DRN-3699937

The complaint

Mrs B and the estate of the late Mr B complain that a business, since acquired by Santander UK Plc, gave them unsuitable investment advice in 2001.

What happened

In around January 2001, Mr and Mrs B met with Santander to take advice on investing a lump sum.

The bank identified the couple were cautious investors. It advised them to invest £7,000 each into ISAs, with their remaining £44,000 distributed across a joint "Save and Invest Plan", which comprised of a cash element and a with-profits bond.

Not long after this, in December 2001, Mr B encashed his ISA entirely to pay for a new vehicle. The couple made a number of withdrawals from their investment bond in the years that followed. What remained of the investments was fully encashed in 2006, yielding a small gain.

In 2018, Mrs B and Mr B's estate complained to Santander via a claims management company. They argued, amongst other things, that the investment the bank recommended was too risky, and therefore not suitable for them.

Santander responded to say the complaint had been made too late, outside of the time limits which apply. As Mrs B didn't accept the bank's response, the matter was referred to our service.

On 10 August 2022, I decided this complaint was one our service could consider. Both parties accepted my decision. Our investigator subsequently gave the opinion that Mrs B and Mr B's estates' complaint should be upheld. They felt Santander's advice was likely to be unsuitable, as it exposed too much of Mr and Mrs B's money to the risks of the financial markets, mindful that the couple were correctly assessed as being cautious investors.

Santander didn't accept our investigator's opinion. It argued the couple were happy to take the risks associated with investing in this way. It felt the investments it'd recommended offered good diversification, and that there was no justification to offer redress in the way our investigator had recommended.

As a result, the matter was referred back to me.

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 advising on investments, Santander's required to ensure any recommendations it makes are suitable for its customers. Establishing whether a particular investment is suitable should involve a consideration of things like a customer's personal and financial circumstances, any prior investment experience they might have, and their attitude towards placing their money at risk. I would reasonably expect the bank to factor this sort of information in when its deciding what investments, if any, should be recommended to a particular customer.

In my view, a recommendation is likely to be suitable if, amongst other things, it has the potential to meet a customer's investment objectives, without exposing them to risks that their personal and financial circumstances suggest they cannot afford to take. I've kept this in mind when reviewing this complaint.

From the submissions available I've noted that Mr and Mrs B had around £60,000 in cash at the time of the advice in 2001. Mr B was already retired, and Mrs B was due to retire in around five years. The couple were still paying their mortgage and lived on a modest income. This left them with surplus disposable income of roughly £300 each month. There's no suggestion the couple had any experience of investing, beyond a small shareholding belonging to Mr B. Santander established that the couple were "cautious investors".

Mindful of this, Santander recommended the couple should place more than 70% of their savings at risk on the financial markets. Of that amount, roughly two thirds of it was placed in a with-profits fund. The remaining third was placed in ISAs and invested in a fund which contained a mix of equities and fixed interest securities. It's acknowledged in Santander's paperwork that whilst the couple are to be treated as "cautious", they were each happy to take a greater level of risk with their ISAs than with the with-profits fund. Santander's advice letter confirms the couple were left with around £13,000 cash in case of emergencies.

From what I've understood of their circumstances, I'm persuaded that Santander was likely correct to regard Mr and Mrs B as being cautious investors. But I'm satisfied its advice to them was unsuitable. I shall explain why.

It strikes me that the money Mr and Mrs B were taking advice on is likely to have been highly significant to them. Mr B had already retired, and Mrs B was due to retire in the coming years. There's no suggestion that either of them were due a windfall of any sort. So it appears the money they had in 2001 represented the majority of what they'd be relying on to support them in their retirement years. This is further supported by the money's designation as being earmarked for "future expenditure" in Santander's paperwork.

With this in mind, I'm not persuaded Mr and Mrs B could've tolerated the risk of the losses which had the potential to arise from placing more than 70% of their cash on the markets. Especially when a third of that money was invested in a fund which Santander's paperwork shows exceeded their cautious attitude to risk. By relying so heavily on market linked investments, I'm satisfied Santander's overexposed money that was significant to the couple's long-term financial security, to risk. And that this risk exceeds the level of risk I'm persuaded Mr and Mrs B could've reasonably afforded to take.

I'm satisfied Mr and Mrs B were willing to, and could've afforded to take some risk, with some of their money. Mrs B's income could've allowed them to save over the five-year term Santander was recommending for the investment. And given the size of the lump sum and Mrs B's impending retirement, I can understand why they might've been inclined to risk some of it, if it meant outpacing what they'd earn through deposit savings accounts. But given their circumstances, I'm satisfied the banks decision to identify them as cautious investors was likely to be correct.

In its defence of this complaint, Santander's referred to its own notes taken in 2001 which refer to Mr and Mrs B as being "happy" to take a greater degree of risk in some areas of their investment. But whilst I can see risk as a concept appears to have been discussed with Mr and Mrs B, and they will've understood that some elements of their investment carried greater risk than others, there's little evidence that persuades me the couple were given any explanation of what risking so much of their cash could do to their finances over the long term. Or what it might mean for their futures and Mrs B's retirement plans if market movements didn't go their way, and their savings pot decreased in value. So I'm not persuaded their happiness to accept the bank's recommendations represents anything more than a general acceptance of what Santander's advisor was telling them was in their best interests to do. This acceptance is not any kind of endorsement that the bank's advice was likely to be suitable.

It's important to note that a customer being "happy" with a recommendation isn't the bar to which Santander's conduct needs to be measured. Santander's overarching responsibility in this scenario was to provide suitable investment advice. And this should've involved tempering Mr and Mrs B's expectations, if their eagerness to achieve growth exceeded the amount of risk their circumstances indicated they could safely tolerate.

Santander has argued that as the majority of Mr and Mrs B's money was invested in a with-profits fund which matched their cautious attitude to risk, that it would be unfair to say the bank's advice as a whole was unsuitable for them. I disagree.

My primary concern with Santander's advice is that it's recommended Mr and Mrs B risk too much of the money that was available to them. The fact that some of it was placed in a fund whose label matched with the bank's appraisal of the couple's cautious attitude to risk, doesn't automatically mean that such a recommendation is suitable. The asset classes within a fund can give an indication of the level of risk a person might be taking by investing in it. But the amount that person invests will also affect the level of risk they're taking with their finances overall. And in this case, I'm satisfied the bank's recommendation to invest more than 70% of their available cash in one fund which matched Mr and Mrs B's attitude to risk and another which exceeded it, represented too great a risk to the couple mindful of their circumstances. I see no justification for investing so much of their available funds anywhere in Santander's paperwork from the sale. I'm therefore satisfied the bank's advice as a whole is unsuitable. I've kept this in mind when considering what must now be done to fairly compensate Mrs B.

Fair compensation

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

I take the view that Mrs and Mr B would have invested differently. It is not possible to say *precisely* what she and Mr B would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs and Mr B's circumstances and objectives when they invested.

What must Santander do?

To compensate Mrs B and Mr B's estate fairly, Santander must:

- Compare the performance of Mrs and Mr B's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Santander should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Joint With-Profits Bond	No longer in force	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 ceased to be held	8% simple per year on any loss from the end date to the date of settlement
Mrs B's ISA	No longer in force	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 ceased to be held	8% simple per year on any loss from the end date to the date of settlement
The estate of Mr B's ISA	No longer in force	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 ceased to be held	8% simple per year on any loss from the end date to the date of settlement

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. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Santander 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 Santander totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs and Mr B wanted Capital growth with a small risk to their capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their 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 Mrs and Mr B's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mrs B into that position. It does not mean that Mrs and Mr B would have invested 50% of their 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 Mrs and Mr B could have obtained from investments suited to their objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Santander UK Plc should pay the amount calculated as set out above.

Santander UK Plc should provide details of its calculation to Mrs B and Mr B's estate in a clear, simple format.
Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and the estate of Mr B to accept or reject my decision before 13 February 2023.

Marcus Moore
Ombudsman