

## **The complaint**

Mr M complains, with the help of a representative, that James Hay Administration Company Ltd ('James Hay') accepted the in-specie contribution of Elysian Fuels shares into his self-invested personal pension ('SIPP') without undertaking appropriate due diligence, ensuring the shares were independently valued or having proper procedures in place for transactions of this nature.

## **What happened**

Mr M purchased shares in the Elysian Fuels scheme in his personal capacity by way of paying a 16p per share cash contribution and with the 84p per share balance financed by a limited recourse loan. He then established a SIPP and transferred the Elysian Fuels shares to it by way of an in-specie contribution.

Mr M completed a James Hay SIPP application form, this recorded that:

- He was employed with approximate annual earnings of £150,000.
- The SIPP would be funded by a single contribution of £110,800, by way of the in-specie transfer of shares.
- The sale was advised, and the adviser would be remunerated by an initial charge of 4% and an ongoing charge of 0.75%.

This form was signed and dated on 24 December 2013.

Mr M completed a James Hay in-specie contribution notification and declaration form in relation to the in-specie contribution of 110,800 Elysian Fuels shares, this was also signed and dated 24 December 2013.

A share certificate was issued on 3 February 2014, confirming that Mr M's SIPP was the registered holder of 110,800 Class A Preference shares in Elysian Fuels of £1 each fully paid.

Mr M claimed tax relief on his contribution and received £27,700 into his SIPP on 21 March 2014 in connection with this.

The Elysian Fuels scheme failed, and the value of the shares was written down to £nil. HM Revenue & Customs (HMRC) investigated the scheme itself and the individual tax affairs of those who invested in it. Mr M's SIPP has since closed and his pension monies, including the tax relief referenced above, transferred to another pension provider, this happened in 2018.

## **HMRC correspondence**

An HMRC letter addressed to Mr M dated 5 January 2017, in relation to a tranche of Elysian Fuels shares that is not the subject of this complaint made some general comments about HMRC's view of the scheme more broadly, it said:

*“Elysian Fuels is an undisclosed mass marketed multi use tax avoidance scheme which HMRC considers one of the main purposes of the arrangements was to secure a tax advantage. You have entered into a scheme where the tax benefit exceeds the potential return from the underlying business plan. You did not pay a cash contribution of the purported £1 per share and the loan finance was provided on uncommercial terms. In addition the loan finance was never in your control being paid directly to the special purpose vehicle. The funding of the whole scheme is of a circular nature and the funds were never available for the underlying purpose.*

*The promoter of the scheme has confirmed that no formal valuation of the shares was carried out and [they] did not consider [that] any third parties had sufficient information or access to documentation to carry [out] independent valuations. There was a valuation of the underlying business assets which were owned by another entity but neither the Elysian Fuels LLP nor the Special Purpose Vehicle funding company owned any tangible assets. This is a complex valuation issue and HMRC[’s] initial view is the shares had no value when the transaction took place.”*

The first reference, within the HMRC correspondence that we’ve seen in this case, to the tranche of Elysian Fuels that is the subject of this complaint is within its letter of 27 July 2022 addressed to Mr M’s representatives. This set out, in so far as is relevant, that:

*“I am writing in response to your request to potentially settle your above-named client’s affairs as connected with Elysian Fuels.*

*Currently HMRC considers that it is highly likely that the LLP is not carrying on a business with a view to profit. An LLP is in law a corporate and it is only transparent for tax purposes (that is the members are assessed or relieved on the results of the LLP personally) where it carries on a business with a view to profit. If the LLP does not carry on a business with a view to profit, then the LLP will be taxed as a corporate and the partnership loss and profits entries should be removed from your client’s tax return.*

...

*Your client also ‘contributed’ shares in Elysian Fuels No... PLC as an ‘in specie’ contribution to a registered pension scheme and entered the gross contribution figure as a payment to a registered pension scheme to extend his Basic Rate for this contribution. HMRC has considered the documentation and process used in a number of cases and has reached the conclusion that the process is flawed and does not amount to a pension ‘contribution’ on which such relief can be claimed.*

*This is HMRC’s primary position with regard to the ‘in specie’ contribution of the shares.”*

And

*“In summary, without prejudice, HMRC would be willing to settle the enquiries into your client’s tax returns on the following basis:-*

...

- *Remove any entries relating to your client’s claim for tax relief on payments to their personal pension.”*

## **Background to the complaint**

Mr M complained to James Hay about its acceptance of his in-specie contribution of Elysian Fuels shares to his SIPP on 10 December 2019. James Hay didn't uphold his complaint. Unhappy with its response, Mr M referred his complaint to this service.

James Hay objected to our service considering the merits of Mr M's complaint. On the basis that it should be dealt with by the pension ombudsman and, if not, that it should be dismissed on the basis that Mr M had not suffered a loss for which James Hay is responsible.

One of our investigators reviewed Mr M's complaint and concluded that it shouldn't be upheld on the basis that he hadn't suffered a loss for which James Hay could reasonably be held responsible. They also highlighted that Mr M hadn't raised a complaint about his financial adviser and suggested that he could still look into pursuing this avenue, if he considered that he had lost out as a result of its advice. Mr M disagreed that he hadn't suffered a loss as a result of James Hay accepting his Elysian Fuels shares and made further submissions, he said:

*"The only investment held within [Mr M's] James Hay pension was his Elysian stock.*

*James Hay charged a variety of fees for the initial Elysian transaction and the ongoing administration of the SIPP that included providing regular valuations of the Elysian asset, however at no point did James Hay complete any valuation and were it not for James Hay authorising the purchase of the investment, [Mr M] would not have been subject to any of these charges.*

*Furthermore, the transaction has resulted in significant stress and inconvenience for [Mr M] and as such he should be compensated accordingly."*

James Hay didn't make any further submissions at that stage.

Mr M originally told us that he hadn't received any correspondence from HMRC in relation to the tranche of Elysian Fuels that is the subject of this complaint. And that he hadn't paid any amount to HMRC in connection with this investment. The initial HMRC correspondence we've been provided does refer to a separate tranche of Elysian Fuels, which wasn't invested with James Hay and not the tranche of shares that is the subject of this complaint.

During the course of this complaint, it appears that Mr M's representatives wrote to HMRC about settling his tax affairs relating to his investments in Elysian Fuels. HMRC's response to this, excerpts from which are set out above, does refer to the investment and transactions that are the subject of this complaint as well as others. When providing this more recent correspondence from HMRC, Mr M also mentioned making stage payments to HMRC to settle his tax affairs but not having settled the bill in full. The tax bill relates to a number of transactions, reliefs claimed and an unauthorised payment, which aren't linked to activities that are the subject of this complaint – but also covers the removal from Mr M's tax returns of "any entries relating to your client's claim for tax relief on payments to their personal pension".

Because agreement couldn't be reached, this case was passed to me for review. I issued a provisional decision explaining why I didn't think Mr M's complaint should be upheld. I explained that I would consider anything the parties to this complaint wanted to add. Mr M's representative requested an extension to the deadline to respond to my provisional decision, which I granted but no further submissions were ultimately received by the extended deadline.

## **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.

My findings remain as set out in my provisional decision; I've reiterated these below.

The parties to this complaint have provided detailed submissions to support their respective positions and I'm grateful to them for taking the time to do so. I've considered these submissions in their entirety. However, I trust that they will not take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision is not to address every point raised in detail, but to set out my findings, on what I consider to be the *main points*, and reasons for reaching them.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

The Elysian Fuels scheme was an unusual arrangement. It involved buying shares largely with a limited recourse loan and then typically – in the cases that we've seen – selling those shares to a SIPP so that funds were paid out of the pension scheme to the investor. This is, as I have said, an unusual arrangement and on closer inspection HMRC was not happy with it. It found that such payments were unauthorised payments and imposed unauthorised payment charges, surcharges and interest. In other cases, like Mr M's, investors transferred shares held in their name to their pension by way of in-specie contributions. HMRC has also denied a number of different tax reliefs claimed in connection with the Elysian Fuels scheme.

In this case Mr M purchased the shares in his personal capacity in the manner set out above, later he transferred the shares to his newly established SIPP by way of an in-specie contribution. Mr M claimed tax relief on this contribution and received £27,700 into his SIPP on 21 March 2014 in connection with this.

There are numerous examples of investment schemes that are set up to make use of tax concessions which push, with varying amounts of aggression, at the boundaries of the purpose of the concession. Sometimes people invest in those schemes without understanding there is a risk that HMRC might challenge the scheme. Sometimes people invest in those schemes understanding and accepting the risk HMRC might challenge the scheme. And over recent years, as seen for example with film partnerships, HMRC has been more and more active in challenging the schemes it thinks are tax avoidance schemes.

Mr M complains, broadly speaking, that James Hay failed to comply with its regulatory obligations and act in his best interests in connection with its decision to accept the in-specie contribution/transfer of the Elysian Fuels shares, which he owned personally prior to the establishment of his James Hay SIPP.

I don't think James Hay is responsible for Mr M's purchase of 110,800 shares in Elysian Fuels in his personal capacity. In turn, I don't think that it would be fair or reasonable for James Hay to be accountable to Mr M for any losses or adverse tax implications he suffered as a result of his purchase of the shares, or any subsequent relief claims he made in connection with that.

James Hay permitted the in-specie contribution of the Elysian Fuels shares. No monies were released from Mr M's SIPP in connection with this transaction, so he hasn't been pursued for an unauthorised payment charge in connection with this. Mr M did claim tax relief on the contribution and received £27,700. The proposed HMRC settlement relates to a number of

transactions, reliefs claimed and an unauthorised payment, which aren't linked to activities that are the subject of this complaint – but also covers the removal from Mr M's tax returns of *“any entries relating to your client's claim for tax relief on payments to their personal pension”*. However, the calculation incorporates all of these elements as part of a single calculation and appears to allow for offsetting – or, put another way, involves the reconstruction of Mr M's tax returns taking everything into account, including all of the gains, losses and tax implications resultant from activities that aren't linked to this complaint.

Mr M's James Hay SIPP was closed in 2018 and monies were transferred away, we haven't been provided with details of what has since happened with those monies. But it is clear that Mr M received £27,700 and had use of those monies for several years. This was a gain that Mr M enjoyed as a result of James Hay accepting the in-specie contribution of Elysian Fuels shares. Based on the evidence provided to us to date, I'm not persuaded that any losses for which James Hay could reasonably be held responsible – even if I were to conclude that James Hay shouldn't have accepted the in-specie contribution of Elysian Fuels shares – exceed the benefit he received.

James Hay established a SIPP for Mr M and administered it for over four years. The SIPP held Mr M's Elysian Fuels investment and £27,700 received in tax relief (which he elected to hold in cash with James Hay), which reduced over time because of the application of various charges. Most of the fees levied went to Mr M's advisor, in addition James Hay deducted fees for the ongoing administration of his SIPP. In the particular circumstances of this case, I'm not persuaded that it would be fair and reasonable to direct James Hay to refund these charges to Mr M.

I'm also not persuaded that James Hay has caused Mr M distress and inconvenience for which it should fairly and reasonably compensate him.

In my view, in the unusual circumstances of Mr M's case, even if James Hay did not carry out adequate due diligence on the Elysian Fuels scheme or undertake sufficient steps before deciding to accept this in-specie contribution (and I make no finding on that point), I don't think Mr M has been caused a loss for which it would be fair and reasonable to hold James Hay responsible. So, I do not uphold Mr M's complaint and I make no award.

### **My final decision**

For the reasons set out above, my final decision is that I don't uphold Mr M's complaint against James Hay Administration Company Ltd and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 May 2025.

Nicola Curnow  
**Ombudsman**