

## The complaint

Through his representative, Mr T complains that Clear Capital Markets Limited (CCM) enabled him to trade in *“investments in a small number of specific and potentially high risk / volatile stocks”* on the SVS Securities trading platform, after it advised him to transfer his Hartley SIPP to Intelligent Money.

Mr T says that he was interested in ensuring that his pension was sensibly invested to give him a good pension provision at retirement, but wasn't a high risk taker as he couldn't afford to take those risks with his pension. So he didn't give CCM a mandate to invest in 'high risk products'. The value of the shares has fallen and the pension is unlikely to have performed as well as it would have done on “suitable” investment.

The representative also mentions that the costs of running the SIPP and trading platform when Mr T's funds were so small, would neutralise any investment gains and prevent growth.

## What happened

In 2018, Mr T was in a management position earning £36-40,000pa for this own company. He had a small amount of shares in Saga & Canada Life, but no other savings or investment experience. He was aged 54. He had an existing pension with Hartley SIPP, worth £6,776. (There is also a suggestion on one of CCM's fact finding calls that he also had a few thousand pounds in a Phoenix pension.)

Mr T's representative says he was made an unsolicited offer of a pension review and referred to CCM. The outcome of this was that they then recommended he transfer from the Hartley SIPP to an SVS Securities platform within an Intelligent Money SIPP in order to achieve better returns. The representative believes that CCM was to carry out discretionary management of the SVS Securities portfolio.

This appears to be a condensed version of a longer timescale. The representative has since explained that Mr T has complained to a financial adviser (Quantum International) in respect of earlier pension transfer advice involving £20,000 from Standard Life to the Lifetime (subsequently Hartley) SIPP in 2015. That also seems to have begun with a cold call and involved discretionary fund management, but it culminated in the firm managing Mr T's money (Sequant Capital) defaulting to the Financial Services Compensation Scheme). I'm aware from this – and other – cases that Sequant and CCM then had an arrangement to avoid clients who were interested in (and appropriate for) share dealing services, being left without an adviser or broker.

CCM says that it didn't make unsolicited contact with Mr T. It's provided details of all the calls it made to Mr T to 'onboard' him as a customer, showing he was willing to take advantage of Sequant's offer to pass his business to CCM. Whilst reference is made in these calls to Sequant writing to Mr T to explain these arrangements, I can see why the CMC thinks Mr T was cold-called. It doesn't appear Mr T had received Sequant's letter at the time CCM first contacted him.

CCM explained that if he wished to use its services, Mr T would need to contact the trading account (Saxo) to obtain the necessary information to enable CCM to take over, as CCM didn't have access to this. However, it's also evident from the calls that Mr T went away and did this and confirmed to CCM that he was happy to use its services. These calls enabled CCM to submit an application form for an SVS Securities account within an Intelligent Money SIPP, which Mr T signed on 19 September 2018. On the form, Mr T has allowed trading in equities only, not foreign exchange, CFDs or futures. However, this would encompass higher-risk AIM shares of the sort he went on to purchase. Intelligent Money noted on its records that CCM's director was the 'adviser', and giving CCM's FCA registration number.

On 5 October 2018, Intelligent Money consented to CCM having power of attorney to make investments on the SIPP account. Following the transfer from Hartley, the SVS account was opened on 16 October 2018, and received £6,626.79 on 2 November – leaving £112.50 in the Intelligent Money SIPP.

CCM then completed a fact find over the phone to assess Mr T's suitability for its services. All three of execution-only, advisory and discretionary were ticked, but my understanding is that this was only to allow future possibilities. The rest of the background (below) bears out that all the trades seem to have been advisory in Mr T's case. CCM recorded that Mr T had £18,500 in cash savings – this includes the value of his SIPP – and £2,000 in each of Funds/ETFs and FTSE 350 shares. Including the value of his home and deducting liabilities, he had net worth of £250,700. He was prepared to use 20% of this (about £50,000) as "risk capital" on the basis that losing this amount wouldn't affect his lifestyle.

CCM also noted Mr T had an appetite for high risk and capital growth. According to CCM's risk profiling this meant that he could invest up to 75% of his risk capital (about £37,500) in high risk products. It also stated that Mr T had a good understanding of markets, and had made deals worth less than £5000, less than three times per year – except in derivatives & bonds. Mr T was willing to consider investment on the Alternative Investment Market (AIM), Initial Public Offerings (IPOs), placings and so on.

CCM subsequently bought and sold shares for Mr T on its advice, including Altitude Group, Rowan Metals, Sirius Minerals, Management Resource Solutions, Karoo Energy and Ascent Resources, generally employing short-term trading of a few days to a month apart. By May 2020 the account held:

	<u>value</u>
Jubilee Metals Group Plc	£ 426.62
Prospex Oil And Gas Plc	£2,132.16
ValiRX	£ 27.91
Vast Resources Plc	£1,689.90
Pounds Sterling	<u>£ 589.03</u>
	£4,865.63

CCM also appears to have made further arrangements for Mr T to continue trading after SVS Securities went into FSCS default. A new fact find was completed on 12 June 2020, with answers materially the same as the 2018 one above. Mr T's risk capital had increased to £62,000.

CCM went on to sell all of the Jubilee Metals and Prospex shares in January 2021 for £3,510, and bought a new holding in Mast Energy for £3,947 in April that year. In July it sold the Vast Resources shares for £643. I haven't found any other trades, but the cash in the account has progressively been used to pay SIPP and ITI account fees. As of 30 May 2023, the Mast Energy shares are worth £345, with £29 remaining in ValiRX and £160 in cash.

Mr T's complaint

When the representative initially complained on Mr T's behalf, it didn't have a full understanding of how Mr T came to acquire these shares. It thought CCM had acted as a discretionary fund manager, and believed – on the basis of the paperwork to transfer to the Intelligent Money SIPP / SVS platform – that CCM had advised Mr T to take these steps. This resulted in the complaint I've summarised above, as the representative considered the shares Mr T ended up in were too high risk and not cost-effective.

When CCM responded to the complaint, it argued that Mr T had made his own decision to use its services, and it acted in accordance with its Retail Client Profile at all times. Noting that it did not have regulatory permissions to advise on pension switches, it said the CMC was mistaken in thinking that it had done so in Mr T's case. Although CCM holds the FCA 'managing investments' permission, it also confirmed that there was no discretionary trading on the account – each share trade had been recommended to and accepted by Mr T.

CCM has also disputed that Mr T wanted to complain about its services at all – providing evidence of a number of phone calls it had made directly to him to clarify his concerns. It believed that this complaint had been mixed up with concerns Mr T had about the adviser who had originally set up Mr T's Lifetime SIPP. A common theme in these calls was Mr T agreeing that CCM *"...ha[d] not had a chance to do anything"* on his account.

As a result, CCM said that there was an absence of anything from Mr T directly indicating that he wanted to complain. It had suggested in these calls that Mr T reflect those wishes by updating his representative. As the representative is acting with Mr T's authority and continued to refer the matter to this service, we proceeded to investigate it.

In response, Mr T's representative has reasserted to this service that the complaint letter to CCM had been approved by Mr T before it was sent to the firm. They have since clarified with Mr T that his concerns about firms who acted prior to CCM are being dealt with separately, and he is behind making this complaint.

I issued a provisional decision on 30 June 2023, upholding the complaint. I gave both parties until 23 June 2023 to respond to the provisional decision. Mr T's representative confirmed that they had no further points to add. CCM did not respond to the provisional decision.

### **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.

I've obtained recordings of all onboarding, factfinding and trade calls CCM carried out with Mr T and this has enabled me to reach the following provisional conclusions. These do not differ from my provisional decision as neither party has given me reason to depart from that.

#### *Did CCM advise Mr T to switch his pension from Hartley to Intelligent Money?*

During the onboarding call of 14 September 2018, CCM's director made negative comments about CCM's experience of liaising with Mr T's existing provider, Hartley. He noted that all the other SIPP providers Sequant had been using were forthcoming and easy with allowing access, but Hartley was unresponsive. He went on to say that he was suggesting that clients move SIPP providers from Hartley to Intelligent Money.

Although it appears that the call cut off at some point whilst CCM was explaining this, after redialling Mr T confirmed he had heard the comments about Intelligent Money. The director

reiterated that it would actually be cheaper for Mr T to move to Intelligent Money in the long run, as their annual fee was only £150.

The FCA gives guidance on what constitutes the regulated activity of advising on investments in its handbook at PERG 8.24. The advice must relate to a specific rather than a generic investment, but it's clear here that it was discussing a SIPP with Intelligent Money in particular. And in my view, the discussion related to the merits of Mr T transacting with that SIPP provider, which is the other main determinant of whether advice is being given.

I realise CCM may seek to argue that its director was only providing *information* as to what Intelligent Money's fees were, and to highlight that this was a firm CCM could work with successfully – in order to break an impasse where Mr T had been left with Hartley on the departure of his previous broker. As FCA makes clear at PERG 8.28.2(1), simply giving information without making any comment or value judgment on its relevance to decisions which an investor may make, is not advice.

However irrespective of his intentions, which aren't a relevant consideration here in my view, it's evident that the director did more than just this - and strayed into giving advice. I say this with reference to PERG 8.28.2(3) and (4):

- (3) Regulated advice includes any communication with the customer which, in the particular context in which it is given, goes beyond the mere provision of information and is objectively likely to influence the customer's decision whether or not to buy or sell.
- (4) A key to the giving of advice is that the information:
  - (a) is either accompanied by comment or value judgment on the relevance of that information to the customer's investment decision; or
  - (b) is itself the product of a process of selection involving a value judgment so that the information will tend to influence the decision.

In this case I'm persuaded that references to Intelligent Money being cheaper than Hartley, and allowing trading to take place that currently couldn't with Hartley, did constitute a value judgement that Mr T should transfer his pension – or at the very least was intended to influence Mr T's thought process that he should do so. That leads to the conclusion that CCM was likely acting in breach of its permissions not to advise on personal pension schemes.

From what it's said (and from what I can see now on the FCA register), CCM only appears to have had permission to advise on other types of non-pension investment, such as shares. But as CCM as a firm is in this service's jurisdiction, and we have jurisdiction over any regulated activities a firm carries out, this doesn't affect my ability to consider Mr T's complaint. And when doing so it is fair and reasonable for me to hold CCM to the standard of a competent firm providing pensions advice, with the appropriate permissions to do so.

It's also irrelevant in my view that when some of the Intelligent Money / SVS documentation was completed late, on 5 February 2020, Mr T signed an application that acknowledged CCM hadn't advised him on the pension transfer. That advice had already been given and Mr T had already acted on the advice. Indeed, one reason for completing this documentation may have been for CCM to attempt to distance itself from pension advice it was aware it should not have given.

*Was the advice to switch pensions suitable?*

COBS 9.2.2R in the regulator's handbook sets out that in order to make a suitable recommendation a firm must have a reasonable basis for believing that the transaction meets the client's investment objectives; is such that he is able financially to bear any related investment risks consistent with his investment objectives; and is such that he has the

necessary experience and knowledge in order to understand the risks involved in the transaction.

CCM could easily have found out from Mr T that the pension benefits in his Hartley SIPP, already small at that time due to prior losses, had only ever started out at £20,000 a few years earlier. That, in combination with only a few thousand pounds in a Phoenix plan, wasn't on track for having a comfortable retirement – and at age 54 Mr T was behind what would generally be considered to be an appropriate level of saving.

His pension was for its own defined purpose – providing benefits in retirement – and I don't think CCM paid sufficient regard to the fact that he could ill afford to lose any more of it by making similar high risk investments to those he'd done previously. I say this noting that irrespective of Mr T's willingness to sign up for CCM's services and consider the share offers it was making to him, FCA-regulated firms have overarching obligations to conduct their business with due skill, care and diligence (Principle 2), or pay due regard to their customers' interests or information needs (Principles 6 and 7). Sometimes the suitable course of action is different to what the client thinks they need - and a firm is expected to take steps to protect a client from, for example, wanting to (or appearing to want to) take more risk than they should.

During its onboarding call of 11 September 2018, Mr T told CCM that *"Someone did a pension review, I was advised to go into a SIPP, someone on the end of the phone has been dealing with it ever since...I'm dealing with about 12 companies here"* and *"I don't understand an awful lot of it to be honest... Seem to be an awful lot of people involved in running the thing."* A week later, he said that in September 2016 he'd had £18,500 in his dealing account, but Sequant had bought a *"lump of...pharma...which got suspended on the German stock exchange and the value disappeared...some sort of laundry problem"*. Sequant had been buying and selling on a regular basis to try and make back what he lost.

I'm aware from other cases this service has received that losses of this degree with Sequant were not uncommon, and Mr T wasn't the only client who mentioned this to CCM. There was alternative recourse, such as through a complaint, to recover losses from inappropriate trading. So I think CCM should have proceeded very carefully when faced with a client who had seen an already small pension fund decimated further, was saying he didn't understand an awful lot of how things worked, but believed further trading could potentially recover his losses. Although he wasn't expressly saying he thought he'd been wrongly advised originally, it's fair to say Mr T didn't seem confident that he was in the right arrangement – and indicated that he had just followed what someone had previously advised him to do.

I don't have details of Hartley's charges, except that CCM said at the time these exceeded Intelligent Money's. So we know they were more than £150pa, which is already 2.2% of the £6,739 transferred across from Hartley. The charges for the SVS account, and CCM's trading fees (up to 1% of equities/bonds and 5% of placing stock, but with minimum monetary amounts) were in addition to this. So, it appears the account with Saxo Mr T already had previously, plus the extra layer of charges to Sequant, would have played its own part in how his portfolio had reduced from some £20,000 to under £7,000.

I therefore consider that a competent pension adviser should have questioned whether Mr T had been given the right advice originally to move to a SIPP. In effect, he would have needed a very high attitude to risk, in order to make the sorts of investments producing sufficient returns to overcome this high 'hurdle rate' of charges. For him to suitably be doing this, and consistent with COBS 9.2.2R, he would likely be a very engaged investor who understood the substantial risks involved in trying to grow a pot that was this small in such a relatively high charging environment. He would need to be prepared to accept that the

£7,000 he had remaining could be all but eradicated from one further misjudged investment decision, because no limit was set on the size of the trades CCM might make.

I'm not satisfied Mr T was this sort of investor, as it looks to me that he was entirely reliant on advice in respect of his pension. And it's difficult to see how someone whose SIPP was the majority of their pension provision, and which was clearly an insufficient amount at that stage to plan for retirement on, could be expected to accept the very high risk of investing all of it in AIM shares, including about 50% in a single share. The logical advice which would be given by a competent adviser to all but the most adventurous individual, would be to move their arrangement back to a lower-charging environment – ideally one without fixed costs at all – such as Mr T used to have with Standard Life.

CCM carried out the main part of its fact finding in a phone call which took place on 7 November 2018, which was *after* it had given the advice I've deemed above to switch pension providers that September. I consider this should have been the other way around, so that CCM could take into account what Mr T's attitude to, capacity for and understanding for risk meant for the intended purpose (share dealing) that the transfer was intended to achieve.

I've considered the fact that CCM did record Mr T as having a high attitude to risk, as this might appear to run contrary to his representative's claim that he was not a risk taker. In the fact finding call, CCM asked Mr T whether he was low, medium or high risk - explaining that the difference between the three categories was whether one was more concerned about limiting losses than achieving returns, both equally, or the other way around.

Mr T answered that he was high risk, but I don't think the scale being used had enough categories to establish whether he was not concerned about limiting losses to any great degree at all, or just slightly more concerned at achieving returns than limiting losses. A single 'high risk' category could potentially have covered anything in between. I don't think this was a sufficient assessment to establish whether Mr T truly understood and accepted the risk of putting the main part of his pension provision entirely into single AIM or similar shares. In any event, that should be regarded by an adviser in my view as a 'very high' risk proposition. As there wasn't such a category on CCM's scale, this in effect brought an inappropriately wide range of clients, including I think Mr T, into scope for this type of share dealing activity.

CCM's fact find established that Mr T's 'risk capital' was about £50,000 – as a result of including the value of his home in his net worth, and then establishing that he was prepared to risk 20% of that net worth. I think this assessment was flawed. Normally, the value of one's main residence isn't generally included in such assessments (for example when assessing if someone meets the legal criteria of being a 'high net worth individual').

That's for good reason, as I cannot envisage how Mr T could be expected to put his own home at risk. Only about £22,500 of assets other than his home were noted on the fact find (although from listening to the phone call this seems to include his pension and mistakenly counts his estimate of £2,000 total in shares twice). Either way, I think CCM should have seen the illogicality in his answer that his lifestyle wouldn't be affected if he lost £50,000, when he would most likely have to remortgage his home.

What this answer did however ensure is that the 75% of the £50,000 "risk capital" that CCM deemed Mr T could invest in high risk products (because of his agreement to take a 'high risk') significantly exceeded the £7,000 in his SIPP. Because Mr T didn't set an upper limit for a single share purchase, this could potentially mean close to £7,000 could be invested in a single share, although I appreciate CCM didn't increase the risk to quite this degree. But it would certainly result in the majority of Mr T's pension provision being insufficiently

diversified. This was not assisted by Mr T's only other assets being either in cash or, to a lesser extent, in shares.

If it turned out, as I think it should, that Mr T was potentially somewhere between medium and high risk (and certainly not very high risk), I don't think a competent adviser would have recommending put all of his pension into single AIM shares. Mr T was educated to A level and didn't work in the financial industry. And there were tell-tale signs as to his level of understanding of what taking a high risk would actually mean. When he was asked about his level of understanding of financial matters he gave an answer of "good to limited", which the adviser then upgraded to "good" on the fact find.

Some further questions the adviser was asking Mr T were designed to capture whether he had previous experience of carrying out trades personally: Mr T answered that he had traded fewer than three times a year in ETFs, large and small capitalisation shares. But he explained that he'd only bought the 'large cap' (in Standard Life Aberdeen and Saga) personally – the others were ones Sequant had bought for him.

These appear to have been traded on a discretionary basis by a broker whose activities had already been called into question, so I don't think CCM should have been confident that Mr T understood the risks involved in shares on the alternative markets that CCM was going to recommend. This was also too cursory an assessment to comply with COBS 9.2.2R, given that (apart from the Standard Life and Saga shares) Mr T had until that point been reliant on others to recommend or select deals for him). Asking Mr T to confirm he agreed that he understood those risks at the end of the call (as CCM did), didn't make it so, or make the advice it went on to give on specific shares suitable for him.

*What should CCM have done instead?*

CCM gave Mr T advice to switch pension providers, apparently in breach of its permissions. And I've concluded that advice wasn't suitable for him. I appreciate that if, strictly, CCM had refused to get involved with Mr T at all, a question might arise as to how he would have exited the holdings he was in under Sequant (which CCM helped him to close down), in order to invest more appropriately. However in my view that's the wrong starting point.

It wouldn't have been consistent with CCM's regulatory obligations to act in Mr T's best interests (COBS 2.1.1R) for it to abandon him, having identified that he had been sat in an disproportionately high-charging pension in inadequately-diversified high-risk and alternative assets for the previous few years. It had already undertaken (with his agreement) to look into what sort of investments would be suitable for him.

It's possible that, based on what he'd bought personally in the past, Mr T might have had a better understanding of and remained receptive to CCM buying 'large cap' shares for him on the conventional markets. But CCM didn't do this. Mr T's representative's portrayal of his attitude to risk suggests that, too, would have been inappropriate – and given the small size of Mr T's pension, I'm inclined to agree. I think some balancing element of other asset classes, such as bonds – and a wide spread of diversification in those shares and bonds – was likely to be more appropriate for the purpose of this investment to support Mr T in retirement.

In my view, managed funds that better achieve the right level of diversification for a small pension pot, and which are typically available in conventional pension plans such as Mr T previously had with Standard Life, would have been more cost-effective for him. These could still have been geared to taking between a medium and higher risk if desired, by having a greater proportion of shares to bonds.

If that wasn't a line of business CCM was prepared to get involved in, then having established that Mr T didn't have the right sort of arrangement for his long-term pension planning I consider there would have been an obligation on CCM to refer him to another advise. Or for it to recommend he got advice or guidance himself, perhaps from a government body such as the Pensions Advisory Service. Had CCM done any of these things, I think that would have set Mr T on the path to investing in a more cost-effective arrangement.

*Would Mr T have followed the suitable advice CCM should have given him?*

Although in my view Mr T should not have been trading in AIM and similar stocks through CCM at all, I expect that CCM might argue that Mr T's willingness to continue with the services it was offering him means that he might have gone on to trade in some other way, perhaps with another party. To do this I've listened to the advisory trading calls.

Typically, CCM would set out to Mr T in an initial call what shares were being offered to the market to gauge interest – and then send him further details by email to be discussed in the follow up call. I can see that Mr T was engaged with the information CCM sent him, and made some comments or asked questions based on the information he'd read in the follow up call.

For example he'd taken a view on how long he was likely to need to hold the Rowan metals shares (6-12 months) to see a profit, based on what he'd read about the company's plans to begin mining for copper. This prompted a further discussion where CCM explained they intended to trade out of most of the shares more quickly than this, as soon as a short-term profit could be realised (whenever positive news emerged from any of the parallel ventures the company had ongoing). CCM then said they would be aiming to take the same approach with lots of other companies over time.

Mr T evidently understood what CCM was telling him and accepted its advice to proceed on that basis. But I don't think this is the same as saying he understood all of the risks involved. I think he would have been aware that this involved more risk than, say, the large cap shares he owned outside his pension, as the warnings which were read out to him at the outset would have alerted him to further risks. But I haven't found that Mr T took control of the discussions.

Ultimately, Mr T acted on CCM's advice. And importantly, he didn't receive the right advice. CCM hadn't addressed the impact that the frequency of trading and multiple layers of charges could have on the likely profits Mr T would make, if they were only aiming to realise modest short-term gains (on average, because gains couldn't of course be guaranteed). If CCM had explained to him instead that he was more likely to be able to sustain (and increase) the value of his pension by investing in low-cost funds – and addressing what he had lost through Sequant separately – I think on balance he would have followed that advice, just as he followed the advice CCM did give him.

Mr T hadn't received what I would consider to be suitable advice on his pension for several years, had sustained significant losses as a result. And there are some indications in the call recordings that he'd started to wonder whether this was working, as I mentioned above. As a result, I don't think he could have afforded to disregard the suitable advice CCM should have given him. I think he only proceeded to switch to Intelligent Money and carry on trading because what was the only option CCM offered.

Whether or not CCM was in a position to recommend a more suitable pension plan or investments itself, I find it unlikely on balance that Mr T would have made the same high risk investments if CCM hadn't advised him to make them. And I'm satisfied that he would have



followed advice to invest his pension more conventionally, either through CCM or after going to any other adviser or guidance service CCM could have recommended.

### **Putting things right**

My aim in awarding fair compensation is to put Mr T back into the position he would most likely have been in, had CCM not encouraged him to make large trades in AIM and other similar shares within his pension. There isn't a single identifiable investment or investments Mr T would have made instead of CCM's portfolio.

I think the FTSE Private Investors Income Total Return Index is a reasonable benchmark to use as a proxy for the investments Mr T might have made instead, as it reflects the typical mixture of assets someone who was willing to take a moderate level of risk (but not the high risks involved in CCM's proposals) would have made.

I've had regard for Mr T's moderate term to retirement at age 54, meaning that he could afford to take this degree of risk even though he was reliant on these funds (and would need to add to them) for his retirement provision. I've also taken into account the overly broad delineation between CCM's "high" and "medium" risk descriptions and Mr T's low level of investment understanding and experience, meaning in my view he was closer to the medium than the high risk investor he said he was at the time. His representative's comments correspond with my view.

This doesn't mean Mr T would have invested exactly in line with this index, which is a composite of about 60% in shares and 40% in bonds. But I'm satisfied that it's a reasonable benchmark to use as a proxy for the range of investments he might have made had it not been for CCM's advice.

### ***What should Clear Capital Markets Limited do?***

To compensate Mr T fairly Clear Capital Markets Limited should:

- Compare the performance of Mr T's investments with that of the benchmark shown below. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.
- If there is a loss, it should pay into Mr T's pension plan, to increase its value by the amount of the compensation and any interest. This payment should allow for the effect of charges and any available tax relief. CCM shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If CCM is unable to pay the compensation into Mr T's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have 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 T won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr T's expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr T is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. As Mr T 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%.

- Provide the details of the calculation to Mr T in a clear, simple format.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SVS Securities subsequently ITI Capital	Shares in Mast Energy, ValiRX & residual cash	FTSE Private Investors Income Total Return Index	2 November 2018	Date of my final decision	8% per year simple from the date of my final decision if not settled within 28 days of receipt of Mr T's acceptance

Since Mr T invested, the share prices of Mast Energy and ValiRX have fallen significantly. But I'm persuaded that Mr T only has these shares as a result of CCM's advice. My understanding is that CCM's objective was to hold on to the residual amount in these investments for the medium to long term. That has led to the position for Mr T to worsen, as it currently stands.

If the shares cannot readily be sold on the open market, I require CCM to purchase them from the portfolio as part of the compensation and include the amount it pays into the portfolio for the shares as part of its value. If CCM is unable to purchase the shares and they cannot readily be sold on the open market, CCM must treat the shares as having a nil value when valuing the portfolio.

Income tax may be payable on any interest paid. If CCM considers that it's required by HMRC to deduct income tax from that interest, it should tell Mr T how much it has taken off. It should also give Mr T a tax deduction certificate in respect of interest if Mr T asks for one, so he can reclaim the tax on this interest from HMRC if appropriate.

### **My final decision**

I uphold Mr T's complaint and require Clear Capital Markets Ltd to calculate and pay him compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 28 July 2023.

Gideon Moore  
**Ombudsman**