

The complaint

Mr M has complained about the inaccurate and unverified advice he received from St James's Place Wealth Management Plc ('SJP') regarding the sale of his Venture Capital Trust ('VCT') shares. He has also complained SJP hadn't sought updated information about his circumstances, the validity of his signature on a suitability report as well as a data breach. To put the matters right Mr M has requested a total compensation payment of £10,320.

What happened

Mr M was a client of SJP. On 28 February 2023 he contacted his adviser as he wanted to invest £100,000 for that financial year into either VCTs or Seed Enterprise Investment Schemes ('SEIS'). He had £32,000 available at the time. These funds were from his employee bonus.

In response SJP recommended investing a further £32,000 into a VCT that Mr M already held. Mr M accepted the recommendation on 1 March and documents for the application and bank transfer were emailed to Mr M and he made the payment to the VCT on 2 March. Mr M signed the VCT client declaration document on 3 March 2023.

Mr M emailed his adviser on 15 March 2023 as he had miscalculated his tax liability. The second part of his annual bonus was to be paid in the next financial year (2023/24), on 15 April, and he asked whether the £32,000 invested could be used to finance a VCT for that financial year rather than 2022/23. SJP emailed back to confirm that the VCT being offered was only for the 2022/23 tax year and wasn't currently offering anything for the following year. The £32,000 subscription had been invested and the shares issued on 13 March 2023.

Mr M then contacted his adviser on 18 March as a friend of Mr M's – who I shall refer to as 'Mr F' in my decision – was potentially interested in the VCT shares and tax certificate – ie a transfer of the shares. The adviser didn't think this was possible, but Mr M was advised to contact the VCT direct, however, it became clear that claiming the income tax relief wouldn't be possible.

Mr M wasn't happy with outcome and raised a complaint with SJP on 26 March about the advice and service he had received. In its final response to the complaint SJP said;

- SJP provided its suitability report on 2 March 2023 which referred to the recent discussion held on 27 February. Mr M was advised to invest £32,000 into a VCT which would offer income tax relief of £9,600.
- SJP was satisfied that the adviser had asked all pertinent questions before providing a recommendation and that all the responses were recorded in the Confidential Financial Review Document further to the 27 February 2023 meeting.
- There was no evidence that SJP provided advice to Mr M about the VCT transfer.
- Regarding Mr M's complaint that he didn't sign the March Docusign document SJP couldn't confirm what had happened but, in any event, Mr M had emailed SJP the

day before to say he was happy to proceed and make the payments. It would be logical for Mr M to have signed his agreement a day later.

- Human error had been the cause of the email being copied into Mr F. This had been identified immediately, and Mr F was contacted who confirmed he had deleted the email before reading it. SJP offered £150 for the distress caused by this.
- The advice to invest in the VCT had been reviewed and it was suitable – it was affordable, offered diversification and met Mr M's attitude to risk as an experienced investor.

Unhappy with the outcome, Mr M brought his complaint to the Financial Ombudsman Service. He said;

- It was only because of his own and Mr F's efforts that it was found that the income tax relief couldn't be claimed if the VCT shares were transferred. His adviser should have carried out these basic checks.
- No financial suitability discussion had taken place in February 2023 and SJP had neglected its responsibility to carry out a thorough suitability check periodically.
- Mr M didn't sign the DocuSign document. He had emailed his adviser's assistant to confirm this was the case.
- Sharing his personal information with a third party had caused him great harm – he hadn't met with friends for over six months. The damage that had been caused couldn't be undone.

Our investigator who considered the complaint didn't think that SJP needed to do anything more. She said;

- There wasn't any evidence that SJP had given advice about the transfer of the VCT shares to Mr F.
- The adviser may not have sought more information from Mr M at the February 2023 meeting about his circumstances, but that information had already been provided in January 2023, so it wasn't unreasonable for the adviser to have relied upon that information in March 2023 as Mr M's circumstances hadn't changed.
- There was no evidence to suggest that Mr M had signed a suitability report in March 2023 – only that he had signed the VCT client declaration, and this was the document SJP referred to in its response to his complaint.
- SJP had arranged for the email sent to Mr F to be deleted by Mr F before he read it so the information contained wouldn't be passed on. She thought the £150 offered by SJP was fair.

Mr M didn't agree with the investigator. He said;

- It was the adviser that sent to him and Mr F the VCT transfer document further to his email of 18 March saying that Mr F was interested in the transfer. This constituted financial advice. Mr M said that both he and Mr F used the services of the same adviser at SJP, and Mr F had made it clear in an email to the adviser that he was only interested in the transfer if the tax certificate could be transferred to him as well.
- He had not received a suitability report for any of his VCT investments in 2022 and the first quarter of 2023 – he wanted this reviewed.

In response to this, our investigator advised that the comments about the suitability reports for 2022 and first quarter of 2023 VCT investments was a new complaint

point and SJP would need to be given the opportunity to address those points before this service could consider it.

- No financial suitability meetings took place with SJP in 2023 – the information recorded related to information about his circumstances in early 2022. In 2023 his income was a lot lower, and an investment referred to in the report had been sold in July 2022. The information had been re-used in the February 2023 suitability report. He was therefore provided with inadequate advice that left him in a financially vulnerable position.
- He accepted the investigator's comments about the signing of the March 2023 suitability document.
- Information included in the email sent to Mr F in error had been shared with Mr M's community.

Mr M asked for his complaint to be passed to an ombudsman and provided further information for my consideration. SJP didn't have anything more to add.

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 conclusions as the investigator and broadly for the same reasons. I'll explain why.

2023 fact find meetings

Mr M has said that the fact find meetings of 2023 didn't happen. SJP has provided us with two calendar screenshots headed 'Event' 'Fact Find Meeting'. The first is dated 26 January 2023 and which was 'About' 'VCT Feb 23' with the participants being Mr M and his adviser with the 'Location' recorded as 'digital'. The 'Event Outcome' was recorded as 'Completed' and the 'Meeting Outcome' was recorded as 'VCT'.

The second calendar screenshot contains the same information but that it took place on 27 February 2023 which is the date referred to in the 2 March suitability report where it said 'I'm writing further to our recent discussion of 27 February 2023 to confirm my recommendation.' And I've seen an email the adviser sent to a colleague about the VCT investment for Mr M on 1 March 2023 which said 'I had a chat with [Mr M] on Monday...' The Monday of that week was 27 February.

And the client fact find document refers to the conversation had;

'March23 – [Mr M] has invested in VCTs this tax year and wishes to invest a further £32k into this VCT for diversification and tax relief. no changes to any circumstance.

We discussed investing in ISA but has maxed this year and plans to max next year. we discussed pensions and he and his family company max this.

he stated that he wished to invest if possible to mitigate some of his tax due to being a additional rate payer.

We discussed the benefit of investing into VCTs. We have discussed that VCTs are defined as higher risk products.

We discussed the benefits of spreading your investment across a range of funds and explained the merits of diversification achieved by a spread of investments and a mix of different management styles.'

I have cross referenced this information with the 26 January 2023 fact find. The information contained throughout is very similar but with the exception of reference to a potential investment of £35,000 rather than £32,000. This suggests that the latter report was just an update rather than a fresh fact find. But I don't find this surprising considering how recently Mr M and his adviser had spoken and it looks like they already had some sort of investment plan in place – investing into VCT or similar to mitigate tax.

While the fact find information might not have been detailed, taking account of all the evidence presented to me, I am satisfied that some sort of discussion was had between Mr M and his adviser in both January and February 2023.

Mr M has told us that by 2023 he had changes to his domestic arrangements and financial circumstances, but this wasn't referred to in either of the 2023 reports. Mr M said that his expenditure was different by this time. While Mr M might feel the information contained in the suitability report was deficient or accurate, he had had the opportunity to update it with his adviser and correct it at the time.

That being said, the suitability of the VCT investment isn't being considered in this complaint. I understand Mr M has made a further complaint to SJP about this. However, from the information SJP provided, it does indicate that discussions were had prior to the investment recommendation being made.

Mr M's signature on the March 2023 suitability report

One of Mr M's complaint points when he brought it to this service was that he didn't sign the suitability document and provided a copy of an email he sent to his adviser's assistant 'immediately after receiving this confirmation from SJP notifying her that I did not sign the document.'

Our investigator commented on this in her assessment of the complaint. She said there was no evidence to suggest that Mr M had signed a suitability report in March 2023 – only that he had signed the VCT client declaration, and this was the document SJP referred to in its response to his complaint. Mr M accepted what the investigator said, so there's no need for me to consider this point any further.

Advice about the proposed transfer

On 15 March 2023 Mr M contacted his SJP adviser as he had miscalculated the timing of his bonus payment and ideally wanted the £32,000 VCT investment to be in the following tax year, but the adviser checked with the VCT, and the investment had already been made.

Then on 18 March Mr M emailed SJP to say;

'I have a friend that might be interested to get the [VCT] shares and tax certificate from me. Is it possible to? Can you help with this? transfer the shares and tax certificate to someone else?'

The adviser responded on the same day to say;

'I'm almost certain those are not transferrable but I'll confirm next week.'

And on 23 March the adviser emailed again and said;

'Seems it can all get sorted simply and directly with [the VCT]. I'll forward you the forms [SJP] got from them this morning and it can be done directly with VCT registrars.'

On 24 March Mr M emailed his adviser at SJP and said;

'I spoke with [the VCT] and they said that following a transfer of shares a[n] income tax relief certificate is not issued.

As mentioned, as a client of SJP I expect SJP to find a verified solution to this issue with minimal financial loss for me. I think this is a fair expectation being a client of a firm such as SJP.'

The adviser responded and explained that its calculations and advice was based on the information Mr M had provided about his bonus for the current tax year which had later changed. The email concluded;

'None of the above can make SJP liable to or for [the VCT] to change the tax certificate which is granted to the investor on the information provided and the fact that [VCT] the basis of investing in their VCT. The advice itself was correct...'

Mr M told us that Mr F had made clear to the adviser that he would only be interested in the transfer if the tax certificate could be transferred as well ie that the tax benefits of the VCT investment could be transferred as well as the shares. That might be the case but that doesn't apply to Mr M's complaint, or his complaint point that SJP's adviser gave 'inaccurate and unverified advice' about the potential transfer.

And I don't agree with Mr M that either advice was given to him or that it was 'inaccurate' or 'unverified'. I say this because Mr M acknowledged it was his error to start with because of the delay in the bonus being paid so I don't agree that it was for SJP to provide a 'verified solution...with minimal financial loss for me...' over and above its efforts to try to help Mr M with the position created by his error. SJP had provided investment advice based on the information it had been given by Mr M about his bonus for 2022/23.

That position changed and after Mr M's suggestion to transfer the shares to Mr F – while the adviser expressed doubts at the ability to transfer the shares – Mr M was directed to the VCT itself. SJP did forward the transfer documents it had been sent by the VCT but there is no evidence of any discussion Mr M had with the adviser about transferring the VCT with the tax benefits intact. So, I'm satisfied Mr M was given information only and not advice, and that the adviser didn't say the transfer – with tax benefits attached – could go ahead. I think this was an assumption on Mr M's behalf.

One of the advantages of investing into VCT is the tax advantages. And because of that it's inevitable there would be limitations about what could be done with the shares. I think the tax position about the VCT shareholding had already been made clear to Mr M. The March suitability report stated that should Mr M 'sell your VCT shares within five years of their issue, any Income tax relief provided will be clawed back.' So, Mr M had previously been made aware there were limitations to holding this type of share and the tax implications upon disposal.

It's not clear to me whether the transfer to Mr F did go ahead. If it didn't then Mr M still holds those shares and is in the same position he was originally in once the delayed bonus payment was realised. Mr M has found himself in the position where he couldn't take

advantage of the tax benefits of investing into VCTs as he had hoped. But that was because his position changed due to the alteration in date of his bonus payment.

And if the transaction did go ahead, then Mr M was already aware – as referred to above – that any income tax relief would be clawed back. So, I can't agree that Mr M has incurred losses because of anything SJP has done or that SJP has an obligation to put the matter right. I can't see SJP has done anything wrong.

It follows that I don't uphold this complaint point.

The data breach

SJP told us that no confidential information was included in the email trail over and above what Mr F already knew.

I've reviewed the email trail that Mr F was copied in on;

'...On 2.3.23 I paid £32k to [VCT].

I miscalculated my tax liability for the 2022-2023 tax year, as a second part of my annual bonus is due to be paid on 15.4.23 (i.e. in the next financial year).

I wanted to request if you could use the paid amount for your VCT in the next financial year instead of 2022-2023. This will be highly appreciated and helpful...'

In response the adviser said;

'...I assume this means that it's been confirmed that the other part of your bonus will be paid in the next tax year?

Let's see what [VCT] say and whether they're able to make the change...'

To which Mr M replied;

'...Yes, the second part of the annual bonus (which is also the bigger part) will be paid on 15.4.23. Apologies for this misunderstanding from my side...'

SJP had accepted that the cause of the email being copied in to Mr F was human error. But said the adviser put the matter right quickly by contacting Mr F and asking him to delete the email. Mr F emailed Mr M's adviser SJP on 24 March 2023 to confirm that;

'...as requested, I deleted the email (before being able to read it).'

Mr M has told us he is private about his finances and this information had been shared within his community. As a consequence, members of his community had commented on and asked information about his employment role and finances. Mr M also told us he had received unsolicited requests for charity donations who, when asked, said that information about his financial wealth had been shared in the community.

I accept that SJP did as much as it could to address the error by contacting Mr F who in turn advised that he had deleted the email without reading it. But I don't think that's the point. I think the point is information about Mr M's investments was sent to a third party in the first place and the impact of that for Mr M.

However, I don't agree that it was the email being sent to Mr F in error that caused the information to be shared with Mr M's community. It seems likely that if that information was shared, then it was shared by Mr F. And Mr F was already aware of the financial situation as referred to in the email as he was interested in the potential transfer of the VCT shares into his own name. He already knew the key information included in the email – the amount invested, what it was invested into and the reason for potential transfer of the investment in that Mr M's bonus was being paid later being the need for the VCT investment to be unwound.

So, while I appreciate Mr M's understandable considerable distress about this – members of his community knowing private information he wouldn't otherwise have shared – I don't think it was the email chain misdirection itself which caused that information to be shared outside of the parties, even if it was read by Mr F. I think it most likely Mr F was already in possession of that information and if he was minded to share it with others, I'm satisfied that wasn't as a result of SJP's error as he would likely have done so in any event as he already knew of all the information included in the email. I can't see that it was the email chain that would have caused him to have shared that information over and above him already knowing the information.

It follows, that I don't uphold this complaint point.

Taking all of the above into account, I don't uphold Mr M's complaint. I appreciate that Mr M will be disappointed with my decision. It's clear he feels strongly about it, and I'd like to thank him for the efforts he has made in bringing his complaint. But I hope I have been able to explain how and why I have reached that decision.

My final decision

For the reasons given, I don't uphold Mr M's complaint about St James's Place Wealth Management Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 June 2024.

Catherine Langley
Ombudsman