

The complaint

Mr M complains about investments St. James's Place Wealth Management Plc (SJP) advised him to make in 2016 in three Enterprise Investment Schemes (EISs).

In particular he complains the schemes were fundamentally defective because they didn't deliver the tax benefits of an EIS, even though SJP told him its fees were high because it had an expert panel that vetted the schemes. Also the schemes performed terribly.

What happened

Our investigator's assessment set out the complaint background. In brief, SJP advised Mr M to invest £600,000 across three different schemes and pay £25,000 in charges for these.

Mr M had monthly expenditure of £2,500 and a monthly income of £19,000 from employment and investments. He had several million pounds in cash, £500,000 in a pension and stakes in two properties as well as his home. He was contemplating retirement or winding down his work in five years.

Mr M lacked experience of financial investments and SJP assessed him as *"Upper Medium"* on its risk spectrum in general. But it said Mr M's main objective was recovering tax already paid and he was willing to be *"High Risk"* when it came to *"tax efficient investments"*. SJP claimed Mr M *"described himself as 'Aggressive' in regard to investing to recover tax."*

SJP said Mr M was willing to invest in a high risk EIS product for the tax benefits and the prospect of capital growth. It said of the £625,000.00 - *"Your overall priority for this investment is to recover some tax already paid as well as investing for future growth."*

SJP's notes at the time said Mr M had mentioned paying tax of over £600,000 in an earlier year and an estimated future tax bill of more £1.7m. It said: *"He really wanted to recover as much of the tax he has paid as possible."* Mr M was advised to make pension contributions. Other options like unit trusts (which Mr M says would've been better) were considered but not recommended because they didn't offer tax relief or had more limited scope for this.

Mr M signed an EIS declaration. This made clear the schemes were only suitable for certain sorts of investors. It also said such investors must accept a variety of risks including the much higher risk associated with investment into unlisted small companies. Such companies were inherently illiquid so it might not be possible to sell them when he wanted. Also the relevant legislation and resulting tax treatment of EISs might change in the future.

The declaration also said: *"In addition to the risks above, I have read and understood the marketing materials produced by the provider(s) of the product(s) in which I have invested. Particular attention was given to the section that explains the specific risks associated with the investment."*

The declaration also said: *"I understand that St. James's Place approach to investment management does not extend to EIS and that St. James's Place has no influence and cannot be held responsible for the underlying investment decision of the EIS provider."*

SJP says this last point is relevant because the underlying investment decisions of the EIS providers is what has resulted in the problems being encountered with the tax reliefs. SJP says the risk that tax reliefs could be withdrawn if the provider companies cease to retain eligibility, is a risk set out in the Information Memoranda of the schemes. It says the issues with the tax relief aren't ones SJP could have foreseen at the time of recommendation.

Mr M told us he had sold a business and had a large lump sum as a result. He told us the EISs were promoted to him for tax reasons and the money would be tied up for three years. He told us all the projections he was given showed returns in excess of the invested sums – suggesting the schemes would make money. In fact the schemes have performed terribly but he puts that to one side. He said SJP justified its fees with reference to vetting it did on the EISs. In essence SJP was supposed to have a panel of experts who would scrutinise the EISs and recommend them. But he says fundamentally the schemes didn't do what SJP said they would do and so weren't the products that they had been sold to him as being. In particular there wasn't the tax relief – he told us six companies in the schemes are having their tax relief queried by HMRC - and his capital was tied up for significantly longer than three years. SJP's response suggested it was washing its hands of the schemes but clearly it promoted and charged for the schemes. He felt he had been wronged by SJP.

Our investigator concluded that SJP didn't have control over the activities of the EIS providers or the investee companies and as such SJP shouldn't be held responsible for the problems that had occurred with the tax reliefs. He thought SJP had made clear that the investments were illiquid and Mr M might not be able to realise the investment value when he wanted. Also Mr M's risk attitude was reported as 'High' and he could afford the risk. So our investigator didn't think the complaint should be upheld. Also the product memoranda said EIS tax reliefs could be withdrawn in some circumstances and the withdrawal here was still under discussion and wasn't something SJP could've foreseen at the time of the sales.

Mr M didn't agree he said, in brief summary:

- He isn't happy with the performance of the schemes, which have performed terribly, but he is aware investments go up as well as down and understands it can happen that investments don't perform. His issue is he paid high fees and charges that SJP told him were warranted because it employed a panel of top financial analysts to research, vet and verify the EISs it offered - making them a much safer and predictable option. But HMRC is challenging the schemes' EIS status. So the schemes didn't offer the fundamental tax benefit of an EIS, and SJP sold him defective products whose fundamental feature didn't deliver. This is mis-selling.
- As SJP recommended and charged fees for recommending the schemes, it is illogical to sign a declaration that SJP's *"approach to investment management does not extend to EIS"*. He certainly doesn't recall this and it wasn't mentioned during the sales process. The whole sales process positioned the products as vetted offerings by SJP, branded with its own branding, making such a clause - buried in the contracts – deceitful and misleading. The EIS pack had many documents to sign and he was under pressure to do so urgently so as to not miss out on SJP's current EIS offerings before the tax year end.
- He would expect at least a refund of the fees and charges made by SJP for selling a product which claimed tax relief and was meant to have been carefully vetted by a supposed SJP panel, but was actually challenged by HMRC. At best he would expect a refund of the invested capital too, as he wouldn't have invested it in a scheme not supported by HMRC.
- It is no doubt easy for a company like SJP to cover itself contractually (such as with disclaimers in the small print) when dealing with an inexperienced investor like him, but he would've thought the ombudsman service would look at the full picture.

- Saying he could afford to lose the money isn't relevant or helpful here. Also, as a side note, his investment risk profile is "high" in SJP's letter but not "aggressive". In any case investment risk appetite isn't really relevant as the issue is the failure of the fundamental (tax) feature of the product, not the investment return of the product. Of course without this tax feature he would never have invested into schemes like this and lost a large percentage of his capital, so his claim for a return of lost capital is relevant as a secondary result of the mis-selling.

As the matter couldn't be resolved informally, it 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.

Having done so, I've arrived at the same outcome as our investigator and for broadly similar reasons. I'll explain my reasoning.

The three schemes SJP recommended were each run by a different company. In each case the managing company would identify investment opportunities and invest Mr M's money in these using investments in unlisted companies. For at least some of those schemes, those companies were also run by the scheme manager or entities connected to it.

Mr M has provided us with copies of the SJP branded information documents for the three schemes. All were headed with SJP's logo and then its name and then immediately below this the heading "*Tax Advantaged Investments*". There followed, beneath this heading, the name of the particular scheme and then details of the scheme. These documents were all in the same format and I accept what Mr M says about the branding giving the appearance that these were SJP offerings. Indeed they were SJP offerings, in that SJP had decided to make these available to its customers.

But in each case, these documents also said: "*This document is intended to highlight some important aspects of the investment, rather than providing full details. It must therefore be read in conjunction with the Information Memorandum document produced by...*" – and then gave the name of the particular scheme manager. Those information memoranda carried the branding and presentation of the particular scheme manager, not SJP. In any case, it was apparent that it was the scheme managers who would be identifying or had identified the investment opportunities, and in some cases would be managing the companies – not SJP.

The meaning of the part of the EIS declaration to which SJP has appealed, and which Mr M says he doesn't recall noting or discussing, plainly doesn't absolve SJP of responsibility for its advice in recommending the schemes. But it does highlight a limit to SJP's responsibilities and involvement. This was in any case apparent from how the schemes worked, being run by scheme managers not SJP, as further disclosed in the SJP branded information and the individual scheme information memoranda.

I'd mention the SJP information documents contained a lot of detail about charges and some information about the pedigree of the scheme managers, but very little about the specific risks the schemes might carry. The documents were, as they stated, edited highlights of certain aspects of the schemes. In my view it was clear that for full details, the information memoranda would need to be reviewed.

Those memoranda contained sections that listed and pointed out various specific risks. One listed factors that could "*materially affect, directly or indirectly, the operation of Investee*

Companies and/or the performance of Investee Companies and the value of and returns from Investments and/or their ability to achieve or maintain EIS qualifying status as more particularly, but not exhaustively, detailed below.”

In the details below, it pointed out: *“If an Investee Company ceases to carry on business of the type prescribed for EIS Qualifying Companies during the Three Year Period, this could prejudice its qualifying status under the EIS. The situation will be closely monitored with a view to preserving the Investee Company's qualifying status, but this cannot be guaranteed. A failure to meet the qualifying requirements for EIS could result in...”* and it went on to detail the loss of tax relief that could occur and various consequences of this. It also said:

“Although approval will be sought from HMRC that the Investee Companies are expected to be EIS Qualifying Companies and their activities should qualify under the EIS prior to making an Investment, there is no guarantee that the formal EIS claims will be agreed or that such agreement will not be subsequently withdrawn. In those circumstances, subscription monies will not be returned to Investors. If an Investee Company fails to obtain EIS Qualifying Company status, or if it is subsequently withdrawn, EIS income tax relief and Capital Gains Tax Deferral Relief would not be available to Investors or could be withdrawn.” It went on to list various situations in which EIS rules might be breached and tax relief lost or withdrawn.

The information memoranda of the other schemes also referred to this sort of risk, in varying degrees of detail. One said: *“The Fund requires each Company to have received Advance Assurance from HMRC prior to making each investment in a Company and that, as a result, a subscription should qualify for the Taxation advantages offered under EIS. However, neither the Fund, nor [the scheme manager], nor the Fund's advisers give warranties or undertakings that EIS Income Tax relief, EIS CGT Disposal relief or EIS Deferral relief will be available, or that if given, such relief will not be withdrawn. If any EIS qualifying Company ceases to trade during the period of three years from the commencement of that trade, this could prejudice its qualifying status under EIS rules.”* The other said: *“[The scheme] will only arrange investments... into companies that are reasonably believed to have EIS qualifying status; however, there can be no guarantee that a company will maintain such status.”*

So the risk that tax relief might be lost or not obtained as intended, was a risk contemplated in the information SJP made available to Mr M about each of the schemes.

SJP selected these schemes and chose to offer them to customers like Mr M. This is clear from the factsheets SJP produced for each scheme and which Mr M has drawn to our attention. No doubt this selection process involved evaluation, whether by a panel or not. But regardless of the nature of that process and the degree of expertise involved, I don't see that it could reasonably be taken by Mr M to mean that risks the schemes would otherwise run would no longer apply or could be disregarded. In other words, SJP wasn't in a position to promise that the schemes would be successful – and I think Mr M knew that. In my view this would apply also, if not particularly, to risks of a kind cited specifically in the paperwork of the schemes SJP had selected. As I've noted, the risk that tax relief might not be obtained or might be lost in certain circumstances was one such risk referred to in scheme documents.

So it seems to me SJP can't reasonably have been taken by Mr M to have promised that this risk could not or would not happen. Plainly SJP recommended schemes on the basis that a positive result might be achieved from both a tax and an investment perspective - or that the result might be positive when taking these two factors together – but this wasn't guaranteed. Also I don't see that any of the schemes were bound to fail or that SJP ought to have known that they would fail – either in general or in the particular way Mr M has complained of.

Also I'm satisfied SJP wasn't responsible for running the schemes or for decisions made by the scheme managers or by the companies into which the schemes invested, which it seems

to me are ultimately at the root of the particular failings or problems that have given rise to his complaint to us. Insofar as the warning SJP highlighted from its EIS declaration has relevance here, it seems to me that it underlines the point that SJP's responsibilities for and involvement in the schemes was limited and that once the investment was made it would be the scheme managers and the companies running the schemes who would be responsible for trying to achieve successful outcomes and SJP wouldn't be able to influence that.

I've thought carefully about Mr M's point that SJP's charges meant, according to SJP, that it had spent expertise vetting the schemes and that this somehow made them safer than such investments might otherwise have been. But it seems plain that SJP made clear to Mr M it was treating him as a high risk investor for the purpose of these investments – and so I think Mr M agreed to enter the schemes knowing these were high risk arrangements.

I've also considered that Mr M was inexperienced with financial investments and the amount he invested was large – and apparently larger as a proportion of Mr M's assets than SJP would usually recommend. I think this significant, so I've thought about it carefully. But I note Mr M had sold a business interest and as a result had both a large cash sum and large tax liabilities that he either had incurred or would incur in future. It seems to me that this gave him particular reason to want to invest the large sum he invested at that time.

Also Mr M was a person who appeared to have achieved a degree of business success, as evidenced by the recent sale of a company, and had sought-after skills, as indicated by the salary he commanded. This isn't to say he had knowledge or experience of EIS schemes or of any of the underlying businesses or enterprises in which the schemes would invest. The evidence is he had no such experience. But what I've seen doesn't make me think that Mr M was someone who it was unreasonable for SJP to invite to consider the schemes or who SJP ought to have decided wasn't capable of using the information it was making available to him to make a reasoned and informed decision as to whether to invest what he did in and take on the risks involved in the schemes.

Also I note Mr M's issue is the schemes may fail or have failed in the particular way he has highlighted concerning tax relief. He hasn't taken issue with the amount he was advised to invest or the high risk that the value of his stakes in the businesses the schemes invested in could fall very significantly. I've still considered these aspects when forming my view on the suitability of the advice, but what Mr M has said about these aspects adds weight to my view that it wasn't unreasonable for SJP to make the recommendations it made here.

Overall what I've seen makes me think SJP took sufficient steps to make sure its advice was suitable for Mr M. I think Mr M was informed of the risks associated with the investments and made aware they were high risk. I'm persuaded he agreed to take that level of risk and on balance I don't think this degree of risk was unsuitable for SJP to recommend him, given his circumstances, his other financial resources and what he was looking to achieve. I'm persuaded the schemes did offer the prospect, but not a guarantee, of recovering tax and the advice was suitable for his objectives in that respect. So, with all I've said above in mind, and having carefully considered all Mr M has said, I haven't identified grounds for upholding Mr M's complaint or for otherwise ordering SJP to pay him compensation here.

I understand Mr M's view that if SJP's advice proves to have failed, SJP should repay the fees it charged him for that advice. But ultimately the risks and rewards of participation in the schemes were risks and rewards Mr M agreed to take on - it wasn't SJP taking them on. Had SJP's advice proved to be more successful than anticipated, there wouldn't be grounds to say Mr M should pay SJP more or return some of the proceeds to SJP. In the same way, if the schemes turn out not to achieve what was expected or aimed for, I don't think this gives me grounds to say SJP should return its fees to Mr M, given what I've already said above.

So, in light of all I've said above, I don't uphold Mr M's complaint. I appreciate this conclusion will disappoint Mr M.

I'm grateful to Mr M for his prompt and courteous responses to our enquiries throughout the course of our consideration of his complaint, and I thank him also for the assistance he has otherwise given us with our investigation.

My final decision

For the reasons I've given, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 April 2024.

Richard Sheridan
Ombudsman