

The complaint

In 2019 an Enterprise Investment Scheme ('EIS') provided by GUINNESS ASSET MANAGEMENT LIMITED ('Guinness') was recommended to Mr S by his adviser. In October that year he invested around £75,000 in the Guinness AIM EIS 2020 (the 'Guinness EIS'). His portfolio was invested by Guinness (as discretionary investment manager) in EIS qualifying Alternative Investment Market ('AIM') stock between April 2020 and April 2021.

Mr S says Guinness failed to conduct proper due diligence on the stock selected for the scheme/his portfolio, that its failure led directly to the portfolio's profoundly poor performance and to a loss of around 70% of the money he invested. He seeks compensation for his loss.

What happened

Mr S confirms that he has no complaint about the advice he received to invest in the Guinness EIS.

Instead, his complaint focuses only on Guinness and on his due diligence and underperformance allegations. A sub-part of the complaint relates to Guinness' refusal to disclose documentation on the due diligence exercise it conducted during the scheme's stock selection. In summary, it regards the documentation to be commercially sensitive, and it says it is against its policy to disclose them. Mr S believes Guinness is duty bound to disclose them, in order to show that it discharged its due diligence obligations (and how).

Guinness' AIM based EIS product had been offered since 2013. The Guinness EIS's offering documents – the Investment Memorandum ('IM'), Summary Document and Key Information Document – were made available to Mr S at the outset.

The IM's contents are detailed. With regards to the scheme's purpose, the IM says it had an expected term of at least three years (potentially up to four or five years), during which it planned to invest mainly in EIS qualifying AIM listed shares with capital growth prospects (alongside possible investment in pre-Initial Public Offering opportunities), and at the end of which the investment was expected to achieve EIS tax relief for the investor and, hopefully, growth. No growth guarantee was given.

In terms of due diligence, the IM says –

“The first stage of due diligence entails a review of documentation including any relevant admission document for an IPO, annual report and accounts, corporate literature and brokers research. This is set in the context of the sector and the market as a whole to provide the Investment Manager with an initial view of the attractiveness of the investment proposition.

Companies that pass the first stage due diligence are invited to present to the Investment Manager, and time is spent in meeting and understanding the management team and their approach. Where appropriate, references are taken and site visits are made.”

Guinness has also given us the following explanations, in response to Mr S' due diligence

documentation disclosure request –

“... it is our policy not to disclose such materials. The investment research undertaken by Guinness is proprietary in nature and forms a core part of our intellectual property as an investment manager. In addition, certain information ... may include material that is confidential or subject to regulatory restrictions.”

“Sharing this information externally could risk breaching confidentiality obligations, undermining the integrity of our investment process, and potentially disadvantaging other investors.”

Following his investment in the scheme, and as his portfolio was being invested, Mr S received ‘Account Valuation and Investee Company Updates’ in April 2020, October 2020 and April 2021. The updates showed how his portfolio was being invested over these periods, with portfolio valuations at each point. Periodical valuation, investor and update based reporting continued to be made available to him thereafter.

The Guinness EIS/Mr S’ portfolio invested in 21 companies between April 2020 and April 2021. He was sent a ‘Confirmation Note’ for each investment, which set out the key details of the transaction. In addition, each Confirmation Note provided a summary about the investee company and about the reason(s) for its selection.

Examples of these summaries are –

“[the company] has a well-established position within the global energy market, assisting clients with its unique combination of products and services, that utilise the Group’s sub-surface skills and geospatial design and implementation capabilities alongside a deep knowledge and understanding of how to deploy data. The global primary energy mix is changing and this places [its] customers into a new commercial landscape, one that is underlain by a web of complex location-based decision making. As a result, new growth opportunities are emerging for [the company] to deploy its skills and technologies with both existing and new customers. The Company is leveraging its strong market position, utilising its existing expertise, and targeting additional commercial opportunities, to de-risk and accelerate the global transition to renewable sources of energy while strengthening its existing and well-established business.”

“[the company] provides specialised, enterprise-class software solutions for customer engagement to telecommunication operators. These telcos face a series of challenges including market maturity, and customer churn. [The company’s] multi-channel contextual campaign management software enables relevant and personalised interactions with telco subscribers in real time to increase the telco’s revenue and reduce customer churn. The Company currently provides its software solutions to 19 telco customers in 17 countries, principally in emerging markets, with a combined user base of more than 1 billion. It is headquartered in ... and has offices in ... employing approximately 160 people. The Company is at an inflexion point for its growth prospects, with a complete end-to-end product suite and credibility with tier 1 telcos. The latest funding will enable the Company to invest further in the business and capitalise on opportunities available to it, that might otherwise be limited due to capital constraints. The Directors believe that [it] can become a \$25 million revenue business in the medium term with high recurring revenue streams and strong cash generation.”

Mr S has made submissions about the underperformance that he says was caused by Guinness’ due diligence failure. However, he stresses that the failure is the root cause he primarily complains about, with the underperformance and financial loss he has incurred being the consequences.

In short, his claim about the underperformance consequence is that 19 of the 21 stockholdings in his portfolio lost value (16 of them suffering *heavy* losses); he understands and accepts the high risks in EIS investments; but such a substantially high (around 90%) failure rate strongly indicates that the cause goes beyond the high risk nature of EIS investments; and that there was probably an initial failure in the due diligence applied to selecting the stockholdings.

In his allegation of a due diligence failure, Mr S mainly says –

- Guinness' refusal to disclose any associated documentation raises a suspicion as to whether (or not) there is any documented due diligence for the stocks selected for the Guinness EIS. This suspicion is heightened by the fact that it has never confirmed that it researched information on the investee companies held in Companies House and within their company accounts, such research being the minimum that it ought reasonably to have conducted as part of its due diligence.
- For the above reasons, he also suspects that Guinness possibly did no more, in its due diligence, than rely on each of the company's prospectus.
- His Companies House and company accounts research into the investee companies has uncovered 'red flags' – causes for concern – for some of them which would have informed Guinness of cause to avoid their selection, had it conducted the same research. Examples of these red flags include a history of losses prior to being floated (suggesting poor future prospects), a high turnover of directors (suggesting internal problems), and an excessive number of employees (suggesting costly overheads).

Guinness stands by the adequacy of its due diligence in selecting the stocks for the scheme. It agrees that performance was poor, and it has apologised to Mr S for this. It extended that apology to include a goodwill compensation payment of around £1,525 made to him as a refund of its fees for the period covering October 2021 to April 2024, and to include confirmation that it would not apply any further fees to his portfolio.

However, it maintains that the scheme's underperformance was caused by wider market conditions beyond its control, particularly in the AIM sector. It says following a high point up to around April 2021 "*... there has been a steep decline in the AIM market which led to the Guinness AIM EIS 2020 portfolio performing badly and resulted in poor returns ... performance of Guinness AIM EIS 2020 is in line with the performance of the universe of investable EIS-qualifying AIM-related stocks at the time*".

One of our investigators looked into the complaint and concluded that it should not be upheld.

He took the view that Mr S' complaint is mainly about performance, less so about due diligence. He was satisfied with Guinness' engagement with Mr S' adviser concerning his enquiries and his case, so with regards to aspects of the complaint that suggest he was/is unhappy with Guinness' communications, the investigator found no wrongdoing.

The investigator considered that there would have been a preliminary and competent exercise in due diligence applied by the nominated advisers required to conduct such checks on unlisted companies before they are permitted to list their stock on the AIM. In addition, he said, was the due diligence conducted by Guinness for its stock selections, and the ongoing due diligence and monitoring it would have conducted after those selections. He did not

consider he had seen evidence that none of these happened.

He was also not persuaded by Mr S' red flags argument. Instead, he took the views that the outcomes for the stocks that lost value resulted mainly and directly from performance in the markets, and that the high risk of such performance problems was inherent in the nature of EIS investments, as Mr S knew at the outset. He also noted that it was Mr S' adviser who decided that investment in EIS, and in the Guinness EIS, was suitable for him.

Mr S disagrees with this outcome, and with what he considers to be the investigator's error in redefining his complaint about due diligence into one about performance. He maintains all the points he previously made, and he has asked for an Ombudsman's decision. He is concerned that our service has taken Guinness' word for the due diligence it says it conducted without actually seeing and considering the associated documentation ourselves, especially as the IM does not even contain information about it.

With regards to his adviser's role in the matter, Mr S says no information about the selected stock was shared with his adviser (or with him) prior to when the holdings used to populate the scheme/his portfolio were selected by Guinness, so there is a distinction to draw between recommendation of the EIS investment (by his adviser) and selection of the investee companies (by Guinness).

The matter was referred to an 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.

Communications

Mr S' complaint in this respect mainly relates to the documentation disclosure matter, which he and his adviser repeatedly, but unsuccessfully, pursued. I understand his point. He is not prepared to accept Guinness' assertion that its due diligence was adequate, and he seeks to either verify that himself or, at least, to have our service verify that as part of our consideration of his complaint.

Given that his complaint alleges a due diligence failure, it is possible to see why he wants such verification. I have balanced this with the explanations from Guinness about the sensitivity of the information and documentation it holds on its due diligence exercise. I can understand why this could justify its refusal to disclose the information to Mr S, but I do not consider the same with regards to disclosure to our service.

We can observe and protect the confidentiality of information provided to us where necessary. If there are reasonable grounds on which a firm asks us not to share information with a complainant, and not to reflect the details of said information in a decision, we can consider such a request and, depending on the circumstances, we can do both. Therefore, we could ask for, receive and consider the information without detriment to the confidentiality attached to it.

For these reasons, I have considered whether (or not) I need to see the due diligence documentation in order to fairly determine Mr S' complaint. I do not doubt Guinness' explanations about the confidentiality and sensitivity attached to it – I have seen no reason to do so – so I would not wish to request its disclosure in such circumstances unless it is necessary.

In the present case, I have not found it necessary to request its disclosure. On balance, I consider that there is already enough evidence on Guinness' due diligence exercise within the information I already have.

Earlier, I mentioned the Confirmation Notes issued to Mr S on each stock investment, and I used two examples of the investee company summaries included in them. These summaries were presented for every company invested in. It might or might not have occurred to Mr S, but I consider that these summaries were essentially feedback from Guinness to him on the due diligence it had conducted on each of the relevant companies.

I do not say or suggest that the summaries substitute for the full documentation of the implementation, in each case, of the due diligence process Guinness has described. However, in the present case, I find that they provide meaningful and sufficient information on the key findings from the process, for each company, that led Guinness to select each stock.

I note Mr S' argument that Guinness probably relied, only, on information from the companies' prospectus. He might say that the summaries I have referred to were products of the same. I do not have enough evidence to determine such a claim, but the summaries I have read – including the two examples above – could equally have been derived from implementation of the due diligence exercise described in the IM (as I quoted above). In the absence of evidence that says otherwise, I do not have grounds to say they did not result from that exercise.

Mr S might also say that the summaries do not substitute for detailed results from the fundamental Companies House and company accounts checks that he has referred to. It is possible, if not probable, that such checks, and/or comparable checks, fed into the summaries. For example, he cited information on employee numbers that could have been obtained from the type of checks he mentioned, but in one of the examples I used above there is reference to employee numbers within the quote, and it is not the only example that mentions employee numbers.

The summaries range in terms of the details within their contents, some are more detailed than others. On balance, their contents convey the overall message that meaningful due diligence – along the lines of the process Guinness has described to us – was broadly conducted for each investee company.

It is possible that some of the causes for concern cited by Mr S might have also been noticed by Guinness. If so, we should be mindful that the Guinness EIS was based on discretionary management, and Guinness was its discretionary manager. Therefore, and so long as it acted within its mandate, it had discretion over its management decisions, including selection of investee companies. It was not obliged to share the same conclusions drawn by Mr S on the characteristics of any of the companies.

This does not mean it was unaccountable in discharging that role. I repeat, it had to act within its mandate, and I have not seen evidence that it did not. It also had to act in the best interests of the fund and its investors. Factors like mistakes, negligent and/or reckless decisions, or a tangible act(s) or omission(s) of mismanagement can be considered in this respect, but, again, and with specific regard to Mr S' due diligence allegation, I have not seen such evidence.

In the absence of the above factors, and in the presence of the summaries showing why it selected each investee company, it appears that Guinness reasonably took a favourable view on the overall prospects of the selected companies, despite any causes for concern it might have identified during due diligence. The scheme was defined as a high-risk product,

so some concerns about some underlying investee companies would have been likely. The decisions to invest in them, despite such concerns, would have been based on the commonly acknowledged correlation between high-risks and the potential for high-rewards.

We have what appears to be full disclosure of the communications between Mr S' adviser (on his behalf) and Guinness in 2024 and 2025, concerning enquiries from the former and responses from the latter. Other than its refusal to disclose the due diligence documentation, which I have already addressed, there is nothing in these communications which depicts Guinness as resisting or avoiding accountability, in terms of explaining itself and its actions, for its role as investment manager. The cross correspondence continued over time and Guinness' responses broadly addressed the enquiries it received. For these reasons, I do not find any wrongdoing by Guinness in this respect.

Performance

In relatively brief and straightforward terms –

- Our service will not normally make findings on performance in isolation. Investment performance can be influenced and determined by a range of factors, including suitability of advice, investment management, socioeconomic and geopolitical factors, and the changing states of the wider markets.
- Where suitability of advice is not an issue, as in the present case, we can look into investment management if there are grounds to do so. There are grounds for this in Mr S' complaint. He alleges a failure at what could be viewed as the first stage of Guinness' management of the scheme – due diligence on investment selection – so I will deal with this in the next section.
- Aside from the due diligence mismanagement allegation, there are no reasonable grounds to blame Guinness for any socioeconomic, geopolitical and/or wider market factors outside its control that affected the performance of the scheme.

Due Diligence Mismanagement Allegation

Overall and on balance, I am not persuaded that this allegation has been established.

It is noteworthy that the allegation seems to be based mainly on Mr S' suspicion, along with some hypothesis that he has presented to support his suspicion. It is for this reason he has argued strongly for the disclosure he sought from Guinness. The aim supposedly being to test his suspicion against the due diligence documentation. This is not a criticism. It is an approach he was entitled to consider. However, because he does not have the documentation, his allegation does not set out precisely what was done, or not done, by Guinness in its due diligence exercise that rendered the entire exercise a failure.

I repeat, I am satisfied with the summaries in the Confirmation Notes as indications of what was done in the exercise. Mr S has identified some general issues concerning some of the 21 investee companies, but the context I mentioned above continues to apply. He invested in an EIS which, as he knew, was defined as a high-risk venture. The IM gave warnings about this, including –

“Investment in shares traded on AIM involves a higher degree of risk, and such shares may be less liquid, than shares in companies which are listed on the main market of the London Stock Exchange.”

“Past performance of the Investment Manager or previous Guinness AIM EIS offerings is no

guarantee of future performance. Previous Guinness AIM EIS offerings are likely to be invested in different companies or at different prices and will be held through different market conditions for different time periods.”

“Investment Companies may be reliant on the skills or knowledge of a small number of individuals, and should a key individual leave performance may be adversely affected.”

“Additional risks and uncertainties not presently known to the Investment Manager may also have an adverse effect on the business of the Investee Companies. Investors should consider carefully whether a Subscription to the Service is suitable for them in the light of the information in this Information Memorandum and their personal circumstances.”

The scheme’s Key Information Document gave it the highest rating (seven out of seven) in terms of risk exposure.

These were the risk terms on which Mr S’ adviser considered the scheme suitable for him, and on which he decided to proceed with the investment.

The point I seek to make is that it is not enough for him to refer to the *red flags* he has mentioned because, even if they were accurate (and I note Guinness disagrees with, and has corrected, some of them) they appear, in the main, to sit within the inherent nature of risks that the Guinness EIS came with.

It could be said that Mr S would need to show why a particular high risk investee company (or companies) should have been deemed too high risk for selection, despite being from a cohort of inherently high risk investee companies that the scheme was designed to select from; and that its due diligence failure, as alleged, was the reason Guinness did not identify this and the reason the company’s stock found its way into the scheme’s portfolio. I have not seen evidence of any this.

I anticipate that he might say he has been hindered in showing the above due to Guinness’ non-disclosure of the due diligence documents. This could be a limited argument. It does not automatically follow that the disclosure would have made a difference to his case.

Amongst his complaint submissions, there is a document in which he summarised a range of details about, and investment outcomes related to, each of the companies the scheme/his portfolio invested in. This is a product of his own research, which he considers to be an example of the type of due diligence Guinness should have conducted. Elsewhere in his submissions he has also highlighted some of the companies that performed particularly badly.

Based on his research, the concerns he has noted include – some companies with directors holding too many directorships, a company with high research and development costs, a company with revenues below costs for two years running, and a company with multiple company name changes and high turnover of directors. I briefly mentioned some of these in the background section above.

I have not seen, from his submissions, enough to conclude that any of the investee companies carried risks at a level outside and/or beyond the seven out of seven rating in the Key Information Document, or that any of them had issues that should have rendered them too risky for the inherently high-risk Guinness EIS. Even though he does not have the disclosure he sought (so he does not know the implementation details of Guinness’ due diligence), he appears to have conducted a form of post-event due diligence by himself, and the outcomes he has presented do not support either of these conclusions.

Overall, on balance and for the reasons given above, I am not persuaded that Guinness mismanaged its due diligence in the Guinness EIS as alleged by Mr S.

My final decision

I do not uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 February 2026.

Roy Kuku
Ombudsman