

## Decision of the ADVERTISING REGULATORY BOARD

Complainant	Steve Lindsay
Advertiser	SJ Capital (Pty) Ltd
Consumer/Competitor	Consumer
File reference	638 - SJ Capital Group - Steve Lindsay
Outcome	Partially upheld
Date	13 March 2020

The Directorate of the Advertising Regulatory Board has been called upon to consider a consumer complaint lodged by Mr Lindsay against email advertisements received from the advertiser.

### Description of the advertising

The email advertisement is addressed to the Complainant, and invites him to invest in “... *our incredible NEW Strategic Land site, KING LANGLEY, Hertfordshire, UK...*”. It includes the following table of projected returns, and stipulates the timeframe for this investment objective to be realised as “4 – 6 years”:

<b>Plot Size:</b>	<b>Pre-Launch Offer:</b>	<b>List Price:</b>	<b>Saving:</b>	<b>Projected Return:</b>
<b>200sqm</b>	<b>£8,400</b>	£12,000	£3,600	£47,200
<b>250sqm</b>	<b>£10,500</b>	£15,000	£4,500	£59,000

The advertisement also references an attached “Factsheet” and “Site Plan”.

In subsequent correspondence, the Complainant attached another example, this time promoting “Shurdington, Gloucestershire, UK” as the Advertiser’s “... fastest selling Strategic Land Site in the 13 year history of SJ Capital Group ...” After providing Google Map images of the area, this advertisement states, *inter alia*, as follows:

“Our latest strategic land investment site is located on the eastern edge of Shurdington, a strategically important village in the Tewkesbury district of Gloucestershire. On successful allocation of the site for residential use, it is projected that investors will enjoy a close to 300% return over a 3 - 4 year period. This equates to an approximately 27% annualized return”.

## Complaint

The Complainant pointed out that the Advertiser is targeting South African customers, rather than UK citizens, with projected returns ranging between 300% and 500% within as little as six years. He alleges that this is simply impossible. He added that a number of the Advertiser’s applications in the UK are refused by the UK Land Authorities, and that several of the Advertiser’s existing clients have seen no return on their investments after nine years.

The Advertiser should be prevented from abusing uninformed South African investors.

## Response

The Advertiser was unwilling to allow the ARB to issue a binding decision on the basis that it was “... not good business practice to give any party jurisdiction if not obliged to”. Notwithstanding this, it addresses the complaint in order to allow the ARB to “... execute and conclude a thorough investigation, in order to provide both your members and the complainant with an accurate decision on this matter...” It added that it may well abide by any recommendations made by the ARB as it was an “... organisation of great integrity...”.

The advertiser submitted that it tried unsuccessfully to engage with the complainant to address his concerns. It added that the practice of marketing to South African investors is not sinister, but is done because there is a market for such services, and because it has

been appointed the exclusive agents in South Africa for its associate vendors; European Property Ventures.

Its advertised property value projections are determined with assistance of a detailed financial modelling tool and is provided by UK-based Landhold Capital and Claremont Planning. It incorporates typical costs per square foot, mandatory development costs and other discretionary costs that may apply. This information is carefully considered and cross-referenced before determining likely financial return and inviting public investments.

At the request of the ARB, the Advertiser provided verification from Claremont Planning that its estimations are informed by independent assessments and that projected returns are "... based upon an accurate methodology, which has utilised assumed outlays based upon site condition and typical residential construction costs".

Similar to what all JSE Listed companies do when listing shares, the purpose of attracting customer investment is to raise capital for private wealth placement. It remains, however, a speculative venture, which is why it includes pertinent reference to this in its contracts and Client Declaration Forms, which state, *inter alia*, as follows:

"I hereby acknowledge that I understand the speculative nature of the investment and that the Plot(s) I propose to purchase may or may not be rezoned in the medium term or at all and therefore planning permission may or may not be forthcoming. The Company offers plots of land for sale and does not have any role in pursuing planning permission once plots have been sold".

The Complainant's assertion that several applications for residential zoning are refused is simply untrue. Residential planning in the UK is an arduous process, but it has not yet been refused development rights. Some of its planning success stories include:

- Yateley (where 88 houses have been approved as a draft local plan).
- Datchet (where 175 houses have been approved as a draft local plan despite several delays by the Council).

- Cranbury Gardens, which was ultimately sold to a major developer, and provided total investor returns of 329% over a four-year period.
- Bursledon (an area directly adjacent to Cranbury Gardens).
- Houghton Regis, also sold to a private investor, yielding 372% profits over an eight-year period.
- Hedge End, which was sold to a developer, yielding a 310% profit over a seven-year period.
- Greenhithe, which was sold to a developer once outline planning was secured at a profit of 239% over four years.

In closing, it noted that it has received thirteen clean audits of its financial records, thirteen clean audits of its Fidelity Fund account, has never been investigated by any tax authority, and ensures comprehensive client vetting for South African FICA purposes and International Money Laundering legislation.

## Application of the Code of Advertising Practice

The following clauses were considered in this matter:

- Clause 2 of Section II (Honesty)
- Clause 4.1 of Section II (Substantiation)
- Clause 4.2.1 of Section II (Misleading claims)

## Decision

Having considered all the material before it, the Directorate of the ARB issues the following finding.

## **Procedural matters**

During the course of this investigation, the Complainant submitted two different advertisements to the Directorate. His submissions appear to suggest that this was done to demonstrate the Advertiser's tendency to exaggerate projected returns on properties that may never materialise. The Advertiser has not addressed the contents of the second example submitted (Shurdington, Gloucestershire, UK), but has done so for the initial example (Kings Langley). In its correspondence, the Advertiser acknowledged having received both advertisements, and argued that the Complainant had not added anything new when submitting the second (Shurdington) example.

Ordinarily, the ARB is expected to consider each advertisement on its own merits, and would not group several similar advertisements together for the sake of adjudicating. This is because there may well be nuanced differences in tone and content, which necessitate alternative considerations and eventual decisions. In instances where different executions make the same claims, however, exceptions can be made, and more than one advertisement may be considered on the basis that the claims are the same and the basis for objecting is consistent across all examples.

In this instance, the Advertiser has been afforded the opportunity to consider both examples, as well as the Complainant's objections. In addition, the cause for concern appears to remain the legitimacy of the advertised potential return on investment, and the alleged lack of information about the likelihood of realising the claimed return on investment.

The Directorate will, accordingly, consider whether the Complainant is correct in alleging that the advertiser is creating false expectations insofar as the potential return on investment claimed, and whether the exact nature of the offer is made clear in the advertising. Where necessary, the nuanced differences between each advertisement will be addressed separately for guidance of the parties.

## Jurisdiction

The Advertiser submitted that it was not a member of the ARB and did not wish to submit to any ARB decision that might follow this complaint.

The Memorandum of Incorporation of the ARB states:

“3.3 *The Company has no jurisdiction over any person or entity who is not a member and may not, in the absence of a submission to its jurisdiction, require non-members to participate in its processes, issue any instruction, order or ruling against the non-member or sanction it. However, the Company may consider and issue a ruling to its members (which is not binding on non-members) regarding any advertisement regardless of by whom it is published to determine, on behalf of its members, whether its members should accept any advertisement before it is published or should withdraw any advertisement if it has been published.*”

In other words, if you are not a member and do not submit to the jurisdiction of the ARB, the ARB will consider and rule on your advertising for the guidance of its members.

The ARB will, however, rule on whatever is before it when making a decision for the guidance of its members. This ruling will be binding only on ARB members and on broadcasters in terms of the Electronic Communications Act.

The ARB will therefore proceed to consider this matter for the guidance of its members.

## Merits

At the outset it is worth noting that the ARB is not empowered to pronounce on whether the Advertiser’s business provides sound investment advice, or whether its proposed development areas constitute prudent investments. It can only consider whether the advertising at issue can reasonably be said to exploit the credulity of consumers or create deceitful expectations, as was alleged by the Complainant.

It is a fundamental principle that advertising should allow consumers to make an informed decision about the product or service offered. This presupposes transparency in advertising, and requires advertisers to include all material information in their advertising. Failing to do so might lead consumers to make uninformed decisions, based on incomplete or deliberately deceptive information.

Clause 2 of Section II deals with instances where advertisers deliberately exploit consumer credulity for commercial gain. It states:

*“Advertisements should not be so framed as to abuse the trust of the consumer or exploit his lack of experience or knowledge or his credulity”.*

Clause 4.2.1 similarly prohibits advertising that deliberately “stretches the truth” or obscures the reality in order to attract customers. It states:

*“Advertisements should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer”.*

The Complainant’s concern appears to relate to the potential return on investment claimed by the Advertiser, which the Complainant argues is simply impossible, and is used to lure uninformed investors into investments that may never realise the claimed returns. The Complainant also alleges that the Advertiser is advertising residential development opportunities which may never materialise, because they are still subject to approval by the relevant UK authorities, and often do not receive such approval. Other such developments have not yet delivered on their promised returns despite investors waiting as many as nine years.

The Advertiser denies this, and briefly outlined the nature of its business and some of its success-stories where relevant permission for development had been granted, or where certain areas were ultimately sold for substantial profits.

The essential questions therefore are:

- Does the advertisement make it immediately clear to any reasonable person that this is a speculative investment that is still subject to the necessary governmental approval before commencing? and
- Does the advertisement communicate a reasonable and justifiable expected return on investment, or are the projected returns exaggerated for the sake of attracting investors?

#### Clarity regarding the speculative nature of the advertised investment

The Kings Langley advertisement (which accompanied the original complaint received by the Directorate) contains a table that lists plot sizes, purchase prices (“Pre-Launch Offer”), “Saving” figures, and “Projected Return:” figures. It provides a quick overview of the area, emphasises that this is a “critical commuter belt” for London, and that the advantages of investing in this site are “Strength of Planning” and “Location!” The “Timeframe” for this investment opportunity to realise is stated as “4 -6 years”.

A reasonable person would likely interpret this communication to mean that the area to be developed is likely still vacant or underdeveloped, and that the “Projected Return” would not likely be set in stone, and may change slightly over the projected time frame. This is not inherently misleading, and is not particularly difficult to notice.

However, what is concerning is the omission of the fact that the land on which this development is set to take place has not yet been approved for residential developing, and may never receive such approval. This information is only disclosed in the “Fact Sheet” that accompanied the advertisement. This document explains that the relevant Council has identified Kings Langley as an area that needs to contribute 1000 homes, but that certain areas, which are designated Green Belt areas, would need to be released in order to achieve this goal. It details the stages in which this is to be done, but then notes:

*“Stage 1 identified our site [presumably Kings Langley] as being suitable for release from the Green Belt for development and was recommended for further assessment in Stage 2. Alongside this, the landscape was assessed as having a high capacity to accommodate development. The final draft Schedule of Site*



*Appraisals does not include our site as it was not formerly promoted at the time, however, the site directly to the south, known as Hill Farm, was assessed positively as being able to deliver 300 homes towards the 1000 home target. This sets an excellent precedent for our site as both sites are adjacent and are similar in nature.*

*Given the above, we believe our site provides an excellent opportunity for promotion within the current draft Local Plan for successful allocation in 4 – 6 years” (emphasis added).*

In addition to the Fact Sheet, the “Client Declaration Form” to which the Advertiser made reference stipulates:

*“I hereby acknowledge that I understand the speculative nature of the investment and that the Plot(s) I propose to purchase may or may not be rezoned in the medium term or at all and therefore planning permission may or may not be forthcoming. The Company offers plots of land for sale and does not have any role in pursuing planning permission once plots have been sold”.*

This appears to suggest that, while the Advertiser is hopeful that this area will be approved for future development, it has no evidence at this time to suggest that this will definitely materialise.

The fact that this is only disclosed in the material that accompanies the advertisement poses a problem. On one hand, a person who enters into a contract of this type is unlikely to do without reading all the relevant documentation. They are also, given the amounts involved and the nature of the offer, more likely to be an educated and financially savvy consumer.

Be that as it may, it is trite that advertisers cannot rely on terms and conditions, or even disclaimers within a single advertisement to correct misleading impressions created in the advertisement.

The email sent to the Complainant makes no mention of the fact that the relevant governmental approval needed to develop this land in the manner advertised has not yet

been obtained and is not imminently expected. It merely presents the opportunity as a wise investment with potentially lucrative returns. In short, it creates an impression that this is a “ripe and ready” investment, which does not appear to be the case.

It is also noted, as is manifest from the example below, that the inclusion of the relevant material is neither too bulky nor too complicated to simply include in the email correspondence.

**The Directorate therefore rules that the Kings Langley advertisement omits material information necessary to allow potential investors to make an informed decision. This is in contravention of Clause 4.2.1 of Section II of the Code.**

Given that a material fact is omitted from the Kings Langley advertisement, it is likely to exploit the credulity of potential investors who are unaware of the intricacies involved. Such uninformed customers would not likely realise that the pending governmental approval (which at this point does not even appear to be formally placed before the appropriate authorities) may scupper the value proposition advertised.

**This suggests that the Kings Langley advertisement is likely to abuse consumer trust and lack of knowledge on the subject matter, which is in contravention of Clause 2 of Section II of the Code.**

By contrast, the second example submitted by the complainant promotes the Advertiser’s Shurdington development. This example includes a discussion under the heading “OUR PLANNING DEPARTMENT COMMENTS”, which states, *inter alia*, the following:

*“Our site was not an assessed site as it was not made available for the 2016/2017 Assessment of Land Availability. This means that it has not yet been considered for development ... our site represents an excellent opportunity for promotion for development both in the short term to alleviate the current land deficiencies as well as the medium term for future Local Plan land delivery”.*

This alerts an interested investor to the fact that the necessary approval needed to develop the advertised area (and generate the advertised returns) has not yet been

obtained. Unlike what is the case in the Kings Langley advertisement, this advertisement incorporates this material fact in its body content, thus allowing prospective investors the opportunity to gauge the more pertinent risks and potential rewards before deciding whether or not they wish to investigate further.

**The Directorate therefore rules that the Shurdington advertisement does not omit material information in a manner that contravenes the provisions of Clause 4.2.1 of Section II. Similarly, the fact that this material fact is disclosed, means that the advertisement does not exploit consumer credulity in a manner that would contravene Clause 2 of Section II.**

#### Justification for the projected return on investment

The Complainant disputed the advertised returns on the basis that such returns (which range from 300% over three to four years for Shurdington, and 462% over four to six years for Kings Langley) are impossible.

The Advertiser has refuted this allegation, citing previous success stories and quoting from its internal calculations, which it claims are informed by, *inter alia*, UK-based Landhold Capital and Claremont Planning. It also presented what appears to be an internal document, which provides a breakdown of the relevant costs and net value on the Kings Langley offer.

This puts the Directorate at somewhat of a disadvantage, because this portion of the dispute essentially becomes a “he-said-she-said” altercation, which would be nearly impossible to consider objectively. However, the Code of Advertising Practice places the onus of proof at the advertiser’s door. After all, as the entity making the claim, the Advertiser should be able to provide evidence to support its claims.

As noted by the Complainant, a return on investment of 300% to nearly 500% within a few years would be a significant achievement. These figures are prominently stated in both advertisements, and are clearly intended to entice potential investors with the promise of lucrative returns.

The immediate question that arises from this is: how reasonable are the Advertiser's calculations?

To address this concern, the Directorate requested verification from an independent source, as per Clause 4.1 of Section II of the Code (Substantiation). The Advertiser provided a letter from Ms Katherine Else, Managing Director of Claremont Planning Consultancy. This letter states, *inter alia*, as follows:

*"... I can confirm that an independent assessment of the returns calculated has been carried out.*

*As a full Member of the Royal Town Planning Institute and Managing Director of Claremont Planning with over twenty years experience, I have used my experience and knowledge of the UK property market to inform my assessment of the projected returns. The calculations rightly identify a Developer's profit that is within the accepted profit margins for England, as well as identifying developer costs such as infrastructure requirements and S106 agreement contributions that are necessary to gain planning permission.*

*The analysis identifies that the projected returns have been based upon an accurate methodology, which has utilised assumed outlays based upon site condition and typical residential construction costs. The Projected Returns provide a logical and founded assessment of the possible revenues of the development site, subject to market influences and the costs of achieving planning consent".*

Accepting that projected investment returns are hard to predict accurately, it would appear that the Advertiser's projections are indeed reasonably accurate, as confirmed by Claremont Planning. According to [www.claremontplanning.com](http://www.claremontplanning.com), this organisation specialises in retail and residential development, town planning, site appraisals, planning applications and evidence-based promotion of strategic development sites.

The Directorate notes that the Advertiser's calculations appear to be based on a proprietary financial tool provided by its UK-based associates Claremont Planning and

Landhold Capital. This raises the question whether Claremont Planning can be regarded as “independent” for the purposes of Clause 4.1 of Section II.

However, there are certain factors at play which mitigate any concerns in this regard:

- 1) Claremont Planning confirms that its modelling is informed by two decades of experience, coupled with membership to the Royal Town Planning Institute, which adds to its credibility.
- 2) The investments in question are speculative in nature and have not yet matured. As such, Clause 4.1 of Section II must be interpreted in this context, given the nature of the product.
- 3) Claremont Planning’s website provides examples of similar developments which have been completed or approved to the satisfaction of investors and developers, which adds further credence to their verification.

Given all of the above, and considering the speculative nature of the advertised investments, the Directorate is satisfied that the Advertiser’s calculations appear to be adequately verified by an objective expert in the field to which the claims relate.

**As such, the advertised projected rates of return appear to be reasonable to an extent that does not render them in breach of the provisions of Clauses 4.1 and 4.2.1 of Section II of the Code. Consequently, the projected, speculative rates of return do not appear to be dishonest in a manner that contravenes Clause 2 of Section II of the Code.**

The Directorate refers to the Advertiser’s statement: *“In fact, if there were any remedial recommendations in the decision we would probably abide by them as we are an organisation of great integrity”*. It is hoped that the Advertiser honours this commitment insofar as its Kings Langley advertisement is concerned, so as to ensure that prospective investors are immediately informed of the true, speculative nature of the investment, and the fact that it may, or may not materialise.