

The complaint

Mr K is unhappy with the advice he was given by Santander UK Plc ('Santander') to invest into one of its products because of the low return he received upon its maturity. Mr K says he lost out financially and would like to be put in the financial position he was told he would be in at the initial sales meeting.

What happened

Mr K invested into the Santander Capital Plus (Issue 9) for a six-year fixed term, which was a capital protected product. £2,945 was invested via an ISA and £30,555 as a Direct Share investment. The investments were made on 7 August 2014 and were to mature on 10 November 2020.

Mr K became unhappy with the return he would receive upon maturity. In September 2020 he complained to Santander that he would never have taken out the investment if he had been made aware that the investment paid out a minimum of 2.5% over the term of the investment.

Santander responded to Mr K's complaint on 27 October 2020. It didn't uphold his complaint and said:

- The recommendations were suitable based on Mr K's appetite for risk, personal objectives and needs along with his personal and financial circumstances.
- There was no evidence to suggest that Mr K had been told he would receive a minimum of 2% return per year.
- It concluded the recommendation was appropriate for him.

Mr K wasn't happy with the outcome and brought his complaint to the Financial Ombudsman. Our investigator who considered the complaint didn't think it should be upheld. Briefly, she said:

- Mr K had been looking to invest his money to get a better return than from his current account. Mr K's previous investment experience of stock market investments suggested he had sufficient investment knowledge and the advice to invest in the stock market again wasn't unreasonable.
- Mr K had been willing to invest for growth for a minimum term of five years from risk-based products. Mr K's financial circumstances indicated he had the capacity for loss, but he had wanted to protect his capital. So, it wasn't wrong of Santander to have recommended a capital protected stock market investment with guaranteed growth.
- Santander had determined Mr K had a medium attitude to risk but because of his preference the product Santander had recommended had reduced that risk. The investigator was unable to find anything that would make Mr K think the product would pay out 2% per annum.
- Mr K said that at the time of the sale Santander had offered a bond which guaranteed

returns of 2.5% per annum over six years. The investigator couldn't find any details of such a bond.

Mr K didn't agree with the investigator. He was convinced that he was told the product worked in a very specific way but didn't have any evidence to support his claim. He had wanted to invest into a secure product and not to gamble with his money.

As the complaint couldn't be resolved, 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.

When the evidence or testimony surrounding a complaint is incomplete or contradictory, I have to make my decision on the balance of probabilities – which, in other words, means I base my decision on what I think is most likely to have happened given the available evidence and the wider circumstances.

Mr K's recollection is that the product would guarantee a return of 2% per year giving a total return of 12% over the six-year investment term. Clearly, I can't know what was actually said to Mr K when the product was recommended to him. But I've carefully considered his testimony alongside the documentation I do have from the time of the sale.

Mr K's circumstances and investment objectives

Santander has provided us with various documents from the time of the sale. Amongst others these include the financial report, the investment returns forecast, capacity for loss summary report and risk profiling questionnaire. The financial report shows there was a fact-finding meeting on 29 July 2014 followed by a recommendation meeting on 7 August. There was also a telephone conversation on the 5 August.

The financial report states that Mr K wanted advice because of low interest rates, and he wanted to discuss potential investment options to invest funds he held in deposit accounts to receive maximum growth potential. He wanted to invest a total of £33,500 over a minimum of five years. Mr K was retired with private and occupational pensions. He had a buy to let property which still had a mortgage but was financed by the rental income and was being advertised for sale. He owned his own property and had no planned expenditure.

Mr K had investible assets of £134,302, £40,300 of which was agreed as a cash reserve and £56,324 was already invested. In response to 15 risk profiling questions Mr K's initial attitude to risk was established as being medium meaning he was 'happy to take risks and have [had] taken substantial risks in the past with your investment decisions'. He had previously invested in a Santander Max 70% Share Portfolio OEIC and UK growth OEIC (held within an ISA taken out in 2001 and sold in 2013) which were medium and high risk investments with greater exposure to equities than his then current holding of Santander Max 50% Share Portfolio OEIC which he invested into in 2010 and had made a gain of 33%.

Mr K expressed concerns about the volatility he had experienced and the lack of capital protection with his existing investment. So, he would prefer a more calculated risk approach with any new investments because of his age and his savings no longer being inexhaustible now that he was retired.

It's recorded that Mr K's capacity for loss was discussed taking into account his initial risk profile, knowledge, and investment experience as well as his existing investment and it was

agreed his attitude to risk was medium. But that for any new investment he would be uncomfortable with a medium risk profile because there would be no element of protection against losses. He wanted to receive at least his capital at the end of the term. His investment objective was to consider investing over the longer term to try and achieve a better potential return for his money than savings deposits.

The documents I've referred to are detailed, and I think evidence the discussions had about Mr K's previous and current investments as well as what he was now trying to achieve. In conclusion, I'm satisfied it was established he was looking to obtain a better return than cash on deposit from a lower than medium risk investment with the capital protected. And taking all of the above into account, I don't think that was an unreasonable conclusion for Santander to have reached.

Was the investment clearly explained to Mr K?

When advising Mr K Santander's adviser had two key responsibilities. To make sure that Mr K was given an adequate explanation of what he was investing in, and to make sure any investment recommended was suitable for his needs and circumstances.

Structured investments can be designed to at least return the capital invested but aren't without risk. So, although the investment was capital protected, the possibility of receiving a nil (or very low) return, apart from the minimum guarantee can be a real risk.

And just because the capital was protected does not automatically mean the advice was suitable. So, the usual suitability tests apply. But I'll first look at whether the product was explained in a way Mr K could understand.

Mr K was advised to invest £33,500 into a fixed term investment – the Santander Capital Plus fund (issue 9) – as it offered the potential for higher growth than leaving it on deposit. It was described in the financial report as:

'a very low risk Structured Investment Product that offers an element of capital guarantee on maturity....At the same time, this product gives you the opportunity to benefit from the potential growth performance of the stock market in the future without exposing this £33,500 to direct bond/equity market volatilities....You are fully aware that our current fixed term cash deposit bonds could potentially provide higher returns if only the minimum guaranteed return of 2.5% on this investment is paid out on maturity.'

It offered the potential to provide a return capped at 36% depending on the FTSE 100 share index (subject to averaging) remaining the same or growing in value during the investment term. 'If the FTSE 100 share index fell in value during this period you will receive a return of your original investment plus 2.5%.' Examples of what returns could be expected were given if the FTSE 100 remained the same or increased or if it fell during the fixed term and that 'any growth above this minimum level is linked to the performance of the FTSE 100 Index and that the returns are paid at maturity, not annually.'

It's recorded that the key features document and term sheet were discussed and attached to the report was a portfolio planner, fact find addendum, summary report which included the risk description and fund specific investment returns forecaster.

I've reviewed the term sheet which I think makes clear the product features and key dates of the product. It states the minimum return at maturity could be 2.5% and maximum could be 36%. It explains the terms, the potential returns and risk and gave examples of those

potential returns. The key features document also outlined the aims of the investment, the risk factors and explained how Mr K's money would be invested.

Mr K has said he was told the product would guarantee a return of 2% per year giving a total return of 12% over the six-year investment term. However, and in the absence of being present at the meeting and not knowing what was said, there is nothing to indicate that this was the case. I appreciate that Mr K says he was told the product worked in a very specific way but doesn't have any evidence to support his claim and this must be frustrating for him if that is his recollection.

However, as explained above, I also have to take into account the evidence I do have and there isn't any reference to the type of guaranteed return Mr K has referred to. And I note Mr K had signed to confirm he had read and understood the information that had been given to him at the time of the sale. So, based on this there isn't enough for me to safely conclude that this is most likely what Mr K was told at the time of the sale. All of the documentation indicates otherwise and suggests the investment was clearly explained to him.

Was the investment suitable for Mr K?

The investment had to be right for Mr K bearing in mind his circumstances and investment objectives. These include Mr K's age, employment, his personal and financial circumstances, financial requirements, attitude to risk and his capacity to bear a loss. Because of the documentary evidence Santander has given us, I'm satisfied that all of these were considered and discussed.

The outcome of the discussions was that Mr K – because of his previous experience and investment knowledge – had a medium risk profile. But as a result of the volatility he had previously experienced, and his then current investment, it's acknowledged he didn't want to take that level of risk with his new investment and wanted his capital protected from loss.

I'm satisfied that is what the Santander Capital Plus fund (issue 9) did offer and that it matched Mr K's investment objectives and requirements. His capital was protected from any loss, but it offered the potential of benefiting from gains in the FTSE 100 over the term of the investment. Unfortunately for Mr K this didn't prove to be the case. But this doesn't necessarily mean the investment was unsuitable for him. And I can't see that the investment was akin to gambling. Mr K didn't suffer an actual financial loss of his capital as it was protected and potentially, he could have benefitted from the upside if the stock market had performed better. So, I can't conclude that the investment recommendation was unsuitable for him.

I appreciate that Mr K is disappointed with the performance of his investment and the return he received. But in this case, I'm satisfied that Mr K was provided with sufficiently clear information about how the investment worked and potentially performed. And I can't see he was given any guarantees as to what the returns would be in addition to the guaranteed minimum. So, in conclusion and in the individual circumstances of this complaint, I don't think Santander has done anything wrong.

My final decision

For the reasons given, I don't uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 October 2022.

Catherine Langley
Ombudsman