DRN-5851943

The complaint

Mr L's complaint against Adviser Business Solutions Limited ("ABS") is about a series of investments he was advised to make between 2011 and 2014.

What happened

On the advice of ABS, Mr L made the following investments, which are the subject of this complaint:

- April 2011 – Mr L invested £15,000 in a venture capital trust ("the VCT")
- March 2013 – Mr L invested £25,000 in a Business Premises Renovation Allowance Scheme ("the BPRA")
- April 2014 – Mr L invested £15,000 in an Enterprise Investment Scheme ("the EIS") and £15,000 in a Seed Enterprise Investment Scheme ("the SEIS").

Mr L complained to ABS in January 2024 about the advice he had been given.
He complained that:

- He had tied up all his savings in the investments ABS recommended to him.
- After more than 10 years, he was still to see a return for the investments, which he had believed would mature after three years or so. He had been trying to boost his money to use in the earlier years of his life and support his future family.
  No individual would tie up all their money indefinitely when they were under the age of 30.
- The investments had not performed as ABS said they would.

ABS didn't uphold Mr L's complaint. They said that while Mr L's investments had the potential to provide returns, he was required to stay invested for a minimum of three years to avoid having to repay the tax relief claimed at the outset. The investments could only be encashed once an appropriate exit point was known.

Mr L brought his complaint to the ombudsman service in April 2024. He said his understanding had been that the investments were tax efficient and would mature in three to five years. He had not been able to withdraw his funds despite multiple requests and had always been told the investments had not finalised and he had to wait. He felt that at best he had been misled and poorly advised, and at worst had simply had his money taken from him.

ABS didn't consent to our service looking at Mr L's complaint as they thought he had brought it outside the time limits that apply. In a decision in July 2025 however I found that Mr L brought his complaint to the ombudsman service in time and that the complaint was one that our service could consider.

One of our investigators considered the merits of Mr L's complaint and thought it should be upheld in part. She didn't think the advice Mr L was given in 2011 was suitable and said ABS should compensate Mr L for that. She found however that the advice Mr L was given in 2013 and 2014 was suitable. In summary, she gave the following reasons for her findings:

2011 advice

- She took account of the tax benefits that the VCT offered but said she couldn't fairly determine if tax mitigation was Mr L's main objective at the time.
- Overall, she wasn't satisfied that the VCT matched Mr L's attitude to risk.
- She thought the adviser should have given greater weight to the fact that a proportion of Mr L's assets would be illiquid and exposed to the risk of capital losses that he might not be able to replace before needing the money for the house purchase that he planned to make in the next five years.
- She was not persuaded that Mr L was made fully aware of the extent of the risk he was taking when balanced against the tax benefits.
- Overall, she didn't think ABS' advice was suitable and didn't think Mr L was given clear enough information about the risk he was taking. If he had been, she thought he would have invested his funds differently.

2013 advice

- On this occasion, the fact find document noted clearly that Mr L wanted to consider investments which provided him with income tax relief and he was willing to adopt a more aggressive approach to planning.
- The BPRA investment met Mr L's objective of mitigating income tax, he was advised the investment was for the longer term, and the fact the investment was high risk was made clear to him.
- The new investment meant that around 24% of Mr L's funds were tied up in high risk assets. She thought that was reasonable for someone with Mr L's attitude to risk and he had the capacity to take the additional risk that the investment carried.

2014 advice

- She thought this advice was suitable as Mr L had additional funds to invest and reducing his income tax liabilities was a key objective for him.
- She was satisfied ABS made clear to Mr L the higher risk and illiquid nature of the investment.
- Although Mr L would now have around 38.5% of his investments in high risk assets, he still had £75,000 of savings in a bank account and cash ISA. These were almost risk free holdings and balanced out his higher risk investments. She was also satisfied his actual risk exposure was lower after he'd claimed the tax relief on the investment.
- She was satisfied that with his increased income Mr L had the capacity to replace any potential losses without significant detriment to his lifestyle.

Neither party accepted our investigator's view. ABS said:

- They disagreed that the advice offered to Mr L in 2011 was unsuitable. There were alternative products offered to Mr L, but he opted for the VCT due to its immediate tax relief incentives, which were not available via alternative investments at the time.

- They appreciated the outcome of the investments was not what they would have intended, however the advice was provided in good faith to Mr L. They believe Mr L understood all the risks involved in making his investments.

- Taking account of the tax relief and dividends Mr L received on the VCT, they calculated his loss on that investment to be £3,708.82. While they did not agree with our investigator's findings, they offered Mr L a without prejudice payment of £5,000 to acknowledge the loss and settle his complaint.

Mr L said that the same adviser had recommended all the investments to him, on the same grounds, and so if one of them was considered unsuitable, they all should be. His attitude to risk was assessed as moderate and the investments fell outside that category. It was never explained to him that his funds could be inaccessible for such a long period of time. He didn't accept the offer that ABS made.

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.

In this decision I will look in turn at the three occasions on which ABS gave Mr L advice and consider whether the advice was suitable at the time. I won't be looking at the advice with the benefit of hindsight – the fact that an investment has performed poorly doesn't necessarily mean that the advice given was unsuitable.

The rules say that a business needs to get enough information from a customer to make sure a recommendation meets their objectives. Before giving advice, ABS should have considered Mr L's financial situation, his knowledge and experience of investing, and his investment objectives. That would include taking account of his attitude to risk, his purpose in investing and how long he wanted to invest for. ABS should also have made sure they communicated information to Mr L in a way which was clear, fair and not misleading.

2011 advice

ABS have provided a copy of the fact find document that their adviser (Mr S) completed as part of his discussions with Mr L. At the time of the advice, Mr L was in his late 20s, single and self-employed, earning about £100,000 a year. His monthly outgoings were just over £1,000, leaving him with a significant surplus of income over expenditure each month.

Mr L had existing savings and investments - £50,000 in a bank savings account, £20,000 in a cash ISA and £40,000 in a stocks and shares ISA. He told Mr S that he was aiming to purchase a house within the next five years.

According to the fact find document, Mr L's main objectives were to discuss income protection and investment planning. It appears that he was initially looking to invest the £50,000 he had in a savings account and was prepared to invest for a minimum of five years. There was a discussion of Mr L's attitude to risk and it was assessed as "moderate" (four out of six on ABS's scale).

Mr S made two recommendations to Mr L. The first was to transfer both his stocks and shares and cash ISAs to a stocks and shares ISA with another provider. The £60,000 ISA would be invested in line with Mr L's moderate attitude to risk. The second recommendation was that Mr L invest in a VCT, which is the subject of Mr L's complaint.

Mr S's advice to Mr L said that VCTs were generally high risk but offered attractive tax reliefs provided he remained invested for a minimum of five years. Mr S said that due to Mr L's risk profile he had focused on VCTs with investment strategies that targeted capital preservation and planned exit strategies. He said the VCT he recommended had a planned exit strategy for five years, a better track record and lower charges than the alternatives. Following Mr S's advice, Mr L invested £15,000 in the recommended VCT.

As I've noted, Mr L's main objectives were income protection and investment planning. I've not seen evidence that tax mitigation was an important consideration for him at this time, or that he was prepared to accept a higher level of risk in order to achieve that.

While the VCT represented only about 14% of Mr L's investable assets, he was putting those funds at a high level of risk and would need to remain invested for a minimum of five years. Mr L had told Mr S that he was aiming to buy a house within the next five years and so the funds invested in the VCT would not be available to him in that timeframe.

Overall, I'm not persuaded that the VCT was a suitable investment for Mr L. I think it exposed Mr L to a higher level of risk than he was prepared to take at that time and also tied up a portion of his assets during a period when he was looking to buy a house. If that had been made clear to him then I don't think he would have agreed to take out the VCT investment. I will set out later in this decision what ABS should do to put things right.

2013 advice

For the 2013 advice, ABS have again provided a copy of a fact find document and a letter from Mr S to Mr L setting out his recommendation.

According to the paperwork, Mr L was now married and had moved into a new property. His annual earnings were recorded as £100,000, which provided a significant surplus of income over expenditure.

Mr L had £50,000 of savings in a bank account, £35,000 in a savings bond and £20,000 in a cash ISA. He also had £40,000 invested in a stocks and shares ISA and his VCT investment, which was valued at £13,000.

According to the fact find, Mr L's objective in seeking advice from ABS was to consider investments which provided him with income tax relief. Mr L's advice letter said:

> "You were primarily concerned about the large amount of tax you paid last year and you would like to consider strategies for reducing your income tax liability for this year. You have recently switched accountants and you expect that your profit levels will equate to approximately £130,000 this year."

Mr L wanted to invest a lump sum of £25,000 and his overall attitude to risk remained moderate. However, the tax planning review document completed by Mr S said:

> "Although you have agreed that your attitude to risk is 4 — Moderate in terms of your overall attitude, you would prefer to adopt a more aggressive approach to these tax

> planning investments. You are willing to accept this deemed higher level of risk due to the tax relief incentives these schemes offer investors."

Mr S recommended that Mr L invest £25,000 in a BPRA to offset a proportion of his income tax liabilities for that tax year. He explained how the BPRA worked and the potential tax relief available to Mr L. He also explained the potential disadvantages of the investment, including its long term nature – it was expected to be eight or nine years before investments were realised - and complex investment structure.

Mr S also explained that the BPRA was an unregulated collective investment scheme (UCIS). He asked Mr L to complete a short 'client suitability' questionnaire in which Mr L confirmed he was happy to take a higher level of risk in view of the tax relief and potential return offered.

I've considered carefully whether the BPRA was a suitable investment for Mr L. His main objective for this portion of his funds was income tax mitigation and the investment met that objective. I'm satisfied that an investment of £25,000 was affordable for Mr L and given that he had no significant expenditure planned, I think he was in a position to tie up such a sum for the long term.

The BPRA was a high risk investment and Mr L was putting all of the capital he invested at risk. Taking account of his existing VCT investment, Mr L would now have about 24% of his assets in high risk investments. That was balanced out by him having about half of his assets in savings and the remainder (his stocks and shares ISA) invested at moderate risk.

Given his cash assets and significant surplus income each month, I think Mr L had the capacity to take a high level of risk with a portion of his assets and I think he was prepared to do so in order to obtain the tax benefits that were a priority to him. So overall, I think the BPRA was a suitable investment for Mr L. I also think Mr L was provided with sufficiently clear and fair information about the investment in order to make an informed decision. I won't therefore be upholding this part of Mr L's complaint.

2014 advice

For the 2014 advice, ABS have provided a copy of letters from Mr S to Mr L setting out his recommendations following their discussions.

Mr L's annual income was now £130,000. He had total savings and investments of £181,622. That was made up of cash savings of about £105,000, £40,000 in a stocks and shares ISA and his existing higher risk investments – valued at £25,000 for the BPRA and £11,622 for the VCT.

Mr L had £30,000 to invest. Mr S's advice letter in February 2014 said that Mr L was a higher rate taxpayer and wanted to consider further tax planning opportunities before the end of the tax year. Following his BPRA investment the previous year, Mr L had said he had further funds to invest for the medium to longer term and he would again like to consider schemes that provided tax relief incentives for investors.

Mr L's attitude to risk was broadly the same as in 2013. Mr S's advice letter in March 2014 said:

> "Although you have agreed that your attitude to risk is 4 - Moderate in terms of your overall attitude, you would prefer to adopt a more aggressive approach in respect of tax planning. You are willing to adopt this higher degree of risk due to the income tax relief incentives these products provide investors. The risks associated with

> Enterprise Investment Scheme and Seed Enterprise Investment Schemes were explained during our meeting."

Mr S considered Mr L's likely income tax liability and took account of his previous investments. He described how EIS and SEIS investments worked and explained in detail the tax relief they would potentially offer to Mr L. Mr S made clear that they were high risk investments and explained to Mr L the different risks associated with EIS and SEIS investments. He recommended that Mr L invest £15,000 in the EIS and £15,000 in the SEIS.

I've thought carefully whether the advice was suitable for Mr L. His main objective was again income tax mitigation and the investments met that objective. I think Mr L could afford an investment of £30,000 and given his circumstances I think he was in a position to tie up such a sum for the long term.

The EIS and SEIS were both high risk investments and Mr L was putting all of the capital he invested at risk. Taking account of his existing investments, Mr L would now have about 37% of his assets in high risk investments. That would leave about 41% of his assets in savings and the remainder (his stocks and shares ISA) invested at moderate risk.

The proportion of Mr L's assets in high risk investments was relatively high and his overall attitude to risk had been consistently assessed as moderate. However, he had also been clear in 2013 and 2014 that he was prepared to take a higher degree of risk with some of his assets to obtain the tax relief that was a clear priority for him. He had significant cash assets and surplus income each month, so I think he had the capacity to take a higher level of risk with some of his assets.

So overall, and taking account of Mr L's clear objective to obtain tax relief through his investment, I don't think I can fairly say that the EIS and SEIS investments were not suitable for Mr L. I'm also satisfied that ABS provided Mr L with sufficiently clear information about the investments, including the risks. I won't therefore be upholding this part of Mr L's complaint.

In summary, I think the advice that Mr L was given in 2011 was not suitable, but on balance I'm satisfied that the advice ABS provided in 2013 and 2014 was suitable for his needs.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mr L as close to the position he would probably now be in if he had not been given unsuitable advice in 2011.

I take the view that Mr L would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr L's circumstances and objectives when he invested.

What must ABS do?

To compensate Mr L fairly, ABS must:

- Compare the performance of Mr L's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

- ABS should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
The VCT	Still exists but illiquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the *actual value* is. In such a case the *actual value* should be assumed to be zero. This is provided Mr L agrees to ABS taking ownership of the investment, if it wishes to. If it is not possible for ABS to take ownership, then it may request an undertaking from Mr L that he repays to ABS any amount he may receive from the investment in future.

ABS may also add to the actual value any available tax reliefs Mr L has received by virtue of making the investment. It may ask him for evidence of this or assume he has availed himself of all available relief at his marginal rate of tax. For ease it can calculate the value of the available relief and add it to the actual value as one figure at the end.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any withdrawal, income or other distributions paid out of the investments should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if ABS totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

The wrapper only exists because of illiquid investments. In order for the wrapper to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by ABS taking over the investment, or this is something that Mr L can discuss with the wrapper provider directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. If ABS is unable to purchase the investment, to provide certainty to all parties I think it's fair that it pays Mr L an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the wrapper to be closed.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr L wanted capital growth and was willing to accept some investment risk.

- The FTSE UK Private Investors Income ***Total Return*** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr L's circumstances and risk attitude.

My final decision

For the reasons I've explained, my final decision is that I uphold in part Mr L's complaint.

Adviser Business Solutions Limited should put things right as I have set out above.
They should provide details of their calculation to Mr L in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 1 December 2025.

Matthew Young
Ombudsman