

The complaint

Mr K and Mr K1 complain about Citibank UK Limited. They're unhappy with advice they received to invest in two structured notes as they think they were exposed to an unsuitable level of risk.

What happened

Mr K and Mr K1 held an advisory portfolio with Citi. Their portfolio had large cash holdings and in 2017 Mr K was looking to achieve a better rate of return. Citi advised him to invest \$180,000 in two structured notes (SNs), one was linked to British Telecom (BT) and Vodafone shares and the other was linked to Credit Suisse and UBS shares.

Mr K complained to Citi in 2020 about the advice to invest in the SNs but his complaint wasn't upheld. Citi thought both SNs were in line with his attitude to risk (ATR) and they'd discussed the risks in detail with him. Mr K didn't accept their findings and raised further points for Citi to consider but they didn't change their outcome. Unhappy with their decision, Mr K asked for our help.

The complaint was considered by one of our investigators who thought it should be upheld. In her opinion, Mr K and Mr K1's ATR had been incorrectly assessed as "moderate" and there was no independent evidence to support Citi's note that Mr K had adequate knowledge of SNs or any evidence that Mr K1 had any experience of SNs. Even if she were to accept the ATR that had been recorded, she didn't think the SNs were suitable for a "moderate" ATR as they were highly complex financial instruments which sat at the higher end of the risk scale.

Citi didn't agree and made further submissions. They said, in summary:

- Their advisor had initially advised Mr K to not invest \$100,000 in the first of the SNs, as there would be other proposals presented to him for investment and instead suggested a \$50,000 investment in two different products so as to diversify their portfolio. However, Mr K made the decision to proceed and invest the full \$100,000. The advisor had also sent Mr K both a conservative and moderate SN to review and he'd specifically stated he was interested in the riskier/more aggressive of the two.
- The profiling completed with Mr K in 2017 confirmed that he held more than three years' knowledge and experience in SNs
- Their terms and conditions at the time of the advice stated that one of the joint account holders would be nominated as the Primary Investor on the account. Their investment advice and recommendations would then be made in accordance with the Primary Investor's investment objectives and risk tolerance. Mr K was the chosen Primary Investor, and the recommendation was suitable for his circumstances and experience
- The investigator had made a misunderstanding with regards to the notes on Mr K's risk profile, what had happened was that he was unhappy that his profile had been

lowered to Conservative instead of Moderate when he was re-profiled in February 2018

- In their opinion, the SNs were suitable for investors with a Moderate ATR

Another of our investigators considered what Citi had said and thought that the complaint shouldn't be upheld. He noted that he didn't speak Mr K's native language which made it difficult to comment on the translations of the conversations between Mr K and Citi's advisor. However, he was satisfied that the written evidence on file showed that Mr K's ATR had been correctly categorised, and Citi had been told he had experience and understanding of SNs.

Therefore, it wasn't unreasonable for Citi to recommend an investment in SNs, as long as they were consistent with Mr K's ATR. And from the information that had been provided, the investigator could see that both SNs were categorised as moderate which was in line with Mr K's ATR.

Mr K didn't agree with this outcome and made the following points, in summary:

- The SNs could result in a full loss of capital and therefore couldn't be classed a product with a moderate level of risk
- From the beginning of his relationship with Citi, he'd made it clear that he was a low-risk investor, and he'd advised them that the funds were his parents' life savings which were meant to provide for their needs in their later years
- While he did have general knowledge of SNs, he didn't have full understanding of how they operated and their mechanisms
- Citi had repeatedly assured him that the risk of the investments was insignificant
- He'd shown that he hadn't comprehended or fully understood the "small print" in the documentation Citi had given him

The investigator wasn't persuaded to change his opinion so the complaint was passed to me to make a decision. I recently issued a provisional decision where I said:

'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm of the opinion that the complaint should be upheld and I will now explain why.'

In considering whether Citi acted appropriately when they gave Mr K advice, I am required to take into account any relevant laws and regulations, guidance and rules provided by the regulator, and any codes of practice. I am also required to take into account, where appropriate, what I consider to have been good industry practice at the time.

An adviser has certain obligations under the regulator's Conduct of Business Rules (COBS) rules and Principles for Businesses (PRIN). Some of the key rules I've considered in determining if the advice was suitable are:

COBS 9.2.2: which broadly says, among other things, that a firm needs to get enough information from the customer to be able to make sure the recommendation meets their objectives, they're able to bear any related investment risk and they understand the risks involved.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

With the above rules in mind, I've considered what happened in the circumstances of this complaint. From what I've seen Mr K and Mr K1 held a portfolio with Citi which had large cash holdings and during a meeting between Mr K and a relationship manager (RM) in February 2017 there was a discussion about investing some of the cash to potentially create income. The system notes from the time say:

"Mr K expressed his interest to make the best use of his cash holdings in USD currency since he does not intent(sic) to use these funds in the next 5 to 10 years for an investment that would potentially create income generation. Along these lines the 3Y USD non-PP linked to BT and Vodafone was discussed with the client for indirect exposure to equity market that would potentially meet the client's income generation objective. Client is also comfortable with the option of the stock delivery at the end of the period. Based on the client's overall IR-3 Moderate risk profile, which matches the one of the product and his undefinable time horizon while the specific time horizon of the product is 3 years, the pre-assessment produced a positive outcome. Client has adequate knowledge in SNs and a valid profile. If the client proceeds as he thinks with 80M, the preliminary concentration indicates within limits concentration. The product is P2P"

The RM's justification for the proposal was recorded as:

"Mr K is a moderate investor with K&E in SNs, he wants to create a well diversified portfolio with investment objectives, for the time being, as high income as possible. Having this in mind he decided to proceed with a first investment in 3Y USD non-PP linked to BT and Vodafone seeking income generation through the high coupon that the product offers (10% - 12%) and the memory effect. This option was proposed to serve his income creation objective and the callability effect was also attractive to the client. The issuer is CITIGROUP INC. which has good rating at the moment and the client feels comfortable with this. In addition the client takes exposure to the stock market in the telecommunication sector but at the same time with important capital protection at the downside (-35%). Customer has an undefinable time horizon while the product's specific time horizon is 1-3 years, the product is also in line with the IR of the client which that of a moderate investor. Client will invest 80,000 EUR which gives him within limits concentration for both issuer and product (3.55%)"

A profiling report was completed at the meeting and detailed Mr K's circumstances, attitude to risk and investment experience. It didn't give any details of his income or assets but noted that he was investing more than half of his net financial assets with Citi. It also noted that he expected to rely on this account to fund most of his expected spending over the next five years.

There were a few questions relating to risk attitude and Mr K's answers showed that he wanted income and growth and was classed as 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 K's knowledge and experience which is described as:

“Moderate – I have good general knowledge and understanding of investment products that are not traditional bank savings accounts or time deposits and of the related risks.”

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.”

It was indicated that Mr K had experience and knowledge of mutual funds, non-complex fixed income, equity shares and preference shares with the source of his knowledge being listed as “experience others”. He also had knowledge but no experience of physical commodities.

The second list of investments, more complex products including SNs, 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.”

The only product that Mr K had experience or knowledge of on this list was SNs. The source of his knowledge was again recorded as “experience others” and he had more than three years’ experience, made less than 10 transactions per year with a volume somewhere between 10,000 and 100,000 USD.

There was a further note recorded about the advice to invest in the second SN:

“Mr K is an experienced investor he is now interested in investing in investments with a high return as possible with some capital protection. He also wants to make the best use of his USD as he is not going to use them currently. Along these lines the 3 Year USD non Principal protected Note linked to CREDIT SUISSE GROUP AG and UBS GROUP AG was discussed with the client for indirect exposure to the financial sector in which our analysts are currently positive that would potentially meet the client’s income generation objective. Client is also comfortable with the option of the stock delivery at the end of the period. Based on the client’s overall IR-3 Moderate risk profile, which matches the one of the product and his time horizon is undefinable while the specific time horizon of the product is 3 years, the pre-assessment produced a positive outcome. Client has adequate knowledge in SNs and a valid profile. If the client proceeds as he thinks with 100M, the preliminary concentration indicates, within limits concentration both for the Issuer and Product”

The justification for this recommendation was noted as:

“Mr K is a moderate investor with K&E in SNs, he seeks to invest in 3 Year USD non Principal protected Note linked to CREDIT SUISSE GROUP AG and UBS GROUP AG seeking income generation through the high coupon that the products are offering and the memory effect. Client wants to proceed with this investment as he wants to make the best possible use of his USD cash holdings. This option was proposed to serve his income creation objective and at the same time the product offers capital protection at the downside (-30%). The call-ability effect was also attractive to the client. The Issuer is Citigroup Global Markets Holdings Inc. and guaranteed by Citigroup Inc. which has good rating at the moment and the client feels comfortable with this. In addition, the client takes exposure in the stock market with important capital protection at the downside. He also confirms that he feels comfortable with the option of stock delivery at the end. He has an undefinable time horizon while the product’s specific time horizon is 1-3 years, the product has lower than the IR of the client which that of an aggressive investor. Client will invest 100,000 and gives him

within limits concentration for both issuer and product.”

So, we have a picture of Mr K’s circumstances at the time he was advised to invest in the SNs. We know that he had some experience of SNs, he was willing to take a moderate level of risk and he was investing around half of his available capital. But it is also apparent that he was relying on the capital he’d invested for his projected spending over the next five years. The RM also noted that Mr K wanted to “create a well diversified portfolio with investment objectives, for the time being, as high income as possible”.

I’ve also considered the content of a call Mr K had with the RM the following year where she re-evaluated Mr K’s investment profile. The transcript of this call shows that she asked Mr K what kind of losses he could bear. Mr K said only a small loss and the RM noted that this meant he wasn’t willing to lose more than 20% of the value of the portfolio. The answers he gave to the questions the RM asked resulted in a change in his classification from moderate to conservative. Mr K questioned why this was as he thought nothing had changed since the last time he was assessed. He then told the RM that he wanted to remain as a moderate investor when she told him that she would have change the type of advice she could give him as a result of the new classification.

Taking everything into account, I don’t think it’s unreasonable to suggest that Mr K wanted to take some risk with his capital, but he wasn’t willing or in a position to lose a large proportion of it. It is also evident that Mr K had knowledge and experience of SNs but that doesn’t necessarily make a recommendation to invest in SNs suitable. Mr K also needed to be able to bear the investment risk of the SNs and I’m not persuaded that this was the case here. I say this because both the SNs were complex, sophisticated investments that carried the risk of losing all the principal amount invested. I’m not persuaded this was a level of risk that Mr K was in a position to bear, despite his prior experience of SNs.

While the SNs may have provided the potential for high income, investing over half of Mr K’s net financial assets into SNs linked to only four equities doesn’t, in my opinion, equate to creating a well-diversified portfolio. I also haven’t seen that Mr K was presented with any alternative investments which would provide him with the potential to meet his objectives without taking the level of risk that the SNs carried. Therefore, I’m not persuaded that Citi were acting in Mr K’s best interests or giving his interests due regard when they made the recommendation.

I also considered the distress and inconvenience caused to Mr K by Citi’s actions. I’m sorry to hear of the difficult personal circumstances he faced over last few years. He’s told us that the funds in the portfolio were to cover any medical expenses for Mr K1 and his wife. Therefore the significant loss of funds and other issues he suffered such as delays in resolving his concerns undoubtedly caused a lot of distress. Taking everything into account, I think compensation of £1,000 is fair and reasonable in the circumstances of this complaint.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr K and Mr K1 as close to the position they would probably now be in if they had not been given unsuitable advice.

I think Mr K and Mr K1 would have invested differently. It is not possible to say precisely what they would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr K and Mr K1’s circumstances and objectives when they invested.

What should Citi do?

To compensate Mr K and Mr K1 fairly, Citi must:

- Compare the performance of each of Mr K and Mr K1's investments with that of the benchmark shown below.
- A separate calculation should be carried out for each investment.
- Citi should also add any interest set out below to the compensation payable.
- Pay Mr K and Mr K1 £1,000 for distress caused by the significant loss of funds.

Income tax may be payable on any interest awarded.

<i>Investment name</i>	<i>Status</i>	<i>Benchmark</i>	<i>From ("start date")</i>	<i>To ("end date")</i>	<i>Additional interest</i>
<i>Structured note linked to Credit Suisse Group AG and UBS Group AG</i>	<i>No longer exists</i>	<i>FTSE UK Private Investors Income Total Return Index</i>	<i>Date of investment</i>	<i>Date shares sold</i>	<i>8% simple per year on any loss from the end date to the date of settlement</i>
<i>Structured note linked to BT Group Plc and Vodafone Group Plc</i>	<i>No longer exists</i>	<i>FTSE UK Private Investors Income Total Return Index</i>	<i>Date of investment</i>	<i>Date shares sold</i>	<i>8% simple per year on any loss from the end date to the date of settlement</i>

For each investment:

Actual value

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

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 K and Mr K1 wanted Income with some growth and were 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 K and Mr K1's circumstances and risk attitude.*

The additional interest is for being deprived of the use of any compensation money since the end date.'

Responses to my provisional decision

Citi accepted my provisional decision. Mr K asked me to consider increasing the award for distress due to the prolonged impact of Citi's advice.

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 reconsidered all the available evidence and submissions, I'm not persuaded to depart from my provisional findings. I appreciate the points Mr K has raised about an increased award for the distress suffered, but in my opinion of £1,000 is fair and reasonable compensation for the substantial amount of distress that Citi have caused Mr K and Mr K1.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr K and Mr K1 as close to the position they would probably now be in if they had not been given unsuitable advice.

I think Mr K and Mr K1 would have invested differently. It is not possible to say precisely what they would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr K and Mr K1's circumstances and objectives when they invested.

What should Citi do?

To compensate Mr K and Mr K1 fairly, Citi must:

- Compare the performance of each of Mr K and Mr K1's investments with that of the benchmark shown below.
- A separate calculation should be carried out for each investment.

- Citi should also add any interest set out below to the compensation payable.
- Pay Mr K and Mr K1 £1,000 for distress caused by the significant loss of funds.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Structured note linked to Credit Suisse Group AG and UBS Group AG	No longer exists	FTSE UK Private Investors Income Total Return Index	Date of investment	Date shares sold	8% simple per year on any loss from the end date to the date of settlement
Structured note linked to BT Group Plc and Vodafone Group Plc	No longer exists	FTSE UK Private Investors Income Total Return Index	Date of investment	Date shares sold	8% simple per year on any loss from the end date to the date of settlement

For each investment:

Actual value

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

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 K and Mr K1 wanted Income with some growth and were 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 K and Mr K1's circumstances and risk attitude.

The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

For the reasons I've given above, my final decision is that this complaint should be upheld. Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend that Citibank UK Limited pays the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My provisional decision is that Citibank UK Limited should pay the amount produced by that calculation up to the maximum of £160,000 (including distress or inconvenience but excluding costs) plus any interest set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Citibank UK Limited pays Mr K and Mr K1 the balance plus any interest on that amount as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mr K1 to accept or reject my decision before 13 November 2024.

Marc Purnell
Ombudsman