DRN-5226980

The complaint

Mr M has complained about the advice he received from St James's Place Wealth Management Plc ('SJPWM') to invest into Venture Capital Trusts ('VCTs'). He says some of the investments weren't appropriate for him and put him in a position where he couldn't meet his financial commitments. To put the matter right Mr M wants the commission returned to him, compensation of nearly £32,000 and recognition of the financial distress caused to his family.

What happened

Between October 2022 and March 2023 Mr M was advised to invest over £120,000 in various VCTs. Mr M became concerned the advice was unsuitable and complained to SJPWM in December 2023. SJPWM responded on 14 August 2024. It didn't uphold the complaint and said;

- Mr M's attitude to risk was assessed as high and he was aware VCTs were defined as higher risk. He wanted to invest for five to 15 years and didn't need to access the funds invested.
- VCTs were suitable for Mr M as he had sufficient experience and diversification across the portfolio and no issues with risk or term. Affordability was discussed as well as capacity for loss.
- Calculations and signed declarations were completed for each investment and application. Mr M was fully informed to achieve his objective of tax relief and capital growth. The recommendations weren't questioned at the time, and it was reasonable for the adviser to proceed in good faith.
- Suitability letters were produced but not received by Mr M in advance of the investments taking place which was allowed provided they were written to reflect the advice given and recommendations accepted.
- The adviser was fully qualified to give the advice.

Mr M wasn't happy with the outcome and brought his complaint to the Financial Ombudsman Service. Our investigator who considered the complaint didn't think it should be upheld. He said;

- He detailed Mr M's circumstances from the times of the sales.
- Mr M had sufficient investment experience and risk tolerance, so the investments weren't unsuitable for him.
- Tax mitigation had been the driving factor as Mr M had fully utilised his ISA and pension allowances.
- Mr M had sufficient time over the investment period to be comfortable with his current investments before making the next one.
- Mr M had been given suitability reports and the risks were fully explained. He also met with his adviser before each investment was made.

- There was no evidence to suggest the investments had caused him financial difficulty. Other complaints Mr M had made suggested he may have needed the tax relief back to meet some financial obligation, but he had invested into VCTs previously, should have known how long the process would have taken and would have been able to budget accordingly. He had sufficient assets in any event.
- The amount invested was appropriate as there appeared to be a strategy to use available cash to make the investments and gain the valuable tax relief quickly. And the stated aim of maximising ISA and pension tax relief year on year would diminish the overall proportion of his assets invested in VCTs over time.
- The VCTs themselves were sufficiently diversified.

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

- The suitability reports weren't sent to him prior to the investments being made and SJPWM had confirmed this. This created an environment where investment decisions were made under pressure rather than assessing the investments and the implications carefully. The investment opportunities were only presented by email and without meetings.
- Time constraints were referenced by the adviser, but VCT investment opportunities were open for weeks or months. As such the adviser wasn't fulfilling her legal requirements in her role.
- SJPWM and the adviser financially benefited from these practices, so SJPWM encouraged this behaviour.
- His disposable monthly income of £7,000 stopped when his wife was no longer working from August 2022, and this wasn't reflected in the suitability reports because the adviser based her information on a discussion held in March 2022.
- The salary recorded in the suitability reports wasn't correct as the figure of £253,000 per annum was based on a one-time bonus. This wasn't correct for the period of October 2022 to March 2023 when his net monthly salary was £5,200. His adviser should have had further discussions with him before making investments and the suitability reports mention details copied from earlier reports. The information should have been updated more than annually – he was relatively new to VCT investments at the time and trusted the process set by his adviser.

The investigator agreed that SJPWM should have checked and updated its fact find but Mr M would have known his own income position and whether later VCTs were affordable as he had already invested into several VCTs, was familiar with the process and how long it may take to benefit from the tax relief.

As the complaint remains unresolved, it has been passed to me for a decision in my role as ombudsman.

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.

I'm aware I've set out the background to this complaint in less detail than the parties and I've done so using my own words. The Financial Ombudsman Service was set up to be a quick and informal alternative to the courts. And the purpose of this decision is to explain what I think is fair and reasonable in the circumstances, not to offer a point by point response to everything the parties to the complaint have said. 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.

Amongst other things, to fulfil its duties SJPWM had to know its client, act in his best interests and give suitable advice. I've looked at the information gathered by SJPWM and the resulting advice.

Mr M's circumstances

The Confidential Financial Review – which looks like it was completed earlier and updated on 4 November 2022 – recorded Mr M;

- Was 36 years of age and married with one child. His wife wasn't to be included in the financial review.
- His occupation was 'Company Director/Executive'.
- His annual income was recorded as being £253,000 which was made up of Mr M's salary of £133,000 and an annual bonus of £120,000. His monthly outgoings were £4,500 and disposable net income was £7,383. Mr M didn't expect his 'financial circumstances to change' in the next five years.
- Two properties were owned, valued at £940,000, the mortgage liabilities for which were £740,000. One was a buy to let property with the rental income going to Mr M's wife. The monthly payment for both was £2,185.
- Mr M's investment objective was for capital growth and tax relief. He was 'comfortable with repayments on mortgage, looking for tax relief.'
- Mr M had total assets of £1.2m with cash of £55,000, five VCTs (Albion and Proven) valued at £88,654, shares of £50,000 and stocks and shares ISAs of £95,000.

Mr M's attitude to risk and investment objectives

For these investments, Mr M's attitude to risk was recorded as being high. I have considered how this came about and how SJPWM made Mr M aware of the varying levels of risk implicit in different investments. SJPWM needs to demonstrate that it gave suitable advice taking into account Mr M's circumstances, understanding and knowledge after ascertaining his attitude to risk.

For each advice given SJPWM provided a suitability letter laying out what had been discussed and giving its reasons for the recommendation of the investment being made. The 17 October 2022 suitability letter records with regard to risk;

> 'We had a conversation about risk as part of our discussions. Some key factors we discussed were your objectives, your investment experience, the time horizon over which you are investing and your attitude to, and ability to withstand, investment losses.'

Under 'Your Risk Profile' it said;

> Taking into account all these factors, we agree you are a High-Risk investor on our risk spectrum. You are looking for the potential to achieve exceptional returns, but you accept that this will be at high risk to capital. You have considerable experience of making investments and are able to invest for the long-term. You are comfortable with a portfolio that may be highly concentrated and contain high risk and specialist

> investments and accept that there may be sharp falls in the value of your investments.'

Whilst I'm not convinced that SJPWM has been able to show us how it concluded that Mr M was a high-risk investor, overall, I think this was most likely discussed and agreed. Even though I don't have evidence that the risk of investing was explained to Mr M – other than a 'conversation' being had – considering his ability to understand investment risk and his investment experience in order to understand the risk involved, I think he reasonably understood the risk of the investment.

I say this because while Mr M was evidently extremely keen to mitigate his tax position, I wouldn't expect to see SJPWM to advise Mr M to take an unwarranted level of risk to reach that goal at the expense of ensuring the underlying investments themselves were suitable in the first instance. However, it's clear that Mr M already had investment experience as evidenced by his higher-risk ISA investments valued at £95,000 held on another platform and in October 2022 Mr M had been investing in VCTs since March 2022 so by the time the investment advice was given in October 2022 Mr M already had invested £138,654 into VCTs. And I also note that as well as his high risk ISA he held cash of £150,000 and had £50,000 in an overseas investments.

I can see from the suitability letters for the October 2022 to March 2023 advice, Mr M had received the appropriate risk warnings and been informed of the related VCT tax benefits. After having thought very carefully about Mr M's attitude to risk, I don't find that SJPWM's conclusion that he was looking for the potential of capital growth along with tax relief and was prepared to accept a high level of risk to achieve that to be unreasonable.

Its recorded Mr M's investment objective was for the potential of capital growth and;

> 'You would also like to be able to mitigate some of your liability to income tax as you are an additional rate taxpayer.
> …
>
> You intend to use your investment to help mitigate your liability to Income Tax and to generate tax efficient lump sum over the medium to longer term, i.e. 5 – 15 years' time, and potentially a tax efficient income in the future, should it be required.
>
> With this in mind, the time frame for your investment into your Venture Capital Trusts (VCTs) is 5 to 15 years because you do not anticipate requiring access to the capital before this time.'

The Introduction section of the suitability letters referred to 'Other Documentation' and said;

> - 'VCT Client Declaration – which you signed and confirms the high risk illiquid nature of VCT investments and which you confirmed that you have read and understood the marketing materials produced by the product providers, in particular the specific risks associate with the investments.
> - Understanding the balance between risk and reward – which explains investment risk and information about the risk ratings and special risk factors relating to our range of funds.
>
> It is important that you have read and understood these documents and I suggest you keep them with this report.'

The VCT Client Declarations referred to and signed by Mr M were clear the investments were in small companies, higher risk compared to listed companies, the possibility of loss because of their high risk nature, were illiquid and tax treatment could change. Mr M had to confirm that he had read and understood the marketing materials provided by the product providers. So, I think it was made clear to Mr M that there were disadvantages in investing in high risk VCTs for the potential of capital growth and the tax benefits compared to other investment.

Overall, I'm persuaded that Mr M was looking for 'exceptional capital growth' and was willing to take a high risk with these investments.

<u>The advice</u>

While I'm satisfied it was most likely the case that Mr M's attitude to risk was reasonably assessed I've considered whether what was recommended to him was right for his circumstances and his financial objective of capital growth. Mr M has complained he was 'enticed…to invest large amount of funds without conducting the proper checks and processes'.

At the times of the investment advice, Mr M had already made maximum contributions to his company pension and had fully utilised his ISA allowances. Because of this the options available to Mr M to mitigate his tax liability were limited. I note Mr M's Personal Allowance was referred to as being zero and other options were considered at the times the advice was given – Enterprise Investment Schemes ('EIS') were discussed and discounted – as well as the VCTs.

This resulted in Mr M being advised to invest into six VCTs between October 2022 and March 2023;

Date	Investment	Amount
17 October 2022	Mobeus VCTs	£20,000
4 November 2022	Molten VCT	£25,000
28 November 2022	Octopus Titan	£15,000
6 February 2023	Unicorn AIM VCT	£35,000
2 March 2023	Baronsmead Second Venture Trust and Baronsmead Venture Trust	£32,000

As mentioned above, Mr M was provided with a suitability letter for each piece of advice. I appreciate Mr M says he didn't receive these prior to the investments being made but the contents of the letters make clear the investments being recommended had been discussed and agreed. All the suitability letters are laid out in the same format and included the same details such as the amount to be invested, the VCT(s) being recommended, risk warnings, Mr M's current assets and cash held etc. So, I've focused on the earliest dated suitability letter for the investments being complained about and have précised the later suitability letters.

<u>17 October 2022</u>

The suitability letter recorded that Mr M had met with his adviser in the previous month and had agreed to the recommendations of further VCT investments. £50,000 had been invested and Mr M received tax relief of £14,325 for the tax year 2022/2023. The suitability letter noted Mr M had £88,654 already invested in VCTs and the further £50,000 was in the process of being invested.

In October 2022 Mr M had an additional £20,000 available for investment and wanted to take advantage of the income tax relief and to invest for the potential of tax efficient capital growth so was looking for any newly available VCTs.

As mentioned above, Mr M had fully utilised his ISA allowance as well as making maximum pension contributions, so both options were discounted. Its recorded EIS and VCTs were discussed and that both offered income tax relief, but EIS were also discounted;

> 'I explained that the tax certificates needed to obtain tax relief provided by an EIS can take several months to receive in full whereas there would be a single tax certificate produced by the VCT this tax year, ensuring the tax relief you required would be provided, and also the income stream from an EIS is not as efficient as with the VCT, therefore an investment in an EIS was discounted.'

The document gave details about how VCTs worked as well as;

> 'the investment risk, liquidity risk as well as concentration risk highlighted in the client brochure. You confirmed your understanding of the risk and potential advantages and pitfalls of such investment.
>
> You confirmed that it was your wish to invest £20,000 into VCTs, for the opportunity for growth as well as tax relief and confirmed that you feel comfortable investing and understand the risks involved. You see this as an opportunity for growth as well as an efficient way to take a tax efficient income.'

VCT options had been discussed and Mr M wished to invest £20,000 into Mobeus which was a new investment. There was the option of investing into Albion, but Mr M already had investments with Albion and wanted to diversify his portfolio.

The report continued;

> 'It must be stressed that VCTs are high risk investments that invest in small, fledgling companies. This means that the value of your investment can rise and fall more sharply than investing in established companies and investment returns are typically more variable. In particular, their values may fall significantly and they are illiquid, meaning that you may not be able to sell them when you wish to do so. Furthermore, the market price of VCT shares may not reflect the fully underlying net asset value of shares and any sale is likely to be at a discount to the net asset value. **They are therefore only suitable for clients who can afford to lose money and who do not require ready access to the amounts invested.**' [original emphasis]

Brochures for the VCTs were provided along with the suitability letters and having reviewed these, the high-risk nature of them was clearly highlighted as was their lack of liquidity and that the tax reliefs available may change in the future. As mentioned, risk was discussed and Mr M's attitude to risk was recorded as being 'high' and under the 'Affordability and Capacity for Loss' section a table was provided which showed the following;

Capacity for Loss			
Assets	Risk Rating	Value	Percentage
Cash	Low	£100,000	26.07%
Investments	Upper Medium	£95,000	24.76%
Shares	High	£50,000	13.03%
VCT	high	£138,653	36.14%

Totals		£383,653	100%
Liquidity after New Investment			
Cash	Low	£80,000	20.85%
Investments	Upper Medium	£95,000	24.76%
Shares	High	£50,000	13.03%
VCT	High	£158,653	41.35%
Totals		£383,653	100%

So, I'm satisfied it was made clear to Mr M that when he was investing, he was increasing his exposure to high risk VCTs from 36.14% to 41.35% at the expense of low-risk cash. The report refers to there having been a discussion about the reduction of liquid assets but that Mr M had;

> 'confirmed that as you have substantial income over expenditure each month in excess of £4,000.00, therefore you feel you have the ability to absorb any falls in the value of your investment and any loss of capital invested over the short term would not have a materially detrimental effect on your standard of living.'

All the suitability letters were laid out in a similar format as the above. I've reviewed all of them and provide a summary of each below as I think it's important to highlight what was provided to Mr M every time advice was given.

<u>4 November 2022</u>

The suitability letter was written further to a meeting the previous month. Mr M had an additional £25,000 available and was interested in any new VCTs when available. Molten were releasing a new VCT and it was agreed it would be looked at.

Because of his currently held VCTs Mr M wanted to diversify his portfolio and to invest solely in the Molten VCT. He would receive £7,500 tax relief on that investment and £27,825 for the year was aware it wouldn't fully remove his liability for income tax in that year.

The high risk nature of VCTs was again explained and that it had been agreed Mr M was a high risk investor looking for the potential for exceptional returns but he accepted 'this will be at a high risk to capital' and that he was 'comfortable with a portfolio that may be highly concentrated and contain high risk and specialist investments and accept that there may be sharp falls in the value of your investments.'

<u>28 November 2022</u>

The suitability letter refers to meeting with Mr M earlier in the year. Mr M had a further £15,000 available from his cash. Octopus Titan was releasing a new VCT, and it had been agreed the proposition would be gone through.

Mr M wanted to solely invest into Octopus Titan as on top of his earlier VCT investments this would provide greater diversity.

Mr M had a total income tax liability for 2021/2022 of £98,810 and the investment would provide income tax relief of £4,297.50 after initial costs and along with the other investments would give relief of £32,122.50.

Again, the high risk nature of VCTs was stated and the relevant risk warnings were given as well as the fact Mr M's cash position would drop to 11% but that Mr M had sufficient income to absorb any falls so as not to affect his standard of living.

6 February 2023

The suitability report was sent further to a discussion and recommendation given on 26 January 2023 and a previous meeting in the tax year.

Mr M had a further £35,000 available for investment and was looking for new VCT options as they became available. Unicorn was recommended as it was the largest AIM VCT in the market and Mr M wished to diversify his portfolio. Despite there being eight VCTs available on SJPWM's panel he didn't accept the adviser's recommendation to invest into other VCTs and he 'acknowledged the higher risk' because of this but was 'comfortable to continue…' The investment into Unicorn would provide income tax relief of £10,027.50 and along with his other investments he would receive a combined tax relief for the year of £42,140. Post investment Mr M's cash position would be reduced to 11% but Mr M had sufficient income over expenditure to withstand any losses and also had emergency funds of £15,000.

2 March 2023

The March 2023 suitability letter records that a discussion had been had on 27 February 2023. Mr M had a further £32,000 for investment.

Six VCTs were available on SJPWM's panel and Mr M understood the principle of diversification but he wanted to invest solely into Baronsmead VCTs as between the two Trusts it had exposure to 86 quoted and unquoted businesses which would strengthen his overall portfolio.

And investment of £32,000 would give a tax relief of £9,600 and his overall tax relief for the year would be £51,740. Mr M's cash position would be reduced to 10% but his income was sufficient to absorb any falls in value.

Mr M has said that his income in the suitability letters was recorded incorrectly as being a gross salary of £133,000 plus a bonus of £120,000. Mr M has said this wasn't correct as the figure of £253,000 per annum was based on a one-time bonus of £120,000. I've reviewed the earlier suitability letters and note that in March 2022 Mr M's bonus was recorded as being £50,000 and this was increased to a bonus of £120,000 in a September 2022 suitability letter. It remained at that figure for the suitability letters of October and November 2022 and February and March 2023.

Mr M has said the bonus was a one-off annual bonus and has provided his P60 for the tax year to 5 April 2023 which shows base gross income of £110,000 and bonus of £25,000. But Mr M would have known his own level of income if the bonus figure was wrong in the later reports, and clearly, this should have been updated to reflect the actual figure. But the Confidential Financial Review was updated on 4 November 2022 and no changes were made to Mr M's salary at that time – there had been 'no changes to any circumstance[s]'.

And in each of the suitability letters Mr M's current income was detailed in the tax liability calculation and was followed by the statement;

> 'The above calculations are based on current values and information supplied by you and the ability to rely upon these is therefore based upon the assumed accuracy of the information supplied.'

And I also note in the 'Introduction' section of all of the suitability reports they concluded by saying;

> 'In the meantime, if anything within this report is incorrect or you have any questions about its contents or any of the documents I have provided you with, please contact me using the details I have previously supplied you with.'

So, I don't think it would be unreasonable for the adviser to have assumed she was giving advice based on Mr M's correct financial circumstances and that Mr M would have informed her otherwise if any of the information she held was incorrect. Mr M did have the opportunity to correct his annual income during his discussions with his adviser or when he received the suitability letters but there's no evidence that he did so. While I think the adviser could have done more here by questioning Mr M further, but she was relying on the information given by Mr M and which he could have updated when he was aware it was incorrect.

For all the investments its recorded that the source of funds was from cash held. I've reviewed Mr M's cash positions at the times of the advice;

Date of advice	Cash held	Cash as a percentage of total assets
17 October 2022	£100,000	26.07%
4 November 2022	£80,000	20.85%
28 November 2022	£55,000	14.34%
6 February 2023	£85,000	19.83%
2 March 2023	£85,000	17.95%

Mr M's cash levels would inevitably be reduced once invested but I see Mr M's cash position was boosted after November 2022. I assume this came from Mr M's monthly income where he had an excess over expenditure. I note all the letters referred to what Mr M's liquidity position would be if the advice was accepted. As an example, the 6 February 2023 letter said it;

> 'could be seen your liquid assets drop from 19% to 11%, this was discussed and you confirmed that as you have substantial income over expenditure each month in excess of £4,000.00, therefore you feel that you have the ability to absorb any falls in the value of your investment and any loss of capital invested over the short term would not have a materially detrimental effect on your standard of living.'

The same comment, with updated figures, was made in all the suitability letters so I think it would have been clear to Mr M what his cash position would be if he acted upon the advice and could have raised any concerns if he them.

And all the suitability letters recorded that an;

> 'emergency fund of £15,000 is held in accessible cash accounts. I believe that your emergency fund is sufficient for your needs because after highlighting the importance of retaining an emergency fund of readily available cash to cover any unexpected expenditure you may encounter…you confirmed your understanding of this and consider your current emergency fund to be adequate now and will be in the future.'

So, I'm satisfied the affordability of the investment and Mr M's current cash position were always a consideration as was his access to emergency funds.

Overall, I'm satisfied Mr M's primary reason for investing was for exceptional growth and to mitigate his tax position. Opportunities to mitigate tax with investments for higher earners are limited over and above ISAs and pension contributions. As those mainstream ways had been exhausted and Mr M wanted to mitigate his tax, he had to look at other options which would include VCTs along with EISs and Seed Enterprise Investment Schemes ('SEIS') as examples. All of these were created by Government to help small and medium sized company investment by offering tax benefits to the investor but inevitably they attract a higher level of risk.

In all of the suitability letters the high risk nature of the VCTs was laid out clearly and its evident that Mr M returned to SJPWM for further investment advice for any newly available VCTs when he had cash available. This suggests to me Mr M was happy with the recommendations, understood how they worked and wanted to continue.

Clearly a high proportion of Mr M's cash was invested into various VCTs over time. Tax mitigation shouldn't be the primary reason for an investment decision, but VCT investment looks to have been a strategy which – along with pension and ISA investment – Mr M was willing to engage with to receive the tax benefits. Mr M was relatively young at the time of the above investments, so over time, his investments held within his pension and ISAs would have increased proportionately via annual contributions when compared to his VCT investments. Investing in VCTs fulfilled Mr M's investment objective and he could claim tax relief in the year he invested.

Mr M has told us his household income dropped from August 2022 when his wife was no longer working. I can see the Confidential Financial Review document recorded that Mr M and his wife covered monthly expenditure, but all the financial advice was for Mr M alone, and I can't see that Mr M's wife's income was ever considered. If Mr M did recognise that his household income had been reduced and it would impact on the advice given, he would have seen this hadn't been accounted for in the suitability letters sent after August 2022 and could have corrected this with the adviser. But I haven't seen anything to suggest that he did so.

Mr M has said that his investments created a financial difficulty for him and his family, but he hasn't provided any evidence of that. And I note he was investing for a term of five to 15 years – so medium to longer term – and he said he didn't anticipate needing to access the capital. The last investment reduced the cash element of his portfolio to 10% which was £52,000 and Mr M held £15,000 as emergency funds. As Mr M hasn't given me anything to show that he was in financial difficulty and his cash position was intact I haven't seen anything to indicate he was in financial difficulty.

With regard to Mr M saying that he felt pressured to make investment decisions I note the adviser did use phrases such as 'I don't think they'll [the opportunity to invest] be open for long' and 'due to its popularity it won't be open for long' but I can't see Mr M was placed under undue pressure. I think the adviser was just voicing her opinion that if Mr M did want to invest, he should act. And I also note there were other VCTs available to him on SJPWM's panel and that new VCTs were regularly being opened for investment as evidenced by the number of times Mr M invested.

Mr M has said that he didn't meet with his adviser prior to each investment and the investment opportunities were presented to him via email. But it's clear from the suitability letters I have referred to above that Mr M met with his adviser in late 2022 and that advice was given further to that and subsequent phone conversations. The adviser presented Mr M with investment opportunities as and when new VCTs were opened for investment which looks likely to have been his strategy.

In response to the investigator Mr M didn't think his concerns about the adequacy of SJPWM's financial advisory process had been addressed. But as I have said above, the suitability letters reflected what had been discussed and agreed after contact had been made. I can't see that Mr M voiced any concerns about the process of that during the time of his relationship with SJPWM or when he invested, and he had the opportunity to do so. Mr M may now have concerns since he has had the opportunity to reflect on the relationship, but I haven't seen anything to suggest that the manner of the investment recommendations was untoward or that any investment was made without Mr M's understanding and agreement.

In conclusion, I don't uphold Mr M's complaint. I do accept a large portion of Mr M's investible assets were invested into high risk VCTs. But as I have said above, I think that was part of an investment strategy and a risk Mr M was willing and able to take for the potential of capital growth and tax relief.

I appreciate this will come as a disappointment to Mr M – its clear he feels strongly about his complaint – 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, 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 30 May 2025.

Catherine Langley
Ombudsman