

## The complaint

Mr D complains that Citibank UK Limited (“Citi”) invested him in an unsuitable investment.

## What happened

In March 2017 Mr D met with his relationship manager (RM) and a ‘portfolio counsellor’ for Citi to discuss investing around £300,000. As a result of the discussions that took place at the meeting Mr D invested £200,000 in a mutual fund and later a further £80,000 in a structured note that was linked to BT and Vodafone.

The structured note had a maturity date of 15 June 2020 and at maturity its value was significantly below the amount Mr D had invested. He complained to Citi about having been misled by the RM and being invested in a product that wasn’t suitable for his moderate risk profile.

Citi didn’t uphold the complaint. In its final response letter (FRL) it said that it was satisfied that the suitability and risk rating of the structured note was in line with its risk policy and procedure. It said it was also satisfied that Mr D was made aware of how the product worked.

Mr D then referred his complaint to our service and it was considered by one of our investigators who thought it should be upheld. In short, she said that Citi had a responsibility to ensure that any recommendation it made was suitable for Mr D and that the significant risks of the structured note he invested in were out of alignment with the level of risk he was willing to take.

Citi didn’t agree with the investigator and the matter was referred to me for review. I issued a provisional decision upholding the complaint, the findings from which are set out below.

*“I think it is important to set out what Citi’s obligations were when it came to Mr D’s investment in the structured note. It was providing an advisory service and as such the structured note had to be a suitable investment for Mr D. The rules that Citi had to comply with are set out in the Conduct of Business Sourcebook (COBS) in the Handbook of the regulator, the FCA.*

*The relevant rules in March 2017 included COBS 9.2.1R, which requires that firms obtain the necessary information about a client’s; knowledge and experience in the investment field relevant to the specific type of designated investment or service; their financial situation; their financial objectives.*

*COBS 9.2.2R then states that firms must obtain from the client such information as is necessary for the firm to understand the essential facts about the client and have a reasonable basis for believing that; the transaction to be entered into meets the client’s investment objectives; he can financially bear the risks; is such that he has the necessary knowledge and experience to understand the risks.*

*And COBS 9.2.6R states that if a firm doesn’t obtain the necessary information, it must not*

*make a personal recommendation to the client or make a decision to trade.*

*I have considered what happened with the above rules in mind. The first communication I have seen between the parties is an email from the RM to Mr D dated 8 March 2017. I have not seen what prompted the email but have assumed that Mr D had indicated to the RM that he wanted to invest as the RM identifies three types of investment products.*

*He refers first to bonds and shares but says that they lack diversification and can be risky and that he would avoid shares. He then refers to tracker and mutual funds and says they are 'okay' although warns of potential tax consequences. Lastly, he refers to structured notes which he says are the products he likes most at that time.*

*I note that Citi referred to this email in its FRL as being factually accurate but has not otherwise addressed the content of the email. I am mindful that this was sent to Mr D before Citi met with him to obtain relevant details from him about his financial position and investment knowledge and experience. Despite this the email uses persuasive language that directs Mr D towards structured notes and which more likely than not influenced him as to what he should invest in.*

*In other words, I think what the RM said in the email set the stage for the subsequent meeting that took place on 23 March 2017 and as such it is no surprise that the system notes that Citi has provided of the meeting record:*

*"Profiling meeting 23/3/2017 – met the client with (name of colleague) explained our proposition. Client wants to invest, not interested in protection as he has sufficient cash and no dependents. Is interested in SN and Mutual Fund portfolios and has some knowledge of investments and markets."*

*The reference to Mr D's interest in 'SN' is obviously a reference to structured notes.*

*Mr D has said that he didn't know what structured notes were prior to investing through Citi and I accept what he has said. His 'interest' in structured notes I think must be considered in context – that being the RM referring to them as his favourite product in his email of 8 March 2017. Put another way, I think Mr D's interest in structured notes was the result of the RM's email of 8 March 2017 and wasn't something that he had already decided he wanted to invest in.*

*The profiling report that was completed at the meeting was sent to Mr D by the RM on 3 April 2017. In the letter the RM said that the report details Mr D's appetite for risks and the investment products he was 'familiar' with.*

*The profiling report shows Mr D has an income of £60,000 and cash/short term savings of £800,000 with real estate of £2.8 million. In terms of questions about risk appetite it shows Mr D wanted income and growth and was a moderate risk investor, described as:*

*"I hope to experience no more than moderate portfolio losses over a rolling one year period in attempting to enhance longer-term performance and I am generally willing to buy investments that are priced frequently and have a high certainty of being able to sell quickly (less than a week) in stable markets although I may at times buy individual investments that entail greater risk and are less liquid."*

*The profiling report then identifies Mr D's knowledge and experience which is described as:*

*"Limited – I have basic knowledge of investment products outside of traditional bank savings accounts or time deposits."*

There are then two lists of investment products, the first being identified as 'Tier 1' products, described as:

*"A financial instrument which can be understood by a person with basic knowledge of financial and investing principles, without requiring specialist product training or experience."*

*For each of the products then listed it was indicated that Mr D had no experience but did have knowledge - with the source in each case being stated to be 'self-education'.*

The second list of investments are referred to as 'Tier 2' investments which are described as:

*"Any financial instrument that does not conform to the definition of a Tier 1 product is classified as a Tier 2 product."*

*Put another way, it is products that cannot be understood by a person with basic knowledge of financial and investing principles and for which specialist product training or experience is necessary – as I think other documents that Citi provided, which I refer to below, also make clear.*

*The profiling report shows only one product under Tier 2 that Mr D supposedly had knowledge of – namely structured notes. As with all the Tier 1 products this knowledge was stated to be by way of 'self-education' and not by way of experience.*

*In short, the profiling report shows that Mr D was a novice investor whose only knowledge of investments had come from 'self-education'. I have seen nothing to suggest that Citi made any attempt to seek further information so it could understand the extent Mr D's knowledge obtained through his 'self-education'.*

*I am mindful that COBS 9.2.3R states that the information a firm should obtain includes information on the nature, volume, frequency of the client's transactions in designated investments. In other words, the expectation where a client does indicate they have experience in a product is that detailed information is obtained so the firm can assess the extent of the client's knowledge and experience.*

*I think the need to obtain detailed information where a client has no experience is arguably even greater. The only information Citi had about Mr D's knowledge was that he had obtained this through 'self-education'. This statement of itself told Citi nothing about Mr D's knowledge and I think it is obvious it needed further information from him to assess suitability of the structured note.*

*However, I have seen no evidence that Citi made further enquiries of Mr D as to what his self-education amounted to. It had no way to know if the structured note was suitable for him. Despite this the profiling report goes on to state that based on his knowledge and experience Mr D is eligible to invest in the products listed – which list simply mirrors the Tier 1 and Tier 2 products that have already been ticked.*

*I note that Citi has referred to Mr D stating that he informed the RM at some point that he invested in equities and did better than Citi. I am not sure what the relevance of this is given the issue I am considering is the recommendation to invest in the structured note, not equities.*

*However, there is nothing to show Mr D invested in equities before his investment through Citi in any event. The information in the profile report shows otherwise and there is no reason to think Mr D wouldn't have referred to having such experience at the time this was*

*completed if he had previously invested in equities. And, if he invested in equities at some later point this provides no evidence that supports Citi recommending the structured note in May 2017.*

*Having considered the information available to Citi I am not satisfied that it had a reasonable basis for believing Mr D had the knowledge and experience to understand the risks of the structured note. As such it shouldn't have proceeded with recommending that he invest in this.*

*I have considered what might have happened if Citi had sought further information from Mr D and whether this could have reasonably led it to conclude the structured note was suitable for him. Having done so, I am not satisfied it could. The structured note subscription agreement dated 15 May 2017 includes the following statement:*

*"The note is not suitable for everyone and is designed for clients who are knowledgeable and experienced in the financial services market and in notes of this nature."*

*Mr D wasn't knowledgeable or experienced in the financial services market or in structured notes so by the above definition the structured note wasn't suitable.*

*Furthermore, in the document titled "Structured Note Ideas" produced by Citi specifically in relation to the structured note linked to BT and Vodafone, the following statement is made:*

*"Investing in structured products is intended only for experienced and sophisticated investors who are willing and able to bear the high economic risks of such an investment."*

*Citi was fully aware that Mr D was not experienced and was the opposite of a sophisticated investor. Even if it had obtained further information from him about his knowledge through 'self-education' this wouldn't have changed this in my view. Based on its own documents it should have been obvious to Citi that the structured note wasn't suitable for Mr D regardless of what he had learnt through self-education.*

*I am also not satisfied Citi provided information to Mr D that was clear, fair, and not misleading as it was required to under Principle 7 of the FCA's Principles and COBS 4.2.1R.*

*Firstly, I am not satisfied that the information in the email of 8 March 2017 was clear, fair, and not misleading. Citi has referred to it being factually accurate, but the RM specifically stated that shares lacked diversification and that they can be risky whilst talking positively about structured notes without making any reference to risk. I think the wording of the email was such that it wrongly gave the impression that structured notes weren't 'risky' like share could be.*

*Secondly, I have some concerns over the use of the word 'moderate' to describe both the product risk and Mr D's risk appetite. I accept these are two different things that are separately defined. I have already set out the definition for a moderate risk investor as set out in the profiling report. A moderate product risk is described in the 'Structured Note Ideas' document I have referred to above as:*

*"Risk of moderate to significant loss associated with fairly volatile markets, mitigated by a reasonably high certainty of being able to obtain a price at short notice which means the product can be sold quickly under normal market conditions."*

*I have noted the reference to a risk of significant loss, but I think with a novice investor such as Mr D there was real potential for misunderstanding about what 'moderate' meant when it came to the product risk – given the description already provided to him for what moderate*

*risk meant in terms of his risk profile.*

*It also seems to me that Mr D did in fact misunderstand what 'moderate' meant when it came to the product risk for the structured note, as in his complaint to Citi he refers to wanting a moderate risk investment because this was his profile and attitude and how Citi had classified him.*

*Mr D made several points about Citi not advising him to come out of the structured note before maturity on the basis that it was dropping in value for some time. I don't think there is any need for me to make any detailed findings on this given my findings above. However, if I had found that the structured note was suitable for Mr D I don't think advising him to remain in it to maturity would have necessarily been unsuitable advice, given the terms of the structured note."*

I awarded appropriate redress and gave both parties the opportunity of responding to my provisional decision and providing any further information they wanted me to consider before making my final decision.

Mr D responded providing his calculations for the amount payable based on the redress methodology set out in my provisional decision. Citi didn't agree with my provisional decision and in summary, made the following points:

- The email of 8 March 2017 (from the RM) was reply to a request on the type of investments available on its platform and contained no specific product details.
- Following the email numerous telephone calls, meetings and emails were exchanged about the specific products where the exact terms and the risks involved were explained to the client and with him acknowledging he understood.
- It would be unfair to ignore all subsequent conversations and instead suggest that the email of 8 March 2017 persuaded Mr D to falsely acknowledge he had knowledge of structured notes and two months later invest in the product.
- In any event the suggestion he didn't have knowledge isn't correct given he subsequently acknowledged he had knowledge of equities and bonds.
- Mr D selected a range of products whilst not selecting others which demonstrates he thought independently and his answers reflected his true understanding of various products.
- It subsequently transpired that Mr D at a minimum had experience of managing his own equity investment portfolio during the same period as he invested with Citi as confirmed for example in his email of 12 February 2020.
- Whilst this information wasn't disclosed to Citi prior to investment in the structured note it does show Mr D wasn't a novice investor as suggested by the ombudsman.
- This confirms the accuracy of the notes left by the RM on its system after the profiling meeting during which he ascertained Mr D had a general knowledge of investments and markets despite not disclosing comprehensive information about his experience.
- At the meeting two of its regulated employees formed a reasonable basis for believing Mr D had sufficient knowledge in structured notes.
- Being self-educated is a valid answer to the question about knowledge and

experience which was then substantiated by wider conversations about financial markets, an example being the notes of the meeting that took place on 19 May 2017.

- During the profiling meeting additional information about Mr D's circumstances, investment objective and an assessment of his ability and willingness to take risk was collated.
- In this case Mr D was very interested to invest in structured notes and repeatedly asked the RM to send him monthly ideas which is contrary to how he described the interactions.
- Mr D asked to invest £80K in two structured notes in an email dated 30 March 2017 but then opted to invest £30K in a structured note that was linked to Credit Suisse and UBS as he believed it could be quite risky. He couldn't invest at the time but this demonstrates his understanding of different types of equity and his willingness to take risk.
- The note of the meeting in May 2017 when the structured note was discussed shows it was Mr D who opted to invest £80k when the RM suggested only £50K be invested.
- Mr D signed the risk profiling form and his risk profile and knowledge and experience was later confirmed to him when he invested in the mutual fund in April 2017 and again in May 2017 when he invested in the structured notes.

Citi also provided some further documents and notes not previously provided. I asked Citi to clarify some of the statements it had made in its response about Mr D investing in equities. It responded and said that Mr D's email to it of 12 February 2020 corroborates its submission that that Mr D was an active investor in equities at the same time as he invested in the structured note.

Citi also referred to what it called the 'tipsheet' (brochure) for the structured note, which was sent to Mr D on 17 May 2017 along with the subscription agreement and Citi's 'Structured Notes Ideas'.

Citi said the brochure provided a summary of the product features and highlighted prominent risks as well as the objective and risk rating and that Mr D, following receipt of the documents sent on 17 May 2017, confirmed, before subscription, that he understood the risks. It also said that he invested in the mutual fund investment over the same time, with the structured note forming a smaller portion of the investments on his investment account.

I asked Mr D to confirm any other investments he had up to 2020 and he confirmed he invested in Berkshire Hathaway in 2018 and this is what he referenced in his email of 12 February 2020. He also referred to having an insurance policy which he paid 2,000 EUR into each year as from 2010 and what he referred to as a pension retirement policy he has paid 2,500 EUR into each year from 2008, with the underlying assets being gilts and bonds.

### **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.

Having considered everything that Citi and Mr D have said in response to my provisional findings and the additional documentation that Citi has provided, I have seen no persuasive evidence that makes me think the findings set out in my provisional decision were wrong. As

such I stand by those findings, which form part of the findings in this final decision.

Citi has referred to important communications between it and Mr D which it says have not previously been provided which it says help to provide an understanding of its procedures for assessing the suitability of investments for each client. However, having considered all the information Citi (and Mr D) have provided in this complaint, I am not satisfied Citi did properly assess suitability as it should have done and I am not satisfied the structured note was suitable for Mr D.

Citi has provided no reasonable explanation as to why it considered the structured note was a suitable investment for Mr D given that in the document it drafted and sent to Mr D on 17 May 2017 headed 'Structured Note Ideas' it explicitly stated that investment in structured products is intended only for experienced and sophisticated investors. On the evidence provided Mr D quite obviously was neither experienced nor sophisticated at the time and Citi has not suggested that he was. Given that Citi's own document makes clear the structured note wasn't suitable for an investor such as Mr D arguably I don't need to address the points made by Citi, but I will briefly comment on these.

Citi has said that the response from the RM of 8 March 2017 to Mr D's query about the investments available on Citi's platform contained no specific investment product details. This is not the key issue in this complaint, as regardless of that email I don't think the structured note was suitable for Mr D and he shouldn't have been invested in it.

In any event, whilst the email may not have contained specific product details in relation to structured notes, it also didn't simply provide information Mr D had asked for about the products available. In my view the wording was such as to suggest that structured notes were a better option to other products. I think what the RM said was likely to be persuasive and more likely than not did influence Mr D when it came to him investing in the structured note.

At the time of the email Citi hadn't obtained any information about Mr D that could reasonably have led it to conclude structured note were a suitable type of investment for him, such that it was reasonable for it to direct Mr D towards that type of investment – as I think the RM did by what he said in his email.

I don't think the email of the 8 March 2017 was the only thing that led to Mr D investing in the structured note, although I think it dictated to some extent the discussion that took place at the subsequent meeting with the RM. I have been provided with a limited record of that discussion but given the RM had already made clear his enthusiasm for structured notes in the email it seems likely he would have spoken positively about them. I think this helps explain the record of the meeting shows Mr D was interested in these.

Citi has referred to 'numerous' telephone calls, meetings and emails being subsequently exchanged about specific products after the email of 8 March 2017 where it says the exact terms and the risk involved were explained to Mr D with him acknowledging that he understood.

It has said it would be unfair to ignore these subsequent communications and to suggest that it was specifically the email of 8 March 2017 that persuaded Mr D to falsely acknowledge he had knowledge of structured notes and invest in the product two months later. Firstly, I would point out I have not said Mr D falsely claimed knowledge in structured notes, rather I think any knowledge he had through 'self-education' was likely to be limited and something he only looked into after the email of 8 March 2017.

Secondly, I have not ignored any information that has been provided to me. The

communications that took place between 8 March 2017 and Mr D investing in the structure note amounted to a few emails and telephone calls as well as the meetings in March and May 2017. I considered this evidence before making my provisional decision and took them into account when making my findings. They do not provide any persuasive evidence as to the suitability of the structured note.

Citi has said that being self-educated is a valid answer to the question about knowledge and understanding of investments. However, as I said in my provisional decision, a client stating they are self-educated is in my view almost meaningless, without further information.

Where a client has indicated they have no previous experience and the only knowledge they have is through self-education I think it is important for a firm to make enquiries to understand what is meant by this – what this amounted to. I can't see how Citi could have properly assessed Mr D's understanding without knowing what he had done to self-educate himself.

I don't think that discussing the risks with Mr D and providing documents where the risks were set out and get him to acknowledge he understood the risks, made up for this. I am not satisfied that this provides any persuasive evidence of Mr D's actual understanding or supports Citi's case that the structured note was suitable.

In the circumstances I am not satisfied that Mr D stating he had knowledge of certain products through self-education or the subsequent discussions provided the information necessary for Citi to have a reasonable basis for believing he had the necessary experience and knowledge to understand the risks of the structured note.

I note Citi's suggestion that because Mr D invested in equities the same time as he was invested in the structured note he wasn't a novice investor, as I said he was. It is referring to what Mr D said in his email of 12 February 2020 about investing in Berkshire Hathaway and getting a return of 28%.

As I have set out in the background above, Mr D has said he invested in Berkshire Hathaway in 2018. This subsequent investment by him obviously isn't evidence he wasn't a novice investor at the time the RM met with him in March 2017, or when he invested in the structured note in May 2017.

Mr D has referred to paying relatively small annual sums into an insurance policy and pension policy invested in gilts and bonds. These are unlikely to have involved him making any decisions so far as investments were concerned. So, I still think it is appropriate to consider him a novice investor - or if not a novice then someone with minimal experience. These policies certainly didn't give him any knowledge or experience relevant to the structured note in my view.

I have considered the notes that Citi has provided of subsequent discussions between it and Mr D when the structured note investment dropped significantly in value. I am not satisfied that these provide persuasive evidence that he had a real understanding of the risks of the structured note.

Having considered everything the parties have said and the information provided I remain of the view that the structured note wasn't suitable for Mr D and he shouldn't have been invested in it.

Mr D has provided some detailed calculations for redress which I have noted but have not referred to. It is for Citi to carry out the necessary calculations and pay the redress based on the methodology I have set out.

## What should Citi do?

To compensate Mr D fairly, Citi must:

- Compare the performance of Mr D's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Citi should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Structured Note	No longer exists	FTSE UK Private Investors Income Total Return Index	Date of investment	Sale of the BT shares	8% simple per year on any loss from the end date to the date of settlement

### **Actual value**

This means the actual amount Mr D received at the end date from sale of the BT shares he received on maturity of the structured note.

### **Fair value**

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any withdrawal, income or other distributions paid out of the investments should be deducted from the fair 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 Citi totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

### **Why is this remedy suitable?**

I have chosen this method of compensation because:

- Mr D wanted Income with some growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing 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 Mr D's circumstances and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

I have not required Citi to repay the advice fee which was part of the redress awarded by the investigator. This is because the redress I have set out above is based on Mr D investing in any event. As such it is more likely than not an advice fee would have been incurred if Citi had advised him differently.

### Putting things right

To compensate Mr D fairly, Citi must:

- Compare the performance of Mr D's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Citi should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
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I have not required Citi to repay the advice fee which was part of the redress awarded by the investigator. This is because the redress I have set out above is based on Mr D investing in any event. As such it is more likely than not an advice fee would have been incurred if Citi had advised him differently.

### **My final decision**

I uphold the complaint for the reasons I have explained. Citibank UK Limited should pay Mr D the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 May 2023.

Philip Gibbons  
**Ombudsman**