DRN-2542163

The complaint

Mr E complains that Oxford Capital Partners LLP ("Oxford Capital") provided misleading information about the Enterprise Investments Scheme (EIS) he invested in.

What happened

Mr E invested £100,000 in March 2015 in Oxford Capital's Infrastructure EIS. The EIS was focused on investment in renewable energy projects and other infrastructure assets. Mr E made the investment following advice from his financial adviser who is representing Mr E in bringing this complaint.

Mr E's funds were spread across three companies with EIS qualifying status. By April 2019, Mr E's portfolio was valued at £581.17, not including any associated tax reliefs.

Mr E complains that:

- Oxford Capital presented the EIS as being relatively low risk for investments of this kind, but that was misleading.
- The Information Memorandum (IM) said the EIS was invested in real assets, but it was actually backed by debt. The document said there might be an "occasional" need for companies to borrow for operational purposes, but such borrowing seems to have been part of the investment strategy.
- He wasn't told about any difficulties with his investment until May 2019 and, by that point, Oxford Capital had pursued a strategy which made things worse rather than giving investors the opportunity to minimise their losses.

Oxford Capital have said, in summary:

- EIS investments are always high risk. The risks and potential for loss were clearly set out for Mr E in the IM before he invested.
- The use of leverage as part of the investment strategy was clearly described in the IM.
- They have managed the EIS as set out in the IM. They provided regular reports to investors and so Mr E should have been aware of the challenges the EIS companies were facing and how they were responding to them.

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.

Oxford Capital were not responsible for giving advice to Mr E about his investment. So, it wasn't for them to decide whether the risks and other features of the EIS were suitable for him.

Oxford Capital were responsible for providing information to Mr E, and his adviser, about the EIS and for managing his investments. The IM gave Oxford Capital the mandate to make decisions on behalf of Mr E and so Oxford Capital had to ensure their actions were in line with the strategy set out in that document.

In this decision I've therefore looked at whether the information Oxford Capital provided to Mr E and his adviser was clear, fair and not misleading. I've also considered whether Oxford Capital managed Mr E's investments in line with the mandate given by the IM.

Risk

Mr E says Oxford Capital portrayed the fund as being relatively low risk for an EIS because it was invested in real assets.

There were references to risk in the 'Important Notice' on page 2 of the IM. It said:

> *"The Oxford Capital Infrastructure EIS will invest in unquoted securities. Such investments can be more risky than investments in quoted securities or shares and market-makers may not be prepared to deal in them. Unquoted securities may be subject to transfer restrictions and may be difficult to sell. It may be difficult to obtain information as to how much an investment is worth or how risky it is at any given time. Investing in private companies may expose you to a significant risk of losing all the money invested."*

The final paragraph of the notice described investing in the EIS as *"speculative and involves a significant degree of risk".* It then drew attention to the section of the document about risk factors.

The relevant section of the IM (pages 16-18) described a range of risks that the EIS carried. It said the investments were subject to the kind of operational and financing risks associated with infrastructure assets. The EIS companies were at different stages of maturity and so subject to development risks. The investments could also be exposed to other management and tax risks.

Under the heading 'risks to capital' it said:

> *"You should only consider subscribing if you are able to bear the risk of losing your entire investment.*
>
> *It is possible that we may not achieve our targeted returns when the investments are sold, or that one or more of the companies in your portfolio may fail, resulting in your shares being sold for substantially less than their original cost, or returning no value at all."*

I think the IM explained clearly the risks of the EIS and the potential for capital loss. An EIS is generally a high risk investment and I'm satisfied Oxford Capital made that clear in the IM.

The IM said a core principle of the fund was that investments should be asset backed. That helped to explain the fund's investment strategy, but I don't think it was intended to indicate it was necessarily lower risk than other EIS investments.

Use of debt

Mr E thinks Oxford Capital provided misleading information about the use of debt by investee companies. He says it was mentioned that companies might occasionally borrow for operational purposes, but it’s clear that borrowing was part of Oxford Capital’s strategy. He thinks the investments were backed by debt and not real assets as promoted.

As I’ve already noted, the IM explained that one of the core principles of the of the fund was that investments should be asset-backed. It said: “we only subscribe for shares in companies which own and operate real assets.”

Oxford Capital say that due to the limit on EIS funding that a company might receive, companies which operate larger projects may require additional finance. They have said that, while the IM was not expected to go into great detail about the types of finance structure that would be used, the use of debt was clearly described. The loans taken were in line with competitive market rates and the decision to borrow was made by the boards of the EIS companies following due diligence and financial modelling.

The part of the IM that is in dispute is in the section on investment risks, under the heading ‘operational and financing risks.’ That section includes the following:

> *“Investee companies may occasionally use debt or other types of finance to service their short and medium term operational needs.*
>
> *The Oxford Capital Infrastructure EIS does not take on long-term bank debt. However, debt or other types of finance may be considered by investee companies for short- and medium-term financing needs.”*

Oxford Capital have said the above text clearly refers to two different types of debt. The reference to “occasionally” related to debt for short and medium term operational needs – for example, if operating funds were insufficient to pay an unexpected bill. Oxford Capital have said the use of such debt by investee companies was very occasional.

The second type of debt described was for “financing needs”. Oxford Capital say this included debt for construction and other capital finance, not day to day borrowing. And they have said fewer than half the investee companies in the fund used debt for capital outlay.

The text I’ve quoted above is in the section of the IM that described the operational and financing risks to investors. Neither that section nor the IM as a whole are intended to provide a detailed description of the EIS companies’ financial strategy. But I think it was made sufficiently clear that debt may be used for financing needs. And I don’t think that was inconsistent with the fund overall being invested in infrastructure assets, or real assets.

I don’t think Oxford Capital acted unfairly or unreasonably by wording the IM in the way they did. And I think the level of detail provided on this point was appropriate to an IM document.

From what I’ve seen, it appears that under half of the investee companies used debt for their short and medium term financing needs. I think that’s consistent with the IM saying that debt “may be considered”.

Mr E has complained that all three of the companies he was invested in used debt in that way, so all his funds were exposed to the same risk. He says the three companies (and others in the fund) failed due to being unable to service their debts or obtain borrowing to carry out their investment strategy.

The process for allocating individual investors' funds to investee companies was set out in the IM. It said the timing of an investor's subscription would determine the assets into which their capital would be invested. Oxford Capital would aim to invest an individual's funds in more than one company to diversify but it was possible that the companies may be in the same sector or in certain circumstances that funds may invested in just one company.

Mr E's funds were invested in three different companies, in line with the process described in the IM. The fact that each of the companies later used debt for their financing needs does not mean Oxford Capital did anything wrong when they allocated Mr E's funds. Oxford Capital had no operational control over the companies. And as I've already concluded, I think the use of debt for financing was one of the risks explained to investors in the IM.

I note too that Oxford Capital have said the companies didn't fail because they were unable to service their debt or raise borrowing. They failed because of the realisation of several key risks, particularly legislative change and the withdrawal of revenue streams, and operational challenges. The failure to service their debts was a symptom of their difficulties not the cause of their failure.

Keeping investors updated and response to difficulties

Mr E has complained he wasn't informed of the investee companies' difficulties until 2019. He also says the legislative changes that affected the companies were first proposed in 2016 so Oxford Capital could have withdrawn from the affected projects at that stage. Instead they pursued a strategy that made things worse.

Oxford Capital provided investors with annual reports on the EIS. I've seen a copy of the reports produced in 2017 and 2018, which would have been sent to Mr E. The reports explain the challenges facing each of the markets the EIS companies were operating in and how the companies were responding to those challenges. Although the reports weren't intended to provide a detailed analysis of each company, I think it should have been clear to Mr E how developments in the market were affecting the companies he was invested in.

When Mr E invested in the EIS he agreed that Oxford Capital would manage the fund on the terms set out in the investment management agreement. In effect Oxford Capital provided an investment management service and had a mandate to make investment decisions on behalf of investors. The IM explained how the fund would be governed, how decisions would be made and how the risks would be managed. It explained that investors' capital would generally be tied up for a minimum of four years, after which Oxford Capital would look to realise the gains from them.

Based on what I've seen, I think Oxford Capital managed Mr E's investments in line with the mandate given in the IM and reported to Mr E as required.

Summary

I'd like to reassure Mr E that I've looked carefully at everything he's said, including on points he said he didn't want to pursue after our investigator's view.

I'm satisfied the IM explained how the EIS would work and was sufficiently clear on the level of risk to investors. I think Oxford Capital made decisions in line with the mandate set out in their agreement with Mr E. I can understand why Mr E feels strongly about what has happened to his investment, but I don't think I can fairly hold Oxford Capital responsible for his losses.

I realise this will be a very disappointing decision for Mr E, but I won't be upholding his complaint.

My final decision

For the reasons I've explained, my final decision is that I don't uphold Mr E's complaint against Oxford Capital Partners LLP.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 1 June 2021.

Matthew Young
Ombudsman