**complaint**

Mr C has complained about advice he received from The Citimark Partnership Limited. He was advised to invest funds from his SIPP into an Unregulated Collective Investment Scheme (UCIS). He says the advice was unsuitable for him.

**background**

Mr C met with an adviser at Citimark Partnership to discuss minimising his corporation tax by making an employer contribution to his Self-Invested Personal Pension (SIPP).

The adviser recommended an investment of £225,000 into the SIPP, £140,000 of which would be added to Mr C's existing portfolio and the remaining amount to be invested in "*higher risk niche fund in the waste management sector*".

In 2008 Mr C invested £75,000 into the New Earth fund. Citimark completed a Sophisticated Investor Declaration declaring Mr C was qualified as a person this investment could be promoted to. Mr C was also provided with a risk statement explaining some of the risks involved in this type of investment. Mr C completed an attitude to risk statement on which he stated he was willing to take a risk level 5 (of 5) but "*only re New Earth Funds*".

Mr C received correspondence from the New Earth fund in July 2016 informing him that the Premier Investment Opportunities element of the New Earth Fund had gone into liquidation and he had lost his investment. He made a complaint to Citimark saying he did not want to be invested in anything in which he could potentially lose his full investment.

The case was referred to one of our adjudicators who upheld the complaint. He took the view that Mr C was not a sophisticated investor and would not wish to invest 33% of his contribution into a UCIS which could potentially result in him losing his full investment.

The business disagreed. They took the view that Mr C was a high net worth consumer, with previous UCIS experience and was indeed a sophisticated investor. The business said he was made aware of the risks but these high risks were also balanced out with some very low risks within his portfolio.

The adjudicator responded with further comments. He noted that Mr C had previous UCIS investment experience but it was his understanding that Mr C had made a complaint about the sale of those investments, not being aware at the time they were UCIS. The adjudicator further noted that having high risk investments and low risk investments does not necessarily equate to a balanced portfolio overall.

The business requested an ombudsman decision.

**my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've summarised all that has been said but I have read everything. I agree with the view of the adjudicator and essentially with his reasoning. I uphold this complaint.

I note that Citimark have said Mr C was a sophisticated investor and was suited to this type of investment. This is based on his wealth, his success in business and his previous experience investing in UCIS. The adjudicator noted that Mr C had also raised separate complaints about the sale of those previous investments saying he was not aware they were unregulated or high risk. I'm not determining those complaints here but the fact Mr C had invested in UCIS before does not necessarily mean he was fully aware of the risks or that those investments were suitable for him.

I'm not satisfied that Mr C is truly a sophisticated investor. Mr C's success in business does not qualify him as a sophisticated investor. And other than the declaration signed by Mr C, I have seen no evidence that he was a sophisticated investor.

The final response letter from Citimark records Mr C's attitude to risk as medium/low but at the same time saying Mr C would like to take a speculative approach and invest in a "*higher risk niche fund in the waste management sector*". The adjudicator noted that this was quite a shift in Mr C's attitude to risk and was not convinced he was fully aware of how much risk the New Earth fund carried.

I agree with the adjudicator that as a medium/low risk investor, Mr C would probably not have invested, or at least not invested as much into this type of investment if he was aware he could lose all his investment. While I accept that risk warnings were given in the suitability letter, there is no warning that Mr C could lose all his investment by investing in a UCIS. I believe that if there had been, he probably would not have invested as much as he did into one fund. And in any event, the inclusion of a risk warning does not make the advice suitable.

Citimark say the investment represented less than 5% of his assets excluding his residence but I think this is a substantial investment into one UCIS particularly when he already held other UCIS investments. In its statement from December 2010 the FSA said that *'UCIS are generally regarded as being characterised by a high degree of volatility, illiquidity or both — and therefore are usually regarded as speculative investments. This means that in practice they are rarely regarded as suitable for more than a small share of an investor's portfolio'.*

In addition, its report in July 2010 ("Unregulated Collective Investment Schemes: Good and poor practice report") gives as an example of good practice: '*The firm set up a maximum portfolio proportion for UCIS investments within their customers' portfolio and monitored it on on-going basis. This level was between 3% and 5% and was backed-up by the Firms' robust and on-going due diligence and monitoring'.* The same document gave as an example of poor practice: "*The firm had a strategy to put all of its customers and all their money into one UCIS*".

According to Citimark Mr C invested £75,000 into the New Earth Fund. This equated to 33% of the overall contribution and 10% of the portfolio at the time. Like the adjudicator, I consider this weighting to be excessive considering Mr C's medium/low attitude to risk.

The business has said that Mr C's asset allocation still provides him with a medium portfolio. They have said he has low risk funds that counter against the high risk UCIS investment and Mr C understood that for growth, these investments were needed. I agree with the adjudicator that a spread of only low risk and high risk funds doesn't necessarily equate to a medium risk portfolio. While I understand that need for diversification and the spread of risk, the UCIS investments were speculative and the investment in the New Earth Fund meant the total percentage of his portfolio invested in UCIS was too high. I don't think this was suitable for a medium risk investor.

Whilst Mr C may have been willing to and in a position to invest some of his portfolio in a UCIS like New Earth, I think the amount recommended was too great particularly given that he already held other UCIS investments.

**fair compensation**

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

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

**what should you do?**

To compensate Mr C fairly Citimark should:

- Compare the performance of Mr C'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.

  It should also pay any interest, as set out below.

  If there is a loss, Citimark should pay such amount as may be required into Mr C's pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the total amount of the compensation and any interest.

  If Citimark is unable to pay the total amount into Mr C'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 total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

  The *notional* allowance should be calculated using Mr C's marginal rate of tax at retirement.

  For example, if Mr C is likely to be a basic rate taxpayer in retirement, the *notional* allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr C would have been able to take a tax free lump sum, the *notional* allowance should be applied to 75% of the total amount.

- In addition, Citimark should pay Mr C £200 for the trouble and upset he suffered as a result of losing all this investment.

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

Income tax may be payable on any interest awarded.

| investment name | status | Benchmark | from ("start date") | to ("end date") | additional interest |
|---|---|---|---|---|---|
| New Earth Fund | still exists | FTSE UK Private Investors Income Total Return Index | date of investment | date of settlement | not applicable |

***actual value***

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

My aim is to return Mr C to the position he would have been in but for the unsuitable advice. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as in this case. It would be difficult to know the *actual value* of the investment. In such a case the *actual value* should be assumed to be nil to arrive at fair compensation. Citimark should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the total payable to Mr C and the balance be paid as I set out above.

If Citimark is unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation. It may wish to require that Mr C provides an undertaking to pay you any amount he may receive from the investment in the future.

***fair value***

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

**why is this remedy suitable?**

I have chosen this method of compensation because:

- Mr C wanted capital 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 C's circumstances and risk attitude.

- Mr C has not yet used his pension plan to purchase an annuity.

**my final decision**

I uphold this complaint about The Citimark Partnership Limited. It must calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask [insert anonymised name here] to accept or reject my decision before 4 January 2018.

Keith Taylor
**ombudsman**