible for any losses claimed by Mr D in this instance for the reasons I’ve already explained above.

I’m aware Mr D says that if the complaint isn’t upheld, he’ll consider legal action. That’s not something that I can comment upon and it’s a matter for him whether or not he pursues the case through the courts.

I appreciate that Mr D will be thoroughly unhappy that I’ve reached the same conclusion as the investigator. Furthermore, I realise my decision isn’t what he wants to hear. Whilst I appreciate his frustration, I can’t safely say that BD behaved unreasonably such that this complaint should be upheld.

In other words, on the face of the available evidence, and on balance, I can’t uphold this complaint and give Mr D what he wants.

My final decision

For the reasons set out above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 31 January 2024.

Dara Islam
Ombudsman