

## **The complaint**

Mrs B complains about the advice she was given to invest in a venture capital trust ("VCT") by Ascot Lloyd Limited trading as Ascot Lloyd.

## **What happened**

In 2016 Mrs B met with an adviser at Investment Solutions, which has subsequently become part of Ascot Lloyd - for simplicity, I'll simply refer to them as Ascot Lloyd in my decision. Mrs B was initially advised to invest in a pension, but when the adviser realised she couldn't use previous years' unused pension allowances, he changed the advice. He advised that Mrs B invest £40,000 gross into a pension and £40,000 into a VCT, which provided 30% tax relief.

In June 2024 Mrs B complained, as having tried to sell the VCT, she had discovered she could only sell her shares at certain times. A new adviser had also told her that she didn't understand why Mrs B had been advised to invest in the VCT. Ascot Lloyd didn't investigate Mrs B's complaint, as they felt she had made it outside of the time limits allowed in the rules.

Mrs B brought her complaint to our service, and an ombudsman issued a decision over our jurisdiction on 14 March 2025. The ombudsman found that the complaint had been made within the relevant time limits as he found Mrs B would have only had reasonable awareness of cause for complaint in 2023, and she made her complaint within three years of that point. So, he said the complaint was in our jurisdiction, and he passed it back to an investigator to consider the merits of Mrs B's complaint.

The investigator considered the advice given and upheld the complaint. He said that the VCT involved more risk than Mrs B was willing to take and said Ascot Lloyd should compare the performance of the VCT with the amount her investment would be worth now, based on the returns from the FTSE UK Private Investors Income Total Return Index. He also recommended that Ascot Lloyd pay Mrs B £400 for the distress and inconvenience caused.

Mrs B accepted the investigator's opinion and explained that she had been able to sell her shares on 31 January 2025 and received £15,271.13 after fees. Ascot Lloyd didn't accept the outcome but didn't provide any further comments and asked for the complaint to be referred to an ombudsman for a decision. As a result, it was passed to me. I issued a provisional decision on the complaint, because things had moved on since the investigator had sent his view. I said the following.

## **My provisional decision**

*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 conclusion reached by the investigator for broadly the same reasons. As Ascot Lloyd were giving advice, they had certain obligations towards Mrs B. This included making a suitable recommendation, based on Mrs B's circumstances, objectives, investment experience and attitude to risk. The information supplied by Ascot*

Lloyd about their recommendation needed to be clear, fair and not misleading, in order for Mrs B to make an informed decision.

Mrs B first met Ascot Lloyd in November 2016 for an introductory meeting. Following that meeting she was sent a letter that confirmed the reason for the meeting was "Advice is sought to invest your monies tax efficiently". The letter set out that the adviser's initial recommendation was to invest in a pension and to potentially also use her ISA allowance. On 23 March 2017 they met again, and the adviser initially advised Mrs B to invest £80,000 in a pension, but the next day emailed Mrs B to change this advice. This was necessary because he'd realised that Mrs B would only be able to invest a maximum of £40,000 in a pension, and he said:

"Separately, if you wish to consider a VCT you can invest up to £200,000 this tax year (& receive 30% tax relief). The investment is tied up for 5 years and the risk level higher. If of interest, I suggest a short meeting."

I've not been given a fact find or attitude to risk questionnaire from 2016/17, only one from a later meeting in 2018, where her attitude to risk was established as a level 6, out of a possible 10. I can see Mrs B doesn't dispute that her attitude to risk was a level 6 as noted in 2018. So, I find it likely that her attitude to risk was the same in 2016/17 and that was described as follows:

"You are likely to be more comfortable and better able to adapt to losing money on your investments than someone whose attitude to accepting risk is lower, for example, someone in profiles 1 to 4. However, you are probably not as comfortable as someone in profiles 7 to 10..."

As your willingness to accept risk is 'high medium', **you would probably prefer your investment to go up and down less and make more modest returns than risk losing money for higher returns.** However, you are probably prepared to **accept some falls** in order to make higher returns than just investing in low-risk investments. This means that **you could make a loss on the amount you invest, particularly in the short term.** An investment portfolio appropriate for this risk profile may contain, for example, **mainly higher-risk investments such as UK and overseas shares, with some lower- and medium-risk investments such as cash, cash-type assets, bonds and UK commercial property.** While a portfolio like this should rise and fall in value less than a higher-risk portfolio, the value of investments can always go down as well as up."

I've emphasised parts in bold as I consider these important to Mrs B's understanding of the amount of risk she was comfortable with taking. They show she would accept the risk of small falls and that she understood the types of investments involved would be mainstream in nature – which is what was included in the pension. I've also considered the answers she gave in 2018 which led to the level of risk being decided upon. The following stand out to me as they do not suggest Mrs B was willing to lose all the amount invested:

- Mrs B agreed that she would rather know she was getting a guaranteed rate of return than be uncertain about her investments.
- She disagreed with the following statements:
  - "If my investment portfolio dropped significantly in value during the first three months, it would not bother me.
  - I would accept potential losses in order to pursue long-term investment growth.
  - Taking financial risks is important to me.
  - I would be happy investing a large proportion of my income/capital in a high risk investment."

- A fall in value of 0% to 5% in one year would concern her – but if the value of an investment fell by 20% she would wait at least one year before changing to more stable options, and she understands that investments can have occasional negative annual returns.

Based on those answers, and an agreed attitude to risk of level 6, in my view it is unusual for Ascot Lloyd to have introduced the possibility of investing in VCTs. VCT generally involve a significant amount of risk and are more complex than the types of shares most investors have experience in (like FTSE 100 shares and the assets involved in Mrs B's pension).

I can see that Ascot Lloyd set out that Mrs B wanted the VCT because of the tax relief available and was willing to increase the risk she was taking to achieve that, so I've considered whether that was reasonable. It's not unheard of that an investor would agree to increase the risk that they are prepared to take in order to benefit from something they wouldn't otherwise receive, for instance tax reliefs, as was the case here.

However, I'd expect that any decision to increase the level of risk in this way should be made on the basis of clear, fair and not misleading information. This is especially when the increase in attitude to risk results in an investment into a product that is widely considered to involve significant risk of total loss – as is the case with VCT investments. So, I've considered whether Mrs B was in a position to make a fully informed decision here, by carefully looking at the way the investment and the risks involved were described. Ascot Lloyds said that the VCT fell into risk level 8 on their risk scale, which was described as (bold is my emphasis):

"You are likely to be more comfortable and better able to adapt to losing money on your investments than someone whose attitude to accepting risk is 'low' or 'medium', for example, someone in profiles 1 to 6...

As your willingness to accept risk is 'high', you probably concentrate on getting higher returns on your investments. You are willing to accept the **possibility of potential losses to pursue long-term investment growth**. An investment portfolio appropriate for this risk profile may contain, for example, **mainly higher-risk investments such as UK and overseas shares, with very few, if any, lower- and medium-risk investments such as bonds and UK commercial property**. Because of this, there is a possibility you **may not get back as much money** on your investments as you put in, particularly in the short term.

I'm not convinced this is an accurate reflection of the type of risk posed by VCT investments. There's no distinction in the type of shares involved in a VCT compared to those more mainstream shares Mrs B would have expected in her level 6 portfolio – so in my view it doesn't sufficiently explain that a riskier type of asset was involved.

I haven't seen the descriptions of levels 9 and 10 but I consider it likely that a VCT is a higher level of risk than level 8. This is because the definition of level 8 makes no reference to specialised investments or investment in unquoted companies. I consider it to be misleading to investors who are unfamiliar with this type of less mainstream investment, as Mrs B was. I can see the suitability letter issued on 24 April 2017 did set out some of the other risks involved in VCTs - it said:

"VCT investments are significantly higher risk than your average investment due to the nature of VCT as the scheme invest in smaller companies whose shares and securities are not listed on the main stock exchange. You accept this risk in order to obtain a reduction on your income tax liability as well as further associated tax benefits. As such we would categorise a VCT portfolio as an 8/10."

*While it does say the VCTs are significantly higher risk, it doesn't say that there was a risk of total loss. That is a very real risk with VCTs due to the type of companies being invested in, as they tend to be small, untested companies.*

*I also note that a level 8 risk level is just two above Mrs B's original risk level of 6 – so she reasonably would have expected it to involve just a bit more risk than she was taking with her pension. Although the letter sets out that there is a higher risk profile here, I don't think the statements about the risks would have had as much impact as they otherwise might have, had the VCT been described as a higher risk level.*

*I understand that some of the risks involved in a VCT portfolio would have likely been set out in the key features document produced by the VCT portfolio provider (which I haven't been given). When considering what was discussed about risk here, I'm more inclined to concentrate on the documents written by the adviser directly as these are designed to summarise and reflect the discussions held between the parties.*

*For the reasons set out above, I'm satisfied Mrs B's decision to increase the risk she would take, was made on the basis of unclear, unfair and misleading information about the risks involved. So, I've considered what she'd have done differently had Mrs B been given clear fair and not misleading information and to do this I've weighed up the tax benefits against the risk involved.*

*There's no evidence of the amount of tax Mrs B would be paying, or the reasons why she wanted to mitigate it. I can see she was self-employed, and so wouldn't have a clear picture of her liability until later – though it was noted her normal income was £50,000, which meant she was likely a higher rate tax payer, depending on her expenses and any other reduction in her taxable income.*

*There's no evidence that Ascot Lloyd ever clearly and deliberately weighed the benefits of investing to mitigate tax with all of its risks, against the cost of simply paying what was owed, and having the peace of mind that her investment wasn't in something that was riskier than Mrs B had the tolerance for.*

*The income tax relief was a maximum of 30% of the amount invested. While Mrs B was advised to invest £40,000, two initial fees applied, a 2% advice fee paid to Ascot Lloyd which reduced the amount to £39,200 and a 2% initial fee applied by the VCT, reducing the amount to £38,416. I believe she would only get tax relief on that resulting amount invested, so it's likely the income tax relief she could claim was a maximum of £11,524.80. So, her options were to either:*

- Pay the income tax she owed and keep £40,000 to save or invest, or*
  - Put £40,000 in the VCT portfolio to receive around £11,500 in income tax relief.*
- However, the risk involved would be significant and she could lose most or even all of the amount invested.*

*I can't imagine that Mrs B would have risked losing most or all of the £40,000, even for the income tax benefits, had she truly understood the risk involved. I'm satisfied that she didn't have the attitude towards risk to take the level of risk involved here, so I'm persuaded she would have simply paid the tax had everything been set out clearly.*

*So, I'm persuaded that Ascot Lloyd should put Mrs B as close to the position she'd be in now, had the investment not been made. I've set out below how the return on the investment ought to be calculated, assuming that Mrs B would have instead invested this money at a level of risk she was comfortable with. In order for the calculation to be completed, Mrs B will*

*need to provide proof of the amount of tax relief she received by virtue of investing in the VCT within a month of this complaint being resolved.*

*I've also considered the investigator's recommended award of £400 for the distress and inconvenience caused. I agree that by advising her to invest in the VCT portfolio, Ascot Lloyd have caused Mrs B unnecessary distress and inconvenience, particularly in the difficulties she's experienced selling the investment. I'm satisfied compensation of £400 is fair to make up for this."*

I went on to set out that Ascot Lloyd should calculate whether there's been any financial loss by reference to the FTSE UK Private Investors Income Total Return Index. As Mrs B had now sold her shares in the VCT, I said 8% simple interest should be added to any financial loss from the date they were sold, until the date of settlement.

### **Replies to my provisional decision**

Ascot Lloyd replied and said the complaint should be time-barred, as they originally set out, but didn't provide any detail as to why they disagreed with the jurisdiction decision previously issued.

Mrs B replied and provided evidence of her tax liability for the year in question. Upon review of this evidence I let both parties know that there would be a slight change to the redress I had set out, as I was satisfied that Mrs B had provided sufficient evidence of the tax relief received and wouldn't need to do so again after the final decision. Mrs B confirmed she had received the maximum in relief available. I explained to both parties that for the purpose of the calculation, the date of receipt of that relief ought to be considered as 31 January 2018, as that was the last date Mrs B paid tax for the relevant period.

Mrs B agreed with this, and we didn't receive a reply from Ascot Lloyd by the deadline given.

### **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, as I've received no arguments from Ascot Lloyd over the merits of the complaint, I see no reason to depart from the overall decision to uphold this complaint, for the reasons I've set out in my provisional decision above. For completeness, I also agree with the jurisdiction decision dated 14 March 2025 and am satisfied this complaint is one I have the power to consider.

The only difference is to the redress method - Mrs B doesn't need to provide further evidence of the receipt of the tax relief before the calculation can be carried out. I'm satisfied based on Mrs B's submissions that she will have received the maximum tax relief available. I consider that it is more likely than not the amount of relief would have been 30% of the amount invested after fees were deducted, which was £38,416. So, it would have been £11,524.80, rather than the full £12,000 available on a £40,000 investment.

Mrs B received the relief as a reduction on the amount of tax she needed to pay. So, I consider a fair date for the deduction to be accounted for is the last date Mrs B paid tax in the relevant year, as it is effectively the time at which she benefitted from the relief. The evidence Mrs B provided shows that date as 31 January 2018.

### **Fair compensation**

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

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

### What must Ascot Lloyd do?

To compensate Mrs B fairly, Ascot Lloyd must:

- Compare the performance of Mrs B'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.
- Ascot Lloyd should also add any interest set out below to the compensation payable.
- Pay to Mrs B £400 for the distress and inconvenience caused.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
£40,000 in the VCT portfolio	No longer in force	FTSE UK Private Investors Income Total Return Index	Date of investment	31 January 2025	8% simple per year on any loss from the end date to the date of settlement

### **Actual value**

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

### **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 from the VCT, including any tax relief Mrs B received as a result of her investment in the VCT, 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.

The tax relief Mrs B received was the maximum available which, after accounting for the fees, would have been £11,524.80 and it should be deducted from the calculation on 31 January 2018.

### Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs B 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 Mrs B's circumstances and risk attitude.

### **My final decision**

I uphold the complaint. My decision is that Ascot Lloyd Limited trading as Ascot Lloyd should pay the amount calculated as set out above.

Ascot Lloyd Limited trading as Ascot Lloyd should provide details of its calculation to Mrs B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 30 December 2025.

Katie Haywood  
**Ombudsman**