

The complaint

Mr M has complained that he was mis-sold a retirement investment account by Santander UK Plc.

What happened

In 1989 Mr M says he was advised by a business, now known as Santander, to contract out of the State Earnings Pension Scheme ('SERPS') and take out a retirement investment account ('RIA'). Mr M paid contributions into the RIA until 1998 and the policy matured in 2008. Mr M took a tax-free lump sum and purchased an annuity with the remaining policy proceeds.

In 2022 Mr M complained via a representative that the policy had been mis-sold. He said contracting out of SERPS in favour of investing his contributions in the RIA was too high risk for him but Santander had advised him to do so. He said he had a personal pension that he ought to have been advised to increase his contributions to, rather than to opt out of SERPS.

Santander didn't uphold the complaint. It said no advice was given to Mr M – it was an 'execution-only' sale – but it considered the policy was appropriate for him as it would help with his goal of building extra retirement funds.

Mr M remained unhappy so he referred his complaint to our Service. Mr M said he was advised to take out the RIA in a branch but he wasn't given sufficient information about it and it wasn't suitable for him in view of his age.

An Investigator considered the complaint but didn't uphold it. He didn't think there was sufficient evidence to demonstrate that Santander had advised Mr M to take out the RIA.

Mr M's representative disagreed, saying that the regulations at the time of the sale show that answering questions would be construed as advice. As it believed there was likely a discussion with Mr M about his circumstances and the sales person would've answered questions, it thought advice was most likely given to him.

As no agreement could be reached the complaint was referred to me to make a final 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.

Having done so, I'm not upholding it for largely the same reasons as the Investigator.

Mr M's representative maintains that advice was given because a meeting was pre-arranged with a senior employee in the branch. It says Mr M had no knowledge of the product before entering the branch and he didn't know of the benefits or disadvantages of contracting out of SERPS. It says Mr M was told the RIA was the best product for him, he was given a personal illustration and the paperwork was subsequently completed by adviser – he was

simply told where to sign. It says Mr M would not have taken the RIA out independently, and he has only ever followed advice.

I've taken what Mr M's representative has told us about Mr M's recollections into account here. But I'm mindful that these events took place over 30 years ago, so I've considered this alongside the documentary evidence I have, as well as what I know about Santander's sales processes at the time, to reach my decision.

Although Mr M says that he didn't know anything about the RIA before he entered the branch, I think on balance he received a direct mailing from Santander about the account and went into a branch with a view to taking it out. I say this because Santander has explained that the product was marketed in this way, and has provided a copy of a leaflet that Mr M likely received. This shows that the process at the time was for Mr M to make an appointment in branch and bring along information that would be needed, as per an enclosed checklist.

Furthermore, Mr M's application form – a copy of which I've seen – asks where Mr M found out about the RIA, and the box for 'Direct Mailing' has been ticked. There were alternative options, such as a 'Personal recommendation' or 'Walked into a branch'. If the RIA had been proposed to Mr M by Santander in person, I think the application form would've reflected this. There is also no evidence in any other associated paperwork from the time that Mr M received advice to take out the RIA. This would include evidence of payment for the advice, such as via commission. So, I'm satisfied Mr M most likely approached Santander to take out the RIA and that he didn't receive any advice to do so.

Mr M's representative says that the lack of documentary evidence of advice in this case doesn't mean that advice wasn't given to Mr M. It says Mr M was told about the RIA's benefits and why it was best for him. It has also pointed to the regulator's update on 'execution-only' sales, which it says shows that answering questions about anything other than price or administration would be considered to be investment advice.

At the time of the sale, Santander would've been subject to the Life Assurance and Unit Trust Regulatory Organisation rules ('LAUTRO'). Mr M's representative refers to an enforcement bulletin issued by LAUTRO in 1988. I've considered this but I don't think there is sufficient evidence to demonstrate that the sale of the RIA was in breach of this guidance. The bulletin states that 'execution-only', "*will be interpreted very narrowly as covering only those situations where a client asks for a specific and accurately described product without prompting or advice.*" And as I've explained above, I think it is more likely than not that Mr M received a direct mailing about the RIA and approached Santander himself with the intention of taking it out.

The bulletin goes on to say, "*A company or appointed representative who answers any questions except those on price or administration, will be considered to have given investment advice and will not therefore be able to execute a deal for any product other than those of his own marketing group which he has the authority to sell without breaching the Rules.*" It is evident that some information would need to be gathered from Mr M to ensure he was eligible for the RIA and in order to complete the application. I would also expect the sales person to give general information and answer questions about how the policy worked, as well as highlighting its advantages and risks. However, I've not seen evidence to persuade me that Mr M was given information about the RIA beyond what I would expect to be disclosed in a non-advised sale.

I don't think the provision of a personal illustration of the benefits Mr M could receive at retirement constitutes giving advice. Ultimately the personal illustration would help Mr M to understand what he could receive at retirement if he invested in it. This is the sort of

information I'd expect Mr M to be given to help him make a decision about whether or not to take out the RIA. I also don't think answering general questions about how the plan worked, or highlighting the advantages of the plan would constitute advice either. I appreciate Mr M says Santander went beyond this and told him the RIA was best for him, but I don't think that is likely, given the other evidence I've seen that points to the sale being non-advised. So, overall, I'm not upholding this complaint.

My final decision

For the reasons set out above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 April 2023.

Hannah Wise
Ombudsman