

The complaint

Mr C complains, with the help of his adviser, that Octopus Investment Limited failed to invest him in the Apollo Venture Capital Trust (Apollo VCT) and didn't inform him that his application had been unsuccessful and his payment returned.

What happened

Mr C applied to invest in the Apollo VCT on 18 October 2021, sending the money for his investment in three tranches, one payment of £10,000 being made on 22 October 2021 and then two payments – one of £10,000 and one of £5,000 – being made on 25 October 2021.

Octopus wrote to him and his adviser on 26 October 2021 with a 'welcome letter' enclosing what it referred to as a summary of his investment stating that his VCT shares would be allotted at the next available date and after this he would receive his tax and share certificates.

Mr C and his adviser asked Octopus about the share certificates on 3 February 2022 at which time he was advised he wasn't invested in the Apollo VCT as his application had been made too late, with his £25,000 being returned to his account on 2 November 2021.

He complained to Octopus but it didn't uphold the complaint. In short it made the following key points.

- The welcome letter Mr C received after he sent his money to Octopus was sent in error as the funds were received too late to be entered into the Apollo VCT.
- It had received and processed applications up to 25 October 2021 to fill capacity, which was announced on 26 October 2021 with applications processed in order of receipt.
- It had received Mr C's cleared funds on 25 October but the applications processed before his had taken the Apollo VCT to capacity.
- It missed the opportunity to clarify this when it returned Mr C's money to his account possibly due to the anomalous welcome letter being produced.
- There are multiple options available for Mr C to invest in another VCT in the current tax year.
- In recognition of the poor service it has provided it will arrange a goodwill payment of £100 to be made to Mr C's bank account.

One of our investigators considered the complaint. She said that the welcome letter had been confusing but Mr C hadn't been allocated shares before the Apollo VCT closed and hadn't been guaranteed he would be allocated shares before it closed.

The investigator thought an award of £100 for the distress and inconvenience caused by the

misleading welcome letter and failure to notify Mr C of the return of funds was appropriate. She thought Mr C should have noticed the funds had been returned to his account.

The investigator said that as Mr C wasn't invested in the Apollo VCT, as his application wasn't processed before closure, he was never entitled to any dividend paid by the fund. The investigator also thought that there were other VCT's Mr C could have invested in so didn't accept he had lost out on any loss relief.

Mr C didn't agree with the investigator and the matter was referred to me for review and decision.

I issued a provisional decision the findings from which are set out below.

"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 am satisfied that Mr C wasn't invested in the Apollo VCT and I have seen no persuasive evidence that this was due to any failing on the part of Octopus. I want to make this clear because Mr C's response to the investigator's opinion suggests he is arguing that the only evidence as to whether he was invested was the welcome letter of 26 October 2021 which indicated that he was invested.

However, there is evidence he wasn't invested in the Apollo VCT, including the fact that Octopus has stated as much, his money was returned on 2 November 2021 and he has never received any share certificates. Octopus makes the point that investing in a VCT isn't like opening a bank account, in that once the fundraising target for a VCT has been reached the fundraise will close as there is no more room left to invest in it. Octopus has explained that applications were processed in accordance with when the application (including the money) were received and that the fundraise target for the Apollo VCT was reached before Mr C's application was processed.

I note Mr C argues that the internal processes of Octopus and Apollo aren't relevant but I don't agree. There is nothing to suggest that simply making his application and sending his money automatically resulted in him being invested. I think it is quite clear that for him to receive shares in Apollo VCT his application will have needed to be processed and Octopus has said, and I accept, that it wasn't.

The letter of 26 October 2021 isn't evidence of itself that he was invested in the Apollo VCT. In short, Mr C can't establish there was an agreement between him and Apollo VCT through which he was entitled to shares in the company based only on that letter.

However, whilst I am satisfied that Mr C's application wasn't processed and he never

became entitled to shares in Apollo VCT what isn't in dispute is that the letter from Octopus to Mr C of 26 October was misleading. It included the following:

"Thank you for investing in the Octopus Apollo VCT.

We'd like to let you know that we have received your application form. Please find enclosed a summary of your investment. Your VCT shares will be allotted at the next available allotment date, which can be found at octopusinvestments.com."

The attached investment summary provided the investment details and identified the

portfolio number for the investment as well as Octopus's charges. A copy of the letter was also sent to his adviser the same date. Octopus has accepted that this 'welcome letter' should never have been sent and offered £100 as a goodwill payment for the loss of expectation Mr C will have had thinking he had been invested when he wasn't.

However, it hasn't accepted that Mr C suffered any financial loss or other consequences of it having sent the letter. I am not satisfied that Octopus has properly taken account of the impact of that letter. There is no question that it led both Mr C and his adviser to believe that he was invested in the Apollo VCT when he wasn't and the impact of that isn't limited to a loss of expectation in my view, and I explain why below.

Mr C wasn't invested in the Apollo VCT because the target for the fundraise was achieved and it was closed before his application was processed, as I have already referred to. This was announced by Apollo VCT through notice on the London Stock Exchange (LSE) on 26 October 2021. Octopus also emailed advisers – including Mr C's adviser – on 27 October 2021 informing them the Apollo VCT was closed to new business and stating that:

"If you or one of your clients has sent us an application over the last few days and you're concerned about it being included in the current fundraise, please call xxxx xxx"

Given the letters sent to Mr C and his adviser on 26 October 2021 indicating that Mr C was invested in Apollo VCT they would have had no reason to take note of the LSE notice or be 'concerned' about Mr C's subscription not being included in the current fundraise and as such no reason to check this with Octopus.

Put another way, but for Octopus sending the letters of 26 October 2021 to Mr C and his adviser it is more likely than not that he or his adviser would have had some concern the application hadn't been included in the fundraise and contacted Octopus accordingly in line with the suggestion in the email of 27 October 2021.

If they had done so they would have been informed the application hadn't been successful and that Mr C's money would be returned. He would no doubt have kept a close eye on his account accordingly and seen the money returned on 2 November 2021 and would have been in a position to invest this in an alternative VCT at that point.

He has said that he would otherwise have invested in the Titan VCT, as his wife did, if he didn't invest in the Apollo VCT. I see no reason to doubt what he has said and as such I think it is more likely than not he would have done this if he had become aware, his application into Apollo VCT had failed.

I have considered the argument put by Octopus that it is reasonable to expect someone to check their account. However, it is apparent Mr C didn't do so, given he wasn't aware the money had been returned to him until February 2022 and up until then thought he was invested. I am not satisfied that it can be argued that there was a requirement on him to check an account he had no reason to think had been credited with the money he had sent to Octopus to invest in Apollo VCT or that in not doing so he is then responsible for what transpired."

What Octopus should do to put matters right

I have found that Octopus provided Mr C with misleading information by way of its welcome letter of 26 October 2021 which led him to believe he was invested in Apollo VCT when he wasn't so invested. I have further found that but for that letter Mr C would have been aware he wasn't invested in Apollo VCT and would have then invested in Titan VCT. The question that I must then address is whether he has suffered any financial loss as a result of not being

invested in the Titan VCT.

I am not satisfied that it would be fair or reasonable for Octopus to have to pay Mr C for the tax relief he would have got if he had invested in Titan VCT. I say this because although he only found out in February 2022 that he wasn't invested in Apollo VCT he still had enough time to invest in an alternative VCT at that point.

I note that Mr C has questioned the basis on which the investigator said that there were other investments he could have put his money into to get tax relief. Possible alternative VCTs were listed by Octopus in a letter to him dated 3 March 2022. He hasn't provided evidence that suggests these weren't available and I have no reason to think they weren't.

However, from the limited information available it appears that the Titan VCT did include the possibility of a dividend payment in December 2021 which Mr C will not have been able to benefit from if he had invested in an alternative VCT in March 2022. I note that Octopus has said this wasn't guaranteed and that any such dividend would affect the net asset value if paid. However, if the dividend has been paid I don't think it is unreasonable for Octopus to pay the amount Mr C would have received if he had invested £25,000 in Titan VCT on the basis that he would, but for it providing misleading information to him, have been entitled to the dividend payment.

I also think Octopus should pay £250 for the distress and inconvenience caused by it providing misleading information."

I gave both parties the opportunity of responding and providing any further information they wished me to consider before making my final decision. Mr C said he agreed with the provisional decision. Octopus provided a detailed response explaining why it didn't agree with my finding that Mr C would have invested in the Titan VCT as an alternative to the Apollo VCT and why it didn't agree he should receive anything for the missed dividend in any event.

In short, Octopus argued that Mr C wouldn't have invested in the Titan VCT because he and his wife were independently advised by their adviser to invest in different VCTs. Given this, as his wife invested in the Titan VCT there is nothing to indicate that Mr C would also have invested in this on being made aware he wasn't invested in the Apollo VCT.

Regarding the dividend, Octopus explained that this didn't operate in the same way as for other more mainstream investments. It said the way this works is that payment of a dividend results in an identical post-dividend reduction in value of the net asset value - so that shares are priced at a corresponding lower value following a dividend payment. It argued that for Mr C to have retained the £25,000 he would have invested in Titan VCT but be paid the dividend would put him in a better position than if he had actually invested.

Octopus also pointed out in relation to the award for distress and inconvenience, it had already paid Mr C £100.

I sent Mr C a copy of the response to Octopus saying that I thought there was some merit to the argument that he and his wife were advised to invest in alternative VCTs and that given how Octopus said the dividend worked I no longer considered it appropriate that Octopus pay this to him. In the circumstances I said I was minded only to award the £250 for distress and inconvenience. Mr C responded and said that he agreed.

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 am going to uphold this complaint for the reasons set out in my provisional decision save where I state to the contrary.

Mr C hasn't disputed my findings that he wasn't invested in the Apollo VCT and that Octopus isn't responsible for this and there is no basis for me changing those findings. Octopus also hasn't disputed my finding about the welcome letter leading Mr C into thinking he was invested when he wasn't so there is no basis for me changing my finding on that either.

The only disagreement with my findings is in relation to the conclusions I reached as to what would have happened if Mr C hadn't received the welcome letter – namely my finding that he would have instead invested in the Titan VCT and that Octopus should pay him the dividend he would have received if he had been so invested.

As I have set out in the background above, I indicated to Mr C that I thought there was some merit to the argument put forward by Octopus that he wouldn't have invested in the same VCT as his wife. For the avoidance of doubt, I am not now of the view that it is more likely than not he would have invested in the Titan VCT.

In any event, and again as I made clear to Mr C, even if he had been so invested I am no longer of the view that Octopus should pay him the dividend he would have received through such investment. This is because this would make him better off than he would otherwise have been - for the reasons explained by Octopus.

Putting things right

Mr C has now agreed with the award of redress being limited to the £250 I awarded for distress and inconvenience caused to him by what Octopus got wrong. Octopus points out that it has already paid £100, so the net amount he will receive is £150.

My final decision

I uphold this complaint for the reasons I have set out above. Octopus Investments Limited must pay the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 May 2024.

Philip Gibbons
Ombudsman