

The complaint

Mr T's complaint concerns investment advice provided to him by Clear Capital Markets Ltd ("CCM") and the losses he feels he incurred as a result.

What happened

Mr T began investing with CCM in early 2018. The relationship began as a discretionary one focussing on contracts for differences (CFDs) but soon moved to an advisory service focussing on shares concentrated in higher risk areas, such as AIM-listed, IPOs and placings.

Mr T initially committed £25,000 in March 2018, which was invested in CFDs. Following disappointing performance Mr T withdrew £17,000. He then opened an advisory account in October 2018 with £20,000. CCM changed custodian in 2020 at which point the balance of Mr T's account was still around £20,000. The balance then fluctuated over the next couple of years before reaching a low point of around £2,500 in April 2023. When Mr T became aware of this, he decided to sell his remaining holding and complained to CCM about the losses he'd incurred.

CCM didn't uphold the complaint. It said, in brief:

- Mr T had confirmed and demonstrated on multiple occasions that he was an investor with significant experience dealing in high-risk investment products.
- All the available documentation confirmed he understood the investment products he invested in and was kept regularly updated on his investments.

Mr T referred the matter to this service, but our investigator also didn't think it should be upheld.

She noted that there'd been considerable volatility in the value of Mr T's portfolio from 2020 onwards, ultimately leading to the significant loss that he'd experienced that led him to close his account. She explained that although she was unable to consider the performance of the shares in which Mr T had been advised to invest, she could consider whether the advice provided by CCM to invest in those shares had been suitable for Mr T.

In this respect, she noted that:

- CCM recorded in 2020 that Mr T had in excess of £1million in his portfolio. And he could afford to lose 50% of this without it having a detrimental impact on his lifestyle. He had no dependents or mortgage. His monthly income after tax was £2,000 with monthly outgoings of £1,000.
- When completing the assessment of Mr T's attitude to risk, it was noted he was 'more concerned about achieving returns than limiting losses.' And was willing to put up to 75% of his investments in high-risk products.
- CCM recorded that Mr T had significant experience in high-risk investments and gambling, including spending over £300,000 on horse racing during 2018. Mr T had said he wanted high-risk investments, and the investigator was therefore satisfied he

- had a large appetite for risk.
- As a result, Mr T was advised to invest in a variety of high-risk shares. The investigator felt the phone calls during which CCM recommended the shares emphasised the risks, for example, those associated with the specific market the stock was in, and the potential risks of IPOs.
- When considering the recommendations together, she was satisfied the advice provided to Mr T had been in line with his attitude to risk.

Mr T didn't accept the investigator's view. He said he felt he'd been taken advantage of by CCM and was particularly concerned that he hadn't been receiving written monthly reports of how his portfolio was performing during the months leading up to the closure of his account.

The investigator sought some more information from CCM in light of Mr T's comments, concerning the monthly statement situation and also some more background on his CFD investments.

When this information was received, the matter was reviewed by another investigator, who focussed at this point on Mr T's CFD investments. In doing so, he didn't think CCM had acted incorrectly. He was satisfied Mr T had sufficient investment knowledge and experience for discretionary CFD trading to be appropriate for him. He also felt that the evidence supported Mr T having the risk tolerance for this type of investment and the capacity for loss.

Mr T responded to reiterate that the primary focus of his complaint was the failure of CCM to keep him informed of how his portfolio was performing, so he'd had to proactively seek the information in April 2023 that revealed the size of the loss he'd incurred.

As the matter remained unresolved, it was referred to me to review.

I issued a provisional decision in which I explained why I also didn't think the complaint should be upheld. I said, in brief:

"As noted, a great deal of consideration has been given to the suitability of all aspects of the advice CCM provided to Mr T. This has led to both investigators broadly agreeing that the advice, both in relation to the discretionary CFD service and the advisory share dealing was suitable for him. Mr T was an experienced investor with knowledge of a wide variety of different asset types, who had a significant appetite for risk, coupled with a high capacity for loss.

All the documentary evidence that CCM has provided supports this conclusion and I think it's fair to say that Mr T doesn't really dispute it. His concerns lie more specifically with CCM's action, or inaction, during the later years of his relationship with the business, primarily from March 2021 when a new adviser took over managing the relationship.

While this seems to have proceeded reasonably amicably to start with, and notably during a period during which the value of Mr T's portfolio with CCM saw some gains, things were clearly not as amicable, and contact not as frequent, in the first months of 2023 up to April by which time the value of Mr T's portfolio had fallen to just over £2,500.

Mr T had made clear in his dealings with CCM's adviser that his only methods of contact were by phone and post. He had no internet access, so no email facility. It seems that during 2021 and 2022 portfolio valuations were sent to him, but on quite an ad-hoc basis. In the call of 24 April 2023 during which Mr T discovered how far the portfolio value had fallen he refers to there previously having been an agreement to send him monthly statements, but he'd had none so far that year.

I've seen nothing that supports such a specific agreement being in place. CCM has said that while it would've provided valuations on request, it wouldn't have done so as a matter of course as they could be obtained on-line. Although, as noted, Mr T didn't have internet access.

I can entirely understand Mr T's frustration on discovering how far the value of his portfolio had fallen. Given that it seems that towards the end of 2022 things seemed to have been going okay, it would clearly have been a shock to be given the valuation of April 2023. But Mr T was aware that he was invested in high-risk assets, which I've already said I think was suitable for him, and so he ought reasonably to have been aware that there could be significant fluctuations in value.

I also think it's fair to note that he was aware that he had very limited visibility and was reliant on CCM to keep him informed. While I don't think I've heard every call that was made between him and CCM over the period in question, in those that I have listened to, he never asked for a valuation of his portfolio. Clearly, he was perfectly entitled not to ask, but I've not seen that there was ever a situation where CCM failed to provide him with information when he did do so. I appreciate he says he expected monthly statements, but for the reasons noted, he hadn't been receiving them, which he'd have been aware of, and I've not seen evidence of any occasion when a specific request failed to be addressed.

All that said, I do have some sympathy for Mr T. It's certainly the case that CCM could've been more pro-active in contacting him during the first few months of 2023 when his holdings were clearly subject to significant falls in value. But I accept that with no specific recommendations to make to him during that period, that there was no absolute requirement for it do so. And I think it's worth noting that during a call in December 2022 the adviser referred to specific holdings that were significantly down in value.

And even if contact had been made earlier, before the portfolio valuation had fallen quite so low, I don't think it can be said with any certainty that Mr T would've taken the action he did in April 2023, to instruct a complete liquidation of his portfolio. He may have felt that there was value in maintaining the positions in the hope of a recovery – in keeping with the nature of this type of high-risk investment.

On balance, in all the circumstances, I find I'm unable to conclude that CCM acted incorrectly or unfairly in dealing with Mr T. But I would stress that this is a provisional decision, and he therefore has the opportunity to provide additional comments and evidence that may serve to change my view."

Neither party responded to my 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.

As neither party responded to my provisional decision, I see no reason to depart from the conclusions previously set out.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 15 November 2024.

James Harris
Ombudsman