

complaint

Mr E has complained about an investment that Santander UK Plc advised him to take out in 2010. Mr E understood that the investment would make use of his annual Individual Savings Account (ISA) allowance, to avoid potential capital gains tax.

background

Mr E was advised to take out an investment over a five and a half year term for a total of £60,000. Of this amount, £5,100 was put into a stocks and shares ISA. Mr E was of the understanding that the rest of the money would be gradually placed within an ISA 'wrapper'.

Santander did not uphold the complaint. It confirmed that the investment did not have the facility to automatically use Mr E's annual ISA allowances for future years. However, Santander did offer £100 to recognise that Mr E had not received the best service when his complaint was looked into.

Our adjudicator did not recommend the complaint be upheld. He had not seen sufficient evidence to suggest that the rest of the invested money would utilise Mr E's future ISA allowances. He was also of the opinion that the £100 offered to Mr E was reasonable, to compensate for any trouble and upset caused.

Mr E did not accept the adjudicator's opinion. Therefore, the complaint was passed to me for review.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I note that Mr E is very certain that he had conversations with the adviser in 2010 when the advice was given about avoiding having to pay capital gains tax (CGT) when the plan matured. He says that it was as a result of this that he was told that a portion of his total investment would be placed annually within an ISA – thereby making use of his annual ISA allowance. This would result in a much lower amount of his investment being potentially subject to CGT when it matured.

Santander says that his plan never allowed for that and I believe that is the case. Although Mr E made one investment (by this I mean he gave Santander one sum of money) it was split initially so that £5,100 was placed within an ISA wrapper and the rest was put into the (non-ISA) Guaranteed Return Plan (GRP). The contract note for the GRP does show an investment into that product of £54,900 – which would marry up with the £5,100 put within the separate ISA wrapper.

Although I can see why Mr E treats this as the same investment it is segmented so that only a portion is ISA wrapped and the rest is placed directly in the GRP. Santander has confirmed that once the GRP has begun in a 'non-ISA' state, portions of it cannot then be placed subsequently within an ISA wrapper – it has to be left to 'run' as is.

This does not necessarily mean that Mr E was not misled at outset. I have considered that carefully. Mr E says that he worked previously as an Inspector of Taxes. He therefore had a very good understanding of tax and CGT. It was for this reason that he says he knew about CGT and wanted to avoid paying it.

On the other hand Santander says (correctly in my view) that none of the documentation it issued says that annual ISA wrapping (as I will term what Mr E expected of his investment) was possible with this investment. I agree with Mr E that it does not say definitively that this is not possible but then I would not expect documentation to explain every possible thing an investment cannot do.

I have also noted that the advisers recommendations say nothing about further portions of Mr E's investment (other the £5,100 placed in the ISA at outset) being placed within an ISA wrapper. There is no explanation of a process such as that and I do not believe there is any inference that will happen.

As part of this investigation we have obtained the advisers comments as to what happened. They have said that it was explained that Mr E's CGT allowance could be used to offset any gains from the non-ISA part of the investment at maturity. They also said that they would not have said that money would be drip-fed into annual ISA because this was not possible with this investment.

In response Mr E has questioned whether the adviser could recollect accurately this specific advice. He also strongly disputes this version of events, repeating some of his arguments about what happened at the time (and in subsequently conversations with Santander).

It is difficult in the absence of any persuasive additional evidence to arrive at the conclusion that Mr E was told that annual ISA wrapping was possible (on an investment where that was never possible). This would mean the adviser intentionally or mistakenly telling Mr E something that was not true. That is possible but I simply have not seen sufficient evidence of that.

I realise that Mr E spoke later to another employee of Santander about his investment but there is no clear evidence as to what was discussed or what guidance was given; Mr E has said at one juncture that he does not have a clear recollection of that discussion.

my final decision

I am sorry to disappoint Mr E but given the evidence I cannot uphold this complaint or make any award. If Mr E wishes to accept Santander's offer of £100 then he can contact it direct.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr E to accept or reject my decision before 18 February 2016.

David Bird
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