DRN-5934864

The complaint

Mr B complains about advice given to him by St. James's Place Wealth Management Plc ("SJP") to invest in four Enterprise Investment Schemes (EIS). He's particularly concerned regarding the administration of the investments and access to the investment monies.

What happened

The background to the complaint will be well known to both parties, so I'll only give some key details here.

In April 2018 Mr B was advised by SJP about investing a sum of £300,000 generated from the sale of an investment property owned jointly by him and his wife. SJP recommended that £150,000 be invested in Mr B's name into four EIS, with the remainder of the monies split between unit trust feeder accounts for Mr B and his wife, adding to those they already held with SJP.

The EIS investment, although higher risk than Mr B's previously established 'medium' attitude to risk, was recommended for capital growth but also to take advantage of the associated tax benefits – primarily immediate 30% income tax relief and also the deferment of the capital gains tax (CGT) liability stemming from the property sale.

The relationship between Mr B and his wife and SJP continued until late 2023 when they opted to move to a new adviser, unhappy with various aspects of the service SJP had provided. Several of those concerns have already been dealt with separately by this service. So, to be clear, here I'm considering only the EIS recommendation made to Mr B.

SJP didn't uphold Mr B's complaint about the EIS. It said, in brief –

- Mr B and his wife had met with their existing SJP Partner in 2018 who'd caried out a financial review which identified the tax liability. At the time, Mr B was married, in good health and the director of his own recently incorporated business. He was a higher-rate taxpayer with an estate, combined with his wife, of approximately £1.8 million. He had some experience of investing via existing stocks and shares ISAs, a unit trust feeder account and previous pension planning and was assessed as having a medium attitude to risk (ATR).
- SJP was satisfied the recommendation to invest across a range of EIS providers met Mr B's identified and agreed objectives - to address the CGT liability while also gaining income tax relief.
- The suitability report provided sufficient information to enable Mr B to make an informed decision. The report noted that EIS were high-risk investments, the values of which could fall significantly and although the prospective term was discussed (medium to longer term/5-15 years), it was also stressed that the money would be invested in unlisted companies, and the investments could therefore be illiquid. The documentation said that Mr B may not be able to sell them when he wished to, or doing so might result in a significant reduction in value.
- Mr B signed declarations that acknowledged his understanding of the products and the associated risks, including illiquidity.

- The SJP approach to investment management didn't extend to the EIS and SJP had no influence and wasn't responsible for the underlying decisions of the EIS providers.
- Aside from the income tax relief or available CGT deferral, the portfolio overall had increased in value.

Mr B didn't accept SJP's conclusions and referred the matter to this service.

Our investigator thought the complaint should be partly upheld. He accepted that Mr B met the definition of a high-net-worth client, so some investment in EIS was potentially appropriate for him. But the investigator noted Mr B's medium ATR and felt that any tax mitigation objective shouldn't have taken precedent over suitability.

The investigator said that although Mr B may have understood the risks involved and most likely wouldn't have required access to the money for some years, as he had several secure final salary pensions in place, he nevertheless felt an investment of £150,000 was too much to commit at the high level of risk associated with EIS investment.

The investigator therefore proposed that SJP compensate Mr B based on him having invested a smaller amount into the EIS – around 5% of the £300,000, so £15,000 – with the balance of the money having been invested in line with his medium ATR. The investigator also felt that some compensation should be paid for the distress and inconvenience caused to Mr B by having to chase SJP for information about the EIS and then discovering that the invested money wasn't readily available to him.

SJP didn't accept the investigator's view. It felt that Mr B's complaint stemmed from his frustration around understanding the nature of EIS investment and it didn't think he'd complained about the products' inherent risks. It noted his subsequent additional investment into other high-risk products – Venture Capital Trusts (VCTs) – during 2019 through to 2022 and felt this supported his capacity to take risk and recover losses.

SJP noted the investigator's view that it would've been suitable for Mr B to invest a smaller proportion of his assets into the EIS and pointed out that, with his wife, he'd held investable assets well in excess of £1million at the time of the advice, So the £150,000 committed to the EIS actually represented quite a small proportion of this, around 12%.

In summary, SJP felt the EIS investments and the amount invested had been suitable. It said Mr B had been advised of the higher risk and had clearly been able to take that level of risk with the capacity to recover from significant losses. He had multiple sources of guaranteed income in retirement, which meant that the EIS investment and any subsequent losses that might be incurred wouldn't have affected his standard of living.

The investigator wasn't persuaded to change his view, other than to acknowledge that a larger investment in EIS would probably been suitable for Mr B given the total of investable assets that SJP had highlighted.

Mr B added some further comments. He stressed his lack of investment experience prior to first engaging with SJP in 2017 and that he didn't feel his ATR had ever been above a medium level. He said the level of risk associated with EIS, while noted in the documentation, was played down by the adviser and there was nothing to suggest the investment wouldn't be realisable in around five to seven years, in time for his retirement.

And while he acknowledged he'd made further investment into similar products – the VCTs – this had been a result of a lack of engagement from SJP. He said that without the prospect of further investment, he'd found it almost impossible to get the adviser's attention to help understand and manage the portfolio.

As no agreement could be reached, the matter was referred to me to review.

I issued a provisional decision explaining why I didn't think the complaint should be upheld. I said, in part –

"*There's no dispute that the recommendation to invest £150,000 (plus fees) into the four EIS sat outside Mr B's agreed medium ATR. This type of product is undoubtedly high risk, with the potential for the whole amount invested to be lost, or for there to be issues around liquidity and the ability to access the invested monies.*

But that said, I don't think that it's the case that a suitable recommendation of EIS investment can't under any circumstances be made to someone with a medium attitude to risk, nor someone with limited investment experience.

Although Mr B's stock market investment experience was limited, I think he'd have most likely understood the nature of the product, which involved investment in early-stage businesses. He himself had only recently started a new business, the year prior to the advice, and he'd also previously invested in the buy-to-let property that had been sold and generated the large capital gain.

It was also the case that the risk of significant loss was made very clear to him in the suitability report and the declarations he signed. The declarations said "the high-risk nature of EIS means you could get back less than was originally invested. While tax reliefs exist to limit any such loss, they remain only suitable for clients who can afford to lose money."

But at the core of Mr B's complaint is the issue of liquidity and access to the invested monies. He's said that the impression was given by the adviser that it was reasonable to expect a five-to-seven-year term. And while I can't be certain what was discussed, the documentation did indicate a likely longer term and further, made clear that ultimately the ability to exit the investment at a particular time couldn't be guaranteed.

The declarations signed by Mr B stated that EIS companies weren't listed on an exchange and were inherently illiquid. And importantly, they went on to qualify this further by saying in more straightforward terms, "you may not be able to sell (the investments) at the point you wish to". The product prospectuses also gave similar warnings, saying, for instance, that the investments should be left for 'considerably' longer than the three-year minimum tax relief qualifying period, it would take considerable time to realise any of the investments, it may not always be possible to sell, and the timing of realisation could not be predicted.

But that all said, the provision of written information doesn't override the need to ensure that a recommendation is generally suitable. Advice needs to meet a client's identified objectives, taking account of their attitude to risk, the purpose of investing and the intended term. And advice also needs to consider the client's capacity to withstand the risks, given their financial circumstances and future requirements.

In this respect, I'm satisfied SJP's recommendation of the EIS did all the above. While Mr B was his early sixties at the time of the advice, so not far off state retirement age, he had just started a business, which looked likely to provide him with a healthy level of income and in any event, he had significant guaranteed pension provision. There was no reference made in the suitability report to the invested money being needed for retirement, rather it was stated that the money was not needed in the future.

What is clear is that Mr B would benefit from the tax advantages of the EIS, both in terms of *the income tax relief as a higher-rate taxpayer and in respect of the CGT referral, given the sum generated by the buy-to-let sale.*

I accept that, as the investigator noted, the tax advantages of investment shouldn't take precedent over its suitability. But I don't think that was the case here. I'm satisfied Mr B was able to withstand the risk of the investment, both in terms of the potential for restricted access, as (at the time of the advice at least) the money wasn't needed at a specific point in time given his wider circumstances.

And similarly in respect of the risk of loss, I think this was something that it was reasonable to consider that Mr B was able to withstand, for the same reason. While encountering either of these issues would clearly be frustrating, a consideration of his circumstances at the time of the advice suggests that a lack of access or loss in respect of this money wouldn't significantly impact his standard of living.

In respect of the administration of the investments, I accept that this type of more complex product involves a greater amount of paperwork than more straightforward products, not least in relation to the tax reliefs. But I've not seen that Mr B was disadvantaged by this or that it in itself made the recommendation unsuitable in any way. Mr B would have already been using the services of an accountant in relation to his business.

So, in summary, I'm satisfied that the recommendation to place a limited proportion of Mr B's investable assets at the level of risk associated with the EIS was suitable for his circumstances and consistent with the identified objective of obtaining tax relief."

Mr B didn't accept my provisional decision. He provided some additional comments in response, saying in brief –

- The suitability report had misled regarding the investment term – the discussion with the adviser had focussed on a five-year term.
- The high broker fees weren't made clear and had they been it would've influenced his decision to invest.
- It was clear his ATR was medium, but I'd accepted that a greater risk could be taken simply because he'd saved hard to accumulate money.
- It was unfair to suggest that the potential losses would've had little impact as his personal circumstances meant that access to the invested money would've been very helpful.
- He had no investment experience, and neither his business arrangements nor the property sale I'd referenced would've given him any insight into how this type of product worked.
- It wasn't the case that the investments couldn't be readily traded, as the documentation had suggested. It was far more challenging than that.
- The actual timeframe for holding the investment was potentially even longer than the 15 years mentioned in the suitability report.
- The management of the investments had created a significant amount of work and stress and simply because he already had use of an accountant didn't mean the recommendation was suitable.

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, while I recognise it will be disappointing for Mr B, I find I've not been persuaded to depart from my provisional conclusions. I remain of the view that the complaint should not be upheld for the reasons given previously.

I appreciate the various points he's made in response to my provisional decision and do understand how on the face of it, taken in isolation, these points could be seen to support an argument that the recommendation to invest in EIS was unsuitable.

For instance, the level of risk involved – Mr B was in general a 'medium' risk investor, and the EIS were high risk. But this investment represented a relatively small proportion of his available assets, so reducing the potential impact of loss or lack or access. Similarly, in respect of my point about Mr B's business experience and the property sale, my intention was not to suggest that this alone rendered the advice suitable. Rather, it formed part of an overall picture which I'm satisfied, on balance, supports that Mr B was able to accept and withstand the risks associated with this recommendation of EIS, particularly in light of the immediate tax benefits it brought him.

I remain of the view that the recommendation was set out in a clear manner with the various costs and risks explained, which enabled Mr B to make an informed decision as to whether to proceed. I acknowledge the dispute around the key issue of access – that the discussions with the adviser created a different impression to that set out in the documentation and were far more encouraging about likely shorter-term access.

But I think that had there been a specific objective of shorter-term access (and there wasn't one recorded) the information available was nevertheless sufficient to fully inform Mr B of the potentially difficulties that might arise if access was needed sooner than expected.

So, in summary, I remain satisfied that in all the circumstances SJP's recommendation that Mr B invest in the EIS was suitable.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 January 2026.

James Harris
Ombudsman