

The complaint

Mrs L1 and Mrs L2 complain about the advice they received from St. James's Place Wealth Management Plc (referred to as 'SJP').

Mrs L2 says she was mis-sold the Downing Four VCT plc investment (referred to as the 'VCT') by SJP. In summary, she says:

- Despite being a medium risk investor, she was sold a high-risk investment.
- She's unhappy about the delays trying to exit the VCT.
- She's unhappy about being unable to access the fund, despite holding it for five years.
- She doesn't accept SJP's offer to pay £500 compensation.

To put things right they'd like compensation for losses claimed.

What happened

Mrs L1 and Mrs L2 received investment advice on 3 October 2017, and 18 July 2017 respectively.

At the time Mrs L2 was in her late 40s and Mrs L1 was in her mid-50s, they were both retired, with no dependent children. Their joint net monthly income was £4,606 and their joint monthly expenditure was £4,120. They also had a joint mortgage with just over £140,000 outstanding.

Their investment objective was tax efficiency and capital growth over the medium to long term. They were classed as having a 'medium' risk appetite – also known as attitude to risk (ATR).

Mrs L1 and Mrs L2 were advised to invest £21,052.63 each into an SJP ISA ('ISA'), and £24,947.37 each into a Unit Trust Feeder ('UTF'). Mrs L2 was also advised to invest £20,000 into the VCT.

One of our investigators having considered the complaint thought it should be upheld. In summary, she said:

- The VCT is the only aspect of the advice that Mrs L1 and Mrs L2 received (that related specifically to Mrs L2) that made the advice unsuitable.
- Although it was recorded that the VCT was riskier than the risk Mrs L2 was prepared to take, this didn't make an unsuitable product suitable.
- Mrs L2 couldn't afford to lose money, and certainly not risk losing £20,000 (or £19,000, less fees) to make a tax saving. Her circumstances (including modest tax bill) weren't such that she needed to do this.
- There's no evidence that Mrs L2 understood the risks involved. For example, SJP hasn't explained that she could lose the £20,000.
- To put things right SJP should compare the performance of the VCT (that existed at

the time but was illiquid) with the FTSE UK Private Investors Income Total Return Index, from the date of investment to the date of settlement.

SJP disagreed with the investigator's view and asked for an ombudsman's decision. In summary, it made the following key points:

- The £20,000 investment into the VCT represented approximately 5% of Mrs L1's and Mrs L2's joint investable assets.
- Mrs L2 had a history of investing in risk-based investments, and the joint portfolio contained ISAs and Investment Bonds – along with the VCT – the recommendation was to maximise their ISA allowance and establish UTF accounts to feed subsequent years.
- Although tax mitigation was a factor in advising Mrs L2 to invest in the VCT, it also provided diversification. The risk and return should be viewed in line with the portfolio, rather than in isolation.
- Just because there was a risk doesn't mean that the recommendation was unsuitable. Based on what the investigator says, no one would otherwise invest to mitigate tax.
- Although the VCT was rated as high risk, Mrs L2 signed documentation confirming that she understood the risks associated with this kind of investment.
- It is possible for 5% of a portfolio to be held in a high-risk product and for the portfolio to be a medium risk product – which is the case here.
- The FCA put a limit of 10% in high-risk investments – *“you should put no more than 10% of your total net assets in high-risk investments, with the remainder diversified across a range of mainstream investments. Read our article about how diversification can work for your investments”*.
- Mrs L2 had considerable capacity for loss, and it was clear that she wasn't relying on the £20,000 for anything in particular. Part of her intention was to use the “PCLS” to reduce her mortgage, along with setting aside extra funds for holidays and furniture.
- Having set aside some funds, and having invested in ISAs and UTFs, Mrs L2 was left with £43,258 in cash. So, it was reasonable, for her to invest £20,000 to mitigate tax and “add extra balance to their portfolio”. They were left with £23,258 accessible as cash.
- It's unfortunate that five years passed and the VCT was illiquid and had reduced in value, but these are risks associated with this type of investment.
- It's reasonable to expect the client to read the relevant materials, and understand it, before signing the declaration. In this case, Mrs L2 was aware that she could get back less than she invested.
- The risks explained that VCT companies weren't listed on an exchange, which meant that they were inherently illiquid, and they were only suitable for clients who could afford to lose money. Mrs L2 was given the information which made all this clear.
- There's a degree of hindsight at play here. If the plan had performed better, and was liquid at the five-year point, Mrs L2 wouldn't have felt it necessary to complain.
- The complaint is about the performance of the product which isn't something it can be held responsible for.

The investigator having considered the additional points, wasn't persuaded to change her view. In short, she said:

- Ultimately, Mrs L2 is a medium risk investor, and VCT was a high-risk investment.
- Despite what SJP says about it being 5% of her joint investable assets, Mrs L2 wasn't a sophisticated investor.
- SJP could've looked to balance things out but didn't.
- These investments come with a significant risk, and there was no justification for

selling this to Mrs L2.

I'm aware of some discussion around the VCT being taken over by another company, which was offering to buy back shares. I note the investigator clarified that this might impact the redress calculation she has recommended. She said that as matters stood, because the recommendation was illiquid, SJP should assume the value to be nil but this will change if Mrs L2 manages to sell the VCT, as she will get some money back that will have to be offset from the sale.

In an email dated 19 March 2023 Mrs L2 confirmed that she sold her shares for £6,700 with SJP reimbursing her the £70 selling fee.

As no agreement has been reached, the matter has been passed to me for 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, I agree with the investigator's conclusion. I'm going to uphold this complaint.

On the face of the evidence, and on balance, despite what SJP says, I think the advice to invest £20,000 into the VCT was unsuitable for Mrs L2, given her ATR and capacity for loss. I'm also unable to safely say that she was made aware of the risks involved.

So, to put things right, SJP should compare the performance of the VCT with the FTSE UK Private Investors Income Total Return Index, from the date of the investment to the date it was sold. In the circumstances, I think SJP is entitled to deduct the value Mrs L2 received from the sale of the VCT.

On the face of the evidence, and on balance, despite what Mrs L2 says, I'm unable to safely say that the advice to invest in the ISA and UTF was unsuitable. On balance, I'm satisfied that it met Mrs L1's and Mrs L2's objective for a tax efficiency, and growth. I'm also satisfied that the investments were affordable, in line with their medium ATR and appetite for loss.

I'd like to thank the parties for their considerable patience, whilst this matter has awaited an ombudsman's decision, due to the current demand for our service.

I also recognise Mrs L1's and Mrs L2's strength of feeling about this matter. Mrs L2 has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope they, and SJP, won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

My role is to consider the evidence presented by Mrs L2 and SJP, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case.

I uphold this complaint, in summary, for the following reasons:

- Whilst I appreciate Mrs L2 wasn't risk averse and was prepared to make a risk-based investment, I can't safely say that the (high) risk associated with the VCT – namely that it was suitable for clients who could afford to lose that money – was reasonable for Mrs L2 in the circumstances.
- Given that she was retired, I think Mrs L2 had a limited capacity for loss. Put

differently, I don't think she could afford to lose £20,000 (which isn't an insubstantial amount of money for her), and she certainly wasn't able to replace the loss without difficulty.

- Moreover, just because she might not have earmarked the money for anything in particular doesn't mean that she was comfortable losing that money. I'm mindful that she and Mrs L1 still had £140,000 outstanding on their mortgage.
- Despite what SJP says, I don't agree that this complaint is made with the benefit of hindsight. Given the above, I'm satisfied that the recommendation was – more likely than not – unsuitable for Mrs L2 from the outset.
- It's likely that Mrs L2 just gave the VCT a reasonable amount of time to perform, before making her complaint. This doesn't mean that she was content with the advice she received.
- On the face of the evidence, and on balance, despite what SJP says, I think it's arguable that Mrs L2 ought not to have been advised to invest in the VCT at all given her financial circumstances.
- I think it's more likely than not the ISA and UTF represented a balanced portfolio that was in line with Mrs L2's ATR. Whilst I'm not suggesting that investing anything in high(er) risk is wrong, in this instance, on balance I'm not persuaded that investing in the VCT added “*extra balance*” to her/their portfolio, especially given her capacity for loss.
- Despite what SJP says, in the circumstances I don't think that Mrs L2's potential tax liability (which appears to be a moderate tax liability in any event) justifies the advice to invest in the VCT. I'm also not persuaded that the true risk involved (namely that she could lose all the money, and still have to pay the tax liability she was hoping to mitigate) was explained to her either.
- Given the level of risk, I don't agree with SJP that this is as simple as Mrs L2 knowing that she could get back less than she put in, which is something she would've been aware of given her medium ATR.
- I note it was recorded that the VCT wasn't something that fit with her risk appetite and yet the recommendation went on to be made, despite SJP being under an obligation to only recommend suitable products.
- I've seen nothing to suggest that Mrs L2 was an insistent customer, and that she wanted to invest in the VCT, despite the risks being made clear to her, which I don't believe they were.
- I'm mindful Mrs L2 says that if she was made aware of the risks involved, she would never have invested in the VCT, which I think is probably right – I can't say that she's making this up.
- In the circumstances, and on balance, I don't accept that by merely signing the relevant documentation, in this instance she was aware of the risks involved.
- In the circumstances, and on balance, it's difficult to know for sure what she would've done in the alternative. However, I think it's more likely (than not) that she would've invested in an appropriate risk-based investment.
- So, to put things right, I think SJP should compare the performance of the VCT with that of the FTSE UK Private Investors Income Total Return Index (as suggested by the investigator), from the date the investment was made to the date it was sold.
- In the circumstances, I think SJP is entitled to subtract the value of the VCT that Mrs L2 received (in the sum of £6,700) from selling the shares.

Putting things right

To put things right, St. James's Place Wealth Management Plc should do the following:

- Compare the performance of the Downing Four VCT plc (VCT) with the FTSE UK Private Investors Income Total Return Index, from the date the investment was made, to the date it was sold.
- In the circumstances, I think SJP is entitled to deduct the value Mrs L2 received from the sale of the VCT.
- If the redress isn't paid within 28 days of Mrs L2 (and Mrs L1) accepting the final decision, unless there is a good reason, it should pay 8% simple interest, from that day, to the date of settlement.

My final decision

For the reasons set out above, I uphold this complaint.

To put things right, St. James's Place Wealth Management Plc should calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mrs A to accept or reject my decision before 8 May 2025.

Dara Islam
Ombudsman