DRN-2798527

Financial Ombudsman Service

The complaint

Mr M complains that Santander UK Plc ('Santander') gave him unsuitable investment advice. He says the recommendation to invest £50,000 left him with too little liquid savings for him to 'weather the storm', was an excessive amount for a first-time investor and didn't reflect his attitude to risk.

What happened

Mr M is represented by a third party but for ease, I'll refer to 'Mr M' in this decision.

Mr M held a total of £56,600 in savings. He was aged 56 years, he told us he was self-employed and the savings he had were for his retirement. He says he was 'pestered' by Santander to have a meeting about his savings, which took place in 2006.

At the meeting Santander advised Mr M to invest £50,000, split equally between two funds within an investment bond – a distribution growth fund and a property fund. His timeframe for investing was five years plus.

Mr M became concerned about the losses the investments were sustaining and surrendered both funds in October 2008. He suffered a loss of £9,960.03. He didn't complain initially as he thought the loss was just bad luck and bad timing.

But as a result of reading an on-line article about the mis-sale of investments, Mr M later complained to Santander. He said, in summary:

- The amount he was advised to invest exceeded his capacity to bear a loss as evidenced by his earlier than expected withdrawal. He was left with too little in available savings to weather any storms.
- Mr M was entirely new to investing, he trusted the financial adviser and accepted him as the expert.
- The advice to invest such a high proportion of his retirement savings was highly excessive for a first-time investor with a cautious risk profile. At the time his savings were on deposit earning 4% without any risk. The high proportion of savings invested altered his attitude to risk more in-line with a high-risk investor rather than Mr M's cautious attitude to risk.
- The agent (the financial adviser) received direct commission of £3,575.06 which may have been why the two investments had been recommended and not because they were in the best interests of Mr M. He was also charged a monthly fee of around £21.00 and Mr M couldn't see how the investments were considered to be a better option for him than to continue to keep his savings in his deposit account.
- The advice breached the FCA's principles – Principle 9: A firm must take reasonable care to ensure the suitability of advice and discretionary decisions for any customer

who is entitled to rely upon its judgement. And Principle 6: A firm must pay due regard to the interests of its customers and treat them fairly.

Santander initially thought the complaint was time-barred as it was six years after the event Mr M was complaining about – the investment advice – and more than three years after he should have reasonably been aware he had cause for complaint – when he suffered the loss upon the surrender of the investments. It did later agree this service could assess the complaint but didn't think it should be upheld. It said it had no control over the global financial crisis and didn't control market conditions.

Our investigator who considered the complaint thought that it should be upheld because:

- There wasn't any indication as to how Mr M's 'medium' risk category was calculated.
- Based on Mr M's lack of investment experience the adviser should have done more to explain the risk of losing too much and at which point it would have been better to understand Mr M's capacity for loss.
- The recommendation to invest £50,000 was unsuitable advice. The distribution fund which was described in the 'Investment Bond Funds Directory' as 'cautious' was made up of 55% equities, 2% cash, 30% fixed interest securities and 13% UK property. The property fund was described as being of 'moderate' risk with an asset allocation of 100% UK commercial and industrial property. So, in total the investigator said that 63% of Mr M's investment was invested within a single sector within a single asset class – commercial property in the UK. This suggested diversification wasn't explained to Mr M and it was unlikely that Mr M would have taken that risk if it had been properly explained to him.
- Santander hadn't been able to demonstrate why Mr M was assessed as being a medium risk investor. Santander failed to recommend an allocation of funds that were suitable for Mr M's experience and attitude to risk. Investing £50,000 of the £56,600 Mr M had available increased the amount he stood to lose and especially when the majority of it was within a single sector of the property market.
- To compensate Mr M, the investigator said it should compare the performance of Mr M's investment with the benchmark of half the investment in the FTSE UK Private Investors Income Total Return Index and the other half with the average rate from fixed rate bonds from the date of investment to the date of surrender plus additional interest of 8% simple per year.
- In conclusion, the investigator said Mr M wanted capital growth with a small risk to his capital which would be reflected by the average rate for the fixed bonds. And the FTSE UK Private Investors Income Total Return Index as being a fair measure for someone who was prepared to take some risk to get a higher return. Mr M's risk profile was in between, hence the 50/50 combination.

Santander didn't agree with the investigator. It said:

- The medium attitude to risk would have been agreed through discussion between Mr M and the adviser. It didn't have to demonstrate how the attitude to risk was arrived at.
- Mr M had a high net disposable income each month which meant he had the capacity to make up any investment losses, again suggesting a medium attitude to

risk was suitable.

- 50% of the investment was within a cautious fund so it erred on the side of lower risk than agreed with Mr M.
- It said it wasn't clear why the investigator said the distribution growth fund was unsuitable. The focus of the investigator seemed to be on the property content.
- Mr M was young enough to invest for five plus years and had very little debt. He wanted potential growth which is what the adviser recommended.
- It wasn't certain the investigator's assumption about the property content of the funds was correct – 13% of the distribution growth fund was in UK commercial property and the property fund invested in UK commercial and industrial property as well as other property vehicles including shops, leisure, retail warehouse, office, collective investments and cash.
- The investigator had assumed Mr M was a cautious investor without any evidence and which conflicted with what was recorded in the fact find. It was unclear how the investigator judged Mr M's level of experience.
- Santander does not control market conditions and Mr M was aware his funds could go down as well as up.

In response, the investigator said:

- The suitability documentation should give an idea of how the investment was suitable for Mr M's circumstances as well as his attitude to risk, investment experience and capacity for risk.
- He referred to the FCA Handbook principle 9. He wanted to know how Mr M's medium risk was calculated – he was a first-time investor; the fact find was limited and didn't highlight any investment experience.
- While Mr M might not have had much debt, the information in the fact find wasn't enough to say the advice was suitable.
- Mr M wanted capital growth and his choices would have been determined by the advice he received so the investigator's focus was on the suitability of the overall advice and he wasn't persuaded Mr M wanted to take as much risk as Santander concluded.
- Mr M would have been 61 years of age at the end of the five-year term and he said he wanted the funds for his retirement. Mr M would have been more suited to having some of his capital at risk and not the majority of it.
- He outlined the investment bonds' brochure's description of cautious and medium risk funds. He reiterated his comments about the risk rating of the funds and the property content overexposing Mr M's investment to a single sector within an asset class and that the other equity exposure in the distribution growth fund would have further increased the risk.
- He maintained his opinion that the advice to place most of Mr M's funds into a product that didn't match his circumstances with limited diversification was unsuitable and it should be fully upheld.

Santander responded:

- It still believed it correctly advised Mr M with regards to which funds to invest in.

- It did agree that 88% of Mr M's total savings was probably too high and that 44% would have been more appropriate. It offered to redress half of the total investment made based on the 100% fixed rate bond averages with no stock market content, taking into account the loss Mr M suffered plus the interest he would have got from a fixed rate bond from 2006 to 2008 plus interest at 8%.

Our investigator put this offer to Mr M. But he rejected the offer and thought that the redress recommended by the investigator was more appropriate.

As the complaint couldn't be resolved informally, it has been passed to me for a 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.

Mr M's circumstances

Due to the passage of time, Santander has very little information in relation to the sale of Mr M's investment. But it has been able to provide a copy of the 'fact find' from the time of the sale.

The fact find detailed that Mr M was in full-time employment, he didn't have or wasn't able to join a company pension and didn't have a personal pension (it is recorded he wasn't looking to discuss pension details). His annual income was £28,000 and his monthly income surplus was £1,100. He had a loan of £3,000 and didn't expect any changes to his expenditure. Mr M didn't have a mortgage and was living with the property owner. At the time Mr M didn't have any investments. He had two current accounts totalling £2,600 and an instant access account with £54,000 so, a total of £56,600. The financial adviser recorded his existing savings as being '*very low risk'.*

Mr M's attitude to risk

Mr M's investment strategy and investment objective were recorded in the fact find as being for growth with a *'greater potential than deposits.* No specific growth was stated. His risk rating was recorded as 'medium' and that Mr M was '*looking to invest 50k with 25k split over several asset classes and £25k into commercial property'*. The resulting investment bond application form shows that Mr M was to invest £50,000 split equally between a distribution growth fund and a property fund.

Santander hasn't been able to show us how it came to the conclusion that Mr M was a medium risk investor. It said it would have been agreed through discussion between Mr M and the adviser. But I would expect to see some sort of evidence that the risk of investing was explained to Mr M, taking into account his ability to understand investment risk and clarification of his experience or knowledge to understand the risk involved.

Clearly Mr M was seeking advice because he didn't have the knowledge or experience to make those investment decisions unaided. Santander said it didn't have to demonstrate how the attitude to risk was arrived at. But I disagree. Santander needed to be able to demonstrate that it gave suitable advice taking into account Mr M's circumstances, understanding and knowledge after ascertaining his attitude to risk. And I think the information recorded in the fact find doesn't constitute enough to show that his investment objectives and attitude to risk were established or that it was discussed whether Mr M had the necessary experience and knowledge in order to understand the risks involved.

Mr M didn't have any investment experience and from what he has told us the savings he had were intended for his retirement. The fact find doesn't record this – whether Santander failed to ask this question or Mr M didn't wish to disclose this – and I accept the fact find records that the meeting wasn't to discuss his pension arrangements. But it is recorded that Mr M didn't have a company pension (and wasn't eligible to join one) or a personal pension. Mr M did have a monthly surplus of £1,100 and while Mr M said he wasn't expecting any change in his circumstances, Mr M told us he was self-employed (which I can't see recorded on the fact find) which can be an indicator of the potential for a less stable or guaranteed income in future.

And bearing in mind Mr M's age plus the fact there's no record he owned a property suggests to me that the savings were extremely important for Mr M's longer-term financial security. Overall, I don't think it was clear what additional funds he'd have in the longer term. So, while Mr M may have had the ability to replace some losses at the time with his disposable income, overall, I don't think that he was in a financial position to take excessive risk with his savings. And I think this type of information about Mr M's circumstances would have been important to establish to ensure suitable advice was given.

Without any investment experience Mr M would have been totally reliant upon the advice given to him. It's recorded that his investment objective was for growth and that he wanted a '*greater potential than deposits'.* It might have been the case that Mr M did want to explore the opportunity to make his money grow more than it had done while on it was on deposit. But I haven't seen sufficient documentary evidence about how the level of risk Santander concluded Mr M was willing to take was arrived at. And I've borne in mind what he'd previously done with his money – by putting it in a risk-free environment in savings account. Taking everything else into consideration I'm persuaded it was more likely that Mr M was willing to take some risk with his money but not too much and, as I'll explain, not to the extent that he was advised bearing in mind what I think his capacity for risk was and the limited evidence about how the level of risk he was prepared to take was arrived at.

The advice

Santander has said it erred on the side of caution by recommending a cautious fund – the distribution growth fund as well as the property fund.

I've seen a copy of Santander's 'Investment Bond Funds Directory'. This categorises the distribution growth fund as being 'cautious' and the property fund as being a 'moderate' level of risk. The distribution fund was invested 55% equities, 30% fixed interest securities, 13% UK Commercial Property and 2% in cash. The property fund was invested 24% office, 19% industrial, 18% retail warehouse, 15% shops, 15% collective investments and 5% cash. The directory explains that the fund will also invest in indirect property vehicles which I understand to be the collective investments.

So, in total, well over half of Mr M's investment was within one single sector and in my opinion such a lack of diversification and subsequent overexposure increased the risk. Even before the stock market downfall in 2008 there was always a risk inherent in investing in property – properties can only be sold as a whole, selling of properties is conditional on many variables such as age, condition and location. And property is not a liquid asset, the sales of which can take time to realise. And this risk was further increased by the 55% exposure to equities in the distribution fund. So overall, a total of 81.5% of Mr M's invested funds were within one single sector – property – and a medium risk asset class – the equities. I think this exposed Mr M to more risk than he was willing to or had the capacity to take.

I say this because by Santander advising Mr M to invest into the investment bond, and underlying funds, this was an increase in the level of risk compared to his previous knowledge of investment – holding his funds on deposit – recorded as being '*very low risk'* by Santander. I haven't seen evidence to support why Mr M was willing to take a significant step up in terms of risk compared to his previous experience of remaining in cash. If this had been the case, I would have expected this to have been established by a more fully detailed fact find.

And while there is some limited evidence that Mr M's attitude to risk was assessed by the adviser – but only as far as it was recorded in the fact find – there is no evidence of how Mr M's attitude to risk was assessed by the adviser. Overall, and taking into account Mr M's circumstances and objectives at the time, I think this meant his money was exposed to risks I'm not persuaded he was willing or able to take. I am satisfied that the advice Mr M was given in 2006 wasn't suitable for him taking account of his personal and financial circumstances that I've already outlined.

Is Santander's current offer fair?

Santander has offered redress of half of the total investment made based on the return of 100% fixed rate bond averages with no stock market content taking into account the loss Mr M suffered plus the interest he would have got from a fixed rate bond from 2006 to 2008 plus interest of 8%.

Santander's current offer effectively re-visits the advice that it gave to Mr M in 2006. But bearing in mind the many investment options that were available to him it's not possible for me to reasonably conclude that this offer is fair and reasonable when it can't be known what Mr M would have done otherwise.

As I've concluded above, I think this money was important to him and I'm of the opinion that considering the advice Santander gave him, it has placed too much weight on his then current ability to replace any losses. And while Mr M might have wanted to increase his risk exposure somewhat, this advice left him overexposed to property – which if risks materialised, may have severely limited his ability to access his money. He also had significant exposure to equities and their fluctuations.

So, in the particular circumstances of this complaint, I am upholding it. Santander has acknowledged its advice wasn't right – but only on the basis Mr M should have invested less.

But, as I've explained, I simply think the advice was unsuitable for him. So, to put the matter right, I need to put Mr M, as far as possible, in the financial position he'd be in if he had been suitably advised.

My role isn't to retrospectively say what the suitable advice would have been, but I'm not persuaded that Santander's current offer is a fair way to compensate Mr M. There were many ways Mr M could have invested and it's not possible for me to now say precisely what he would have done. So, in line with our long-standing approach, I think it's more appropriate to use a benchmark to assess the type of return Mr M would have been able to achieve with suitable advice, rather than the more prescriptive approach Santander has suggested.

Putting things right

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

I think Mr M 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 M's circumstances and objectives when he invested.

What should Santander do?

To compensate Mr M fairly Santander should:

- Compare the performance of Mr M'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.
- Santander should also pay interest as set out below.
- Provide the details of the calculation to Mr M in a clear, simple format.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Investment bond – (distribution growth fund and property fund)	surrendered	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date surrendered	8% simple per year on any loss from the end date to the date of settlement

Income tax may be payable on any interest awarded.

Actual value

This means the actual amount paid 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.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Santander should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr M wanted capital growth with a small risk to his capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who reasonable return without risk to his capital.

- 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.

- I consider that Mr M's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr M into that position. It does not mean that Mr M would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr M could have obtained from investments suited to his objective and risk attitude.

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

(*) HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Mr M a certificate showing how much tax it has taken if he asks for one.

My final decision

I uphold Mr M's complaint. My final decision is that Santander UK Plc should pay the amount as calculated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 May 2022.

Catherine Langley
Ombudsman