

The complaint

Miss K has complained about the advice she received from an appointed representative of Openwork Limited ('Openwork'). She says the investments were too high risk, she was charged excessive fees and the buy to let mortgage advice wasn't suitable for her.

What happened

Miss K had been a client of Openwork since 2014 and received advice on mortgages and investments. Miss K became unhappy with some of the advice and service she had received and raised various complaint points. Openwork responded several times, but it didn't uphold the complaint. It said the advice to invest into VCTs was suitable as they were affordable and Miss K was willing to accept the higher level of risk for the tax benefits. The fees were explained.

Unhappy with the outcome Miss K brought her complaint to this service. Our investigator who considered the complaint thought it should be upheld in part. He said;

- The rules didn't allow this service to consider Miss K's complaint about buy to let ('BTL') mortgages as they weren't regulated.
- The complaint about the advice given to invest into two venture capital trusts ('VCTs') – which I shall refer to a 'Business F' and 'Business A' in my decision – was made in time under the rules. But he thought the VCTs were too high risk for Miss K and redress should be paid.
- The 2014 advice to invest into a bond – 'Company P' – was suitable for Miss K.
- Miss K had agreed to the fees but those deducted for the VCT investment should be repaid.

Openwork didn't agree with the outcome. It commented that the suggested redress didn't take account of any income/tax relief for the VCTs Miss K may have or may receive. It questioned whether the complaint about the advice to invest into Business F was made within the time limits and in any event that advice was given in 2017.

Regarding the latter point, our investigator remained of the opinion that the complaint was made in time. Openwork still didn't agree so a fellow ombudsman issued a decision that it was made within the time limits.

As the merits of the complaint remain unresolved, it has been passed to me to decide 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.

After doing so, I've reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

Miss K's circumstances

I've detailed these at the different times the advice was given.

In 2014 a Fact Find document was completed which included all Miss K's personal details;

- Miss K was 49 years of age, single with no dependents.
- Miss K was employed and earning £16,680 per year. She had a monthly income surplus of £340.
- Miss K's home was valued at £270,000 and she had other property valued at £260,000.
- She hadn't used her ISA allowance for that year but held stocks and shares ISAs valued at £47,400.
- Miss K had an emergency fund of £50,000.

This was updated in March 2017 when Miss K complaint an Advice Fact Find which recorded that Miss K;

- was self-employed as a property manager earning £25,160 per year and had a net monthly income surplus of £640. Miss K was a basic rate tax payer.
- She had fully invested into her ISA for the year, held £15,000 in a cash ISA, had £50,000 on deposit and she had £83,000 invested in an ISA.
- Miss K had invested £50,000 with Company P by this time and the investment was valued at £49,200 from which she was taking £160 per month in income.
- Miss K had a small personal pension.
- Including the value of Miss K's home, her other properties and savings and investments, her net assets were valued at just under £950,000.
- Miss K had a £4,000 income tax liability for the year.

This was updated the following year in April 2018 when the Advice Fact Find recorded that;

- Miss K's gross annual income had increased to £48,000 but her monthly income surplus stayed the same at £640 and she was still a basic rate tax payer.
- Miss K had bank account savings and emergency funds of £80,000 held on deposit.
- She hadn't used her annual ISA allowance at the time but had sufficient funds set aside to do so. She had a cash ISA of £15,000. Miss K also had an ISA valued at £3,000
- Miss K still held the small personal pension and Business P investment bond from which she was taking the monthly withdrawal.
- Her net assets were now valued at just under £900,000. Miss K had an income tax liability for the year of £12,000.

Miss K's investment objectives and attitude to risk

In 2014 Miss K's attitude to risk and investor experience was assessed which concluded she was a 'Balanced' risk investor which meant she was;

'likely to require an investment that offers higher returns than those available from deposit accounts. You are also likely to accept a certain amount of fluctuation in the value of your investments, based on an understanding that this will be necessary to meeting your long-term goals.'

There was comment about her investment experience;

'Client would be considered an inexperienced investor although having Stocks & Shares ISA's currently with various companies she does not necessarily understand their workings. However, in speaking with my client, they do understand asset-backed investments and how they can go down as well as up.'

In March 2017 Miss K completed Openwork's risk questionnaire. The 'Risk questionnaire result' concluded Miss K was '2 – CAUTIOUS' out of Openwork's risk ratings of one to five with five being the highest risk. Openwork provided a 'Risk profile Summary report' and Miss K answered some further questions. She said she considered herself to be an experienced investor as she managed properties herself and had a financial adviser for two collective funds. As a result, Miss K's 'Selected risk profile' was '3 – BALANCED' and the summary went onto say;

'Client has a cautious portfolio of funds currently with a medium 5 plus BTL portfolio, appetite for growth whilst keep risk lower has lead to a change in attitude to risk on this element of Financial Advice. Client is looking to utilise a generalist VCT which would fall under a Balanced/Slightly higher Attitude to Risk. Client still holds over 50k in [Openwork's model portfolio]...

Summary

You are likely to require an investment that offers higher returns than those available from deposit account. You are also likely to accept fluctuation up and down in the value of your investments as the markets change, based on an understanding that this will be necessary to meet your long-term gains.

As a balanced investor, you will be knowledgeable about financial matters, and show some interest in keeping up to date with them. You may have some experience of investment, including investing in products containing assets like shares and government bonds.

In general, you understand that you have to take investment risk in order to be able to meet long-term goals and are willing to take risk with part of your investments, accepting that the value of them could rise or fall.

Balanced investors will usually be able to make up their minds on investment matters relatively quickly, but do still have some concern when their investment decisions turn out badly.'

And looking at Miss K's answers to the questions asked and her overall circumstances, I don't think her risk rating of 'balanced' was unreasonable. I think it was a fair reflection of her responses to the questions posed. And it's clear she had some investment experience with her ISAs – held with four different managers – and in collective investments/managed funds plus she had sufficient cash.

So, I'm persuaded Miss K was looking for a better return than cash deposits, had some investment knowledge and experience to understand the implications of being a balanced risk investor. And looking at Miss K's financial circumstances I'm satisfied she had the financial capacity to accept some financial loss that could result from a balanced risk investment approach in exchange for the potential of capital growth.

The advice and was it suitable

- *Company P*

In 2014 Miss K was looking to invest over the longer term of ten years plus and could tolerate small/medium losses. She would look to use her ISA allowance during the year but was happy to invest into an onshore investment bond as it;

‘suits clients taxation position as on the cusp of being a basic rate tax payer from rental income the other income is a small carers allowance so extremely unlikely to be a higher rate tax payer.’

Miss K was advised to invest £50,000 into an Investment Plan with Company P to be split between the cautious and growth funds. The plan was to be held within an onshore investment bond tax wrapper which was designed to provide capital growth over the medium to long term and Miss K could take withdrawals of up to 5% each year if she wanted without incurring income tax at the time.

Looking at Miss K’s circumstances and investment objectives, the investment recommendation doesn’t look unsuitable. While it’s noted the growth element (50%) of the investment carried a higher risk than the cautious element this was because of a higher exposure to equities but in summary, the investment was a managed collective investment which reduces the risk and Miss K could take tax free income – which she later did. So, I think it reasonably matched Miss K’s requirements and attitude to risk.

Miss K has concerns about the fees she agreed to and has been charged. For this investment the Suitability Report detailed that for the advice given the fees were to be deducted from the amount invested which was £2,000 or 4% - ‘Please refer to the signed Fee Agreement and Client Proposition brochure for full details of what this fee covers and my on-going servicing commitment to you.’ Miss K signed Openwork’s ‘Fee Agreement.’

I’ve also seen the application for the Investment Plan where the ‘Instructions for Ongoing Adviser Charges’ has been completed by hand and the ‘keyfacts’ document for Miss K’s Investment Plan issued on 2 June 2014. That document makes clear the ‘Set-up Adviser Charge’ as well as all other charges under ‘What are the charges?’ on page four. Again, it makes clear the initial charge made by Openwork and also the ‘Ongoing Adviser Charge’ which was 1% per year and deducted monthly from the plan.

So, as well as the suitability of the investment, I’m satisfied that fees being charged were made clear.

- *Business F*

The March 2017 Advice Fact Find recorded that Miss K’s ‘tax efficiency considerations’ were that she had fully utilised her ISA allowance for the year and made the maximum pension contributions;

‘and likes the tax reducer on the VCT to get some income tax back that you don’t like paying. You understand the 5 year term and you understand the risks associated with these types of investments.’

Miss K was willing to invest £13,000 which left her with £37,000 cash. Miss K was;

‘Happy to go along with the relative increased risk as always accept risk but taking the tax reducer and also looking at your other assets you feel that this easily justified.’

Openwork provided its Suitability Report of 28 March 2017. It outlined what Miss K was trying to achieve with different asset classes and that;

'after discussions decided to take a balanced/adventurous view of the latest tranche of money...'

into the VCT. Details were given about what a VCT was and how it worked and that it was;

'primarily suitable for those investors with a high propensity for risk.'

And I agree that it is generally accepted investment principle that VCTs are high risk investments only suitable for experienced investors with a high risk tolerance. They are niche tax driven investments which invest into small unquoted companies and are often difficult to sell because of their lack of liquidity. They need to be held for at least five years for the investor to retain the initial income tax relief of 30%.

When giving investment advice tax advantages may be a consideration – ISAs, pension contributions etc – but the underlying investment itself still has to be suitable for the investor and I'm not persuaded that was the case here.

I say this because post completion of the updated risk questionnaire it was concluded Miss K still remained a balanced risk investor and despite this the advice she received immediately after that classification exposed her to a higher than medium risk. I accept Miss K had lower risk assets such her ISA and cash, but I think it's likely the reason for the investment into the VCT was primarily for the tax advantages rather than consideration of the suitability of the underlying high risk investment.

And Miss K already had lack of diversification/concentration risk as most of her assets were in BTL properties. They were valued at £1.3m at this time which represented 77% of Miss K's overall assets and inevitably included leveraged debt of £800,000. And I don't think it's unreasonable to consider BTL properties to be illiquid investments and that illiquidity would be replicated in her exposure to the VCT where she had to remain invested for five years so would further increase the risk.

Taking all this into account, I don't think the advice for Miss K to invest into the VCT was suitable for her and this should be put right.

- *Business A*

The April 2018 Advice Fact Find records that Miss K's 'Needs and objectives' were 'Investing for the future' and her 'immediate financial needs, aims and goals' were;

'Client has requested to try and use a bit of tax year end planning to mitigate income tax via a VCT and use a small pension contribution for tax relief. Client income tax bill has increased somewhat due to new regulations around investment property. Wants long term growth. Client off her own back cashed in Platform Investments for cash mainly for a new property project. Circa £80k from ISA and investment accounts. I said this was a bad thing for her to do however [Miss K] did manage to close at market highs. [Miss K] is aware of the 5 year minimum for the VCT. This will run by her previous VCT 2016/17 with [a different VCT].'

The reference to a different VCT – which wasn't the Business F investment – suggests Miss K did have earlier experience of VCT investment and there is reference later on in the Advice Fact Find that Miss K 'likes VCT, did one last tax year also' – which I assume was with reference to the Business F investment.

I also note the Advice Fact Find said that Miss K 'has just cashed in ISA's against my advice and wants something different – we had lengthy discussions and may do ISA later on this

year 2018/19.’ These comments suggest to me that Miss K was capable for making her own decisions without consulting her financial adviser or not acting on the advice given but I comment on this further on.

Openwork provided a Suitability Report on 24 April 2018. And for this advice Miss K’s attitude to risk was recorded as being ‘Adventurous’ which it said Miss K agreed;

‘was an appropriate description, considering the level of risk you are willing and able to take.’

Miss K was able to refer to Openwork’s risk categories if she wished but;

‘for the £30k you are investing into the VCT you felt adventurous for this investment is perfect and you have already been exposed to Higher Risk Investments in the past choosing sector asset backed investments to produce growth while volatile and ran your own single asset class investment (property) for some time.’

I’ve seen Business A’s own ‘Key Information Document’ which risk rates the investment as being three out of seven – seven being the higher risk. If Miss K saw this it might have given her a level of comfort about the risk rating of the investment and while it’s not the role of this service to risk rate investments, this product was still a VCT which are inherently high risk investments. And I note the Key Information Document did say that it was intended for those;

‘...willing to invest in the longer term and be comfortable with higher risk investments, such as unquoted company shares/holding an underlying portfolio of AIM companies who can afford to bear investment losses.’

As mentioned above, while I think it’s likely Miss K did make her own investment decisions or acted against investment advice that was given, when assessing this complaint, I have borne in mind that Openwork was the professional financial adviser in the relationship who was giving Miss K regulated advice. And importantly that included giving advice that suited Miss K’s needs in line with her investment objectives and recorded attitude to risk.

It had previously been agreed that Miss K was a balanced risk investor which was changed to adventurous for this investment without any comment, note of the reason why or that Openwork sought to assess whether Miss K understood what that meant. While Miss K may have been keen to invest again into VCTs it was Openwork’s role to ensure that was suitable for her and advise her against that if necessary. And I’m not convinced that Openwork has been able to show us how it came to the conclusion that Miss K was an adventurous investor, I haven’t seen there was any meaningful engagement with Miss K about the increase in the risk she was willing to expose her assets to – rather it was led by her wish to mitigate income tax – so I can’t be sure she fully understood the high level of risk or was aware of the potential impact that could have on her.

I accept the Suitability Report did provide details of what a VCT was, how it worked, how it was invested and the particular risks relevant to VCTs but I don’t think that obviates Openwork’s regulatory obligations to ensure the investment was right for Miss K in the first place – bearing in mind her attitude to risk – which had just been increased from balanced to adventurous without any assessment that I have seen.

I note that Openwork wrote to Miss K in June 2018 about ‘a few discrepancies against the advice given/paperwork produced...’ That confirmed ‘There have been some recent conversations about your appetite for risk and we have agreed that you’re a Balanced Investor whilst still have some tranches of money invested into Cautious account...’ But

there was no mention about the adventurous attitude to risk recorded for the Business A recommendation other than the inclusion of a charges document Miss K may not have had.

I appreciate Miss K was looking at the potential to invest for tax efficiency, but as I have said above I don't think this should have been done at the expense of all other considerations – including risk. Again, I'd question whether it was the tax element of the investment that led Miss K to the conclusion to invest into the VCTs in the first place rather than Openwork taking an overall view of Miss K's circumstances, requirements and attitude to risk.

Taking all of the above into account, while I think the investment with Company P was suitable for Miss K's balanced attitude to risk, for the two VCT's I think Miss K was exposed to too high a risk when taking all of her circumstances into consideration. It follows that I partially uphold Miss K's complaint.

I see from correspondence with Openwork Miss K wanted information about the fees for her pension investments. I can't see there was any complaint about the investment advice itself, but I have looked at whether the costs of the advice was made clear for the investments made in 2016 and April 2018. I've seen the 'Existing Pension Tax Wrapper' letter of 24 April 2018 which details the adviser's initial fee for the top up amount as well as the ongoing fee and which included the product provider's charges information document. I haven't seen the 2016 advice letter, but all the other Suitability Reports/letters do include similar breakdowns so I think it likely the same information was included for the earlier advice.

So overall, I am satisfied the costs of the initial advice fees was made clear as was the ongoing advice fees for all the investments. However, for the VCTs as the fees were taken out of the sums invested, the redress will take account of that and will be returned to Miss K in any event.

Regarding the redress, Miss K has said but for the advice she was given to invest into Business F and Business A she would likely have purchased more BTL properties within her own limited company as this had always been her intention. While I appreciate what Miss K has said, and she clearly was active in the BTL market, but for redress purposes it can't be known for sure what she would have done or what BTL purchases she would have made.

And my role isn't to retrospectively say what the suitable advice would have been. There were many ways Miss K could have invested and it's not possible for me to now say precisely what she would have done. So, in line with our long-standing approach, I think it's more appropriate to use a benchmark to assess the type of return Miss K would have been able to achieve with suitable advice. And to be fair to the parties the redress method also takes into account any benefit Miss K may receive from those VCTs – withdrawn dividends, tax benefits etc.

My understanding is that the Business A investment has been taken over but Miss K has sold the Business F investment. Miss K may need to engage with Openwork to provide any information it might require for redress purposes.

Putting things right

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

I take the view that Miss K 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 Miss K's circumstances and objectives when she invested.

What must Openwork do?

To compensate Miss K fairly, Openwork must:

- Compare the performance of each of Miss K's investments with that of the benchmark shown below.
- A separate calculation should be carried out for each investment.
- Openwork 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
Foresight VCT	No longer exists	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	Pay 8% simple interest per year on any loss from the end date to the date of settlement
Amati VCT	Still exists but illiquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my final decision	Not applicable

For each investment:

Actual value

This means the actual amount paid or 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 Miss K agrees to Openwork taking ownership of the investment, if it wishes to. If it is not possible for Openwork to take ownership, then it may request an undertaking from Miss K that she repays to Openwork any amount she may receive from the investment in future.

Fair value

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

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Openwork should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other payment out of the investment 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. Any tax benefits Miss K received from the VCT should be treated as a payment out of the investment and as paid on the date Miss K received the financial benefit (for example, the date she would otherwise have had to pay extra tax).

Openwork must pay the compensation within 28 calendar days of the date on which we tell it Miss K accepts my final decision.

If Openwork fails to pay the compensation by this date, it should pay 8% simple interest per year on the loss, for the period following the deadline to the date of settlement.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Miss K wanted Capital growth with a small risk to her capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.
- 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.
- I consider that Miss K's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Miss K into that position. It does not mean that Miss K would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Miss K could have obtained from investments suited to her objective and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

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

Openwork Limited should provide details of its calculation to Miss K in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 6 March 2026.

Catherine Langley
Ombudsman