

The complaint

Mr G complains he was given unsuitable investment advice by Aspect Financial Solutions Ltd (“AFS”). He’s represented in bring his complaint, but for ease of reading, I’ll mainly refer just to Mr G.

What happened

In 2013 AFS recommended Mr G invest £311,250 (made up of a cash sum of £49,800 along with a limited recourse loan for the balance) in an unregulated investment, Elysian Fuels 16 LLP, which involved the purchase of unlisted shares in an Elysian Fuels PLC. £300,000 of Elysian stock was then sold to Mr G’s company as part of a secondary tax planning exercise intended to reduce his tax bill on repayment of his director’s loan account.

Elysian Fuels subsequently failed, and the tax planning exercise was deemed a tax avoidance scheme by HM Revenue and Customs (“HMRC”), resulting in Mr G’s tax liabilities being recalculated. He also lost the cash element of the investment.

In 2020 Mr G complained to AFS that the recommendation had been unsuitable, saying, in brief, that it failed to take proper account of his circumstances and attitude to risk. Further, the adviser had failed to explain the investment and its associated risks.

AFS didn’t uphold the complaint. It said Mr G’s accountants had provided him with advice in respect of the tax arrangements, it being the primary driver behind the arrangement. AFS had been responsible only for the suitability of the investment element. The majority of the related documentation, including Mr G’s certification as a high-net-worth client, has been completed by the accountants.

AFS felt Mr G had accepted the high level of risk associated with the investment, which had been made clear in documentation issued to him, including in the suitability letter relating to Elysian, and also in respect of another similar scheme he’d invested in at the same time. Further, he’d been certified as a high-net-worth investor by his accountants.

The complaint was referred to this service, but our investigator didn’t think it should be upheld. She said, in brief:

- The Elysian investment involved a high level of risk, which matched the attitude to risk recorded for Mr G in the fact find. The suitability letter explained the high level of risk – that all could be lost – and that Mr G still wished to proceed.
- It wasn’t reasonable to separate the tax advice, which AFS had said Mr G’s accountants were responsible for, from the suitability of the investment. The potential tax benefits were the main reason behind the recommendation.
- Mr G had investment experience and was certified as a high-net-worth client, so would likely have had a greater understanding of the risks involved. However, the adviser was still responsible for ensuring suitability. It wasn’t sufficient to rely upon documentation to explain the risks.
- Although the investment may ultimately have been unsuitable for Mr G, it seems likely that he was keen to participate in the scheme to benefit from the potential tax

- advantages proposed by his accountants.
- The fact that Mr G was made aware of the risks and also agreed to them after receiving advice from his accountant, evidenced his appetite for tax mitigation and showed he was willing to following his accountant's advice. The investigator was therefore persuaded he would've still have invested in Elysian even if the risks had been made clearer.

Mr G didn't accept the investigator's view, so the matter was referred to me to review.

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 role is to decide this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances, based on the information provided and taking into account relevant law and regulations, regulator's rules, guidance and standards, codes of practice, and good industry practice at the time - where I consider it appropriate to do so.

In reaching my findings, where there's conflicting information about what happened and gaps in what we know, I must weigh the evidence we do have and decide, on the balance of probabilities and in light of the wider circumstances, what's most likely to have happened

Further, although a great deal of information and comment has been provided so far, I don't intend to give a detailed response to every point raised. While I've taken account of all the submissions, I've concentrated my findings on what I think is relevant and at the crux of the complaint.

While the complaint as made focusses on the suitability of the investment advice for Mr G, I don't think that can reasonably be looked at in isolation, separate from the overall scheme of which it formed a part. That is, a tax planning exercise that involved Mr G's accountants alongside the adviser. It went beyond simply making an investment of just under £50,000 with an aim of capital growth.

The suitability letter of 20 April 2013 issued to Mr G by the AFS adviser said that there'd been an initial meeting in February 2013 to discuss Mr G's corporation tax position and during this meeting the potential for extracting cash from his company in a tax efficient manner had been discussed. They'd then met again on 19 April 2013 to discuss Elysian and complete the application process.

That process involved the completion of various documents, many of which appear to have been generated and completed with the involvement of Mr D's accountants during March 2013, between the two meetings. These included a Statement of High Net Worth in which Mr G's accountants confirmed his assets to be in excess of £500,000 and a Facility Application confirming his employment as a director of his company with an income of £100,000 and assets separate to his residential property totalling in excess of £1million.

The suitability letter referred to a fact find having been completed and that the adviser had "*received (Mr G's) Accountants' tax evaluation*". The fact-find contained limited information about Mr G's circumstances. But it did record his objective as 'investment planning', with a specific note indicating the intention to invest a sum into a limited company to then pay off his director's loan. He was also categorised, in respect of his approach to investment, as a 'business investor' with requirements of growth and tax efficiency and a 'Highly Speculative' attitude to risk.

In respect of the 'tax evaluation' mentioned in the suitability letter, I note Mr G's representatives have queried the apparent reliance on this and whether such a document was ever actually created and provided to the adviser. AFS has confirmed it doesn't have a copy, but I don't think this necessarily confirms that one wasn't completed, or not provided to the adviser.

It would seem likely, given the completion of the various documents by the accountants, that at least some degree of consideration would've been given by them to the tax situation. And given their involvement in the completion of the documentation, I think it's likely that they provided quite a detailed level of evaluation. And if that wasn't the case, I think it seems reasonable to expect Mr G to have questioned the reference to a tax evaluation in the suitability letter, along with any other references in it that were potentially incorrect or which he didn't understand. But I've seen no indication that he did so.

The suitability letter included clear warnings about the risks involved, including saying that investing may involve '*a substantial risk of all or part of any monies invested. Only applicants who can afford the loss of their entire investment should consider investing.*' I accept there wasn't a specific warning regarding the potential for the tax arrangement element to fail and be deemed an avoidance scheme by HMRC. But the potential for that type of issue to occur was covered in the documentation relating to another similar scheme in which Mr G invested around the same time, again with the apparent involvement of his accountants. So, I think it seems likely Mr G would've been aware of the risk relating to the tax element of the arrangement, as well as those of the investment element itself.

And indeed, that conclusion seems to be supported by the fact that when a previous complaint relating to this matter was made to AFS by other representatives of Mr G in 2017 (at that time specifically concerning the failure of the taxation element,) it was stated that Mr G had understood and accepted "*that the investment in Elysian itself was a high risk one*" and did not "*complain of that in itself.*"

While I accept, as noted, that the fact find was limited, it does appear to be the case that Mr G was an experienced business owner, as such likely to be comfortable with considering novel ways of potentially improving his tax situation using his company. Clear warnings were provided to him by AFS of the high-risk nature of the investment and while I accept that doing so doesn't negate the need to ensure the suitability of an investment, on balance I don't think a recommendation to commit just under £50,000, which represented less than 10% of Mr G's overall assets, was unsuitable. Not when set against the wider context of his financial experience and circumstances. On balance, I think it's more likely than not that Mr G understood the nature of the arrangement and was keen to try to obtain the potential benefits involved.

In summary, I think a consideration of the wider circumstances, which reasonably includes noting the involvement of Mr G's accountants, leads me to conclude that it wouldn't be a fair and reasonable outcome to find AFS responsible for any losses incurred by Mr G.

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 G to accept or reject my decision before 22 December 2023.

James Harris
Ombudsman