DRN-4337681

The complaint

Mr B, through a Claims Management Company (CMC), complains that he was given unsuitable investment advice by Santander UK Plc, referred to as "the business".

In short, the CMC says that the advice – to invest in the ISA and Direct Share investments – wasn't suitable because:

- Mr B was advised to invest his redundancy money and life savings therefore he was advised to invest too much.
- He was advised to invest his money in a portfolio that he was uncomfortable with.
- He was in poor health and had a number of operations before and after the advice, therefore was vulnerable.

What happened

Between 2011 and 2012 Mr B invested £85,000 in several funds. He was, and still is, in receipt of monthly income. He surrendered some of the funds in 2023 and received back £37,580. His current portfolio is valued at £42,270.

In March 2023, the CMC complained to the business. It said that due to Mr B's age he's unable to recall the details of the meeting(s), however, he does recall investing the majority of money from his life's savings and redundancy money into the investment portfolio. He recalls having a mortgage and a car loan but doesn't recall the payments.

The CMC also said that Mr B had a private pension income of £400 a month, and his outgoings included his mortgage payment, utility bills, council tax, insurance, car, and general living expenses.

The business having initially questioned jurisdiction later consented to us considering the merits of this complaint but didn't uphold it. In summary, the business said that it was unclear if the investments were set up on an execution only basis. But even if they hadn't been, the recommendation to invest wasn't unsuitable.

Unhappy with the business's response, Mr B, through his CMC, referred the complaint to our service.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, he said:

- On balance, it's unlikely that this was an execution only sale. In other words, it's likely that this was an advised sale, even though some key documentation is missing.
- Mr B's likely to have been supplied with key information, such as the key features document and the fund guide, showing the risks associated with each fund.
- The investigator can't say that Mr B was advised to invest too much money. He had sufficient cash reserves and didn't require access to his money for over 10 years. This doesn't suggest that he was unhappy with the investment.

- In addition to the £85,000 invested, Mr B had £25,000 invested in a one-year fixed rate cash bond – which was the equivalent of 22% of his total savings.
- Mr B was also receiving an income – to supplement his pension – which he was receiving from his Sterling Corporate Bond Fund.
- He didn't touch the investment for over 10 years, which suggests that he didn't need the money.
- Despite what the CMC says about Mr B's circumstances, it's unlikely that this wouldn't have been taken into account when the advice was given even though details aren't clear now.
- He's unable to say that Mr B was unhappy or uncomfortable with the investment.
- Having reviewed the portfolio investments brochure, and Mr B's portfolio from around the time he received advice, he found the following:
    - Mr B invested £60,000 in the Sterling Corporate Bond Fund, which was a low risk investment.
    - Mr B invested another £25,000 in the Balanced Income Portfolio (later changed to the Santander Max 60% shares income portfolio).
    - Separate to the above, Mr B invested £25,000 in a risk-free cash bond.
- Assuming Mr B had around £110,000 in savings, he can't say that the mix was unsuitable. The portfolio would've been diversified as follows:
    - £25,000 – which is 22.7% of Mr B's total savings – invested in no risk.
    - £60,000 – which is 54.6% of Mr B's total savings – invested in low risk.
    - £25,000 – which is 22.7% of Mr B's total savings – invested in medium risk.
- The asset mix and level of risk that Mr B was advised to take wasn't unsuitable, even if he had no investment experience. The portfolio wasn't unsuitable, as it was a diversified portfolio, shared between three different asset classes.

The CMC disagreed with the investigator's view and asked for an ombudsman's decision. In summary, it said:

- Given the source of the funds – derived from Mr B's redundancy and life savings – he wasn't in a position to invest.
- Despite what the investigator says, there's no evidence that Mr B was comfortable with the investment. But in the absence of any evidence that he was, it can't safely be said that the advice/risk was suitable.
- It's concerned that there's no documentation even though the investment is still live.
- Having invested £110,000, Mr B didn't have access to cash for short term needs.
- Investing £60,000 into one fund wasn't suitable.
- It's questionable whether or not the Sterling Corporate Bond was actually low risk given its four out of seven risk-rating. Furthermore, the unit price has gone down by 20%, between 2018 and 2023, which can't be classed as low risk.

The investigator having considered the additional points wasn't persuaded to change his mind. In short, he made clear that it wasn't his role to risk rate the funds and based on the information provided he's satisfied that it was low risk and therefore not unsuitable. He's also not seen any evidence that Mr B didn't have investment experience. It seems Mr B is unhappy about the performance of the fund but that's not something that our service would consider.

The CMC maintains that there's no record of the sale and therefore no way to justify the sale. Furthermore, it says that Mr B wasn't aware of the risk and volatility involved and these matters should've been discussed before the recommendation was made.

As no agreement has been reached, the matter has been passed to me for review.

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 agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what the CMC says, I'm unable to safely say that the advice was unsuitable.

Before I explain why this is the case, I think it's important for me to recognise the strength of feeling Mr B has about this matter. The CMC has provided submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading, or undertake a forensic analysis of the evidence, it's not what I'm required to do in order to reach a decision in this case. I appreciate this can be frustrating, but it doesn't mean I'm not considering the pertinent points in this case.

My role is to consider the evidence presented by the CMC, and the business, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case – I'm not here to take sides.

In deciding what's fair and reasonable, I must consider the relevant law, regulation, and best industry practice, but perhaps unlike a court or tribunal I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

In short, I don't uphold this complaint for the following reasons:

- Our service doesn't consider complaints in isolation about the performance of an investment. This is because performance is dependent on the financial markets and is not something that a business can control or predict. So, on the face of the evidence, and on balance, despite what the CMC says, I can't safely say that the business behaved unreasonably just because Mr B's investments didn't perform better.
- Without a fact find and suitability letter, it's possible that this could've been an execution only sale. However, and on balance, I think it's unlikely that it was. Given how these sorts of investments were likely to be sold and given Mr B's level of experience, I think it's unlikely he would've chosen to invest in the portfolio without advice. So, on the face of the limited evidence, and on balance, I think it's unlikely that these investments were sold to Mr B without advice.
- I note what the CMC says about the lack of documentation. But given the passage of time, I can't say that the business has done anything wrong by not being able to provide more documentation. This doesn't mean that the CMC's version of events should be automatically preferred (and the complaint upheld), just because there isn't more information about what happened.
- Whilst I make no criticism of Mr B's memory, I'm still left without (key) details about some of the points made by the CMC. I'm not suggesting that there can never be any gaps in the evidence, however, I'm still obliged to decide this case based on the available information.

- I appreciate Mr B recalls that he had a mortgage, but I've no further details in terms of size, whether it was interest only or repayment and what was outstanding. In any case, having a mortgage (and/or a car loan, for which I also have no further details) didn't of itself mean that he couldn't invest.
- In any event, I can't safely say that these points weren't considered when the advice was considered. I've seen no persuasive evidence that they weren't.
- I appreciate what the CMC says about risk and volatility, but in the circumstances and on balance, I can't say that these weren't discussed. I note Mr B doesn't have a good memory of what happened at the point of sale, so on balance I can't say that these matters weren't discussed, just because the relevant point of sale documents aren't available.
- On balance, I think these matters were discussed and that Mr B was comfortable with the investment and that's why he kept it for 10 years, despite arguably being aware that it was making losses between March 2015 and November 2018.
- On the face of the evidence, and on balance, despite what the CMC says, I can't safely say that he was advised to invest too much money. Notwithstanding the source of his funds, his circumstances suggest that he had a reasonable amount of money available to maintain his standard of living without having to take any money from his investment.
- I note that Mr B didn't access the portfolio for 10 years or so, which, with the benefit of hindsight, suggests that he had access to adequate cash reserve and/or the investment met his income needs. I'm also mindful that Mr B received an income from Sterling Corporate Bond Fund to supplement his pension income. This would suggest that the investment met his income needs too.
- I'm aware of the points raised by the investigator in relation to market volatility between – including the China-US trade war, Brexit, and Covid-19 – which suggests that Mr B didn't need the money and was able to tolerate this level of volatility.
- In my opinion, the above suggests Mr B was comfortable with the recommendation rather than uncomfortable as suggested by the CMC. In other words, and on balance, I'm not persuaded that Mr B was advised to invest in a portfolio that he wasn't comfortable with. His subsequent behavior doesn't suggest that he was unhappy at all.
- On the face of the evidence, and on balance, despite what Mr B says, I can't safely say that the portfolio was unsuitable given the asset class and breakdown. In the circumstances, and on balance, I can't safely say that Mr B was advised to take an unreasonable level of risk to achieve his medium to long term investment goal.
- Given Mr B circumstances, and the source of the wealth, I don't agree that investing £60,000 in one fund with low risk was unsuitable. I note this was balanced out with investing £25,000 in a no-risk investment and another £25,000 in a medium risk investment.
- I note the CMC says that Mr B was in poor health, but there's no evidence that the business was made aware of this. In the absence of any evidence that the business was aware – and ignored evidence of Mr B's vulnerabilities – I can't say that the business has done anything wrong. In any case, having health issues doesn't mean that it was wrong for Mr B to invest.
- In other words, a business can only advise on the basis of the information provided. If Mr B didn't provide certain information about his circumstances, I can't blame the business for not taking it into account.

I appreciate Mr B will be thoroughly unhappy that I've reached the same conclusion as the investigator, and I realise my decision isn't what he wants to hear.

I note the CMC believes that the business should pay him compensation, but I don’t agree, because I don’t think the business is responsible for any losses. Whilst I appreciate his deep frustration and anguish, I’m not going to ask the business to do anything.

On the face of the available evidence, and on balance, despite what Mr B says, I’m unable to uphold this complaint and give him what he wants.

My final decision

For the reasons set out above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 10 October 2023.

Dara Islam
Ombudsman