

The complaint

Miss W complains that Birchwood Investment Management Limited (BIML) haven't correctly compensated her for a loss she suffered due to their delay in selling some of her holdings.

What happened

Miss W held a discretionary portfolio with BIML. In late 2019, she made enquiries about selling part of her portfolio to raise £300,000 for a property purchase. On 4 February 2020, BIML wrote to her and explained which of her holdings they proposed to sell to raise the funds. Miss W accepted their proposal on 7 February and instructed them to proceed.

Due to an oversight, BIML didn't act on her instruction and failed to sell the holdings they'd proposed. The sale wasn't actioned until 4 March 2020 and in the intervening period the market had suffered a significant fall. As a result, BIML changed their mind about which holdings would be right to sell but Miss W's portfolio was still worth less than what it would have been if they had actioned the sale.

BIML wrote to Miss W on 4 March, accepted they'd made an error and proposed to offer her compensation which they estimated to be £18,975. They then wrote to Miss W on 22 July and explained that they'd calculated her loss by comparing the values of what her remaining portfolio would have been if the sale had been actioned in February versus the value of her portfolio when the sale was actually made. They calculated the difference using the prices on 9 June and once they'd also factored in the difference in tax liability and an amount they'd already paid Miss W, the difference came to £8,854.

Miss W then complained to BIML as she thought the compensation didn't reflect her true loss. BIML didn't uphold her complaint as they thought their method of calculation was correct. Miss W then brought her complaint to this service where it was considered by one of our investigators. The investigator thought the complaint should be upheld. However, BIML didn't agree with his proposed redress methodology and asked for an ombudsman to review the complaint.

I issued a provisional decision on 12 May where I said:

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

BIML have accepted they made an error in delaying the sale of Miss W's portfolio in February 2020. So, I need to consider what position Miss W would have been in if they hadn't made an error. Having considered everything, I don't think the redress methodology suggested by the investigator is correct. I don't think there is a way to easily calculate what the portfolio would have looked like if the error hadn't been made. I've therefore considered how to put Miss W in as close a position as possible to where she would have been if the error hadn't been made.

I appreciate that Miss W thinks the loss should be calculated by the difference in what the value of her portfolio would have been in February 2020 if the error hadn't happened versus

what the actual value was following the sale of the holdings in March 2020. However, I don't think this is accurate as it doesn't take into account any potential reduction in value between February and March 2020.

I think the fairest way to calculate redress is using a similar method to what BIML have proposed. However, the date for comparison should be when the actual sale was completed in March 2020 and not June 2020. We can then compare what Miss W's portfolio should have been worth at the time versus what it was actually worth due to the error that was made. Deductions should then be made for the CGT savings and any amounts BIML have already paid her.

I note what BIML have said regarding how they continued to act in Miss W's best interests to ensure her portfolio retained the maximum valuation throughout the period between the error having occurred and the date when compensation was paid. However, I'm not persuaded that this means we should use the June values for calculating the redress. I consider that the fairest way to calculate redress is to use the point closest to when the error occurred which is why I'm proposing to use the date when the actual trades were made.

Putting things right

BIML should calculate redress of A and compensate Miss W as follows if it shows there is a loss:

$$A = B - C - D - E$$

B = The value of what should have been in Miss W's remaining portfolio on 4 March 2020 if processed as originally recommended

C = The value of Miss W's remaining portfolio on 4 March 2020 as actually processed

D = The CGT that Miss W saved due to the revised sale

E = Any amounts already paid to Miss W

They should also pay interest of 8% simple per year on any loss from 4 March 2020 to the date of settlement.

Responses to my provisional decision

BIML agreed with my findings and didn't have anything further to add.

Miss W responded and queried the use of the word "remaining" in the redress calculation.

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 can't see any reason to depart from my provisional findings. For clarity, I'd like to explain that the purpose of the redress calculation is to compare the value of what Miss W's portfolio was worth on 4 March 2020 against what it should have been worth if Miss W's email of 7 February had been correctly actioned. To avoid any confusion, I've removed the word "remaining" from the calculation.

Putting things right

BIML should calculate redress of A and compensate Miss W as follows if it shows there is a loss:

$$A = B - C - D - E$$

B = The value of what should have been in Miss W's portfolio on 4 March 2020 if processed as originally recommended

C = The value of Miss W's portfolio on 4 March 2020 as actually processed

D = The CGT that Miss W saved due to the revised sale

E = Any amounts already paid to Miss W

They should also pay interest of 8% simple per year on any loss from 4 March 2020 to the date of settlement.

My final decision

I uphold this complaint for the reasons I've given. Birchwood Investment Management Limited should calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 28 June 2022.

Marc Purnell
Ombudsman