

The complaint

Mr and Mrs K complain about the suitability of advice given by Armstrong Watson Financial Planning Limited ("AWFPL") to invest in an Enterprise Investment Scheme ("EIS") fund.

What happened

AWFPL is a financial advice firm within the Armstrong Watson group, which also includes Armstrong Watson LLP ("AWL"), a tax advisory firm. In December 2017 AWL was advising Mr and Mrs K about their overall tax position and in a letter dated 19 December 2017, AWL set out their recommendations. This said that Mr and Mrs K ran five businesses, one of which is central to this complaint, which I will call Company L.

The ownership of Company L was set up so that one Ordinary Share was owned by Mrs K and 170,000 Preference Shares (each worth £1) were held in an Employee Benefit Trust for Mr K's benefit. Mrs K had also received a loan from that Trust of £226,000 previously. Income tax provisions were coming into place on 5 April 2019, which would mean that the £226,000 would be subject to income tax, if it wasn't fully repaid before that date.

Any money Mr K received from the Trust at any time would also be subject to income tax, regardless of the new tax provisions. Broadly AWL's plan was for Mrs K to repay the loan to the trust (though it was noted that the source of funds for this would be discussed later). Mr and Mrs K would introduce £170,000 into Company L through a Directors Loan Account, allowing Company L to repay the preference shares held by the Trust. The Trust would be wound up and in total £396,000 would be released to Mr K. AWL said that if released in one tax year, that would result in income tax of just under £165,000. To mitigate this, AWL recommended that Mr K take staggered withdrawals of:

- £85,000 in the 2017/18 tax year and the same amount in 2018/19
- £90,000 in 2019/20 and the same amount in 2020/21
- £46,000 in 2021/22

AWL said that if Mr K invested each amount into EIS investments, he'd be able to claim income tax relief of 30% of the amount invested. As AWL were not authorised to give financial advice, they passed Mr and Mrs K to an adviser at AWFPL. AWFPL says their role was to give Mr and Mrs K financial advice about whether an EIS would be suitable for them, from a risk and client understanding perspective.

After deduction of AWFPL's initial advice fee, £83,300 was invested into an EIS fund in February 2018 following which Mr K received income tax relief of £24,990, which was used to offset the tax liability of £24,160.40 on the income from the Trust. Later that year they discussed investing the second £85,000 into an EIS with AWFPL – but this didn't go ahead. The adviser from AWL who had set out the plan in December 2017 had left, and they spoke to a new AWL tax adviser. They decided to focus on repaying Mrs K's loan to the Trust, rather than taking any further distributions, and so didn't invest in any more EIS investments.

By April 2023 the EIS provided a total return from investment of £15,461, and Mr K could claim maximum loss relief of £19,282, depending on his tax bracket. Mr and Mrs K

complained, as while they accepted there was a risk of some loss, they weren't prepared to lose this much money. They felt they were clear with both AWL and AWFPL that they needed access to the money before January 2022 for an expected tax bill at that time of around £53,000, but the investment had been illiquid in January 2022, and they had to source other funds to pay that bill.

They said the cost in 2017 for the advice from AWL was around £16-17,000, as well as the £1,700 advice fee deducted by AWFPL from the EIS investment. They asked for a full refund of the latter and a partial refund of the former, as well as the amount lost from the investment after the tax reliefs, of around £45,000.

AWFPL didn't uphold the complaint and said that the investment was suitable for their needs and objectives. However, they offered £2,000 as a gesture of goodwill. Mr and Mrs K remained unhappy and brought the complaint to our service, where it was considered by an investigator. The investigator found the risks had been explained to Mr and Mrs K and so didn't uphold the complaint.

Mr and Mrs K disagreed that the risks had been fully emphasised and said that explaining the risks doesn't make the investment suitable for them. The investigator wasn't persuaded to change her mind, so the complaint was passed to me for a decision. I issued a provisional decision upholding the complaint as follows.

My provisional decision

"When looking at whether AWFPL gave suitable investment advice to Mr and Mrs K, I've considered what they knew about Mr and Mrs K's objectives, circumstances, investment experience and attitude to risk. Any information given to Mr and Mrs K by AWFPL needed to be fair, clear and not-misleading, to allow them to make informed decisions.

Before I go into my findings on whether AWFPL gave suitable advice, it's first important that I set out the extent of my powers here. While AWFPL and AWL are part of the same group of companies, they are separate and only one of them – AWFPL – is under our service's jurisdiction. So, I cannot provide an opinion on AWL's actions (including the fee paid to them) – only AWFPL. That being said, I have had to consider the actions of AWL from a factual standpoint, in order to understand the context of the advice given by AWFPL.

I note that AWFPL have emphasised that they had no involvement in the advice on how to wind up the Trust. Though I agree they are a separate company, I cannot ignore what they knew about the plan put forward by AWL. AWFPL had their own duty of care toward Mr and Mrs K, in particular to act in their best interests. In order to advise on whether an EIS investment is suitable, in my view AWFPL reasonably need to be able to give advice on the tax benefits of that, which involves considering the source of the tax that Mr K was looking to mitigate. It follows that in order to give fair and reasonable advice about the use of EIS, the AWFPL adviser would have needed to consider the wider context of Mr and Mrs K's tax mitigation plan and advise Mr and Mrs K with their best interests in mind.

In my view, AWFPL's documents show that the adviser felt the overall EIS strategy would be suitable – they repeated the whole plan in the suitability letter, which suggests they endorsed it. It's also clear the AWFPL adviser wasn't just talking about the first £85,000 investment but at least the second as well as it was mentioned in the paperwork, and from the emails I've seen they were looking at other EIS opportunities in the months following February 2018.

AWFPL has argued that the £85,000 invested in February 2018 represented less than 2% of Mr and Mrs K's overall assets. However, that ignores the broader plan – this EIS advice has to be considered in the context of the future planned investments. It was the first in a series

of investments that would culminate in Mr and Mrs K investing just under £400,000 in EIS. EIS are generally considered in industry to be very high risk investments due to the relatively small, young and untested nature of the companies that can qualify under the scheme.

The plan would have resulted in around 20% of Mr and Mrs K's overall wealth being held in EIS. It would have made up 100% of their non-business assets, as their cash holdings of £150,000 were foreseeably going to be necessary to repay Mrs K's loan to the trust. That would then be released to Mr K and invested in EIS. So they would have held no personal assets in no or low risk environments – and would have had no emergency fund.

The only reason for this strategy appears to be because Mr and Mrs K wanted to wind up the Trust as quickly as possible. No consideration was given to any other options. As an example, they could have stopped taking the regular income of £4,000 per month from their businesses and replaced it with distributions from the Trust instead – leaving their tax position relatively unchanged. No modelling was carried out to find out how long that would take, compared to the proposed plan. No questions were asked by AWFPL about why they wanted to unwind the trust more quickly than however long that would take.

As the proposal involved such a high amount of risk, I've carefully considered whether Mr and Mrs K had the capacity to take that risk, or the willingness to do so. Having reviewed all of AWFPL's documentation, I'm not convinced the adviser gathered enough information about Mr and Mrs K's objectives and circumstances, in order to ensure they were willing and able to take that much risk. This is because:

- There's a lack of information about Mr and Mrs K's assets – AWFPL have been unable to answer questions about where the money to repay the Preference Shares held in the Trust came from. There's also no information about any money held in bank accounts by the five businesses owned by Mr and Mrs K.*
- In the fact find, the adviser noted that Mr and Mrs K "see their business as their retirement fund." They were in their mid-late 50's at the time of the advice, but I can't see any evidence of AWFPL asking when they planned to retire or how that would in practice be funded, especially without any of the money held in Trust or in cash.*
- In the suitability letter, Mr and Mrs K's capacity for loss was put in context of all assets held. If they were to lose the entire amount invested (which was a real possibility due to the nature of these investments) no consideration was given to how they would meet any emergency expenditure - as set out above their cash reserves were likely going to be needed to repay the loan. All assets held were illiquid, either specialist equipment, which wouldn't necessarily retain value, or properties.*
- No information was recorded about their ability to make up for any losses. The money to be invested wasn't a gradual buildup of savings and instead appears to have been a lump sum payment from a previous company. Mr and Mrs K didn't appear to have any disposable income as the fact find noted they "take enough income to meet their needs". This meant the adviser had no knowledge of how quickly they could make up any losses through their income.*
- In my view, it's clear from the evidence that the adviser was aware of Mr and Mrs K's desire to have access to this money very quickly after the three-year qualifying period for the EIS relief. An email from Mr and Mrs K to AWL on 24 December 2017 says:*

"After discussions with [the AWFPL adviser] it looks like the EIS withdrawal is not clear cut to exactly 3 years. We have asked her to prioritise schemes that do make it

easier to withdraw the funds at this point but apparently they could be a few months delay, which we may need to factor in."

AWL replied on 2 January 2018 and said:

"I discussed this with [the AWFPL adviser] prior to her coming to see you and I am sure there will be some schemes which fit our planning"

While that isn't to AWFPL, its contemporaneous to the discussions that Mr and Mrs K had with AWFPL, so I consider it to be strong evidence of what was discussed. It's corroborated by the suitability letter which says:

"You wish to look at schemes that aim to allow exit as soon after the three year tax qualifying period as possible. You are aware that there are no guarantees and as by their nature, EISs are specialist investments that have no specific exit date."

It's also clear AWFPL were aware that Mr and Mrs K didn't want to invest for the long term – the fact find notes:

"Investing for the next 3/4 years – understand that the funds may not mature at that point but they are willing to tie the funds up for longer if required as long as from outset there is an intention that an exit should be available within 5 years (preferably less)"

Despite knowing about the desire to access the money, the adviser didn't ask why that time frame was important – and when I asked AWFPL, they confirmed they didn't know about Mr and Mrs K's intentions for the money. The need for access suggests a clear reliance on this money, which in itself suggests an intolerance toward risking any of it, yet the adviser didn't explore that.

I also consider that the adviser's notes show an expectation – on both the part of Mr and Mrs K and the adviser – that the funds would definitely be available at some point after the three years. This ignores the likelihood of long-term liquidity problems that this type of investment often faces. In my view the adviser did not make that risk clear enough, and in fact gave a misleading impression that the money would likely be available in future. While there are mentions of EIS being high risk, and of liquidity issues in other of the documents, I'm satisfied that they would have been outweighed by the misleading impression AWFPL gave Mr and Mrs K about their ability to access these funds within five years.

- Though Mr K's attitude to risk was recorded as 'high' – the fourth of five options - it was noted that a 20% loss in his investments would make him feel uncomfortable. When asked to pick from a range of investment portfolios he said he'd be comfortable with a portfolio made up of 30% low risk, 40% medium risk and 30% higher risk investments – which was the middle of seven levels of risk. In my view this doesn't align with the very high-risk nature of EIS investments. While his overall score was higher than average, I'm not convinced the adviser did enough to ensure he was really willing to lose as much as he realistically could here.*

I'm not convinced that Mr and Mrs K would have been willing to invest the entirety of their money held in the trust in to such a high risk investment, had they been told it was more risk than their attitude towards risk and that, if the worst were to happen and they lost it all, they would have to sell part of their business assets if they needed any emergency cash. Overall, I'm not convinced the tax benefits outweigh the risk here. I'm satisfied that had the adviser properly considered all relevant aspects, they would have advised Mr and Mrs K that the

investment wasn't suitable for them. Had they done that I'm persuaded that Mr and Mrs K would not have gone ahead with the investment."

To calculate whether Mr and Mrs K had been caused any loss as a result of the unsuitable investments, I said that AWFPL should compare the performance of the EIS investment with that of the FTSE UK Private Investors Income Total Return Index benchmark.

Replies to my provisional decisions

Mr and Mrs K accepted the provisional decision.

AWFPL didn't accept the decision and in summary they said:

- Mr and Mrs K didn't tell them in 2018 that they would need to pay a tax bill in 2022. They felt the evidence shows Mr and Mrs K's desire for access was a preference rather than a need and that they had other sources from which to pay the bill, and they were able to pay it in 2022 when needed. Regardless, the documents clearly set out that there wasn't a guarantee of exit after three years.
- The documents clearly set out the risks involved, including that a 100% loss was possible and Mr and Mrs K had said that a total failure of the EIS would not impact their lifestyle.
- AWFPL said Mr and Mrs K would have an emergency fund available – the documents show they would have £150,000 in premium bonds and cash.
- The summary they received from AWL was that Mr and Mrs K were looking to develop their business, and the withdrawal from the Trust and restructure was required to make business lending more favourable and that the impact of the restructure would be the tax bill of up to £164,000 upon full withdrawal from the Trust. The plan put forward by AWL was designed to balance the business development with the tax liability and risks involved in the investment and they feel the EIS helped achieve that balance, despite the losses experienced.
- They did not state the AWL plan was a good or poor plan and they were reliant on AWL's expertise regarding the business development plans.
- In advising Mr and Mrs K to invest the £85,000, this didn't guarantee that AWFPL would have agreed to the future investments. They would have reassessed the risk at each point. From their perspective the amount that wasn't invested isn't part of the complaint.
- Mr and Mrs K's personal wealth arguably is intrinsically linked to the success of their businesses, so while 100% of all non-business assets being tied up in EIS would perhaps be an initial concern to AWFPL also, they feel it needs to be weighed against the bigger picture of the benefit it would give to Mr and Mrs K.
- Regarding the alternative solution that I put forward in my provisional decision, that Mr and Mrs K could have simply taken an income from the Trust rather than from their business, they said that this method wouldn't have occurred within the required timescale.
- If I was still minded to uphold the complaint, then any distributions Mr K received from the EIS during its term prior to 2023 need to be factored into the calculation.

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 not been persuaded to depart from the findings I reached in my provisional decision. I'll avoid repeating my provisional findings where possible and the

below should be read with the provisional decision set out above, which forms part of my final decision.

Regarding liquidity, I'm not convinced the liquidity issues that an investment like this were sufficiently set out. I accept there are mentions of a potential 100% loss and that Mr and Mrs K said that a total loss wouldn't impact their lifestyle. However, I'm persuaded the possibility of that happening was downplayed to the point Mr and Mrs K would have reasonably thought it was unlikely. There are several pieces of correspondence where Mr and Mrs K mention wanting to access the money after three to four years, and overall they would have been left with the impression that it would be very likely that they would have access after that time.

AWFPL say there's no reference in the 2018 paperwork to Mr and Mrs K's need to pay a tax bill in 2022 – I agree, but in my view, that highlights the issue here. The adviser was repeatedly told by Mr and Mrs K that they wanted access after that time frame, but the adviser didn't ask why. Their desire for access – either as a need or a preference – was a key factor of whether this type of investment would be suitable for them. No questions were asked about what they wanted the money for and how they would fund that without it.

As it turned out, Mr and Mrs K were able to pay the tax bill in 2022. However, that is only something I know due to hindsight. The adviser didn't have enough information in 2018 to know that would be possible. They had given no consideration to how Mrs K's loan from the Trust would be repaid. I understand that in practice the cash and premium bonds had to be used. AWFPL haven't given me any evidence to show how that loan was going to be repaid.

As a result, I disagree that Mr and Mrs K were going to be left with a £150,000 emergency fund – that money was foreseeably going to be used for repaying the loan. That money would then be released from the Trust to Mr K and the plan was to invest it in EIS. The adviser expressed no concerns about the plan as a whole, which would lead to almost £400,000 in EIS. So as far as the AWFPL adviser would have known in 2018, Mr and Mrs K's entire non-business assets would eventually be held in EIS.

Given AWFPL didn't gather any information about the money held in Mr and Mrs K's business bank accounts, or the amount of profit those businesses generated, there's no evidence of what Mr and Mrs K's capacity to make up for any losses was.

I've considered AWFPL's comments about the fact they'd have reassessed suitability at each new investment point. From the evidence I have I'm satisfied the adviser had already told Mr and Mrs K that the second investment was suitable, given their research into different options that was being done in May 2018 and the proximity of that to the first investment. With regards to later investments, I appreciate AWFPL would have reassessed suitability at each later point, but based on the evidence I've seen, I've no reason to believe that they would have advised against it at those points. They gave no warnings or indication in 2018 that it may not be suitable to invest all non-business assets in such a high-risk environment.

AWFPL has said they were reliant on AWL to advise on the business development issue and the risk involved in investing in the EIS were outweighed by the benefit provided to their businesses. So, I've considered what AWFPL knew about the business development plans to decide if I agree that benefit exists and if so, whether it makes the advice suitable.

In the paperwork from AWL there's a mention of the more favourable view of lenders if the preference shares weren't held in Trust – but there's no mention of concerns from lenders about the Trust structure itself. Mr and Mrs K's concern around the Trust was the outstanding loan due to the income tax that would become payable if it were still in place in April 2019. Those are two separate issues, neither of which necessitated the full withdrawal

from the Trust itself, as far as I can see. As Mr and Mrs K were happy to invest for three years from 2018, they weren't reliant on the money to develop the business within that time.

In my view it doesn't require specialist knowledge to understand those points from AWL's advice letter. AWFPL had a duty to ensure they had enough information about Mr and Mrs K's objectives to ensure the advice they gave was suitable. I consider it would have been reasonable for them to contemplate the objectives AWL set out, to decide how their advice to invest in the EIS fit in with the overall plans. Having considered AWFPL's argument, I'm not convinced that the investment in the EIS did anything to meet Mr and Mrs K's business development goals, as there's no indication that's what the EIS specifically was for.

AWFPL have said Mr and Mrs K wanted to withdraw from the Trust as quickly as possible and the tax efficiency of the EIS allowed that to happen. The plan in place in 2017 was structured to withdraw from the Trust over four to five years – but due to the subsequent investment in EIS and the minimum time periods, the earliest time at which Mr and Mrs K would receive the total amount from the Trust in cash would be April 2024 – and only if there were no liquidity issues.

There are no notes as to why Mr and Mrs K wanted to entirely withdraw from the Trust – though I believe it's likely just to have been for simplicity, given the need to repay the loan. There are also no notes about the time period they'd like to withdraw over and given the timescale set out they were happy for it to take at least six years. So, I don't accept AWFPL's arguments that the risk taken in investing in the EIS was outweighed by being able to access the money quickly – as it was going to take at least six years regardless.

This leads me to AWFPL's comments on the alternative plan that I discussed in my provisional decision. As mentioned, the maximum timeframe over which Mr and Mrs K wanted access to this money was not established and it was clear they were happy to wait for several years for the total to be received.

If they replaced the income they took from their businesses of £4,000 per month with the same monthly amount from the Trust, it would take around eight years to withdraw in full at £48,000 per year. The personal allowance was £11,500 in the tax year when the advice was given, and so Mr K would have paid income tax at 20% on £36,500 of the yearly withdrawal. I find it likely they were paying income tax on the income they received from their businesses, albeit slightly less as they would have used both Mr and Mrs K's personal allowances.

That's just one alternative – there could have been others available. I mentioned it simply to make the point that I am not persuaded the EIS solution was the only suitable solution for Mr and Mrs K's objectives. There were others available that would have met their risk level and preference for access to the money.

Lastly regarding AWFPL's comments about any returns Mr K received from the EIS needing to be accounted for in the calculation, I agree they ought to be. This was accounted for in my provisional decision and is also accounted for below under the "Actual value" and "Fair value" sections.

I note AWFPL have said they are attempting to find out what the distributions were, as they suspect there may have been more than the £15,461 returned in 2023. Mr K has provided a statement from the EIS company dated 23 March 2023, which confirms that £15,461 was the total he was paid in return. As such, I'm satisfied that there were no earlier distributions (not including any tax relief received). Mr K has provided another letter dated 4 April 2023 confirming the payment had been made – so that should be the "end date" for the calculation below.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs K as close to the position they would probably now be in if they had not been given unsuitable advice.

I take the view that Mr and Mrs K would have invested differently. It is not possible to say *precisely* what they would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs K's circumstances and objectives when they invested.

What must AWFPL do?

To compensate Mr and Mrs K fairly, AWFPL must:

- Compare the performance of Mr and Mrs K's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.
- AWFPL should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
£85,000 invested in the EIS	No longer in force	FTSE UK Private Investors Income Total Return Index	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any withdrawal from the EIS paid to Mr and Mrs K – including any tax relief they received - should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if AWFPL totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr and Mrs K wanted capital growth and were willing to accept some investment risk.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr and Mrs K's circumstances and risk attitude.

My final decision

I uphold the complaint. My decision is that Armstrong Watson Financial Planning Limited should pay the amount calculated as set out above.

Armstrong Watson Financial Planning Limited should provide details of its calculation to Mr and Mrs K in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 2 October 2025.

Katie Haywood
Ombudsman