

complaint

Mr R and Ms W complain Santander UK Plc opened two new individual savings accounts (ISA's) after they had asked for their investments to be transferred to a new business and then delayed reversing this which has caused them a Capital Gains Tax (CGT) liability they should not have had.

background

I gave a provisional decision on this complaint on 8 June 2017. I said I intended to uphold the complaint because I thought Santander should have checked whether Mr R and Ms W wanted the automatic ISA wrap to take place when this conflicted with their instructions to transfer all their investments to the new business. I gave both parties the opportunity of providing further information before making my final decision.

Santander said it agreed with my findings and Mr R and MS W had nothing further to add.

my findings

As Santander has agreed with the findings set out in my provisional decision, and I have been given no other information which would lead me to change my decision I still think Santander are responsible for the CGT liability Mr R and Ms W had to pay.

What Santander should do to put things right

Santander should:

- Pay Mr and Mrs W any CGT liability arising from the sale of investments to carry out the ISA wraps which took place on 21 April 2015.
- Pay interest at 8% simple per annum from the date Mr and Mrs W paid the CGT liability referred to above from the date of payment to the date of settlement.
- Pay Mr and Mrs W £250 for the trouble and upset caused.

my final decision

I uphold this complaint for the reasons I have explained above and in my provisional decision and Santander UK Plc have to pay the redress I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs W to accept or reject my decision before 11 August 2017.

Philip Gibbons
ombudsman

COPY PROVISIONAL DECISION

complaint

Mr R and Ms W complain Santander UK Plc opened two new individual savings accounts (ISAs) after they had asked for their investments to be transferred to a new business and then delayed reversing this which has caused them a Capital Gains Tax (CGT) liability they should not have had.

background

Santander didn't uphold the complaint. It set out the timeline of when the request was made to transfer the investments. It said the new business had sent the authorisation to re-register the funds with an investment platform on 9 April 2015 but the platform couldn't accept one of the funds at the time. It said it wrote on 14 April 2015 to explain it had to wait for this before it could complete the transfer as all the funds had to be transferred at the same time.

Santander said the delay was outside of its control. And it was during the delay the ISA wraps occurred automatically in accordance with the open instructions given by Mr R and Ms W to do this annually which hadn't been cancelled. It said the transfer eventually took place on 27 May 2015.

One of our adjudicators considered the complaint and thought it should be upheld. He said sufficient notice was given by Mr R and Ms W that they wanted to transfer all their funds and this should have put Santander on notice it should stop any other transactions.

Santander didn't agree. It said:

- It isn't part of the process to stop any regular transactions, including automatic ISA wrapping, when receiving an instruction to re-register funds with a new business as it's always possible it won't be able to accept the re-registration – which is what happened initially here.
- If it stopped all transactions before funds had been re-registered this could disadvantage the customer if the re-registration didn't then go ahead.
- In the circumstances it leaves everything as it is until it has full confirmation the transfer can be completed unless the customer requests otherwise.

As there is not agreement with the adjudicators opinion the matter has been passed to me for review.

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.

There is no real disagreement about the facts in this complaint. The only issue is whether Santander should've automatically invested in two ISA's, one for Mr R and one for Ms W, when they had already asked for the transfer of their investments to another business.

On 20 March 2015 the new business wrote to Santander to transfer management and control of Mr R and Ms W's investments to it. The letter asked for valuations, and other information, and stated:

"Once we have received the above information we will send you our formal acceptance and nominee details to enable you to proceed with this transfer".

The letter asked for the transfer to be 'in specie' rather than for some or all of the investments to be cashed in and transferred which would have avoided any capital gains tax charge on the transfer.

So Santander was on notice that Mr R and Ms W intended to transfer their investments to another business, and they didn't want any of the investment cashed in. But the transfer couldn't go ahead

until Santander had provided the information requested and the new business confirmed its acceptance.

Santander provided the information the new business had asked for on 2 April 2015. And the new business then confirmed on the 9 April 2015 it wanted the transfers to go ahead. So at this point it was clear the new business was going to take over responsibility for Mr R and Ms W's investments.

However it wasn't possible to complete the transfer of funds because the platform wasn't able to immediately accept one of the funds and had to set up a new fund before it could do this.

The two ISA's were then arranged by Santander on 21 April 2015. This happened because Mr R and Ms W had chosen to automatically invest in ISA's each year. The terms and conditions said this would be done within 14 days of the beginning of the new financial year.

I note the new business has suggested Santander didn't have authority to sell any of Mr R and Ms W's investments and arrange the ISA's. But I don't think the agreement with Santander had come to an end at the time the ISA's were arranged.

I acknowledge the terms and conditions state the agreement can be ended by writing to Santander to ask for this or:

"Alternatively, you can re-register all of your existing share-holding with a different provider. We can do this for you if the other provider is willing to accept the re-registration."

But it seems to me reasonably clear from this term that it is the re-registering of all of the existing share-holding that ends the agreement. And this hadn't taken place by 21 April 2015.

And I don't think it would have been appropriate for Santander to have decided by itself not to do something the agreement required it to do.

But Santander knew in March 2015, before the start of the new tax year, that Mr R and Ms W no longer intended to use it. It then provided the information requested by the new business, including valuations for all the investments on 2 April 2015. And the new business confirmed it accepted the transfer of those investments on 9 April 2015.

So by 9 April 2015 there was no doubt Mr R and Ms W wanted the investments, as valued in its letter of 2 April 2015, to be transferred to the new business. I acknowledge this couldn't take place until the platform had set up a new fund which wasn't Santander's responsibility. But there was nothing to suggest Mr R and Ms W didn't want the transfer to go ahead as originally intended.

And by allowing some of the investments to be sold to complete the ISA wraps Santander wasn't going to be able to do what Mr R and Ms W, through the new business, had made clear they wanted it to do – namely transfer all of their investments as set out in Santander's letter of 2 April 2015.

In the circumstances I don't think it's unreasonable to expect Santander to check with customers in the process of transferring their accounts what they want to do about such things as automatic ISA wraps once it is aware there is going to be a delay in the transfer.

I note Mr R and Ms W have also suggested the ISA wraps could have been reversed within 30 days which might have avoided the CGT liability that arose. As I have decided Santander should have checked with them before completing the ISA wraps anyway I don't need to consider this point.

What Santander should do to put things right

Santander should:

- Pay Mr R and Ms W any CGT liability arising from the sale of investments to carry out the ISA wraps which took place on 21 April 2015.
- Pay interest at 8% simple per annum from the date Mr R and Ms W paid the CGT liability referred to above from the date of payment to the date of settlement.
- Pay Mr and Ms W £250 for the trouble and upset caused.

my provisional decision

I intend to uphold this complaint for the reasons I have explained and direct Santander UK Plc to pay the redress I have set out above.

Philip Gibbons
ombudsman