DRN-5076531

The complaint

Mrs O's complaint concerns a Venture Capital Trust (VCT) investment recommended by St. James's Place Wealth Management Plc ("SJP"). She feels she was given incorrect information, and the matter was generally poorly handled.

The same VCT investment recommendation was made concurrently to Mrs O's husband, a similar complaint about which has been dealt with under a separate reference.

What happened

The background to the complaint will be well-known to both parties, particularly given its overlap with other SJP-related issues Mrs O has complained about. But I'll nevertheless provide a brief overview of the circumstances.

Mrs O had an existing VCT investment, which she'd started in late 2013. Towards the end of 2018 it was worth around £60,000 and had reached the five-year point at which it could be sold and the original tax benefits maintained. She discussed the potential 'recycling' of the investment with her SJP adviser, and it was agreed that this would be looked into.

A few months later, in early 2019, Mrs O chased the adviser for an update. It transpired that the rules governing VCT investment meant that, if sold, the monies couldn't be reinvested back into the *same* VCT (which Mrs O has said was her preference) for a period of six months, which would've taken the transaction into the next tax year, losing the opportunity to obtain the tax benefits in the 2018/19 tax year.

An alternative recommendation was made to invest a sum of £58,500 (so broadly what was likely to be generated from the future sale of the existing VCT) into three new VCTs with other providers. However, to make this new investment, money had to be taken from Mrs O's SJP ISA and an investment bond (IB) held jointly with her husband. The bond withdrawal incurred an early withdrawal charge (EWC) of just over £1500 and also created a chargeable gain of around £9,000.

Mrs O accepted the recommendation and the investment went ahead. But she later complained, saying that although she hadn't been able to sell and re-invest back into the existing VCT before the end of the 2018/19 tax year, she would nevertheless have been able to invest more 'new' money into it – *ie* the money that had been taken from the ISA and IB.

She felt that she'd been generally misinformed about her options, rushed through the process and not told about the additional costs involved, particularly the EWC. She said that to resolve the matter SJP should compare the performance of the three VCTs she'd been recommended with the performance of her existing VCT that she'd wanted to invest more in and pay her any difference, along with a refund of the additional costs incurred and any advice fees associated with recommendation.

SJP didn't uphold the complaint, saying, in brief, that it felt the recommendation had met Mrs O's objectives and hadn't exposed her to more risk than she was willing to take. It was satisfied that the term, risk and affordability had been fully discussed, along with alternatives

and the tax implications. SJP said that while it appreciated that the performance of the new VCTs might have been disappointing, it was of the view that it was clear Mrs O's primary objective had been to reduce her tax liability for 2018/19.

The complaint was referred to this service and considered by an investigator. He was satisfied it had been Mrs O's intention to invest further in VCTs. He acknowledged that 'recycling' back into the existing VCT wouldn't have been possible but noted that the existing VCT investment could've been sold and invested into other VCTs.

But rather than a sale of the existing VCT, as noted, money had been drawn from other investments held by Mrs O. So, the investigator considered the overall circumstances of the recommendation.

He noted that VCT investment in general had been documented as inconsistent with Mrs O's medium attitude to risk, but that she'd been willing to accept the increased risk to obtain the associated tax benefits. The investigator also said that the additional costs involved would've meant the new VCTs had to achieve a higher level of performance, compounding the issue of the higher risk level.

The investigator acknowledged that the complaint made by Mrs O wasn't about the risk and suitability of the recommendation. Rather, it focussed on administrative issues and the provision of information. But, despite this, the investigator concluded that the advice had been unsuitable from a risk perspective. He said that if the costs of withdrawing from the other investments been clearly explained to Mrs O, in the context of the high risk of investing in the new VCTs in addition to the existing VCT, he felt she was unlikely to have agreed to proceed.

The investigator proposed that SJP compensate Mrs O by comparing the position she'd have been in had the recommendation not been made with her actual position invested in the new VCTs, taking account of the various costs and tax implications.

He initially suggested that the comparison be made with a benchmark investment but then altered this (prompted by a suggestion from SJP, as it initially broadly accepted the investigator's view that the advice had been unsuitable) to a comparison with the performance of the ISA and IB, to reflect the likelihood that Mrs O would simply have remained invested as she had been.

Mrs O didn't accept the investigator's view. She corresponded further with him providing more background and clarification of facts and stressing that the complaint had always been about incorrect and inadequate advice preventing her from making informed decisions, rather than VCT investment itself being unsuitable.

She felt that the calculation of redress was unlikely to show any loss because of the significant tax benefits associated with the VCT investments. So, having received poor advice and service from SJP, even with the complaint upheld she would be left with no compensation. She reiterated that she felt the redress should instead be a refund of the various costs incurred – income tax on the chargeable event, the EWC, and related advice charges.

SJP, having been made aware of Mrs O's insistence that the complaint wasn't about suitability and that she had wanted to invest more in VCTs, changed its position and said the advice had therefore been suitable.

The investigator wasn't persuaded to depart from his opposing view, that the advice had been unsuitable. So, as no agreement could be reached the matter's been referred to me to

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, while I recognise Mrs O will be disappointed, I find I've come to broadly the same conclusions as the investigator. And I'm satisfied the amended methodology for redressing the complaint (a comparison with the position Mrs O would be in had things remained as they were, and she'd not withdrawn the money and invested in the new VCTs) is fair and reasonable in all the circumstances.

Firstly, I want to assure Mrs O I've read and considered all the evidence and submissions made. But that said, I'm satisfied I don't need to comment on every point raised to reach what I consider to be a fair and reasonable decision. Where I've chosen not to comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. That approach is in line with the rules we operate under.

Further, where the evidence is incomplete, inconclusive or contradictory, I've reached my decision based on the balance of probabilities. That is, what I think is more likely than not to have happened in light of the available evidence and a consideration of the wider circumstances.

Turning to the merits of the complaint, I'm satisfied that as Mrs O's existing VCT investment reached the end of its initial five-year holding period she was looking to repeat the process. She'd clearly been very happy with the investment performance and moreover wanted to take further advantage of the 30% upfront income tax relief available with VCT investment.

Although I've seen no documentary evidence that suggests she was solely interested in recycling back into the existing VCT, I think it was likely to have been her preference. But selling and re-investing back into the same VCT within six months, so before the end of the 2018/19 tax year, as noted, wasn't possible.

It's not entirely clear why the new VCT investment wasn't dealt with sooner by the adviser. It wasn't until the very end of March 2019, so right at the end of the tax year, that the related documentation was completed. And it appears that the lack of sufficient available funds to make a £58,500 investment wasn't fully dealt with until the very end of the process, which would perhaps explain why it wasn't made clear to Mrs O that the IB withdrawal would involve an EWC and tax liability.

A suitability letter dated 20 March 2019 was issued setting out the reasoning behind the recommendation. But I'm satisfied that, as Mrs O has said, this wasn't provided until after that date. Some of the wording used in the letter suggests it was written later, after 5 April 2019, in the new tax year. And SJP's record of it being compliance checked indicates the same.

I'm therefore satisfied that the recommendation was most likely dealt with in such a way that meant Mrs O wasn't able to make a fully informed, considered decision about whether to proceed.

But that leads to the question of what might otherwise have happened had the advice process been conducted in a timelier manner, with Mrs O given better opportunity to understand the recommendation, any restrictions and why alternatives to straightforward recycling were necessary.

While I'm sure Mrs O would disagree, I think there's an argument she would've chosen to go ahead in any event. Clearly the additional costs involved with doing so weren't ideal. But the potential tax benefit of her £58,500 investment was £17,550 – far more than the costs incurred by the IB withdrawal and any loss that might occur as a result of moving money out of the ISA.

I note Mrs O has suggested the adviser made the recommendation of the new VCTs because SJP was no longer recommending the original product. So, this was a way of ensuring that more business was generated for the adviser. But while it's been confirmed that the original product could no longer be recommended (and I accept Mrs O wasn't told that at the time) I've not persuaded that the adviser made the alternative recommendation solely as a means by which to generate new business. I think more likely that not she was generally trying to facilitate a solution that met Mrs O's objective of obtaining the VCT-related tax breaks but diversifying as a means by which to balance the risk to a degree.

But the additional VCT investment (as opposed to recycling the existing investment) placed considerably more of her money at a high level of risk – a level that was documented as inconsistent with her attitude. Selling and recycling the proceeds into new VCTs would've provided the tax breaks but not increased the overall amount of capital at risk. But the recommendation to invest more into VCTs meant that, coupled with her husband's similar investment, around £240,000 would be held jointly by Mrs O and her husband at a level of risk inconsistent with her/their attitude.

I appreciate she'd been very happy with the performance of the existing VCT since 2013 – describing it as 'the gift that kept on giving'. But there was no guarantee that the new VCTs would perform at the same level, or that the existing VCT itself would continue to perform as well as it had. Future poor performance could've significantly impacted the overall benefits of the investment.

So, in all the circumstances, I think on balance that if a clear explanation of the risk of investing further into VCTs, provided alongside the costs of doing so because of the need to withdraw money from other investments, had been provided to Mrs O, then more likely than not she wouldn't have agreed to proceed with this recommendation.

As such, I think the suggestion that SJP compensate her by putting her back in the position she'd be in had the withdrawals and additional VCT investment not taken place is a fair and reasonable way in which to put things right.

Putting things right

SJP should compare the notional value of funds withdrawn from the investment bond and the ISA against the performance of the VCTs.

The performance of the VCTs equals the current values of the VCTs plus Tax Relief obtained from VCTs (net) and any dividend/income from the VCTs, minus Tax and Early Withdrawal Charges from the IB and the cost of the loss of the ISA Wrapper.

If this calculation shows a loss, then the amount should be paid to Mrs O.

My final decision

For the reasons given, my final decision is that I uphold the complaint and direct St. James's Place Wealth Management Plc to compensate Mrs O as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or

reject my decision before 24 July 2025.

James Harris
Ombudsman