

complaint

Mr and Mrs H complain that Santander UK Plc wrongly advised them to invest too much of their money in an unsuitably risky fund in 1996 and 1999.

background

The background and circumstances of this complaint are set out within my provisional decision of 15 May 2019. A copy of this is attached and forms part of this decision.

Santander disagreed with my findings, and said:

- Given the length of time since Mr and Mrs H made these investments it does not have any point of sale information; but it is satisfied that they would have received all the key information plus a full recommendations' report
- As there's no point of sale information, my provisional decision is solely based on Mr and Mrs H's recollections from more than 20 years ago - by definition this cannot be entirely reliable
- If accounts were closed more than six years ago it no longer holds any records so cannot offer any information about what savings or investments Mr and Mrs H may have held. The absence of such information does not mean they did not have any
- Mr and Mrs H did not provide any documentation about their finances, retirement payments, new income or business profitability. However, they would both have received pensions from their employer and Mrs H may have received a carers allowance
- Mr H must have been happy with the performance of his PEP as he visited the branch two/three years later to arrange a further £14,000 investment (jointly)
- There is no evidence to indicate that they didn't understand the risks
- Mr H's profession meant he would have had the skill and attention to detail to understand the documentation and been capable of raising any questions or concerns at the time (rather than 20 years later)
- If Mr and Mrs H did not have any existing savings it seems unlikely they would have taken early retirement and invested funds for a recommended minimum five year period, especially given Mr H was setting up a new business
- Have they provided any information as to why they surrendered their investment after three years? It's possible that this was just due to poor performance rather than a need for this money
- Their representative's comments suggest they were able to absorb the losses; this contradicts his argument that they were encouraged to invest too much money
- A loss of £2,870 would have been a significant amount, and there's no evidence to show this loss did not affect them
- Their representative refused to allow Mr and Mrs H to fill in its standard questionnaire. It therefore does not know what they recall being told at the times of advice. Any decision is therefore based on very limited information
- It still does not accept that this complaint should be considered within our jurisdiction given the size of their losses

In the light of Santander's comments, I asked Mr and Mrs H's representative to speak to them further about their overall finances at the time of the first advice point including their pension income. I also wanted to know how the subsequent meeting came about, why they cancelled the investments 'early', and to confirm whether they had any prior investments.

Their representative replied:

- Mr H was receiving around £1,200 a month from his police pension; Mrs H was not receiving a carers allowance
- They said that the meetings generally occurred as a result of going into the branch for day-to-day activities and then being recommended to speak to an advisor; but they cannot recall the specific circumstances surrounding this second meeting
- They cannot remember the reasons for the withdrawal
- They had no previous investment experience and are willing to sign a document to that effect. Mrs H did hold some British Gas shares from the original privatisation/public offer

my findings

Firstly, I have considered Santander's repeated view that this complaint has been made too late under our time rules. A business is entitled to continue to raise jurisdiction objections even after an ombudsman has made a ruling that a complaint is within our jurisdiction (as in this case).

However, this is in order for it to raise new arguments or fresh issues not to have a 'second bite of the cherry'. From what I've read, its current comments are in essence the same as those it originally raised and which were fully considered by the ombudsman who made the decision that this complaint was within jurisdiction. I have therefore not reconsidered the jurisdiction issue again at this stage as, in my view, no new arguments have been raised.

I've then considered all the new evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I am still satisfied that this complaint should be upheld - with the redress previously proposed.

I am satisfied, on the balance of probabilities, that Mr and Mrs H had no previous investment knowledge or experience (except the British Gas shares) and therefore they would have been reliant on the advisor to fully explore their propensity for risk and make recommendations accordingly. The fact that Mr H had been employed in a responsible job, requiring judgment and expertise does not alter this fact or mean he would have understood the risk posed by the recommended product.

Given this, I think it is more likely than not – given their overall circumstances, finances and somewhat uncertain income prospects – that Mr and Mrs H would have been looking to take no more than a modest risk with their money.

That said, I recognise that there is very little information about what was discussed, and a less than complete picture of their finances. For these reasons, I am not convinced that there is sufficient to safely conclude that the 1996 advice was wrong - despite my concerns about the risks of the recommended funds – given the modest sums involved.

However, for the reasons previously outlined, I am satisfied that the 1999 advice more likely than not exposed the new investment sums to a greater risk than Mr and Mrs H would have wanted, or should have been advised to take.

Given their advisor said they did not want to take any risk with this money, I think it is reasonable to instruct Santander to pay compensation based on a risk-free compensation formula. While there is some argument that it might have been reasonable for Mr and Mrs H

to have exposed these sums, or a percentage of them, to a small risk, neither party has suggested this. So I don't think it is appropriate to award compensation on this basis.

I instruct Santander to pay compensation based on what Mr and Mrs H would have earned on their ISA invested sums (totalling £14,000) if they had kept this money in secure, interest-guaranteeing bank accounts. It should use the standard formula recommended by this service i.e. the returns on the Bank of England's fixed-rate bonds of 12 to 17 months' maturity.

It should then add 8% simple interest per annum to these two loss figures from the dates of surrender to the date of settlement of this complaint.

my final decision

I uphold this complaint and instruct Santander UK plc to pay compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 12 July 2019.

Tony Moss
ombudsman

provisional decision

complaint

Mr and Mrs H complain that Santander UK Plc wrongly advised them to invest too much of their money in an unsuitably risky fund in 1996 and 1999.

background

In 1994 Mr H retired at the age of 50, taking a £50,000 cash lump sum from his pension but then setting up in business himself. Mrs H had retired permanently.

Two years later Santander recommended he invest £2,000 in a PEP plus £50 a month, both in its UK Growth Fund. In 1999 Mr and Mrs H agreed to invest approx. £7,000 each in the same fund within an ISA. They closed all their accounts after three years.

Mr and Mrs H's representative complained that:

- They were first-time investors and the recommended fund was almost entirely exposed to equities and was therefore too risky for them
- They had used much of the lump sum for home improvements and were not left with sufficient residual savings after the initial investment
- Mr H invested £20,000 in his new business so the second advice resulted in the majority of their remaining money being in risk-based assets
- They wanted to preserve the rest of their pension money so should not have been advised to make any further investments

Santander said that as these investments had all been surrendered more than six years ago it did not have more than the basic paperwork about the sales. It did not have copies of fact finds, recommendation letters etc.

An adjudicator did not feel the advice had been obviously inappropriate, based on the limited information available. She felt the sums were modest and that as Mr H was still in his early 50s and running a new business he was likely to have sufficient ongoing resources to be able make these modest investments.

Mr and Mrs H's representative did not agree, and said that irrespective of its other complaint points, the UK Growth Fund was clearly too risky for a first-time investor – something the adjudicator had not addressed.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I recognise there is very limited information about the sales, something which is understandable given the investments were cancelled many years ago. Nevertheless, I am satisfied that there is sufficient information to reach a fair and reasonable decision, based on the balance of probabilities.

Santander has not disputed that Mr and Mrs H had no investment experience or the various sums involved. I assume it has access to Mr and Mrs H's bank accounts from the time, and so if they had significantly more capital than suggested it would have pointed this out.

On this basis I am not satisfied that the advice was reasonable given Mr and Mrs H's limited capital, lack of investment experience and likely objectives, particularly given the level of risk posed by the fund in question.

On balance, I think that - given the modest amounts involved - the 1996 advice was not necessarily unreasonable, even taking account of the significant risk posed by the UK Growth Fund. But the 1999 advice seems to me to pose an unnecessary level of risk to Mr and Mrs H's money, and I've seen nothing to indicate that they wanted to take such a risk.

If Mr and Mrs H had something like £25,000, or less, in cash at the time, I think it was highly arguable whether they should have put nearly £14,000 in any investments, even low risk ones. While Mr H was only in his mid-fifties and had started a new business, this could not have provided a guarantee of a sufficient, medium-term income (unlike his previous job). Given the precariousness of start-up businesses, it's quite possible that Mr and Mrs H would've needed to draw on some of his remaining pension pot cash in the near or medium-term future.

Crucially, I strongly suspect that Mr and Mrs H would have been heavily reliant on the advisor as to what fund to invest in. While they may have been drawn to the attractions of an ISA-linked investment and *may* have been prepared to take some risk with some of their money, I doubt they would have understood the specific risks of this fund.

As their representative said, it exposed virtually all of their money to the vagaries of the stock market and the potential for it to fall very substantially – and by a far larger amount than they eventually lost. Given their overall circumstances and likely objectives, I don't believe this was appropriate advice.

While Mr and Mrs H's representative says, or implies, they didn't want to take any risk with this money, I think they would have been aware that they were committing to a risk-based investment. So it is not clear to me whether, if fully and fairly advised, they would have invested any of this money in a product where they could lose some of it.

I note that they surrendered these ISAs and Mr H's earlier investment within three years of 1999. This suggests they may not have been able to afford to commit so much of their capital (after the earlier investment) to what needed to be considered as a medium-term investment.

So, on balance, I believe it is appropriate to instruct Santander to pay compensation based on what Mr and Mrs H would have earned on their ISA invested sums if they had kept their money in secure, interest-guaranteeing bank accounts. It should use the standard formula recommended by this service i.e. the returns on the Bank of England's fixed-rate bonds of 12 to 17 months' maturity.

It should then add 8% simple interest per annum to these two loss figures from the dates of surrender to the date of settlement of this complaint,

my provisional decision

I currently intend to uphold this complaint and instruct Santander UK plc to pay compensation as outlined above.

Tony Moss
ombudsman