

The complaint

Miss M and Mr M complain about the service provided by Birchwood Investment Management Limited (referred to as "*Birchwood*").

In summary, Miss M says Birchwood used an online portal – namely the online Money info system (referred to as "*the portal*") – which provided inaccurate data with regards to their portfolio performance.

To put things right, they'd like compensation for losses claimed – namely £2,724.91 loss across the portfolio, and half the management fees paid since July 2022, for this and other errors.

What happened

In 2014 Miss M (and Mr M) – brother and sister – became clients of Birchwood after she was recommended its services by her employer. She was expecting a £160,000 lump sum and wanted advice about what to do.

At the time Miss M had an income of around £23,000. She also owned her own property – valued at around £200,000 – with an outstanding mortgage of around £72,000. She also had a substantial cash lump sum.

Miss M (and Mr M) had an objective for capital growth, as well as income, to help their parents. They'd planned to invest for five years. It was recorded that they had a 'balanced' attitude to risk (ATR), however after some discussion it was agreed that they'd take a more 'cautious' approach. Miss M felt a responsibility to protect the capital which had been gifted by their parents.

I note that Miss M (and Mr M) were advised to invest in the following investments:

- Prudential Investment Bond.
- Aegon General Investment Account (GIA).
- Aviva Investment Bond, and
- Investec Structured Plan.

I note the portfolio offered growth potential, whilst providing a level of protection. The recommendation report confirmed an initial charge of 2%, along with an ongoing fee of 0.75%, plus VAT.

I understand that Miss M says she was introduced to the portal by Birchwood, for clients wishing to monitor the progress of their portfolio. From 2020, she started to use it more regularly, to decide whether the portfolio was performing well, and trusted the figures presented.

However, in May 2023, during an annual review, she discovered that the figures from the portal didn't match up with the figures from the adviser. This was when she realised that there was a problem with the portal.

Miss M says that she was led to believe that the portfolio was performing better than it was. Had she known it wasn't, she would've moved the investment elsewhere.

Birchwood partially upheld the complaint. In summary it made the following observations:

- On 24 May 2023, when Miss M spoke to the adviser, she queried a discrepancy in the values displayed for the Prudential bond and Aviva bond.
- She could see a value of:
 - £57,148.98 for the Prudential bond, and
 - £82,608.69 on the Aviva bond – but the figures were incorrect.
- The correct figures were as follows:
 - £56,243.67 for the Prudential bond (a difference of £905.31 or approximately 1.61%)
 - £80,789.09 for the Aviva bond (a difference of £1,819.60 or approximately 2.25%)
 - A total of £2,724.91 less than the values on the portal.
- Based on what Miss M said – about withdrawing the funds a year earlier, if she knew the true values – it compared the performance of the bonds to the Bank of England (BoE) base rate over the last year. Having done so, it found:
 - The Aviva bond yielded 2.05%, and the Prudential gained 3.94%, compared to the BoE's 2.79% base rate over that period.
- Miss M subsequently withdrew the Aviva bond but kept the Prudential bond. This suggests that the “withdrawing” only really applied to Aviva.
- The root cause of this issue stems from a systems issue, specifically affecting Miss M's and Mr M's adviser, in relation to certain providers.
- Miss M bringing this matter to its attention has enabled it to address and rectify the underlying system problem.
- So, this part of the complaint has been upheld (and resolved).
- There are two other issues:
- Although Miss M says that she and Mr M were billed twice when the investment was set up, Birchwood found no evidence that it was.
- However, it accepts that it incorrectly charged them when they invested in 2014.
 - They were charged 2% of the £160,000 (which was £3,200) rather than 2% of the sum with fees deducted – which would've been £3,136.
 - A credit note was added on file on 1 October 2014 resolving the matter.
- In addition, despite concerns being raised in 2017, 2018 and 2019, it doesn't accept that it did anything wrong by investing £14,700 net of fees – rather than £15,000.
- The above notwithstanding, it accepts that there were multiple instances where policy information – belonging to Mr M and his wife (not his sister Miss M) – was sent to Miss M's address. It contacted the provider, numerous times, to try and rectify the situation. It accepts that Miss M and Mr M should've been informed about the complexity of having a joint policy and residing at different addresses.
- As a “*gesture of goodwill*”, it offered £300 compensation for the distress and inconvenience caused, as a full and final settlement of the situation.

In a response dated 17 August 2023, Miss M disagreed with Birchwood's findings. On 6 December 2023, Birchwood provided a further response stating that it doesn't believe that Mr M would've behaved differently, even if the error hadn't occurred. That said, it acknowledged that Miss M and Mr M had overpaid fees. In the circumstances it offered £500 compensation for the distress and inconvenience caused.

Unhappy with Birchwood's response Miss M (and Mr M) referred the complaint to our service.

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

- He agreed with Birchwood's findings regarding the Aviva and Prudential bond, and the basis upon which it (partially) upheld that complaint.
- He's not persuaded that the error affected Miss M's (and Mr M's) plans.
- The meeting notes from the annual meeting in 2023 confirm that Miss M wanted to raise around £120,000 to purchase a property abroad. At the time she had just over £175,000, which suggests that the error – relating to the overall value of the portfolio – didn't interfere with the plan as such.
- Meeting notes from 2022 confirm a discussion about moving some of the funds into a pension to alleviate potential inheritance tax (IHT), as well as investing in a five-year structured deposit plan. There was no mention of using funds to buy a property abroad at this point.
- Despite Miss M saying that she (and Mr M) would've surrendered the investments, they chose not to, even after the calculation by Birchwood, which suggests that a complete surrender wasn't imminent.
- Although Miss M says that half of the management fees should be returned because of the error(s), her suggestion isn't fair or reasonable.
- Miss M's (and Mr M's) objective was growth, they also wanted to protect their capital which is what they got. Despite what they say, they weren't paying management fees on the basis that the investments would perform in a particular way.
- Although the performance *might've* affected their decision to continue, the investigator would expect Miss M (and Mr M) to consult their adviser in any event before taking any action regarding moving their investments elsewhere.
- In any event, the performance of the investment wasn't guaranteed. That latter was dependent on multiple other factors that Birchwood couldn't predict or control.
- The portal error aside, it's important to note that the value of the investment can change daily. Therefore, the investigator isn't persuaded that the current errors affected Miss M's (and Mr M's) long term plans.
- Except for the Prudential with profits funds, the value of their investment could rise and fall, daily. This was made clear in the suitability report from 2014.
- Birchwood has already upheld the complaint about information being sent to the wrong address. This was due to an error with the back office.
- Overall, the £500 compensation is fair and reasonable.

Miss M (and Mr M) disagreed with the investigator's view and asked for an ombudsman's decision. In summary, Miss M made the following key points:

- At no point did Birchwood advise its clients that the online portal wasn't accurate. In the past it has assured her that it was, and that the portal was updated daily.
- When the portal was relaunched in 2020, she was again reassured that it would reflect the true and accurate figures.
- By not telling customers that the portal wasn't accurate, Birchwood behaved unethically and unprofessionally.
- Birchwood always encouraged the use of the online portal. Even when she called to get accurate figures, she was reminded to use the portal. So, it's unhelpful to suggest, as the investigator did, she should've/could've called Birchwood.
- Birchwood should've delivered a service that worked, by failing to do so it was financially negligent. It misled clients by offering inaccurate, deceptive, and incomplete investment information.
- Valuations can fluctuate, but they shouldn't be different for her and her adviser, trying to access the same investment values at the same time. Despite the investigator's

- findings, Birchwood's incompetence has affected her (and her parent's) future.
- Had she not logged in at the same time as her adviser that day, she'd still be in the dark.
 - The online portal was the last straw in addition to the billing issue and confidentiality issue.
 - As soon as she realised what happened, she asked to surrender her portfolio and move somewhere else.
 - She doesn't recall saying she'd only need £120,000. If she did, this wouldn't be the total amount she'd need to pay by the end of the property purchase.
 - If she bought a property off plan, there'd be three stages – this gave her the flexibility to keep the Prudential bond as her last surrender. That's not what she said and not why she kept it.
 - The investigator was misinformed by Birchwood that she didn't surrender the Prudential bond straight away and therefore didn't need the money.
 - Just because Birchwood had notes from 2022, which doesn't mention the property abroad, doesn't mean that she didn't intend to move the money to buy a house. She would've moved the money or bought the property earlier. The plans to buy a house (or land) have been ongoing – since 2016/2017.
 - The Covid-19 pandemic had brought the value of her portfolio down, but as soon as it picked up, she was ready to buy a property for her ageing parents (for whom the UK became unsuitable) abroad.
 - How many more mistakes does Birchwood need to make before it's held accountable? It was never her intention to make money off it, but there's only so many times she can turn the other way. The stress of this has had a massive impact on her and those around her.
 - It's unacceptable that it sent the information to the wrong place in breach of data protection. Her account held with her brother (Mr M), are with two different addresses. It was Birchwood's responsibility to make sure it wasn't divulging her brother and sister-in-law's portfolio/policy information to her.
 - In the circumstances, £500 compensation is not enough.
 - She (and Mr M) are being fair in their request for 50% of the management fees for Birchwood's failure to provide a professional, accurate and reliable service. It can't charge management fees when its management hasn't been professional.
 - They should really be asking compensation for all the years Birchwood hasn't provided "*accurate online services*", "*administrative blunders*", and management that was "*not to professional standards*".
 - There's also been a previous issue where someone at Birchwood faked a signature to justify not doing what it should've namely invest £15,000 rather than subtract fees first.
 - Whether or not she buys a house, what she does with the money, is irrelevant. The final decision is hers.
 - Despite having faith in Birchwood doing the right thing, it has failed to do so. It has breached data protection rules and breached its contract by not providing the level of service it should've done – which is what the complaint is really about.
 - In the circumstances Birchwood should be making up the difference in portfolio value and refund 50% of fees.

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'm going to partially uphold this complaint. On the face of the evidence, and on balance, I'm unable to safely say that Birchwood behaved reasonably.

Because Birchwood partially upheld the complaint – on the basis that its online portal provided incorrect values (and it mistakenly sent Mr M's (and his wife's) policy information to Miss M), and it mistakenly charged an additional £24 or so in fees – the key issue is for me to consider is redress.

Having done so, I think Birchwood should pay Miss M and Mr M £500 compensation in line with its latest offer which amounts to £250 compensation each. I'm mindful that this complaint isn't about the suitability of the advice, which is why I haven't considered it.

The above notwithstanding, I don't think Birchwood is responsible for any losses claimed by Miss M and Mr M because I'm not persuaded that they would've moved their portfolio away from Birchwood, immediately, on this basis either to buy a house or invest elsewhere. Nor am I persuaded that Mr M's (and his wife's) letters being sent to Miss M in error, caused any losses, other than an inconvenience to him.

Before I explain why this is the case, I'd like to thank the parties for their considerable patience whilst this matter has awaited review by an ombudsman, given the current demand for our service.

It's also important to note I very much recognise Miss M's (and Mr M's) strength of feeling about this matter. Miss M has provided clear, well-argued, and detailed submissions to support the complaint, which I've read and considered very carefully. But unfortunately for them, I haven't been persuaded by her submissions in this case. I hope they 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. It's also not for me to determine whether in law there has been a "data breach" or a "breach of contract". The data breach issue is something they can refer to the Information Commissioner's Office (ICO), and the breach of contract is a matter for a court to determine.

My role is to consider the evidence presented by Mr M and Miss M and Birchwood, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case.

I (partially) uphold this complaint, in summary, for the following reasons:

The portal and incorrect figures

- Despite what Miss M now says, I think it's unlikely that she (and Mr M) would've surrendered their portfolio straightaway, based on the incorrect figures displayed by the portal, which I also note Birchwood has remedied soon after.
- In other words, on the face of the evidence, and on balance, despite what Miss M says, I'm not persuaded that she would've done anything differently, even if the correct figures had been shown from the outset. I think she and Mr M knew, or ought reasonably to have known, that investment performance isn't guaranteed.
- The above notwithstanding, there's no dispute that the figures on the portal were inaccurate and were displayed in error. I'm satisfied that this would've skewed the true value of the investment performance.
- Based on what Birchwood says, I note that the root cause of this issue stems from a systems issue, specifically affecting Miss M's and Mr M's adviser in relation to certain

providers.

- Given the issues above, I think it's arguable that there was a "loss of expectation", in that Miss M and Mr M thought that the value of their portfolio was greater than it was.
- However, they're not entitled to the higher figure, because it doesn't reflect the true and accurate value of their portfolio. In other words, Miss M and Mr M aren't automatically entitled to the difference between the correct figure, and the incorrect figure, just because the latter was higher, giving them the (false) impression that their portfolio value was greater than it was.
- In my opinion, and on balance, it's immaterial whether one, or all four investments, displayed discrepancies. In this instance I don't think Birchwood needs to compare the value of the investments with that of the BoE base rate, as I don't think it's relevant. I note it has already done so, in relation to the two bonds, but I don't need to comment further.
- I also don't think the incorrect value had a material impact on Miss M's (and Mr M's) plans – whether to buy a property or land – at some point in the future, which I will discuss further below.
- The above notwithstanding, I think Miss M's subsequent actions – namely choosing to move one bond, and not the other – was done so with the benefit of hindsight. It's not persuasive evidence that they would've moved the whole portfolio had they known the correct figures a year or so earlier. I'm mindful that they still had the opportunity to move the whole portfolio but didn't.
- I can't say that Birchwood behaved unreasonably by not telling Miss M (and Mr M) that the portal was inaccurate because I don't think it was aware that there was an issue until it was brought to light by Miss M.
- This is also probably why when Miss M called Birchwood about the values, it would point her towards the portal. I don't think it would've done so deliberately (knowing that the figures weren't right) to mislead her.
- In any event, what it should or shouldn't have done in relation to its other customers, is not something I can comment upon because it's not within the remit of this complaint. In other words, I'm only considering Miss M's and Mr M's complaint against Birchwood.

Plans to buy a property abroad

- On the face of the evidence, and on balance, I'm unable to safely say that there was a fixed plan for the funds invested in the portfolio as such.
- I note in 2022, Miss M was still considering reinvesting the money, which wouldn't have allowed her (and Mr M) to make a significant purchase (such as a house abroad) anytime soon.
- In any case, despite what Miss M says, I don't think their plans to purchase a property abroad (or alternatively buy land abroad) was set in stone either.
- So, in the circumstances, and on balance, I don't think the inaccurate figures materially affect any broad plans Miss M and Mr M might have had.
- I'm mindful Miss M states that what she does with the money is irrelevant, as it's her choice, which also doesn't suggest that they were committed to any single plan.
- In any case, in my opinion, and on balance, the inaccurate portal figures didn't stop Miss M and Mr M from doing what they wanted, even if it was to purchase a property abroad at some point in the future. In other words, it's arguable that the discrepancy wasn't such that it would've completely prevented them from pursuing a house abroad.

Management fees and other issues

- Whilst the portal issue is clearly at the heart of the complaint, I note other issues

- were raised separately in support of why Birchwood should refund 50% of the fees.
- Despite what Miss M says about the management fees – which are agreed upon at the outset and must be paid come what may – the fees aren't dependent on performance. Nor are they dependent on a business not making any administrative errors at all. In other words, these issues raised by Miss M aren't directly linked to fees.
 - Although not providing a specific service (that's already been paid for) can justify a refund of the requisite fees, this isn't what I'm dealing with here.
 - In the circumstances, and on balance, I'm not persuaded that the issues raised by Miss M justify a reduction/refund in fees, over and above the redress offered by Birchwood.
 - The above notwithstanding, in the circumstances, and on balance, I don't accept that Miss M and Mr M were charged twice in 2014. On the face of the evidence, and on balance, I don't think Birchwood was wrong to invest £14,700 (net of fees) rather than £15,000. This is a common industry practice, even in circumstances where a customer has asked to invest a specific amount, a business is entitled to invest an amount less its fees, unless a specific request has been made not to and measures have been put in place to pay the fees separately.
 - I note in a separate incident, Birchwood has refunded some additional fees charged by mistake. But in the circumstances, and on balance, I'm not minded to uphold this complaint on this basis, and ask Birchwood to refund at least half of the fees. It has already done what I would've asked it to do in any event.
 - Just because some administrative errors were made, doesn't (automatically) entitle a customer to a refund of all or some of the fees.
 - I appreciate the difficulty in having 'joint plan holders' with the same surname but living in different addresses. I can see why the error happened, but it's no excuse. I'm aware Miss M says that it was Birchwood's responsibility to ensure that it wasn't sending her brother's information to her – which I think is a reasonable observation.
 - Whilst I appreciate that this might've affected Mr M (and his wife), I'm not sure how it impacted Miss M – because the error didn't involve her details.
 - I'm also mindful that this complaint isn't specifically from Mr M (and his wife) involving their policies so I don't think I can say anymore on the matter.
 - I note Birchwood has spoken to the plan providers in order to try and stop this from happening and has offered greater compensation to take into account the impact of this error on Mr M which I think is fair and reasonable.

Redress

- In the circumstances, and on balance, I think the compensation offered (prior to the complaint was referred to our service but not paid) – is broadly fair and reasonable. In the circumstances I think Birchwood should pay this amount. I've considered Miss M's recent points in relation to redress, I'm well aware she doesn't think it's enough, however despite what she says my conclusion remains the same.

I appreciate Miss M and Mr M will be unhappy that I've reached the same conclusion as the investigator in that the redress is fair and reasonable.

Furthermore, I realise my decision isn't what they want to hear. But on the face of the available evidence, and on balance, despite what they say, I'm unable to give them what they want.

Putting things right

To put things right, Birchwood Investment Management Limited should pay Miss M and Mr M £500 compensation for the distress and inconvenience caused.

My final decision

For the reasons set out above, I partially uphold this complaint.

Birchwood Investment Management Limited should pay Miss M and Mr M £500 compensation for the distress and inconvenience caused as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M and Mr M to accept or reject my decision before 20 March 2025.

Dara Islam
Ombudsman