DRN-3187163

The complaint

Mrs S complains that the advice given by Central Markets Investment Management Limited (CMIM) in relation to a Small Self Administered Scheme (SSAS) and the investment of her pension into a Cape Verde hotel development of The Resort Group (TRG) was unsuitable for her.

What happened

In 2013, Mrs S says she was cold called by an unregulated firm, Your Choice Pensions Limited (YCP), who offered to review her existing pension provisions. She was 49 and only had one personal pension policy worth around £33,000. She had no significant investment experience. She was given information about an oversea property investment with TRG to be made through a SSAS. Mrs S says she was persuaded by YCP this was a good match for her. She only wanted to invest half of her pension into TRG and asked YCP where she should invest the other half. She says she was advised to invest the other half of her funds through a discretionary fund management firm (DFM).

Mrs S was provided with a document *'Small Self Administered Scheme: Key Features'* which stated under requirement for advice:

'Before deciding whether to buy or sell an investment, all SSAS Trustees must by law obtain and consider written investment advice from an appropriately qualified person.

Where the proposed investment is FCA regulated, this advice must be provided by a person who is appropriately authorised by the FCA to advise on regulated investments.

Where the proposed investment is a non-FCA regulated investment, this advice must be provided by a person who has knowledge and experience of financial matters and the management of the investments of pension schemes set up under trust like a SSAS.

This advice needs to consider the suitability of any investment and in particular the need for diversification of assets, in so far as is appropriate to the circumstances of your SSAS. Diversification means the extent to which you wish to invest in a variety of investment types, to spread your risk so you aren't reliant on the performance of a single investment. The advice obtained is also likely to consider other factors in relation to an investment's suitability, including the liquidity of the investment i.e. the ease with which an asset can be sold to generate cash in your pension fund.

Your SSAS Administrator may be able to introduce you to an appropriate investment advisor. Central Markets Investment Management Limited may be able to provide you with investment advice in respect of certain non- FCA regulated investments, subject to an appropriate introduction and agreement as to their terms and conditions.'

Mrs S signed CMIM's terms of business in November 2013 which confirmed that CMIM would provide her, in her capacity as trustee of the SSAS, with a letter of advice in relation to the TRG investment for the purposes of section 36 of the Pensions Act 1995 (PA'95).

For reference, section 36 of PA'95 requires trustees of an occupational pension scheme such as a SSAS to obtain and consider written advice *'on the question whether the investment is satisfactory having regard to the requirements of regulations under subsection (1), so far as relating to the suitability of investments…'*. s.36 also warns that the advice required under this section may constitute the carrying on of a regulated activity under the Financial Services and Markets Act 2000 ('FSMA)'.

The terms of business clarified that:

- CMIM was a regulated firm, but that the service it would provide was not regulated, as it related to an unregulated investment.
- It was providing the service to trustees of a SSAS.
- No advice was being given on investments regulated under s.22 of FSMA and other than the Cape Verde investment.
- No *'individual suitability advice…which takes into account your personal financial circumstances'* was being given.

Mrs S was also provided with CMIM's terms of business for portfolio management.

The SSAS was established in December 2013 with Mrs S as the trustee and Cantwell Grove (CW) as the administrator. CW requested a transfer from Mrs S's existing pension provider to the SSAS in January 2014.

In October 2014 Mrs S signed a form instructing CW to invest £14,750 into the TRG investment and £14,497,85 into a CMIM discretionary portfolio. By signing the form she confirmed that:

Prior to issuing this letter I have obtained and considered the advice letter Central Markets Investment Management Limited has produced in relation to the Cape Verde investment opportunity. I believe Central Markets Investment Management Limited to be an appropriately qualified advisor for the purposes of section 36 of the Pensions Act 1995, in relation to the question of whether that investment opportunity is satisfactory in terms of:

(a) its suitability as an investment in the SSAS; and

(b) *the need for diversification, in so far as is appropriate to the circumstances of the SSAS.*

Mrs S's pension transfer value of £33,670.81 was paid into the SSAS bank account in December 2014. £16,609.31 was invested into the CMIM DFM portfolio and £14,750 was paid to TRG. The rest was taken in fees.

In 2015, Mrs S instructed CW to invest £14,330.43 into a DFM portfolio with Organic, managed by Gallium Fund Solutions. Organic has since gone into liquidation and the DFM portfolio was transferred to a Self-Invested Personal Pension and taken over by another firm. I understand Mrs S sold her DFM portfolio in November 2019 receiving £17,258,01.

In 2019 Mrs S complained to CMIM about the advice she received. She said the SSAS and the TRG investment, which is now illiquid- had been unsuitable. The SSAS was only established to allow the TRG investment.

CMIM rejected the complaint. They said their advice was appropriate and compliant with PA'95. They said they made it very clear in their advice letter that the TRG investment was not suitable for a cautious investor and provided risk warnings as well as pointing out the need for diversification of investments. The decision to invest was down to the trustee.

Mrs S referred her complaint to this service and one of our investigators upheld her complaint. He said CMIM gave regulated advice and promoted the TRG investment, an unregulated collective investment scheme (UCIS), to Mrs S. He said CMIM should have been aware of the restrictions of promoting UCIS to retail customers like Mrs S.

He thought CMIM had failed their high-level regulatory obligations of treating Mrs S fairly and acting in her best interest. He said CMIM should have provided a personal recommendation to Mrs S on the suitability of the investment. Mrs S was intending to invest roughly half of her pension provisions into the TRG investment and investing such a large proportion in a single, high risk, unregulated scheme was plainly unsuitable. So CMIM should have recommended against this investment. The investigator thought if CMIM had advised Mrs S properly, she wouldn't have invested in TRG and so they should be compensating her for her losses.

CMIM disagreed and responded by way of letters covering several complaints simultaneously. I've considered all their submissions even though I won't repeat them in detail here.

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.

CMIM's advice process

CMIM confirmed that they had an introducer agreement with YCP. They say they were first approached by YCP in mid-2013 and knew customers were in the process of establishing SSAS's to invest in TRG. CMIM say their only financial benefit was the opportunity to promote their DFM service for the residual funds.

CMIM's written advice took the form of a "Dear trustee" letter, which was general in nature and not addressed to a named recipient. These letters were provided to customers through CG and YCP. Mrs S does not have a copy of this letter. However, CMIM did provide a template which they acknowledge was passed to YCP to provide to customers intending to invest in TRG, so there's no reason for me to think Mrs S didn't receive such a letter. The investment instruction also referred to an advice letter from CMIM being obtained and considered by Mrs S.

The 'Dear Trustee' letter explained that YCP had asked CMIM to consider a number of specific investments and provide advice to customers as the trustees as to whether these investments were appropriate for their SSAS. It said the advice wasn't deemed to be regulated under the Financial Services and Markets Act 2000 as the SSAS was not regulated by the FCA. It said:

'We have researched the commercial property investment, The Resort Group, the hotel operator (Melia Hotels International), and the wider aspects of ownership and security; and our conclusion is that it is an appropriate investment albeit when considered in the light of sensible diversification of a portfolio of an investor's overall wealth and that an effective "exit" strategy is planned in order to coincide with the needs of the investor. The Resort Group have cooperated with our research.'

'The investment is not suitable for a cautious investor who needs the protection of the UK investor compensation and regulatory environment, as both a SSAS and the overseas investment have no such regulatory protection. There are a range of risks that we have seen have been clearly documented to the investor and should be considered carefully: The value

of any investment can fall as well as rise. Land or commercial property should not necessarily be considered as a liquid investment; it may therefore not be suitable should you need access to the capital at short notice or the timeframe desired by the trustee….

Commercial property investments tend to incur ongoing costs and charges, which may not always be covered by any possible rental returns. The value of rental returns is dependent on occupancy demand, which cannot be guaranteed. Investments held overseas may have additional risks such as currency fluctuations, which may impact on any returns when converted back into sterling; political risk to ownership and title; and commercial risk to the delivery and management of a property/resort. You may wish to take independent legal advice to ensure you understand all these issues…

Our view is that the investment is appropriate but only as part of a diversified holding according to an investor's attitude to risk and capacity for withstanding loss. You should ensure that you only invest what you can afford to lose…We believe as core principles that where an investor is looking to retire within ten years then no more than 50% of their investment should be invested directly within commercial property, and the remainder should be held in liquid investments. Our advice to investors is to consider the need for diversification carefully…We have not reviewed other overseas commercial property investment opportunities and accordingly are not providing you with advice as to the merits of the proposed investment as against other such investment opportunities. If you still have any doubts we recommend that you seek independent financial advice…'

The letter went on to propose CMIM's Global Growth Portfolio to provide diversification.

I'm satisfied that CMIM did carry out the regulated activity of 'advising on investments'. This is defined in the FSMA 2000 (Regulated Activities) Order 2001 (amongst other things) as advice on '*buying, selling, subscribing for or underwriting **a particular investment** which is a security or a relevant investment'.* **(my emphasis)**

CMIM said they didn't provide Mrs S with a personal recommendation. And I tend to agree. Their terms of business clearly stated they wouldn't be giving *individual suitability advice…which takes into account your personal financial circumstances'* and I think Mrs S would have been aware that she never met anyone from CMIM or that they hadn't explored her personal and financial circumstances.

Without a personal recommendation, the suitability obligations set out in COBS 9 wouldn't apply here. However, CMIM still had regulatory obligations when giving their advice. Amongst the FCA's Principles, CMIM was required to:

- conduct its business with due skill, care and diligence (Principle 2);
- take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems (Principle 3);
- pay due regard to the interests of its customers and treat them fairly (Principle 6);
- take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment (Principle 9).

I've also considered other COBS rules that aren't in chapter 9 as well as the restrictions to promotion of UCIS at 238 FSMA. CMIM has accepted the TRG investment appears to meet the legal definition of a collective investment scheme, albeit an unregulated one, following *Asset Land v FCA [2016] UKSC 17*). Although they admitted they didn't realise this at the time of the advice.

<u>Did CMIM promote the TRG investment to Mrs S, ancillary to their advice?</u>

The glossary definition of promotion is the FCA handbook is *'an invitation or inducement to engage in investment activity that is communicated in the course of business'*. The words 'invitation' or 'inducement' are not defined in the glossary or under the corresponding s.21 of FSMA. Applying the guidance at PERG 8.4.5G I'm not satisfied CMIM's 'Dear Trustee' letter had the characteristics of an *invitation*, mainly because it seems YCP had already invited Mrs S to consider TRG as an investment. But at PERG 8.4.7G the FCA went on to say this about inducements, with my emphasis:

*'An inducement may be described as a link in a chain where the chain is **intended** to lead ultimately to an agreement to engage in investment activity. But this does not mean that all the links in the chain will be an inducement or that every inducement will be one to engage in investment activity. Only those that are a significant step in persuading or inciting or seeking to persuade or incite a recipient to engage in investment activity will be inducements under s.21.'*

The FCA clarified this further at PERG 8.4.4G, again with my emphasis:

*'The FCA considers that it is appropriate to apply **an objective test** to decide whether a communication is an invitation or an inducement. In the FCA's view, the essential elements of an invitation or an inducement under section 21 are that it must both have the purpose or intent of leading a person to engage in investment activity and be promotional in nature. So it must seek, on its face, to persuade or incite the recipient to engage in investment activity. The objective test may be summarised as follows.*

Would a reasonable observer, taking account of all the circumstances at the time the communication was made:

(1) consider that the communicator intended the communication to persuade or incite the recipient to engage in investment activity or that that was its purpose; and
(2) regard the communication as seeking to persuade or incite the recipient to engage in investment activity.'

I don't dispute that YCP first promoted the TRG investment to Mrs S and I agree it's likely YCP had persuaded her to invest before she received CMIM's advice. However, this doesn't prevent CMIM's actions being an inducement too. Their 'Dear Trustee letter' was clearly *intended* to lead trustees to invest in TRG. A reasonable conclusion to draw was that only trustees who were cautious and/or needed short-term access to the money shouldn't invest. And I think CMIM ought to have reasonably known this was an unlikely conclusion to draw for most of the recipients of their letter. I say this with view of the following:

- the advice was being given on a pension, which is typically held for the long-term
- no indication was given to the trustee to understand whether they met this 'cautious' definition. The letter also said that the more cautious the investor, the lesser amount of the holding should be in commercial property. So even if someone thought of themselves as fairly cautious, in my view the letter suggested an investment in TRG could still be appropriate as part of their portfolio.
- CMIM suggested it was possible to mitigate the risks of TRG by diversifying with liquid assets. They recommended their own DFM portfolio for this purpose.

CMIM say the letter encouraged trustees to take independent regulated advice. However, whilst I appreciate they did tell trustees to seek independent advice 'if in doubt about your choice', I think it would have been reasonable for most trustees to infer from the letter that if they weren't particularly cautious or needed their money in the short-term no further advice

was needed. I also disagree with CMIM's apparent suggestion that setting out the risks of the TRG investments means the letter couldn't have been an inducement to invest.

CMIM argue YCP and CG had vested interests in trustees investing in TRG and they were the ones promoting it. However, CMIM also stood to gain from trustees choosing TRG as an investment as they could offer them to diversify their portfolios with CMIM's DFM service. I think CMIM would have been aware that if the investment in TRG was discouraged, it was unlikely trustees would use their DFM service.

Overall, I think the 'Dear Trustee' letter inferred that whilst there were risks in TRG, if properly diversified the investment was appropriate for most. In my view the letter's *intent* was to induce investment and I'm satisfied a reasonable observer would regard the letter in this way. On the evidence provided I'm satisfied CMIM promoted the TRG investment to Mrs S.

The fact that advice could also be a promotion was further confirmed on 1 January 2014 when the FCA revised the list of exemptions allowing promotion of UCIS (by then included in a wider category of 'non-mainstream pooled investments') at COBS 4.12.4R. I don't know when Mrs S would have exactly received the 'Dear Trustee letter', however I think on balance this would have been provided to her not too long before she signed the investment instruction in October 2014 confirming she had received advice from CMIM. So likely after COBS 4.12.4R came into effect.

The new exemption for 'solicited advice' only allowed a promotion where the communication met all of the following requirements:

'(a) the communication only amounts to a financial promotion because it is a personal recommendation on a non-mainstream pooled investment;
(b) the personal recommendation is made following a specific request by that client for advice on the merits of investing in the non-mainstream pooled investment; and
(c) the client has not previously received a financial promotion or any other communication from the firm (or from a person connected to the firm) which is intended to influence the client in relation to that non-mainstream pooled investment. [See Note 3.]

Note 3 read as follows: *'A person is connected with a firm if it acts as an introducer or appointed representative for that firm or if it is any other person, regardless of authorisation status, who has a relevant business relationship with the firm.'*

The introducer agreement YCP had entered into with CMIM would always have made this exclusion unavailable (in effect because the introducer, rather than the trustee, was soliciting the advice). And CMIM also didn't give a personal recommendation. But what I consider relevant here is that the wording of the exclusion itself confirms that advice can also amount to a promotion – even where a third party had previously promoted the investment. That is what happened here: CMIM promoted and advised on the investment through their 'Dear Trustee letter'.

<u>CMIM's position that Mrs S paid no attention to the 'dear Trustee' letter</u>

CMIM say trustees wouldn't have taken much notice of their advice letter and only would have signed where they were told to by third parties. Their letter wouldn't have influenced their decision to invest.

However, whether Mrs S read the letter or not is in my view immaterial to whether CMIM's advice letter was also a promotion. Whether something counts as an inducement depends on the intent of the communication and how it would be regarded by a reasonable observer.

I think it ought to have been clear to CMIM that the SSAS administrators would expect trustees to sign a confirmation that they had obtained and considered proper advice as required in section 36 of PA'95.

Their advice was a significant step in the investment process and they should have reasonably expected their advice to be considered by trustees. Their involvement as a regulated party and provider of advice legitimised the arrangement. And CMIM should have realised their advice was also an inducement which means they were promoting the investment as well as advising on it.

Did Mrs S qualify for a relevant exemption from the restrictions on UCIS promotion?

The investigator explained in his view that Mrs S is unlikely to have qualified under the criteria set out in the in the FSMA (Promotion of Collective Investment Schemes) (Exemptions) Order 2001, because she didn't appear to be a high net worth or sophisticated investor. This was not established at the time by CMIM (as required under the regulations) and has not been challenged since, so I won't go into that here in detail – as I agree with what the investigator said.

This leaves the range of exemptions set out at COBS 4.12.4R, none of which apply to Mrs S in my view.

The only conclusion I can therefore draw from this is that CMIM unlawfully promoted the TRG investment to Mrs S as part of their advice, in contravention of s238 of FSMA. Moreover CMIM ought reasonably to have been aware that other parties who promoted the investment to Mrs S previously were likely also in contravention of FSMA – because they were themselves unregulated and/or because it appears unlikely they could rely on a valid exemption.

What should CMIM have done instead?

CMIM had chosen to advise on TRG, so it ought to have established whether or not it was a UCIS – as if it was, then they (and others) were promoting it in breach of FSMA.

They attended meetings with the other parties involved where a whole sales and marketing strategy was apparently discussed to attract new clients to invest in TRG. Yet CMIM now say it should have been obvious to CG that those clients were wholly inappropriate candidates for SSASs. They also say CMIM's name was being used to give the arrangements an 'air of credibility'. These arguments demonstrate why CMIM shouldn't have got involved in inducing Mrs S's investment into TRG at all. They knew that none of the other parties in the transaction were regulated by the FCA and they could not, as a result, expect them to share its duty of care to clients.

I have significant concerns about the arrangement CMIM entered into that effectively meant it could only track who the end recipients of their 'dear Trustee' letter in respect of TRG were if YCP remembered to pass on a trustee's signed copy of its terms of business, or it later heard from them because they'd signed up for their DFM service.
That calls into question whether CMIM was adhering to Principle 3 (take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems).

They didn't have enough oversight of who would receive their advice and left it to unregulated parties-who they should have known had an interest in trustees investing in TRG- to control and influence the advice process. The trustees here were often

inexperienced investors with very modest pension funds and who the TRG investment was unsuitable for.

I also can't see how it was possible for CMIM to give trustees proper advice which enabled them to make investment decisions for their SSAS (as set out in CMIM's terms of business) if it wasn't personalised to their specific SSAS and considering its circumstances and objectives.

As set out at the beginning of this decision the FCA's Principles required CMIM amongst other things to treat Mrs S fairly and pay due regard to her interests. And they had to take care when formulating their advice to her.

In observance of these principles and rules, in my view there were only really two options CMIM had in this situation:

1) Decline to get involved in the introducer-adviser relationship with YCP, and therefore not come into contact with retail clients like Mrs S at all; or

2) Agree to accept introductions from YCP, but proceed on a basis which was fundamentally different in a number of ways in order to ensure that it was complying with the principles and rules. This would have included:

- Taking reasonable care to make a recommendation to Mrs S, which was tailored to her specific circumstances and thus was more likely to pay due regard to her best interests and treat her fairly.

- Being mindful that if the recommendation was *not to* invest, this would not amount to promotion and so the restriction wouldn't be breached.

- Issuing that recommendation to Mrs S directly, rather than supplying it to YCP (where there was potentially some doubt whether it would reach Mrs S, if the advice didn't give a favourable impression of investing).

I considered what consequences these alternative actions would have had. If CMIM declined to get involved or warned that it would need to advise Mrs S, and other investors of a similar background to her, *not* to invest in TRG, it's possible that YCP would have sought a relationship with a different adviser hoping to get a more favourable outcome.

However the wording of PA'95 meant that the 'proper advice' Mrs S was required to take couldn't be given by just any adviser. And evidently the SSAS administrator or the other parties involved, presumably in not wanting to jeopardise the successful operation of the SSASs being established, were keen to ensure that this legislation was observed.

Section 36 states:

'For the purposes of this section "proper advice" means—

(a) if the giving of the advice constitutes the carrying on, in the United Kingdom, of a regulated activity (within the meaning of the Financial Services and Markets Act 2000), advice given by a person who may give it without contravening the prohibition imposed by section 19 of that Act (prohibition on carrying on regulated activities unless authorised or exempt);

(b) in any other case, the advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of trust schemes'

Whether or not the other parties realised that any advice on TRG was a regulated activity, it wasn't surprising that typically the relevant knowledge and experience to give that advice was more likely to be found amongst regulated firms.

In this context I think it's also reasonable to expect *any* regulated adviser to be as mindful of the FCA's principles and rules as CMIM should have been. So I would have expected any regulated adviser to consider the position on promotion and the consequences for that of giving any advice in favour of investing that couldn't be supported by a valid exemption.

I've also taken into account that CMIM had the option to refuse to get involved in advising Mrs S at all, but it chose to give advice. So, I think it's fair and reasonable that CMIM is held to the standard of the proper personal recommendation that it *should have given* to her to satisfy the regulator's expectations.

What would have happened if CMIM gave suitable advice?

As a regulated firm with permission to advise on investments, I'm satisfied CMIM should have been aware of the regulator's views on UCIS and other non-mainstream investments. It ought to have known that any investment in UCIS taking up a significant portion of a SSAS was plainly unsuitable for an inexperienced investor like Mrs S. There was nothing about TRG in particular – being an off-plan, offshore property development subject to a variety of currency, counterparty, construction and occupancy risks – to counter that presumption of unsuitability.

It should have been apparent that Mrs S couldn't afford to take the speculative risk investing nearly half of her pension provisions in TRG. And Mrs S is unlikely to have had the experience to fully understand the risks to her pension.

It's evident that the whole reason for the SSAS being introduced to Mrs S by other parties was in order to invest in TRG. So I need to consider how Mrs S would likely have acted, if CMIM had advised against the TRG investment.

Would Mrs S have invested in TRG anyway?

CMIM didn't provide Mrs S with the advice to open a SSAS and transfer her pension. It seems that Mrs S had already set up the SSAS and completed the transfer paperwork before she received CMIM's advice. And I think it's likely YCP would have focussed on the positives of the TRG investment. However, I don't think Mrs S was at a point where she couldn't have changed her mind about the transfer of her pension and the investment in TRG.

If CMIM had clearly told her that the TRG investment was unsuitable for her explaining that this was a specialist high-risk investment which meant there was a real risk of losing large parts of her pension and the regulator deemed this sort of investment unsuitable for inexperienced investors like her, I think it's likely she would have listened.

Of course I don't know for certain what Mrs S would have done. And I appreciate it can be difficult sometimes to backtrack from a planned action. However, I've considered that Mrs S was cold called by YCP and doesn't appear to have had a longstanding relationship with them. On balance, I think if Mrs S had received a clear recommendation from an independent regulated financial adviser like CMIM not to proceed as it wasn't in her best interest to do so, she would have decided against the transfer and investment into TRG.

The investment instruction form which confirmed Mrs S had received CMIM's advice was signed in October 2014 and the pension was only transferred in December. So I think there would have been sufficient time for Mrs S to change her mind and stop her pension being transferred to a SSAS if CMIM's advice had been different.

Involvement of other parties

CMIM feels it's unfair that they should compensate Mrs S for all her losses when they weren't involved in the pension switch advice and initial promotion of TRG. They also say the CG were heavily involved in the transaction and should be held responsible for any losses.

I'm aware that other parties were involved here. And I appreciate they might have contributed to the situation Mrs S now finds herself in. However, I can only consider the complaint brought to this service which is the one against CMIM. As explained in this decision I think CMIM didn't act in line with their regulatory obligations and if they had done so, Mrs S likely would not have transferred her existing pension to the SSAS and invested in TRG.

So I'm satisfied CMIM could have prevented Mrs S's losses if they had advised her properly notwithstanding what happened before or after they advised her.

So in the circumstances I think it's fair and reasonable that they compensate her for her losses in full. If CMIM feel that other parties' actions have contributed to these losses, they are free to pursue this directly with them once the paid the full redress to Mrs S.

Putting things right

My aim is that Mrs S should be put as closely as possible into the position she would probably now be in if she had been properly advised.

I take the view that Mrs S would have remained with her previous pension provider (Zurich), however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mrs S' circumstances and objectives when she invested.

What must CMIM do?

To compensate Mrs S fairly, CMIM must:

- Compare the performance of Mrs S' investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

  CMIM should add interest as set out below.

- CMIM should pay into Mrs S' pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If CMIM is unable to pay the total amount into Mrs S' pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have

provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs S won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mrs S' actual or expected marginal rate of tax at her selected retirement age.

- It's reasonable to assume that Mrs S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs S would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Pay to Mrs S £300 for the distress caused by experiencing losses to her pension.

Income tax may be payable on any interest paid. If CMIM deducts income tax from the interest it should tell Mrs S how much has been taken off. CMIM should give Mrs S a tax deduction certificate in respect of interest if Mrs S asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SSAS	Still exists but illiquid	Notional value from Zurich. If this can't be obtained, FTSE UK Private Investors Income Total Return Index.	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

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

It may be difficult to find the *actual value* of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case. CMIM should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount CMIM pays should be included in the actual value before compensation is calculated.

If CMIM is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the *actual value*. CMIM may require that Mrs S provides an undertaking to pay CMIM any amount she may receive from the illiquid assets in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. CMIM will need to meet any costs in drawing up the undertaking.

CMIM has suggested to this service that it may be able to use independent valuers for the TRG investment, or agree a value with the SSAS administrators (which is more than nil value), even if it's not actually buying the investment from the SSAS. As there appears to be no market for the investment I don't consider it's fair to use a value that is the opinion of someone who is not actually prepared to (or unable to) buy the investment from the SSAS. I also cannot anticipate whether TRG will be permitting changes of ownership because clearly legal processes would be involved. But to the extent that this is possible, if CMIM believes that the investment has value then it can benefit by buying the investment out of the SSAS.

The aim of this undertaking is to avoid double-recovery of Mrs S's losses. It is not my role to set the terms of the assignment and undertaking, but rather to explain its aim in achieving overall fairness for both parties.

Notional Value

This is the value of Mrs S's investment had it remained with the previous provider until the end date. CMIM should request that the previous provider calculate this value.

Any withdrawal from the SSAS should be deducted from the notional 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 CMIM totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, CMIM will need to determine a fair value for Mrs S' investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

The SSAS only exists because of illiquid assets. In order for the SSAS to be closed and further fees that are charged to be prevented, those assets need to be removed. I've set out above how this might be achieved by CMIM taking over the illiquid assets, or this is something that Mrs S can discuss with the provider directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. If CMIM is unable to purchase the illiquid assets, to provide certainty to all parties I think it's fair that it pays Mrs S an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the SSAS to be closed.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mrs S wanted capital growth and was willing to accept some investment risk.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of

indices with 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 Mrs S' circumstances and risk attitude.

Details of the calculation must be provided to Mrs S in a clear, simple format.

My final decision

I uphold this complaint and require Central Markets Investment Management Limited to compensate Mrs S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 11 July 2022.

Nina Walter
Ombudsman