

The complaint

Mr J complains that Santander UK Plc failed to follow his instructions to transfer the money held in his ISA to another ISA provider, following the maturity of a structured product. Instead, the money was removed from the ISA wrapper and so lost its tax efficient wrapper.

What happened

In 2015 Mr J invested in a 5.75 year structured product held within his ISA, which matured on 23 December 2020 with a maturity value of £9,604.25. Around maturity the following events took place:

- At the beginning of November 2020 Santander wrote to Mr J in advance of the maturity. Along with a cover letter, they sent a brochure and a Maturity Option Form to complete. The brochure explained he had these options:
 - Reinvest in another stocks and shares ISA with a similar fixed term investment
 - Transfer to a Santander stocks and shares ISA
 - Transfer to a Santander cash ISA
 - Transfer to another ISA provider

The cover letter also said *"It's important to let us know what you'd like to do with your maturing money by 26 November 2020. This is particularly important if your maturing investment is held within an ISA... if we don't hear from you by 26 November 2020 and you haven't given us any account details... your money will mature into a Santander Instant Saver, which currently pays 0.01%"*

- 21 November 2020 – as Mr J wanted to retain the ISA status, but wanted to transfer to a different ISA provider, he wrote to Santander, returning the form with the options crossed out – he wrote on it that he wanted to *"Reinvest full amount with other provider"* and *"see enclosed letter"*. The enclosed letter made it clear that he was intending to do a cash transfer to a third party ISA manager, without losing the ISA status.
- 2 December 2020 - Santander had stamped this form as being received.
- On 18 December 2020 Mr J signed a form giving authority to his new ISA manager to apply for the funds to be transferred to them.
- 21 December 2020 – that transfer authority was sent to the new ISA provider by special delivery
- 29 December 2020 – the new ISA provider received the transfer form. Santander sold the 9370 shares Mr J held for 102.5 pence each. They removed the money from the ISA and placed it in an instant access savings account.
- 30 December 2020 – Santander wrote to Mr J to confirm the maturity value and said *"We have arranged for your maturity proceeds to be credited to a new savings"*

account in your name... Your new Instant Saver currently pays 0.01% gross p.a./AER". Mr J's new ISA provider first attempted to put the transfer request through.

- 1 February 2021 – the date Santander first received the transfer request
- 2 February 2021 – Santander informed the new ISA provider by letter that they rejected the ISA transfer request. It was rejected because the ISA no longer held any money, as it had already been transferred to the savings account.
- 22 February 2021 Mr J called Santander to follow up on the ISA transfer and was informed the money was no longer in the ISA wrapper and had been placed in the savings account.
- 26 February 2021 Mr J complained that his instructions given in November hadn't been followed.
- 26 March 2021 – Santander replied to the complaint, explaining that they felt they had given clear instructions in the maturity pack on how to retain the ISA status of the account. They didn't feel that they needed to resend that information in reply to Mr J's letter of 21 November 2020. They said that as they didn't receive Mr J's ISA transfer form until after the maturity date, they couldn't reinstate the ISA.

Mr J escalated the complaint to our service, saying that the reason he'd written to Santander in November 2020 was because the maturity option forms they'd sent were biased toward reinvesting with Santander. An investigator at our service looked into the complaint and upheld it. She said that although Santander received Mr J's instructions after 26 November 2020, they received them several weeks prior to the maturity date. So, they ought to have acted on Mr J's instructions to retain the ISA status. She said that instead of paying the money into the savings account, they should have paid it into a cash ISA. So, she directed Santander to reinstate the ISA and pay the interest rate Mr J would have received in the cash ISA, plus £100 for the distress and inconvenience caused.

Santander agreed to speak to HMRC about whether they could reinstate the ISA and both they and Mr J initially agreed with the rest of the investigator's opinion. However after looking into it further, Santander thought that HMRC wouldn't allow them to reinstate the ISA as they didn't think they had made an error in moving the money into the savings account. They offered a further £150 compensation for the time it took them to reach that conclusion. Mr J didn't accept this, as he wanted the ISA to be reinstated. He also argued that Santander had caused him to lose out on investment growth, and his portfolio had grown by over 10% in the intervening period.

The investigator reiterated that it was Santander's fault that Mr J's money was no longer in an ISA and eventually Santander agreed to speak to HMRC about the situation. HMRC concluded that there wasn't an error that allowed them to reinstate the ISA. Our service also spoke to HMRC and confirmed HMRC's stance.

The investigator issued further findings, setting out that she still believed Santander ought to have done more in reply to Mr J's letter from November 2020. If they had, she found that he likely wouldn't have lost his ISA status, and so would have been able to easily transfer to his new provider in February 2021, which likely would have been completed by the beginning of March 2021.

He'd been planning to invest in line with the rest of his portfolio, and so the investigator said Santander should put Mr J in the financial position he'd be in had the transfer gone through.

The investigator put forward two dates for the start date of this calculation – either 2 March 2021, which is the latest the transfer would have happened if the money had still been held in an ISA wrapper with Santander, or 26 March 2021, which is when Santander issued their final response to Mr J's complaint. She said Santander should calculate the growth Mr J's portfolio achieved as a percentage up until 25 July 2023 (which is when we let Mr J know the ISA couldn't be reinstated), and pay that percentage of growth on the £9,604.25. Due to the various tax allowances available, the investigator didn't think Mr J would be financially disadvantaged by holding this money outside of an ISA.

The investigator also recommended that Santander increase the compensation for distress and inconvenience to £400 in total.

Santander disagreed saying that HMRC had found they'd made no error, so they didn't understand how we could find they had. They also felt Mr J could have mitigated his losses by moving his money into his portfolio earlier. The investigator disagreed, explaining that until July 2023 Santander hadn't satisfied us or Mr J of the inability to reinstate the ISA. So, it wasn't unreasonable for him to not move the money, as it would have made it easier for the ISA to be reinstated if the money remained with Santander. As Santander didn't agree, the complaint has been passed to me for 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've reached largely the same conclusions as the investigator, for the same reasons. I'm satisfied that by ignoring Mr J's letter of 21 November 2020, Santander did not treat Mr J fairly and reasonably. I'll explain why.

Firstly, I'm satisfied that Santander did give clear instructions in the maturity letter and brochure. The brochure set out that if a customer wanted to transfer to a new ISA provider, then the new provider had to send Santander an ISA Transfer form, and it had to arrive by 26 November 2020.

However, I'm mindful that they didn't give customers much time to take action – Santander has said they aren't sure of the exact date of posting Mr J's letter, but that the latest it would have been posted is the 5 November 2020. The UK was in a national lockdown due to Covid-19 at that time, which caused well known delays with the postal service. This is demonstrated by the fact Mr J sent his letter back to Santander on 21 November, but it wasn't received by them until 2 December – much outside the normal delivery times. This didn't allow customers who wanted to transfer to new ISA providers much time to take the necessary steps to arrange for the new ISA provider to start the transfer process.

It's clear from Mr J's letter and enclosed Maturity Option Form that he didn't understand how to instruct Santander of his intention to transfer elsewhere. He said *"you have given me options to reinvest in Santander investments, but what I wish to do with the maturing ISA is to transfer it to an ISA portfolio of stocks and shares investments that is held for me [elsewhere]...[the new ISA provider] intend to send a letter of authority to you soon. I trust that you will be able to comply with my wishes without any difficulties"*.

Santander has said they didn't reply due to the volume of maturing plans that they had to deal with, and because they felt the initial instructions they gave were sufficient. I'm not satisfied with this excuse – they ought to have been able to handle questions from customers and ought to have had a strategy for dealing with enquiries of this sort.

Our service is aware from other complaints we've dealt with, that instructions that were received by Santander after the cut off date set out in the maturity letter, but before the actual maturity date itself, could still be followed. Mr J's maturity date was 23 December, and Santander received his letter of 2 December – so Santander had sufficient time in which they could have replied to Mr J and told him the next steps. This is especially important where it's clear Mr J hadn't fully understood the process he needed to follow – so to treat him fairly they ought to have explained it again.

I've seen the communication between Mr J and his financial adviser, who was liaising with the new ISA provider. Had Santander replied to Mr J with clear information, I'm satisfied the adviser could have arranged with the ISA provider to send Santander the relevant forms quick enough so that they arrived prior to 23 December 2020 – before the plan matured. So, if Santander had treated Mr J fairly and reasonably, he would have arranged for the forms to be sent to them prior to maturity and his money wouldn't have lost its ISA status.

Even if I'm wrong about that, at the very least Santander shouldn't have taken the money out of the ISA wrapper and placed it into the savings account, given they knew Mr J's wishes. The money could have been placed in a cash ISA, so that when the provider eventually did receive the ISA transfer forms in February 2021, they could have simply transferred the money across. In that scenario, Mr J would have received the money into his stocks and shares ISA by 2 March 2021. As he didn't place it into that ISA until after July 2023, he's lost out on the growth he'd have received in the interim. I've set out below how Santander should put this right.

I note there has been some discussion as to the delays experienced by Mr J after his new ISA provider had all the relevant forms they needed in late December 2020 and January 2021. There's no evidence of Santander receiving a transfer request prior to February 2021, so I agree with the investigator that the latest his money ought to have been with the new provider was the beginning of March 2021, allowing for the normal timeframes for ISA transfers.

Santander has argued that Mr J ought to have mitigated his losses. I agree with the investigator that it wasn't unreasonable for Mr J to leave this money with Santander to make the re-wrapping of these funds easier. It wasn't until 25 July 2023 that our service was satisfied that Santander couldn't do this. Prior to that, Santander hadn't convinced us that they had sufficiently explained their errors to HMRC when discussing this case – they hadn't explicitly admitted any error. They were still telling us that they didn't think they'd made an error – which our service clearly disagreed with. So, I'm satisfied Mr J wouldn't reasonably have been in a position to mitigate his losses, given that situation.

Santander has also said they are confused about how we could conclude they've made an error, when HMRC has concluded they didn't. I'm not privy to HMRC's exact process when they decide on these issues. However, I do know that HMRC were not given a copy of our investigator's opinion letter by Santander and Santander hasn't shown our service whether they admitted any error to HMRC.

My role is to make a finding on what I consider to be fair and reasonable in the circumstances, and my findings are based on the balance of probabilities. As set out above I'm not convinced Santander acted fairly or reasonably here. Had they done so, on the balance of probabilities, I'm satisfied Mr J could have given new instructions prior to maturity. So, I don't give HMRC's opinion much weight here – it doesn't change the outcome I've reached – other than to have a bearing on how things can be put right.

There are a variety of income tax and capital gains tax allowances for individuals if their money isn't in an ISA. Based on the amount of money in question here, I'm satisfied it's

likely that Mr J will be able to mitigate the impact on his tax position caused by the money being held outside of an ISA, until it can be reinvested.

I've considered the distress and inconvenience caused here. Firstly, Santander ought to have communicated with Mr J in December 2020 and by not doing so, they have caused a lot of confusion and inconvenience to Mr J by moving the money to the savings account. In February 2022 after the investigators first opinion letter, Santander told our service that they were waiting for HMRC's approval of the ISA reinstatement. In May 2022 they told us that they hadn't actually spoken to HMRC, but internally they'd decided that the ISA couldn't be reinstated. It wasn't until November 2022 that they began to speak to HMRC about it. Had they done this when first agreeing to, they could have saved several months of this process. Overall, I'm satisfied the compensation recommended by the investigator of £400 in total is fair.

Putting things right

Santander should speak to Mr J's new ISA provider and find out the value of his portfolio on 2 March 2021 and on 25 July 2023 (not including any additional contributions to the portfolio). They should calculate the return Mr J received over that time period as a percentage.

Santander should calculate what Mr J's maturity value would have been worth on 25 July 2023 had it received that return since 2 March 2021, and pay the growth to him. This method is fair because I'm convinced Mr J would likely have invested the maturity proceeds in line with the rest of his portfolio.

Santander should also pay Mr J £400 compensation in total for the distress and inconvenience caused.

My final decision

I uphold this complaint. Santander UK Plc should pay compensation to Mr J as set out above. Santander UK Plc should provide Mr J with details of its calculation in a clear format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 April 2024.

Katie Haywood
Ombudsman