DRN-2787169

Financial Ombudsman Service

The complaint

Mrs B complains that Santander UK Plc recommended an unsuitable 5½ year structured product in 2002, the likely returns being far less than she could have been guaranteed via one of its medium-term fixed-rate bonds.

What happened

Mrs B retained the product for the full period and received back her initial invested sum plus the minimum 20% return that had been guaranteed.

She complained to Santander in 2020 by which time it had deleted all but the basic files relating to the recommendation and the investment itself. In the absence of key documents such as a fact find, recommendations and suitability letter, it said it had no evidence to indicate that it had given inappropriate advice.

As Mrs B had kept the product for the full 5 ½ years, there was no evidence it had been unaffordable.

Mrs B's representative, a Claims Management Company (CMC), brought her complaint to this service, saying:

- Our client's attitude to risk was not fully assessed
- The level of risk within the investment was inappropriate for our client
- The amount of our client's free assets placed into the products was unsuitable
- Our client's future needs and objectives were not considered
- The Guaranteed Equity Bond contained risks which our client did not have a sufficient understanding of
- Our client had no previous investment experience, was 66, had just retired and received £7,000 from an employment benefit scheme
- This represented the majority of the money she had available at the time
- The product offered a return based on changes in the FTSE 100 over a five-year period. Every six months during the term of the investment the fund tracked the changes on FTSE 100 index and clients were able to receive a maximum of 6% growth within that six-month period (or a loss of up to 6% in each period)
- In order to receive the maximum level of growth (60% over the term) the FTSE would have had to perform exceptionally and in a way that it has never performed in history
- Around this time fixed-rate bonds were available on the high-street paying 5.25% per annum. This would have represented a return of £9,040.84 over five years, compared with the £8,740.20 possible return shown in the illustration for the Safety Plus Growth Fund based on past performance of the FTSE
- To match the performance of a fixed-rate bond this required the maximum growth of 6% in half of the periods and no losses in the remaining periods; this was highly unlikely

An investigator at this service did not feel there was sufficient evidence to uphold the complaint, saying:

- Due to the passage of time Santander has explained that it no longer holds the Fact Find or Suitability Report. As the advice was provided in 2002, I don't find this unusual or unreasonable
- However, this does mean I won't be able to review the contents of these documents to establish what Mrs B's investment objectives, capacity for loss or attitude to risk was at the time
- As the point of sale documentation isn't available, I can consider what both parties to the complaint recall about the advice given. In this case, neither party were present, so it'll be even more difficult to gather what took place
- I'm unable to give an opinion on whether or not Mrs B's attitude to risk was fully assessed to say if the advice given in 2002 was suitable or not. Neither can I say if the investment was in line with Mrs B's objectives as there's no fact find, financial report or suitability letter to consider
- The Key Features document clearly explains that a customer is guaranteed to get back a 20% return on maturity, and there's no reason to assume Mrs B wasn't made aware of or failed to understand this
- The presence of other investments generating greater return does not render another generating a lesser yield unsuitable
- As Mrs B kept the investment for the full period, I can't safely conclude this was an unaffordable recommendation
- Mrs B's representative had not provided concrete evidence to support many of its claims, resulting in insufficient evidence to fairly conclude this was poor advice

Mrs B's representative did not agree, saying:

- In this case the presence of other investments generating greater return does render another generating a lesser yield unsuitable
- Our client was clearly a low-risk investor and whilst the investment offered capital protection the level of return required to exceed risk-free options made the investment unsuitable
- For a client who is clearly seeking some security with their capital it should be apparent that they would be keen to maximise their return based on the most likely scenarios rather than take a gamble on markets performing in a completely unique (and nigh impossible) way
- We cannot accept that a niche product of this type was suitable for our client given the significant (and guaranteed) return that would have been available at the point of sale from fixed-rate investments. The risks and gamble that our client was advised to take was amplified further by the excessive portion of Mrs B's assets that were invested into this single product

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.

My role and that of this service is to decide if there is sufficient, persuasive evidence to safely conclude that a business did something wrong; in this case that Santander should not have recommended a product where the guaranteed return was lower than that available via various savings/deposit accounts.

In assessing this issue, it is extremely important to look at Mrs B's financial position at the time, her general circumstances and specific objectives in order to assess whether she was in a position to risk getting a modest return in the hope of getting a greater one via this product.

However, the absence of any key paperwork makes this very difficult. As neither Mrs B's representative nor Santander's complaints handler can offer first-hand knowledge of what was discussed in the meeting between Mrs B and the advisor, I am left with insufficient evidence to make a fair assessment of this issue – even on the balance of probabilities.

I can therefore only consider whether it was manifestly unsuitable for Mrs B to take such a risk with this fairly significant portion of her money. It's important to note that she kept this product for the full term so one can reasonably assume she had sufficient remaining money to do so.

This product guaranteed a minimum return of 20% - equivalent to just under 4% interest a year – with the possibility of a higher return, depending on the FTSE performance. Mrs B's CMC argues that she could have got around 5.25% via fixed-rate bonds i.e. up to 1.5% greater in interest.

But I do not agree that this made the recommendation necessarily unsuitable. I would have expected Santander's advisor to have made this comparison clear so Mrs B could make a fully informed decision as to whether she wanted to risk getting a slightly lower rate of return in the hope of a significantly larger one (if the FTSE grew steadily over the next five years).

However, in the absence of any relevant paperwork it is impossible to know, with certainty, what was discussed. I therefore don't believe there is sufficient evidence to uphold Mrs B's complaint. If the product had not guaranteed a significant return, I may well have reached a different conclusion given the risk-free bond rates at the time.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 15 June 2021.

Tony Moss
Ombudsman