DRN-3536562

The complaint

Mr and Mrs G complain they were given unsuitable advice to invest in Enterprise Investment Schemes ("EIS") and Venture Capital Trusts ("VCT") by St. James's Place Wealth Management Plc ("SJP").

What happened

Mr and Mrs G were existing clients of SJP, when they received advice to invest in a range of EISs and VCTs between September 2018 and April 2020. These investments totalled approximately £850,000.

Following concerns with the performance of their investments and several issues regarding the actions and behaviour of their advisors, Mr and Mrs G complained to SJP in 2020.

This service has already considered an initial complaint regarding most of these issues. However, a subsequent complaint was raised about the suitability of the advice to invest in the EISs and VCTs. Mr and Mrs G also said that information regarding the risks and charges relating to these investments hadn't been made clear and that a delay in investing funds had caused them a loss in regard to tax relief in the 2018/19 tax year.

SJP responded to these complaint points in January 2022. They said they were satisfied the recommendations given met Mr and Mrs G's objectives and were affordable and with sufficient diversification. They also believed Mr and Mrs G had sufficient cash reserves and capacity for loss. They felt the charges had been explained sufficiently and that no guarantee with regard to the immediacy of investment was given.

Mr and Mrs G remained unhappy and the case was passed to one of our investigators for an independent review. He looked into it but felt the advice given was suitable for their circumstances and needs at the time. He also felt the documented evidence showed that the charges and possible delay in investing had been made clear.

Mr and Mrs G didn't respond with any specific comments but they confirmed they didn't accept the view of our investigator and so the case has been passed to me to decide.

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've focused on what I consider to be the pertinent points. That isn't meant as a discourtesy, it simply reflects the informal nature of our Service. I've set out the key issues I think are important here. And I've answered them below in turn.

<u>Suitability of the advice to invest into the EIS and VCT</u>

As SJP were giving advice in 2018, 2019 and 2020, they had certain obligations towards Mr and Mrs G. This included making a suitable recommendation, based on Mr and Mrs G's circumstances, objectives, investment experience and attitude to risk. The information supplied by SJP about their recommendation needed to be clear, fair and not misleading in order for Mr and Mrs G to make an informed decision.

The conversations between SJP and Mr and Mrs G regarding the VCT and EIS began in 2013 when they spoke to their adviser about how they'd be able to mitigate capital gains tax (CGT) and income tax (IT). The couple had a pre-existing relationship with their SJP adviser, so the adviser was already somewhat familiar with their circumstances, including investment experience and attitude to risk.

I have been provided with copies of the fact finds and suitability letters from each of the recommendations. These show that Mr and Mrs G were 43 and 35 respectively, with a joint annual income of £335,000 and dividend income of a further £40,000. They held a range of investments including ISAs and unit trusts with a joint value of approximately £750,000. They had approximately £200,000 in cash and were recorded as having over £3,000,000 in other assets.

Whilst Mr and Mrs G's attitude to risk and investment experience prior to this point had been recorded as medium, from September 2018 they were recorded as being willing to take a higher risk in order to achieve the potential tax relief offered by the EIS and VCT. Prior to each investment they signed a specific declaration confirming they were aware of the higher risk and illiquid nature of the investments, that they might get less than they put in and that the legislation around the tax relief could change.

They were advised to disinvest from their ISAs and UTs and make the following investments. £100,000 into an EIS in September 2018, £200,000 into a VCT December 2018, £150,000 into an EIS in December 2018, £75,000 into a VCT in September 2019, £225,000 into an EIS in November 2019 and £125,000 into a VCT in April 2020.

Having considered all of this, and their objectives of investing in the most tax efficient way and reducing their income tax liability. I haven't seen enough to conclude that these recommendations were unsuitable.

Mr and Mrs G have also said that they were guaranteed growth rates during the meetings with the advisors. They have said that the investments were mis-sold as they wouldn't have made them if they had known the growth rates given were not accurate. However, other than their testimony, I don't have anything to substantiate this. The product literature given at the time doesn't make any guarantee and the declarations given above which were signed, explained that they might make a loss. Based on this, there isn't enough for me to conclude that any guarantee was given and as the investigator explained previously, whilst it is clear the complaint was triggered by Mr and Mrs G's unhappiness when reviewing performance, that isn't something I can comment on.

SJP have offered Mr and Mrs G £200 as a gesture of goodwill and apology for the time it took them to respond to these concerns. I think that's fair in the circumstances and considering the impact it had.

Disclosure of charges

Mr and Mrs G have also complained that these investments included additional charges that were not made clear to them.

As well as the initial advice charges, these investments incurred an ongoing charge applied by the provider. Mr G has said this wasn't made clear to him and he has said he thought he was just paying the initial charge. However, the documentation I have been provided with appears to evidence the ongoing charges sufficiently.

Each suitability and recommendation letter states the applicable *"total ongoing charge*". In particular, the September 2018 letter stated, *"the new plan will have higher ongoing charges than your existing arrangements".*

I think SJP did enough to make these charges clear and prominent in the documentation. There was a responsibility on Mr and Mrs G to read this and query it if they had any concerns.

Delays in investing the funds

Mr and Mrs G have also raised concerns that one of the EIS they invested into following a recommendation in December 2018, wasn't made until the 2019/20 tax year. They have said this had ramifications in regard to Mr G's IT liability.

However, I don't find SJP responsible for the time it took. The application and deposit of funds was made with the EIS provider in a timely manner.

The suitability and recommendation letter that Mr and Mrs G were provided with, stated that *"due to the way in which EIS investments are structured, the money invested might not be invested immediately and this may delay the tax reliefs available. It can typically take 12 – 18 months to invest your subscription in underlying unquoted companies but it can take longer depending on the business proposals available to the investment manager".*

The EIS brochure also stated, *"funds may be held with the Depositary for a target period of 12 months before being allotted into Investee companies, but may be extended at the discretion of the Manager. There is no guarantee the shares will be allotted in the same tax year as the relevant Subscription Deadline".*

Unfortunately, this is how EIS investments happen and there can be a delay. I know Mr G says this caused an increased liability, but I can't see anything from the information provided to me, to suggest that he wasn't told this might happen.

In summary, having reviewed all the submitted evidence in line with Mr and Mrs G's circumstances and needs at the time, I am satisfied the SJP recommendations were suitable and that the charges were made clear. I also don't hold SJP responsible for the time it took the EIS investments to qualify for the tax relief.

My final decision

My final decision, for the reasons set out above, is the offer already made by St. James's Place Wealth Management Plc of £200 to put things right is fair. St. James's Place Wealth Management Plc should pay this to Mr and Mrs G if they haven't already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 12 January 2024.

Yoni Smith

Ombudsman