

## **The complaint**

Mr B has complained he was mis-sold an Enterprise Investment Scheme ('EIS') by Old Mill Financial Planning Limited ('Old Mill'). To put the matter right Mr B wants to be financially compensated.

## **What happened**

In October 2017 Mr B was advised by Old Mill to invest £25,000 into an EIS. Upon application this was increased to £35,000.

Mr B raised his concerns with Old Mill in July 2024 but wasn't happy with the response and so made a complaint in October 2024. He said his attitude to risk was no more than medium, but the investment had fallen in value and he was misinformed of when he could access his investment. His objective was to save tax but not take an undue risk. He said he had initially raised his concerns in 2022, but Old Mill hadn't responded and took too long to respond to his subsequent contact.

Old Mill responded to Mr B's complaint on 19 September 2024. It said;

- The EIS Information Memorandum detailed the medium to long term investment and it had a target life of between three and four years but this wasn't guaranteed. This was also outlined in Old Mill's suitability letter.
- It understood Mr B's concerns about the situation regarding the EIS which was being looked into by the regulator, the Financial Conduct Authority.
- It had undertaken due diligence of the investment including the key personnel before recommending the investment.

Unhappy with the outcome Mr B brought his complaint to the Financial Ombudsman Service. Our investigator who considered the complaint didn't think Old Mill needed to do anything more. She said;

- She outlined her understanding of Mr B's professional role at Old Mill.
- The suitability letter made clear the adviser had limited information about Mr B's financial circumstances and he was happy to work on that basis.
- She detailed the financial information that had been provided by Old Mill and concluded that the EIS was likely affordable for Mr B.
- While the EIS wasn't within Mr B's risk profile the suitability letter recorded that Mr B agreed to some higher risk investment for the potential of higher returns. The Information Memorandum provided also highlighted the risks and illiquidity. She wasn't convinced this had been highlighted by the adviser but Mr B had a responsibility to review the information and documents he was provided.

Mr B didn't agree with the investigator. He said;

- While he was involved with Old Mill he had no experience in financial planning

matters and was assigned his adviser as his financial planner because he wasn't experienced in investments. His adviser's duty of care was to him.

- He had little income outside of the business so it should have been aware of his income, tax and capital gains.
- While he was aware of the tax relief benefits he only invested on the basis he was advised of a return of capital and possibly some gain but little likelihood of significant losses. What he was told sounded plausible.
- Old Mill had referred to him having other property interests in 2016 valued at £650,000 but wasn't sure where this came from – he only had other interests of around £200,000 which was jointly owned.
- He wasn't sure why he would have changed his risk profile in 2017 as a 33% loss would have horrified him. He only invested on the basis that the risk was never more than the tax relief and that the capital could be realised in no more than four years.
- He listened to the adviser rather than looked at the 'small print' in documents.
- He was concerned about the investigator's assessment that the investment was affordable when she wasn't aware of his outgoings.
- He wasn't an expert in EIS and his involvement in the EIS with Old Mill was limited to tax advice.

Old Mill also responded;

- It reiterated Mr B's position within its business and that he had a good understanding of how the financial planning arm operated.
- It would have been Mr B's responsibility to provide tax returns and full disclosure of his financial affairs if he wanted the adviser to be aware of his financial circumstances.
- Mr B had sufficient knowledge to understand that returns etc of the EIS weren't guaranteed and there were risks associated with the investment. It provided a sample of a letter written by Mr B that evidenced his knowledge.
- It wasn't responsible for the management of the EIS. The regulator had referred the EIS manager to the Financial Services Compensation Scheme. The current position couldn't have been predicted and didn't automatically make the investment unsuitable.
- It wasn't responsible that the timeframes didn't materialise. Mr B was given documentation that detailed the timeframes and associated risk warnings.

As the complaint remains unresolved, it has been passed to me for a decision in my role as ombudsman.

### **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.

After doing so, I've reached the same conclusions as the investigator and broadly for the same reasons. I'll explain why.

#### Mr B's circumstances and investment objectives

Mr B was a founding partner of Old Mill and was employed by Old Mill but not in the capacity of a financial adviser. I understand from Old Mill he approached his investment adviser as and when he needed ad hoc advice so didn't have an ongoing relationship. Instead he occasionally sought advice in relation to tax savings schemes such as pensions and EISs. While the information Old Mill had about Mr B's circumstances was limited at the time of the advice it has provided some details it recorded in 2016/2017.

Mr B was 50 years of age and wanted to retire at 60. He was married with two children. His income was £10,000 per month, his house was valued at around £950,000 and he had another property interest valued at £650,000 – disputed by Mr B – as well as cash of £700,000. His pension was valued at around £640,000. Prior to the advice in 2017 Mr B had previously invested into an EIS and Old Mill has also told us he was a director of a large bespoke EIS Old Mill set up for a client and which was operated by the same company into which he made his personal investment.

I can see from Old Mills' April 2017 meeting notes that Mr B's 'objectives had not changed in that he wanted a definite ten year plan'. At the meeting his renewable life policy was discussed and his pension was to be transferred to a SIPP. Mr B's ISA – valued at just over £22,000 – was to be transferred to Old Mill and Mr B was to increase his monthly savings into the plan from £500 to £1,000. Mr and Mrs B had around £500,000 in cash which they were to retain pending a property purchase. Along with other clients Mr B was on Old Mill's waiting list for when an EIS became available.

The fact find from March 2017 recorded;

'[Mr B's] objectives are to maximize tax efficiency as far as possible whilst building a fund for himself, [Mrs B], and [their children] in the future. Ultimately he would also like move house to somewhere with 25-30 acres nearer to the [children's] school.'

I can also see from a Risk Tolerance Questionnaire Mr B completed around the time of the investment that his personal and household gross income was £200,000 or over and the value of his overall assets including his family home was over £2m net.

I've reviewed the suitability letter Old Mill provided Mr B on 24 October 2017. As mentioned above, Old Mill's advice was based on limited information about Mr B's income and capital gains as referred to in the suitability letter;

'It is important to ensure the information I hold on record for you is accurate as it is this information that forms the basis of my advice. However, we have very little information on your income and capital gains and I have advice you that the advice I provide may well have been different if I were party to full disclosure. You understand this and are happy to work on this basis.'

However, please note that if you feel any of the information or assumptions in this letter are not correct, please let me know as soon as possible.'

I think this makes quite clear the basis of the advice and if Mr B had any issues about that he could have raised this at the time or provided Old Mill with further information about his personal and financial circumstances.

Mr B's objectives at the time were recorded as being a reduction in inheritance tax ('IHT') that would be due on his estate, to continue to mitigate income tax and defer a recently incurred capital gains tax ('CGT') liability.

The suitability went on to say advice had been given earlier in the year about EIS but the opportunity to invest hadn't materialised but a suitable investment had now become available. The amount invested would fall outside of Mr B's estate for IHT purposes after two years provided the shares were still held upon death. There was also scope for Business Property Relief ('BPR') from day one.

#### Mr B's attitude to risk

Mr B has said his risk profile was no more than medium. Based on a risk profiling and risk tolerance assessment from 2009 Mr B, along with Mrs B, were deemed to be average risk takers which was defined as;

'Investors in the Average risk group are prepared to take a small to medium degree of risk with their financial decision, more likely medium...For some, a fall of 10% in the total value of their investments would make them feel uncomfortable but for most it would take a fall of 20% or 33%, most likely 20%.'

The meeting notes from April 2017 show the adviser wanted to update Mr B's risk profile now that he was looking at a ten year plan. Old Mill has provided a copy of its Risk Tolerance Questionnaire completed by Mr B in November 2017 which I see was around a week after the investment was finalised but I don't think it's unreasonable for me to conclude it reflects Mr B's risk profile as discussed around the time the investment recommendation was made.

Mr B described himself as an average risk taker and was then currently prepared to take a medium attitude to risk. For all his investments he was only comfortable with a 20% fall in value. Given scenarios of various portfolio make ups he selected a portfolio with 30% exposure to high risk, 40% medium and 30% low risk. The outcome score of the Questionnaire for Mr B was 55 which meant he just fell into a high risk group where the score range was 55 – 64. That meant he was;

'...only prepared to take a medium degree of risk with [his] financial decisions...For some, a fall of 20% in the total value of their investments would make them feel uncomfortable but for most it would take a fall of 33%.'

Mr B has said he has no idea how this change came about but I've not seen anything to suggest he wasn't aware of the outcome of his updated risk score and if he had concerns about that he could have raised this at the time. The suitability letter explained that EIS are typically higher risk and investment risk had been discussed 'at our meetings and have also covered the subject in my previous advice letters'. It was agreed Mr B was;

'comfortable with investing a proportion of your funds into higher risk investments, for a potentially higher return or a significant tax saving, as you tend to view these investments separately to your main portfolio.'

A Risk Discussion Document was enclosed with the suitability letter.

Looking at the above, I do accept Mr B's usual investment approach was most likely to be within a medium risk profile. But I'm satisfied it was made clear to Mr B that for the potential benefit of tax mitigation he was prepared to take a higher risk with some of his funds. I have considered how this came about and how Old Mill made Mr B aware of the varying levels of risk implicit in different investments particularly as he was seeking advice as he says he didn't have the knowledge or experience to make such an investment decision unaided. But after reviewing the suitability letter and other documentation provided I think the increase in risk in EIS investing was most likely discussed and agreed. And taking into account Mr B's

investment experience, previous investment into an EIS and his ability to understand investment risk, I think he reasonably understood the risk of the investment.

While Mr B had a professional role at Old Mill he has explained that this wasn't in investment advice. And I accept that Mr B was seeking advice from Old Mill as he didn't have that expertise himself. So, despite his role within the business Old Mill still had an obligation to provide him with suitable advice which I have gone on to consider.

#### The advice and was it suitable

While I am satisfied it was most likely the case Mr B's attitude to risk was discussed and agreed with him, I've considered whether what was recommended to him was right for his circumstances and financial objectives.

Mr B was advised to invest into an EIS that focused on media. Old Mill provided details of the scheme's investment strategy, tax and other key considerations. It was explained in the suitability letter the;

'...value of the EIS shares may go down as well as up and investors may not get back the full amount invested.'

The scheme needed to be held for a minimum of three years to qualify for IT relief and was;

'likely to come to an end in the 5<sup>th</sup> year and you should not expect to be able to access the funds during this time. I understand you are happy to commit the funds to a further 4 year terms.'

In the EIS' own Investor's Guide document it highlighted the risks;

'An investment in the Fund may not be suitable for all types of investor. The value of an investment can go down as well as up and you may not get back the full amount subscribed. The investment will be highly illiquid and so investors should consider this to be a medium to long-term opportunity.'

So, while an EIS needs to be held for a minimum of three years to retain the full tax reliefs from HMRC, it's not always the case that capital can be returned after that period because of the illiquid nature.

The suitability letter further explained that;

'EIS investments by their nature are not low risk as this would be inconsistent with the availability of tax reliefs given by HMRC as an incentive for investment. However, we continue to use those schemes of a lower risk nature with a capital preservation strategy and therefore the income tax relief is essentially the effective return on the investment. Although it is not possible to remove risk completely, it can be reduced by use of lower risk qualifying trades.

...

[the EIS] have strategies in place to mitigate risk where possible, however as the scheme is investing into small unquoted companies your capital is exposed to a level of risk which cannot be avoided...'

A table of the three potential trading risks attached to the EIS was detailed including counterparty risk, production risk and performance risk. The EIS' strategy for dealing with

those potential risks and risk mitigating factors was stated. An Investor Guide was enclosed and the further key risks associated with the EIS was provided.

EIS are inherently high risk illiquid investments in early stage companies. And part of that risk is that the investment can fall in value or the underlying assets difficult to sell. Mr B says he was told he would have his capital returned to him after three/four years. But while I think Old Mill could have emphasised the risk and illiquidity more than it did, I think that overall Mr B was given sufficient information and documentation – along with his previous EIS investment experience – for him to have reasonably been aware of the risks involved.

I say this because in addition to the suitability letter Mr B was given other documents about the investment. Mr B completed the EIS application at the end of October 2017. By signing that document Mr B confirmed he had fully read and understood the Fund Information Memorandum. In the application it was made clear that;

‘Investment in the Fund involves a high degree of risk and may not be suitable to all Applicants.’

and Mr B ticked to confirm he understood;

‘EIS Investments are not Readily Realisable Investments and because of this are high risk investment for which there is a restricted market, which may make it difficult for you to sell the investments.’

And he also ticked to confirm he understood that;

‘there is no guarantee that the target rate of return will be achieved and that the value of your investment may do down as well as up and you may lose some or all of your investment.’

The Fund Information Memorandum which Mr B confirmed he had read and understood had a section entitled ‘Risk factors’ which amongst other points said;

- ‘The value of EIS Qualifying Shares and Income from them can go down as well as up. An investor may not back the full amount invested and may, therefore, lose some or all of their investment.
- ...
- ...[the investments made] are unlikely to be readily realisable and due to their unquoted nature, may be difficult to value.
- ...
- Investors may find it difficult to sell their interest in the Fund as there is currently no market for the EIS Qualifying Shares in the Companies for which the Fund intends to subscribe...Investors are likely to find it difficult to sell their interest in the Fund and should be able to afford their chosen lifestyle without any further recourse to their investment.’

I can see that Mr B did have previous experience of EIS investing from 2016. And Old Mill has said that because of this and his involvement at director level of another EIS that he wasn't a lay person with no understanding of this type of investment nor was he solely reliant on the advice of Old Mill. That doesn't absolve Old Mill of its responsibility to have provided suitable advice to Mr B but I don't think the advice given was unsuitable for him bearing in mind his investment objectives and what I know about his financial circumstances.

In response to the investigator Mr B has said he was concerned about her conclusion the investment was affordable for him without having an assessment of his outgoings. But he didn't provide any further information about that for me to consider. Mr B was advised to invest £25,000 which it looks like it was his decision to increase this to £35,000. Mr B disputes the value of his other property and says this was more likely £200,000 jointly owned, so £100,000. Mr B's overall assets were recorded as just over £1m (excluding his home) so accounting for the disputed value of other property, I don't think the amount invested and the proportion of that compared to Mr B's overall assets would have been unaffordable for Mr B.

I appreciate there may have been other EISs available for investment that might have provided Mr B with a better return. But my role isn't to re-visit the advice that he was given and what other options were potentially available to him. Rather it's to consider whether the advice that was given to Mr B was suitable for him at the time and as identified prior to the investment and whether it was sufficiently explained to him.

Taking all of the above into consideration, and in the individual circumstances of this complaint, I don't find that the advice given to Mr B was unsuitable for him bearing in mind his personal and financial circumstances, his attitude to risk and his investment requirements. It follows that I don't uphold Mr B's complaint.

No doubt Mr B will be disappointed with my conclusion. It's clear he understandably feels strongly about it, but I hope I have been able to explain how and why I have reached it.

### **My final decision**

For the reasons given, I don't uphold Mr B's complaint about Old Mill Financial Planning LLP.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 December 2025.

Catherine Langley  
**Ombudsman**