

The complaint

Mr D complains that Oxford Capital Partners LLP ("Oxford Capital") gave misleading information about an Infrastructure Enterprise Investment Scheme ("IEIS") and raises concern about management of the investment.

What happened

In March 2015, Mr D invested £100,000 into the IEIS with Oxford Capital, Mr D says he sustained a capital loss of around £94,140.50, for which he seeks compensation.

Mr D says he was misled about the level of risk exposure and maintains that the Investment Memorandum ("IM"), failed to highlight the product was high risk. Mr D was concerned that investors stood to face a total loss of capital without the benefit of similar gains. Mr D also raised concern about the level of debt taken on by the investee companies and submitted that it was misleading to say debt was being used for the short to medium term. Further, where the debt was high, the equity could not be said to be asset backed. Mr D also raised concern about the general performance of the fund and the quality of the management of the fund. Further, Mr D complained that Oxford Capital had charged full fees, when the impact of legislative changes ought to have been reflected earlier in the valuations of the companies.

Oxford Capital say that this was the third tranche of EIS investment by Mr D. They acknowledge that performance of this particular investment was disappointing. Funds were split across three investee companies, two concerning reserve power and the third anaerobic digestion. Oxford Capital say that reserve power was impacted by removal of the TRIAD system, suspension of the Capacity Markets both in 2018, the drop in wholesale energy prices and the changes to EIS qualifying status, which impacted the onward sale value of the companies. Oxford Capital maintain that these factors were outside their control, but the risks associated with the IEIS and potential for losses were set out in the IM.

Oxford Capital also say that IM made clear that the companies might use debt, where the use of debt for capital financing or other operational reasons was highlighted. They maintain that the IM also set out the possibility of short or medium-term financing, such as capital outlay or construction finance. Funding above the EIS limit could be sought to scale a project at the outset and industry research had predicted growth in the sector so as to meet the debt over time.

Oxford Capital explained that appropriate due diligence was undertaken before the investment was made, experts provided forecasts on electricity demand and pricing and a committee reviewed the proposals. Removal of revenue streams had a significant impact on the industry as a whole as well as the particular investee companies and despite strategy changes the companies could not be turned to profitable operation. Oxford Capital denied any mismanagement of the fund, rather they said several identified risks had materialised.

Our investigator considered the complaint and decided not to uphold it. She thought Oxford Capital had invested in line with the IM in selecting three companies aiming to own and operate assets in renewal energy projects and noted the objective of providing tax relief was also met with these investments. Our investigator highlighted that in addition to the income

tax relief already availed of, Mr D might also have the opportunity to claim loss relief.

Having considered the IM and Investment Management Agreement, our investigator concluded that appropriate risk warnings had been given sufficient prominence, highlighting the risk that Mr D stood to lose all his capital. The losses sustained by Mr D resulted from a combination of the highlighted risks materialising and this wasn't reasonably foreseeable at the time of investment.

As to debt, our investigator thought Oxford Capital had highlighted the use of debt in the IM, whereby financing for capital outlay and construction finance fell within the financing needs of the investee companies. Our investigator highlighted that all the companies suffered as a result of the legislative changes within the energy industry, regardless of whether they had incurred debt. Further, she thought there was nothing to show that fees had been applied incorrectly. The level of fees was set out in the IM and were calculated as a percentage of the net subscription. Performance fees were only collected if there was a net profit and after the net subscription was repaid (which did not happen in this instance).

Mr D disagreed with the outcome. He maintained that the IM did not use the term "high risk" and the documentation was misleading given the high level of gearing at the very outset. Further, the description of "asset-backed" was misleading given that the assets were secured against debt at the outset.

As the parties do not agree, the matter has come to me for a final decision.

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.

At the outset I think it's helpful to be clear that as Mr D's financial adviser (IFA) recommended investment into this IEIS, this decision does not consider whether that recommendation was suitable for Mr D's attitude to risk, objectives and capacity for loss at the time. Any such complaint about suitability of the recommendation lies against the provider of that advice. The investment agreement, signed by Mr D, expressly stated that Oxford Capital were not providing advice as to the suitability of the investment as against Mr D's needs.

It's clear that Mr D is disappointed with the performance of this investment. Having read all the information provided, I hope Mr D won't take it as a discourtesy that I haven't addressed every point raised. I've concentrated my findings on what I consider to be the key factors in reaching a fair and reasonable outcome. So, the focus of this decision is whether Oxford Capital provided clear, fair and not misleading information about the particular investments within the IEIS and whether it was managed in line with the mandate during the period that Oxford Capital was responsible for managing it.

Risk

It's helpful to highlight the distinction between an investment strategy and the risks pertaining to a particular investment. I have reviewed the IM from the time. The aim of the investment was to return the capital sum with a target return equivalent to 1.1x to 1.5x of the net subscription and to provide a range of tax benefits. That relatively low growth was targeted does not automatically mean that the risk exposure was lower. EISs are non-mainstream, complex and illiquid, specialised and speculative investments, where there is a real risk of losing the original capital investment. It is this risk, which justifies the tax benefits and Mr D has been clear that tax efficiency was central objective in making the investment.

Whilst I agree that the phrase "high risk" was not expressly used within the IM, I consider that the totality of the following risk warnings made it clear that this was an investment where Mr D was placing *all his capital* at risk and on balance, I consider that it is more likely than not that reasonable warning was provided about the higher risk profile of this IEIS.

On the first page under "Important Notice":

"The Oxford Capital Infrastructure EIS will invest in unquoted securities. Such investments can be more risky than investments in quote 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. . .

Investing in the Oxford Capital Infrastructure EIS is speculative and involves a significant degree of risk. The attention of prospective investors is drawn to the contents of the section in this document entitled 'Risk Factors' "

Immediately under the "Risk to Capital" heading 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. "

The risk section also highlighted a number of other risks, including the potential for changes in or withdrawal of legislation and the risk of fluctuation in power prices, impacting annual revenue. Development risks, particularly surrounding those companies in the development phase of an infrastructure project were highlighted. Liquidity risks, whereby exit from the investment could be delayed considerably beyond the three year were also clear. Operational and financing risks were also set out.

On balance, I am satisfied from the information provided that Oxford Capital provided clear, fair and not misleading information about the risks of the investment and I'm persuaded that the risks were fairly highlighted. I'm not persuaded that Mr D has shown otherwise. I'm satisfied that Oxford Capital made a distinction between investment strategy with a target return and the inherent higher-risk nature of this investment.

Debt

As addressed above, the IM set out operational and financing risks, in which it was highlighted that investee companies may use debt or other finance to service short and

medium-term operational needs. Further, investee companies may use debt or other types of finance for short or medium-term financing needs, where it was possible that finance providers would have priority over shareholders in the event of an asset distribution arising from liquidation.

Oxford Capital have confirmed that two of the three investee companies took on debt. They've explained that construction finance and working capital start-up finance were taken in the short-term, with the aim to move to lower rates once the energy plants were fully operational, a medium-term debt, to be paid off from projected cashflows. The aim then being to sell each company to enable investors to exit. So, on balance, I'm not persuaded that the information in the IM was unclear or misleading as to the possibility of investee companies taking on debt. And Mr D or his IFA had the option to seek clarity about the particular assets that the funds would be invested into, the IM said, in the Strategy section, *"The timing of your subscription will determine the assets into which your capital is invested. If you would like more information about the next assets in which we are proposing to invest, please call us."*

It's also important to consider in context that Oxford Capital had sole discretionary management, which meant it was for them to make legitimate commercial decisions and no guarantees were given as to which of the forty-nine underlying investee companies individual investors would invest into.

Whilst I agree that the use of debt was a risk factor, it was addressed in the information provided by Oxford Capital. The possibility of investee companies failing, with a full capital loss was also made sufficiently clear as set out above, as was the possibility of finance providers outranking shareholders in the event of liquidation of an investee company.

Assets

Mr D has suggested that misleading information was provided about the IEIS being asset backed. The IM explained at the outset that investor's subscriptions would be, *"used to acquire shares in one or more EIS qualifying companies which in turn will own, operate and maintain revenue-generating infrastructure assets."* The IM expressly stated, *"Investments should be asset-backed. In other words, we only subscribe for shares in companies which own and operate real assets."* And went on to say, *"... we aim to invest in companies which develop or own assets..."* The risks section further explained, *"The Oxford Capital Infrastructure EIS invests in companies at different stages of maturity, ranging from companies that are yet to purchase or install their infrastructure assets, to companies that are already operating and generating revenues."*

Each of the investee companies was involved in construction or operation of energy plants developed to generate revenue. That finance was required to undertake construction and/or support the initial stages of operation was addressed as a risk factor within the IM as set out above, but that did not detract from the fact that investment was into physical assets. So, on balance, I'm not persuaded the information provided was misleading and it was open to Mr D to seek advance clarification about which investee company funds were likely to be invested in.

Investment in line with the mandate

Having reviewed the evidence, I am satisfied, on balance, that Oxford Capital did investment Mr D's funds in line with the mandate. The objective of tax efficiency was met. I note from the application form that Mr D's main objective at the time was to secure tax benefits. In my view it wasn't unreasonable for Oxford Capital to place reliance on third-party expert information when it made investment decisions about the investee companies and I'm satisfied that

funds were invested into energy companies in line with the information given in the IM.

It's unfortunate that a combination of the risk factors identified in the IM materialised but I haven't seen anything to show that Oxford Capital ought reasonably to have foreseen this at the point Mr D invested in 2015. The wider landscape with changes to legislation and falling energy prices were matters outside of Oxford Capital's control and the illiquidity risks had been clearly highlighted.

Fees

Mr D raised concern about that full fees were charged, noting that the value of the respective investee companies only reflected the impact of legislative changes in 2018.

The IM and IM Agreement explained that a 1.5% annual management charge (AMC) applied, calculated on the net subscription not on the value or notional value of the investee companies. I haven't seen anything to show that an error was made in the application of the AMC. Further, no performance fees were paid as the success criteria wasn't met.

My final decision

I'm sorry to disappoint Mr D but for the reasons given, I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 18 January 2023.

Sarah Tozzi
Ombudsman