

The complaint

Mr and Mrs B complain that Birchwood Independent Financial Advisers Limited ("Birchwood") gave them incorrect advice to encash two mortgage endowment policies. They say they've since found out it would have been more beneficial for them to have taken out a loan against them instead.

What happened

In December 2007, Mr and Mrs B met with an advisor from Birchwood to re-mortgage their property. As well as advising them on their mortgage, Mr and Mrs B says that Birchwood recommend that they surrender two mortgage endowment policies. One of these plans was surrendered on 24 October 2008 with the payment being made to Mr and Mrs B's account on 27 October 2008 and the other surrendered on 23 October 2008 with the payment being made to their account on 27 October 2008.

Mr and Mrs B complained to Birchwood in August 2023 about this advice. They said they'd recently found out the advice was unsuitable as they ought to have advised to take a loan against the policies, as opposed to encashing them so close to the maturity date. They say that they would have been in a better financial position if this had been explained to them at the time. They also provided copies of letters of authority from Birchwood which they say they have no recollection of signing or agreeing to.

Birchwood considered the complaint but didn't uphold it. In summary, it said it had no record of giving Mr and Mrs B any advice regarding the endowment policies. Birchwood added that it's standard practice when offering mortgage advice to request letter of authority on all client's policies, which relate to the type of advice required. It said the purpose of such authority is simply to check that the policies match the mortgage details.

Mr and Mrs B remained unhappy and so they referred their complaint to this service for an independent review.

One of our investigator's considered the complaint but also didn't uphold it. In summary, they said neither party had been able to provide any supporting evidence to show advice regarding the endowment policies was given by Birchwood. As such, they said they were unable to make a finding on the suitability of any advice. They said the letters of authorities aren't proof that advice to surrender the policies was received and instead merely shows Birchwood was able to engage with the policy providers in order to gather information. Furthermore, they said it's their understanding that any request to surrender the policies would have required Mr and Mrs B's signed authority. So, it's not the case that Birchwood encashed the policies without their knowledge or consent.

Mr and Mrs B didn't accept the investigator's findings. In summary, they said believe that the letters of authority were produced by Birchwood without their knowledge or consent. They said that by placing itself as their financial adviser, by way of these letters, Birchwood owed them a duty of care to provide fair and independent advice, communicated clearly by letter or email. Mr and Mrs B said Birchwood should have kept records of the advice given and should have made them aware that they could have borrowed against one of their

endowments. They also raised concerns that Birchwood may have benefitted by the surrendering of the policies by way of commissions paid to it by the policies provider.

As Mr and Mrs B remained unhappy, the complaint has been passed to me to decide.

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 hope Mr and Mrs B don't take it as a discourtesy that I won't be responding to each submission or every point they have raised. The purpose of my decision isn't to do that, but rather to explain my findings on what I consider to be the key issues in the complaint. I believe these to be firstly, whether Mr and Mrs B received investment advice from Birchwood regarding their endowment policies and, if so, whether that advice was suitable.

In determining whether advice was given, I've looked carefully at all available documentary evidence provided by both parties. Birchwood has provided our service with a copy of the financial review document completed with Mr and Mrs B in December 2007. This records that Mr and Mrs had joint endowment policies which were both maturing in 2009 but there is no record of any advice given on these. Instead, the document is clearly driven towards giving mortgage advice only. Furthermore, Birchwood has provided a copy of the letter it sent Mr and Mrs B on 19 December 2007 confirming the advice provided to them. Again this confirms that only mortgage advice was provided to them. I understand the two endowment policies were surrendered in October 2008 which is almost a year after receiving the mortgage advice from Birchwood. So I'm satisfied there is no record that Birchwood gave Mr and Mrs B advice on their endowment policies at the time of giving the mortgage advice in December 2007.

I understand Mr and Mrs B believe that the letter of authorities they've provided demonstrate that Birchwood did give the advice they seek to complain about. Whilst I appreciate these do say that Birchwood could give Mr and Mrs B advice on their financial affairs as well as provide them with service under the endowment plans. But in the absence of any evidence to show that Birchwood did in fact give the advice to surrender, I'm unable to consider whether that advice was suitable.

I appreciate Mr and Mrs B feel there were better options for them to have taken instead of surrendering their endowments and have suggested that Birchwood advised them to do so in order to collect commission. However, I haven't seen any evidence that Birchwood engaged in any advice with regards to their endowments. Nor have I seen any evidence to suggest Birchwood received commission as a result of Mr and Mrs B surrendering their policies early. Also it wasn't usual at the time for an adviser receive commission for giving advice to surrender, as commission was commonly paid when new investments were taken out.

So taking into account all of the above, I'm persuaded Birchwood has acted fairly.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 29 March 2024.

Ben Waites
Ombudsman