DRN-4188325

The complaint

Mr S complains about advice given to him by Central Markets Investment Management Limited (CMIM) in connection with a property investment in Cape Verde with The Resort Group (TRG) for his Small Self Administered Scheme (SSAS).

What happened

Mr S says he was cold-called by an unregulated company called Your Choice Pensions Limited (YCP) and offered a free pension review. Although it's unclear if Mr S ever met or spoke to anyone from CMIM, he signed CMIM's '*Terms Of Business For Providing Investment Advice In Relation To The Cape Verde Investment'* on 16 December 2013. The document said CMIM was regulated by the Financial Conduct Authority (FCA) but the service CMIM was agreeing to provide wasn't regulated as it related to an unregulated investment. CMIM's services were provided to SSAS trustees and CMIM had agreed to provide a letter of advice for the purposes of section 36 Pensions Act 1995. Amongst other things, CMIM's services didn't include any advice in connection with investments regulated by section 22 Financial Services and Markets Act 2000 (FSMA); any investments other than the Cape Verde investment; or '*any individual suitability advice in relation to the Cape Verde investment which takes into account* [Mr S's] *personal financial circumstances and goes beyond the 'proper advice' requirements …*'

On 15 January 2014 Mr S's SSAS was established by a Deed of Trust with Mr S as the sole Trustee and Cantwell Grove Limited as the SSAS Administrator. CMIM completed an account application form for SSAS trustees with Cantwell Grove shown as the Administrator. The document said CMIM had power of attorney to manage the Trustee's investments. There's another undated form headed '*SSAS Trustee Signature and Declaration*' signed by Mr S. Amongst other things Mr S agreed he'd read and understood the nature of the products and services provided; he'd provided true, accurate and complete information; he'd read and understood and agreed to CMIM's terms of business; and he'd read the power of attorney section and agreed to it.

On 25 February 2014 Cantwell Grove wrote to Mr S's existing provider, Aegon, requesting a transfer of Mr S's benefits in a Group Personal Pension Plan. The request included completed discharge forms, signed by Mr S on 3 February 2014 and a signed typed letter of the same date (with Mr S's details written in by hand) saying Mr S wanted to proceed with the transfer for an investment opportunity.

Aegon wrote to Mr S on 27 February 2014, confirming a request had been received from Cantwell Grove to transfer his pension to the SSAS and enclosing a transfer pack. Mr S responded to Aegon on 20 March 2014 saying his response was delayed due to a change in address and the redirection of his mail. The letter was typed and detailed that Mr S wanted to go ahead with the transfer to the SSAS.

On 9 May 2014, Aegon paid £43,437.28 to Cantwell Grove to complete the transfer. And, on 23 May 2014, £27,120.66 was invested with TRG. On 2 June 2014, Cantwell Grove wrote to Mr S stating £12,264 as of 30 May 2014 had been invested into CMIM's discretionary fund

management (DFM) services. Another letter was issued on 9 June 2014, stating a further £1,913.12 had been invested into CMIM's DFM services.

There's also an undated 'Dear Trustee' letter. Some of the main points were:

- The company that had introduced the SSAS concept to Mr S – YCP – had asked CMIM to consider a number of specific investments and provide advice to Mr S as the Trustee. It was a requirement under section 36 Pensions Act 1995 that Mr S, as trustee, took and considered appropriate advice on whether the proposed investment was satisfactory for the aims of the scheme.
- CMIM wouldn't be providing advice that would be deemed regulated under FSMA as it was considering investments through a SSAS which isn't regulated by the FCA.
- CMIM understood YCP had introduced TRG's Cape Verde investment. The purpose of CMIM's letter was to advise as to CMIM's research and present its view on whether such an investment was appropriate for the SSAS.
- CMIM's view was that the investment was 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.*' Diversification and exit strategy were further explained.
- The investment wasn't suitable for a cautious investor as both a SSAS and the overseas investment didn't have UK regulatory protection. It may not be suitable if access to the capital was needed at short notice. A key risk was potential illiquidity when the capital was required to secure retirement pension. A trustee shouldn't invest more than 50% if retirement was anticipated within the next ten years. And, ultimately, the trustee would make their own decisions in the light of their personal circumstances which CMIM hadn't assessed.

Mr S sought advice from his current representative in 2021 who wrote to Cantwell Grove asking, amongst other things, who'd provided advice in relation to the investments. In an email dated 29 June 2021 Cantwell Grove confirmed the original advising agent for TRG was CMIM. In a further email on 17 September 2021 Cantwell Grove confirmed CMIM hadn't established the SSAS but had provided section 36 advice relating to TRG investment.

Mr S complained on 11 January 2022. An initial response was issued on CMIM's behalf by solicitors on 10 March 2022. Amongst other things it said '*at no time has CMIM provided any personal advice to investors/SSAS trustees in respect of any investments in* [TRG] *or in connection with existing and recommended pension arrangements.*' Further details and documents in support of the claim were requested. Mr S's representative replied on 26 July 2022, setting out why it was considered CMIM had given advice to Mr S in 2014 to invest in TRG, an investment which was unsuitable for him and had led to losses, details of which were set out.

In September 2022 Mr S's complaint was referred to us. Mr S's representative told us CMIM hadn't issued any final response letter within the specified time frame. We contacted CMIM for its business file. In February 2023 we received some information from the solicitors who'd written on 10 March 2022, including a copy of the generic 'Dear Trustee' letter I've referred to above. Amongst other things they said CMIM didn't advise Mr S on his existing pension arrangements or about moving his pension to a SSAS. CMIM's work was limited to advising Mr S, following his decision to establish a SSAS, with the section 26 (I think that should've read section 36) 'Dear Trustee' letter.

Our investigator's view

The investigator considered jurisdiction first, including if the complaint had been made in time. The investigator said, taking into account PERG (the Perimeter Guidance Manual in the regulator's Handbook) CMIM had undertaken the regulated activity of advising on investments. Although there was no evidence Mr S had direct contact with CMIM, the 'Dear Trustee' letter sufficed for Mr S to be a customer of CMIM.

The investigator quoted the relevant parts of DISP (Dispute Resolution) 2.8.2R which sets out the six and three year periods for bringing a complaint. The complaint had been brought more than six years after the events in 2014. So the issue was when Mr S became aware (or ought reasonably to have become aware) he had cause for complaint and if he'd complained within three years of then. Mr S had said he'd become concerned in April 2021 having received the last rental payment from TRG on 1 October 2019. Initially payments had been made on a monthly basis but had then become more sporadic. Mr S understood he needed to invest for ten years so he wouldn't have been expecting a return until May 2024. He'd complained on 11 January 2022, within three years of 1 October 2019. The investigator's view was that the complaint had been made in time.

The investigator upheld the complaint. His main findings were:

- CMIM had said that no personal advice had been provided. The FCA Handbook definition of personal advice is something that is either presented as suitable for the person to whom it is made or based on a consideration of the circumstances of that person. Mr S signed CMIM's Terms Of Business which said CMIM wasn't making a personal recommendation. There's no evidence Mr S had met anyone from CMIM or given CMIM any personal information. It seems likely the advice was forwarded by YCP. Mr S would've reasonably thought CMIM's advice was limited and only inviting him to consider if he met the circumstances of the person being described in the 'Dear Trustee' letter as an appropriate investor into TRG. As such, as it wasn't a personal recommendation, COBS (Conduct of Business Sourcebook) 9 suitability rules don't apply.
- But, when considering financial promotion as defined in the FCA Handbook glossary along with PERG 8.4.5G and 8.4.7G which refer to invitations and inducements, it appeared to be an inducement to invest. PERG 8.4.4G says an objective test should be applied as to CMIM's intentions in making the communication in its 'Dear Trustee' letter. A reasonable conclusion to be drawn from the letter was that only trustees who were cautious and/or needed short-term access to the money shouldn't invest – and that was an unlikely conclusion that most of the recipients would draw.
- CMIM wasn't collecting a fee for its recommendation or commission from TRG but stood to gain business from being able to provide DFM services on the remainder of the portfolio. Given this implicit intention, CMIM's 'Dear Trustee' letter was a '*significant step'* (in the language of PERG) in persuading Mr S to make the investment. CMIM should've known the significance its advice held because Mr S was required to consider it under the Pensions Act 1995. Mr S had already met with YCP. But a promotion can take place alongside advice, even if someone else has already promoted the investment.
- TRG investment was an Unregulated Collective Investment Scheme (UCIS). Promotion of UCIS is restricted under section 238 of FSMA unless an exemption applies (under COBS 4.12 or the FSMA (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (the PCIS Order)).
- The SSAS was established on 15 January 2014. After 1 January 2014, the '*established or newly accepted client'* exemption in COBS 4.12 was renamed the 'solicited advice' exemption and was only available if the following applied:
  '(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: '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 CMIM had with YCP was the sort of agreement the wording above was designed to prevent. The promotion of TRG alongside CMIM's advice was therefore unlawful. Not only should CMIM have been aware it was breaching section 238 of FSMA, CMIM ought to have known the other parties in the chain were too.
- CMIM was bound by the FCA's Principles for Businesses (PRIN) which included: to conduct its business with due skill, care and diligence (Principle 2); 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). It was also bound by COBS 2.1.1R (the client's best interests rule) and COBS 4.2.1R (ensuring a communication or a financial promotion is fair, clear and not misleading).
- If CMIM had declined to get involved in the introducer – advisor relationship with YCP, Mr S would've still needed to get advice from a competent person under the Pensions Act 1995, which is typically easier to find amongst regulated advisers. It would be reasonable to expect other regulated advisers to decline to get involved or advise against investing for the reasons the investigator went on to give, so it would've been difficult for Mr S to proceed another way. However, as CMIM chose to advise, it's reasonable to hold it to the standard of the advice it should've given.
- To comply with FCA principles and rules CMIM should have taken reasonable care to make a personal recommendation tailored to Mr S's specific circumstances and which was thus more likely to pay due regard to his best interests and treat him fairly. If the recommendation was not to invest, this wouldn't have amounted to promotion and so the restriction on promotion wouldn't have been breached.
- It was also difficult to see how the advice fulfilled its stated purpose of enabling Mr S to consider the investment under section 36 Pensions Act 1995. That required an assessment of suitability and '*the need for diversification of investments, in so far as appropriate to the circumstances of the scheme'*, which implied a personal recommendation specific to his scheme.
- CMIM ought to have known that any investment in UCIS taking up the vast majority of a SSAS was plainly unsuitable for a retail investor; even one with an average attitude to risk. The advice should've made it very clear that TRG was unsuitable for Mr S's SSAS.
- It appears the whole reason for the SSAS being promoted to Mr S was in order to invest in TRG. Even if CMIM had made a proper personal recommendation that didn't involve TRG – for example, to offer its DFM service for the whole portfolio – it's unlikely the third parties involved would've been interested in Mr S proceeding without the TRG investment.
- If CMIM had clearly explained that Mr S shouldn't invest and why, then the likely outcome of any further attempts by the other parties to secure Mr S's TRG investment would've failed in the light of the advice CMIM should have given him. So Mr S would never have had a reason to give the instruction for his Aegon funds to be transferred and he'd have remained in his Aegon plan.
- The investigator set out how CMIM should compensate Mr S.

We didn't hear from CMIM or its legal representative in response to the investigator's view. We extended the time for comment before confirming to CMIM and Mr S that the complaint had been referred to an ombudsman for review. We gave a deadline for further comments which has now passed.

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.

Before I address the merits of the complaint, I've first considered jurisdiction as we're required to keep jurisdiction under review throughout our consideration of a complaint.

Jurisdiction

We can consider a complaint under our compulsory jurisdiction relating to an act or omission by a firm in the carrying on of one or more of the listed activities DISP 2.3.1R and which include regulated activities specified in Part II of the Regulated Activities Order (RAO). They include advising on investments (article 53). PERG 8.27.5G confirms: '*Advice will still be covered by article 53 even though it may not be given to or directed at a particular investor (for example, advice given in a periodical publication or on a website). The expression 'investor' has a broad meaning and will include institutional or professional investors.*' PERG 8.28.7G (1) adds: '*A person can give advice without saying (or implying) categorically that the customer should invest. The adviser does not have to offer a definitive recommendation as to whether the customer should go ahead*.' PERG 8.28.1G, 8.28.2G and 8.29.1G are also relevant and include:

- '*In the FSA's view, advice requires an element of opinion on the part of the adviser. In effect, it is a recommendation as to a course of action. Information, on the other hand, involves statements of fact or figures.*
- *'In general terms, simply giving information without making any comment or value judgement on its relevance to decisions which an investor may make is not advice.'*
- *'Advice must relate to the buying or selling of an investment – in other words, the pros or cons of doing so*.'

In my view, the 'Dear Trustee' letter went beyond simply providing information about TRG investment – in fact fairly little information about it was given. In broad terms, CMIM said it was an appropriate investment for the trustee to hold as part of a portfolio, with some caveats given – including that the trustee wasn't cautious, there was diversification and the risks and lack of guarantees were understood. I think that amounts to advice on the pros or cons of buying the investment. TRG was a UCIS and so was a specified investment under the RAO and so advising on a UCIS is a regulated activity.

Mr S (as trustee of his SSAS) must have one of the relationships with CMIM defined under DISP 2.7.6R. The most relevant one here is that Mr S was a customer of CMIM. Mr S signed CMIM's terms of business which demonstrates that he was CMIM's customer.

I'm also satisfied CMIM reasonably knew the 'Dear Trustee' letter – which is on what any decision that CMIM gave advice to Mr S rests – was going to be sent to him. My understanding is that CMIM had entered into an arrangement with YCP to advise a number of clients, albeit that CMIM believed it was only doing so for the purposes of the Pensions Act 1995. Those clients presumably each signed terms of business with CMIM, as Mr S did, so CMIM knew who they were. CMIM drafted a 'Dear Trustee' letter to be provided to those clients. Even if YCP actually forwarded the letter to Mr S doesn't change the fact that CMIM intended the letter to reach him.

I also agree with what the investigator said about why Mr S's complaint hadn't been made too late. The investigator set out the relevant parts of DISP 2.8.2R so I'm not going to repeat them here. The advice was given in 2014 and Mr S's complaint wasn't brought until early 2022. As that's outside the primary six year period, the complaint will only have been made in time if it was made within three years of when Mr S became aware (or ought reasonably to have become aware) he had cause for complaint. The investigator pointed to the fact that rental income payments from TRG stopped in October 2019. Mr S had complained within three years of then. I agree with that and so I'm satisfied we have jurisdiction to consider this complaint.

Moving on to the merits of the complaint, and in the absence of any further comments, evidence or information from CMIM, I agree with the investigator and with the reasons he gave (as summarised above) as to why the complaint should be upheld. Much of what I've said below echoes the investigator's views.

Did CMIM make a personal recommendation that Mr S invest in TRG?

I agree the 'Dear Trustee' letter didn't amount to a personal recommendation. I note in particular that CMIM's terms of business said it wasn't giving individual suitability advice and that CMIM was advising pursuant to section 36 Pensions Act 1995. And the 'Dear Trustee' letter was written in such a way which made it clear it wasn't intended to be a personal recommendation. Although what's said might amount to a personal recommendation even if that wasn't the intention, I don't think that was the case here. So the suitability obligations under COBS 9, where a firm makes a personal recommendation in relation to a designated investment, didn't apply.

Did CMIM promote TRG investment and, if so, was the promotion lawful?

In my view, and again for the reasons the investigator gave, CMIM did promote TRG investment to Mr S. The fact that the investment had been suggested or promoted to Mr S by others (for example, YCP) or that he may have already decided to invest doesn't mean CMIM couldn't also have promoted it. I agree that the 'Dear Trustee' letter was a significant step in persuading Mr S to make the investment. It was an inducement which meant that CMIM was promoting the investment.

TRG investment was a UCIS, the promotion of which was restricted under section 238 of FSMA. I don't think Mr S would've qualified under the criteria set out in the PCIS Order as he didn't appear to be a high net worth or sophisticated investor. That left the exemptions set out in COBS 4.12.1R. Not only was the '*solicited advice'* one unavailable, for the reasons the investigator explained, I also can't see that any of the other exemptions were relevant. And the changes to COBS 4.12 effective from 1 January 2014 meant that the former exemption of '*A person … for whom the firm has taken reasonable steps to ensure that investment in the collective investment scheme is suitable*' was no longer available either.

The upshot is that CMIM unlawfully promoted TRG investment to Mr S as part of its advice, in contravention of section 238 of FSMA. CMIM ought reasonably to have been aware that other parties who promoted the investment to Mr S previously were likely also in contravention of section 238 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?

In giving investment advice, CMIM was bound by COBS 2.1.1R and COBS 4.2.1R as well as PRIN. I think Principle 9 is particularly relevant – it points to the care CMIM needed to take

in giving advice and in the knowledge that Mr S would rely on it. Against that background I've considered what CMIM should've done. As I've said, CMIM should've established that TRG investment was a UCIS and that, in the absence of a valid exemption, CMIM and others were promoting it in breach of FSMA. CMIM also seems to have thought any advice about TRG wasn't regulated but, although the investment was unregulated, advice about it was regulated.

CMIM, if it had fully understood the position, could've declined to get involved and not entered into any introducer arrangement with YCP. If CMIM was still prepared to be involved, I think CMIM, acting in compliance with the relevant COBS rules and PRIN, should've proceeded differently. As the investigator suggested, CMIM could've made a personal recommendation to Mr S, which was tailored to his specific circumstances and so more likely to pay due regard to his best interests and treat him fairly. If the recommendation was not to invest, this wouldn't have amounted to promotion and so the restriction wouldn't be breached. The recommendation should've been supplied direct to Mr S, rather than through YCP to ensure (as it might mean Mr S wouldn't be inclined to go ahead and invest) that it reached Mr S.

Further, as things stood, the stated purpose of the advice was to enable Mr S as a trustee to meet the requirements of section 36 Pensions Act 1995 in making investment decisions for his SSAS. But I'm not sure the advice could meet that purpose. The Pensions Act 1995 isn't explicit about what should be taken into account by the trustee in reaching a decision. But there are references to suitability and diversification and that other regulations may specify further criteria. In that respect the Occupational Pension Schemes (Investment) Regulations 2005 may be relevant. Regulation 7 refers to having regard to the need for diversification, in so far as appropriate to the circumstances of the scheme.

I'm not sure it was possible for Mr S to obtain advice on whether TRG was suitable and provided adequate diversification without a recommendation being made specifically in respect of the requirements and objectives of Mr S's particular SSAS. Nor can I see that a generic recommendation, leaving Mr S to draw his own conclusions, would assist him in making investment decisions as a trustee under the Pensions Act 1995.

Further and in any event, CMIM's advice was that, aside from the caveats it set out, investing in TRG would be appropriate. I don't agree – I think CMIM should've realised that investing in a UCIS would likely be unsuitable for the vast majority of ordinary retail investors and certainly for a substantial proportion of an investor's fund (and even if there'd be some diversification provided by some investment in CMIM's DFM portfolio). UCIS are generally higher risk and TRG UCIS was no exception – it was an overseas, off plan property development and was subject to a variety of risk factors, including currency, counterparty, construction, occupancy and liquidity risks. CMIM should've been aware of the regulator's increasing concerns about this type of investment and which had led the regulator to seek to tighten up, with effect from 1 January 2014, the promotion of UCIS.

What would Mr S likely have done if CMIM had acted as it should've done?

If CMIM had declined to act or indicated that its advice was unlikely to be in favour of investing in TRG, the other parties involved may have sought to find another adviser for Mr S and others. But I think any other regulated adviser would've been mindful of the issues I've pointed to about promoting TRG investment without a valid exemption and the need to comply with the FCA's principles and rules and so been reluctant to get involved. And I don't think it's unreasonable to assume that any other adviser would've recognised that TRG investment was unlikely to be suitable and declined to act or advised accordingly. I don't think it would've been possible to bypass the need for a regulated adviser to be involved. Leaving aside factors such as advice from a regulated firm carrying more weight with Mr S, I

think his existing provider may have undertaken checks and, if they'd revealed that Mr S was dealing with unregulated parties, declined to carry out the transfer. All in all I consider, if CMIM had acted as it should've done, Mr S wouldn't have proceeded with the transfer and the investment in TRG.

Should CMIM only have to pay part of Mr S's losses?

CMIM wasn't the only party involved. Aside from YCP which is an unregulated entity the SIPP provider is regulated. There may be some suggestion that it should bear some responsibilities for Mr S's losses. But CMIM chose to provide misleading and unsuitable advice and should've instead have unequivocally told Mr S not to include this UCIS in his SSAS. The likely outcome of CMIM acting appropriately is that Mr S wouldn't have transferred his Aegon pension at all. In that case, all of Mr S's losses would've been avoided. That includes any losses arising from the use of a DFM arrangement, the concept of which CMIM also introduced to Mr S. He wouldn't have been exposed to any of these investments had it not been for CMIM's advice on TRG. In the circumstances I think it's fair and reasonable to hold CMIM responsible for all of Mr S's losses.

It's a matter for CMIM whether it wishes to attempt to recover any of the compensation I'm requiring it to pay from other parties. It may take an assignment of Mr S's rights to pursue those parties if it wishes to do so.

Putting things right

I've broadly adopted the redress set out by the investigator. My aim in awarding fair compensation is to put Mr S as far as possible in the position he'd be in now if Central Markets Investment Management Limited had given him appropriate advice in relation to the TRG investment for his SSAS. I think on the balance of probabilities Mr S wouldn't have established the SSAS or gone ahead with the transfer and he'd have instead remained with his previous provider (Aegon).

To compensate Mr S fairly Central Markets Investment Management Limited should:

- Compare the performance of Mr S'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. Central Markets Investment Management Limited must therefore contact Mr S's previous provider to obtain a *notional value* as at the date of my final decision. It should be assumed that Mr S would've remained invested in the same funds. Any interest as set out below should be added to the compensation payable.
- If there's a loss, it should be paid into Mr S's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
- If compensation can't be paid into Mr S's pension plan, it should be paid directly to him. But had it been possible to pay into the plan, it would've provided a taxable income. Therefore the compensation 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 Mr S won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr S's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume Mr S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction

would equal 20%. However, if Mr S would've 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 Mr S £250 for the distress and worry he's been caused as a result of the disruption to his pension arrangements.
- Provide the details of the calculation to Mr S in a clear, simple format.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Mr S's SSAS	Some liquid/some illiquid	Notional value from previous provider/ FTSE UK Private Investors Income Total Return index/average rate from fixed rate bonds	Date of investment	Date of final decision	8% simple pa on any redress which remains unpaid 28 days after notification by this service to CMIM of Mr S's acceptance of the final decision

actual value

This means the actual amount payable from the investment at the end date. If, at the end date, any investment in the portfolio is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the portfolio. So, Central Markets Investment Management Limited should take ownership of any illiquid investments within the portfolio by paying a commercial value acceptable to the pension provider. The amount Central Markets Investment Management Limited pays should be included in the actual value before compensation is calculated.

If Central Markets Investment Management Limited is unable to purchase any illiquid investment the value of that investment should be assumed to be nil when arriving at the actual value of the portfolio. Central Markets Investment Management Limited may wish to require that Mr S provides an undertaking to pay Central Markets Investment Management Limited any amount he may receive from that investment in the future. The undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Central Markets Investment Management Limited will need to meet any costs in drawing up the undertaking.

And, if Mr S isn't able to close down his SSAS and move to a potentially cheaper and more regulated arrangement, I think it's fair that Central Markets Investment Management Limited also pays five years' worth of future administration fees at the current tariff for the SSAS as part of the compensation and to allow a reasonable period for the SSAS to be closed. And any outstanding administration charges yet to be applied to the SSAS should be deducted from the actual value.

notional value

This is the value of Mr S's investment had it remained with the previous provider until the end date. Central Markets Investment Management Limited should request that the previous provider calculate this value.

Any additional sum paid into the SSAS should be added to the notional value calculation from the point in time when it was actually paid in. 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 all those payments are totalled and that figure is deducted at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Central Markets Investment Management Limited will need to determine a fair value for Mr S's investment instead, using this benchmark:

For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. 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.

I've chosen this method of compensation because:

- Mr S wanted capital growth with a small risk to his capital.
- If the previous provider is unable to calculate a notional value I consider the benchmarks I've suggested are appropriate.
- The average rate for fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- 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's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr S's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr S into that position. It does not mean Mr S would've invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr S could have obtained from investments suited to his objectives and risk attitude.

My final decision

I uphold the complaint. Central Markets Investment Management Limited must redress Mr S as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 August 2023.
Lesley Stead
Ombudsman