

The complaint

Mr J has complained that 'Offer Prices' quoted in Octopus Investments Limited's ('Octopus') policy documents weren't clear. He would like for the number of shares he was allocated to be recalculated if his complaint is upheld.

What happened

After reviewing the November 2022 Octopus Titan VCT Brochure Mr J invested some funds. Upon receipt of his share allotment, he wanted to know how the share allocation had been calculated but wasn't entirely satisfied with the answer.

Mr J had understood that the Offer Price was determined by a formula (the Net Asset Value ('NAV') divided by 0.945 in this case) and that the NAV per share would be rounded up to one decimal place and the subsequent number of shares would be rounded down to the nearest whole number. But he hadn't been informed that the Offer Price itself was also rounded up to one decimal place. This affected the number of shares allocated and had an ongoing impact on dividend calculations.

Mr J complained to Octopus who issued its final response on 20 March 2023. It said;

- It referred to the prospectus which said 'In respect of the Offer, the NAV per Share will be rounded up to one decimal place and the number of New Shares to be issued with be rounded down to the nearest whole number...'
- Mr J had referred to stages one and two of a three stage calculation and the prospectus didn't break it down the way Mr J had. The statement above was overarching.
- 'the NAV per Share will be rounded up to one decimal place' applied to steps one and three whereas 'the number of New Shares to be issued with be rounded down to the nearest whole number' applied to step two. All three steps naturally applied in respect of 'The Offer'. To illustrate it broke down an example as given in the prospectus.
- The prospectus didn't state that any of the statements were applied only once 'rather it explains the basis for rounding where the NAV per share or number of new shares, applies'.
- It was satisfied that the correct number of shares had been allocated and Mr J hadn't been disadvantaged.

It further said that at no stage were the NAV per share and the offer price synonymous, but it appreciated Mr J's interpretation was different, however it was satisfied the information given was adequate and the correct detail was provided. All of its prospectuses were legally approved, and the same formula was applied to all Titan VCT investors, so Mr J hadn't been personally disadvantaged.

Mr J wasn't happy with the outcome so brought his complaint to this service. Our investigator who considered the complaint didn't think it should be upheld. They said;

- After reviewing the relevant Octopus prospectus, they agreed there wasn't an explicit sentence which confirmed the Offer Price would be rounded to one decimal place.
- But there wasn't anything in the prospectus that would rule out the possibility of the Offer Price being rounded to one decimal place.
- A worked example did show rounding to one decimal place.

Mr J didn't agree. He said the prospectus didn't provide an adequate, clear or incontrovertible explanation for the rounding of the Offer Price. And particularly as it had been so clear about the other two steps which were clearly described. He further noted that the 2023 version of the prospectus had updated the wording to reflect that the Offer Price would be rounded up to one decimal place and the new shares issues would be rounded down to the nearest whole number.

As the complaint remains unresolved, it has been passed to me for a decision.

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

The Financial Ombudsman Service was set up to be a quick and informal alternative to the courts. So, I will not refer to every submission, comment, or relevant consideration. Instead, my decision sets out what I think are the most important points in order to explain my decision in a way that is intended to be clear and easy to understand.

Mr J has said the extra layer of rounding with regard to the Offer Price is without explanation and unnecessary. The calculation method and rounding up/down of the other two stages in the overall calculation are explicitly referred to in the prospectus;

Page 67 of the prospectus says;

'The formula is: the most recently announced NAV per Share, divided by 0.945.'

And it goes on to say;

'In respect of the Offer, the NAV per Share will be rounded up to one decimal place and the number of New Shares to be issued will be rounded down to the nearest whole number (fractions of New Shares will not be allotted).'

So, I do agree with Mr J that it isn't clear that the Offer Price would be rounded up to one decimal place unlike the information given about the two other stages, the valuation for NAV purposes and for the whole number of shares to be allocated.

But I don't agree that the prospectus didn't provide that information albeit not as explicitly as explained for the other rounding in the allocation calculation or as explicitly clearly as Mr J would have liked. The prospectus does also say that;

'Any decision to invest under the Offer should be based on consideration of this document as a whole.'

And as part of the 'document as a whole' it includes an example of what an investor would be allocated if they invested £10,000;

'Example

On the assumption that an investor does not receive any advice in respect of their Application, an illustration of the pricing formula for an aggregate investment of £10,000 under the Offer (using the most recently published unaudited NAV of the Company as at the date of this document) is set out below:

<i>Latest published unaudited NAV as at the date of the Prospectus</i>	<i>Offer Price</i>	<i>Application</i>	<i>Number of New Shares to be allocated</i>
<i>91.3p</i>	<i>96.7p</i>	<i>£10,000</i>	<i>10,341</i>

If this example is followed through, then 91.3p divided by 0.945 (as per the formula) would produce an unrounded Offer Price of 96.6137566p so it's clear that the Offer Price as quoted in the above example has been rounded by one decimal place.

Mr J has argued that as explanations had been given in the prospectus about the rounding up/down that would apply to columns one and four for the above table but nothing similar was given for column two, this would suggest that the Offer Price wouldn't be subject to rounding.

And while I agree with Mr J that this point isn't explicitly referred to in the prospectus I equally agree with Octopus when it referred to the rounding up/down in the prospectus and that wasn't necessarily being limited to the steps it specifically referred to. Clearly as part of the calculation overall, the NAV and the Offer Price are linked by the formula used so I don't think it's unreasonable to conclude that rounding up to one decimal place would more likely apply to both.

Mr J has carried out a detailed breakdown of how his share allocation came about – which of course he is entitled to do – and he has found it wanting. But I think there was sufficient information included within the prospectus for Mr J to have made an informed investment decision.

And while there was some ambiguity in the prospectus – in that the rounding up/down may have applied to more than two steps of the allocation calculation – but if that was the level of detail Mr J wanted and expected from a prospectus then I think the inclusion of the example did provide him with all of the forensic information he would have needed to have completed such a calculation before investing.

So overall, while the prospectus might not have explicitly stated that the Offer Price would be rounded to one decimal place, I don't find Octopus misinformed its potential investors. I say this because I am satisfied that if an investor was concerned about this in advance of investing, then there was sufficient information provided for them to have understood how the Offer Price was going to be calculated. And if Mr J had read the prospectus and found that he wasn't satisfied there was a clear explanation of the rounding of the Offer Price then he could have queried this with Octopus prior to investing or have declined the opportunity to invest if he remained dissatisfied.

When utilising the practicalities of rounding of shares/share prices/share allocations etc, there will always be advantages and disadvantages. And it's clear that Mr J feels disadvantaged on this occasion as the rounding at the Offer Price stage wasn't described in

the prospectus as he would have liked. And even though Mr J hasn't said he wouldn't have gone ahead with the investment if he had been aware of the rounding up of the Offer Price, he feels he has lost out because of this.

But I disagree. Even though Mr J says that all other successful applicants of the offer have also been disadvantaged they will all have been treated in the same way by Octopus. It has an obligation to create a level playing field for all shareholders of the same share class – it has a regulatory obligation to do so. So, all of those investors who invested alongside Mr J will have all been allocated shares on the same basis as Mr J – so it follows they will all have the same prorated interest in the investment in the future.

If I were to uphold Mr J's complaint and ask Octopus to recalculate Mr J's allocation as if the Offer Price hadn't been rounded, he would receive slightly more shares. If that were the case, then he would be being given preferential treatment compared to his fellow shareholders which wouldn't be right as they all invested on the same equal footing. So, I don't think this would be a fair and reasonable outcome.

It's not for this service to tell a business what it should or shouldn't include in a prospectus, that is the role of the regulator. Part of the resolution sought by Mr J was that future prospectuses should clearly describe all of the steps involved in calculating and Mr J has confirmed that the 2023 prospectus did include this. And Mr J also asked that this service pursue the broader issues he referred to, but this service only looks at each individual complaint on their own particular merits so it's not something I can consider – but the new prospectus suggests Octopus has done what Mr J hoped for in any event.

In reaching my decision I have to be fair and reasonable based on the evidence. And while I accept there was some ambiguity in the information given in the prospectus about the rounding of figures, I think sufficient information was provided for Mr J to have established the level of detail he required in advance of investing.

It follows that I don't uphold Mr J's complaint. I appreciate that Mr J will be disappointed in the outcome – it's clear he feels strongly about it – but I hope I have been able to explain how and why I have reached the decision that I have.

My final decision

For the reasons given, my final decision is that I don't uphold Mr J's complaint about Octopus Investments Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 7 June 2024.

Catherine Langley
Ombudsman