

The complaint

Ms C's complaint is about the investment losses she has experienced on her investment stocks and shares Individual Savings Account ('ISA') with Santander UK Plc. She says Santander hasn't contacted her since she took out the investment in 2012 to reassess her risk and circumstances despite her understanding that she was paying an annual fee for advice. Ms C also complains that, when her investment started to lose money in 2022 and she raised concerns, she was told to 'give it three months.' She says this led to further losses, and because she couldn't get any help, she had to sell and close her investment. Ms C is seeking compensation for her investment losses and the costs she paid for a service she didn't receive.

What happened

Our Investigator thought that the Financial Ombudsman Service couldn't consider Ms C's complaint. Ms C disagreed with the investigator's opinion. The complaint was then passed to me.

I issued my provisional decision saying that the Financial Ombudsman Service couldn't consider part of Ms C's complaint and that I didn't intend to uphold the part of the complaint the Investigator hadn't addressed. A copy of the background and circumstances leading up to the complaint, and my provisional findings, are included below and form part of this final decision.

Santander said it had nothing further to add in response to my provisional decision.

Ms C thanked me for my report and said that she understood part of her complaint was out of time – that was never her issue. She said her issue was that Santander lost her investment details and about the losses on her investment which started from March 22. She said she hadn't expected to have to remove the money invested with Santander with the losses she experienced.

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, because neither party has given me anything new to consider, I see no reason to change my mind. So I reached the same overall conclusion as my provisional decision and for the same reasons.

My final decision

My final decision is:

- I cannot consider Ms C's complaint that Santander UK Plc has not contacted her since 2012 to review the ongoing suitability of her investment, which is what she thought she was paying for, because it has been brought out of time. And I'm not

persuaded there are exceptional circumstances here.

- I do not uphold Ms C's complaint that Santander UK Plc told her to hold onto her investments and that the subsequent lack of help led to further substantial losses. So, I make no award in Ms C's favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 12 June 2024.

My provisional decision

I've considered the relevant information about this complaint.

Having done so, I'm issuing a provisional decision first because I don't think the Investigator's assessment provided a complete answer to the complaint points Ms C raised. And while typically the complaint points raised would require me to separate out the issues of jurisdiction (whether we have the power to consider part of the complaint) from the merits (making a finding on the substance of the other part of the complaint) in the interest of simplicity and expediency, I intend to combine the two in one decision.

I'll look at any more comments and evidence that I get by 14 May 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Ms C's complaint is about the investment losses she has experienced on her investment stocks and shares Individual Savings Account ('ISA') with Santander UK Plc. She says Santander hasn't contacted her since she took out the investment in 2012 to reassess her risk and circumstances despite her understanding that she was paying an annual fee for advice. Ms C also complains that, when her investment started to lose money in 2022 and she raised concerns, she was told to 'give it three months.' She says this led to further losses, and because she couldn't get any help, she had to sell and close her investment. Ms C is seeking compensation for her investment losses and the costs she paid for a service she didn't receive.

What happened

Ms C complained to Santander about her investment on 5 December 2022. Ms C expressed broad concerns about feeling uneasy at losing money, her disappointment at not having received a review of her circumstances since the investment began in 2012, which she thought she was paying for, and she questioned why she was recommended a low-risk portfolio.

On 11 April 2023, Santander issued its response to the complaint saying that it believed the complaint had been made out of time – i.e. more than six years since the event complained of and more than three years from when Ms C knew or ought to have known she had cause for complaint. It said Ms C's investment was taken out in 2012. It said since November 2016, Ms C's regular statements showed she had made large losses. And by November 2018, which showed she'd made a loss of over £1,600, it believed she had sufficient information to have been aware of all the complaint points and know she had cause for complaint.

It said because this is more than six years since the start of the investment and more than three years from when Ms C was aware she had cause for complaint, her complaint was out of time. It said it didn't agree we could look at the complaint.

Dissatisfied with its response, Ms C referred her complaint to us. She said it was only in March 2022 when she noticed her investments were losing money. She said she contacted Santander for advice, but she was usually told they couldn't give advice. But she said, when she took out the investments, she was told she would pay an annual fee for advice. She said in September 2022 she was prompted to sell her investment because of the losses, which is what then prompted her complaint to Santander.

In submitting its business file, Santander provided a call recording of a phone conversation Ms C had with its investment centre in September 2019 about a fall in her income payments. It said Ms C was told in this call that Santander didn't provide advice and that if she wanted advice, she would need to seek independent financial advice. It said its agent read out a script in the call which explained that it was the customer's responsibility to ensure the ongoing suitability of their investment. So, it said Ms C was aware at this point that she had not paid for on-going advice, so her complaint was out of time. It also provided a call recording from February 2022 in which Ms C arranged to speak to a financial planning manager about her investments the following day, and a system file note which recorded that the financial planning manager gave Ms C factual information during the call.

One of our Investigators looked at things and they concluded we couldn't consider Ms C's complaint because it was brought out of time. They said while Ms C indicated it was only in 2022 when she noticed the losses on her investment, as Santander had explained, her regular statements prior to this had shown noticeable continuous decreases. They said having listened to the phone call Ms C had with Santander in September 2019, they thought this was the latest point Ms C ought reasonably to have been aware she had cause to complain. So, they said, because Ms C's complaint was made later than six years from when the investment started and more than three years from when she became aware of cause for complaint, it was out of time. And they said they weren't aware of any exceptional circumstances which prevented Ms C bringing her complaint within the time allowed.

Ms C disagreed. She said that her complaint isn't about what happened in 2019 – it's about what happened in March 2022 when she started to lose money. She said her investment steadily lost money over the following months and because she couldn't get any help, she closed the account with a loss of over £8,000.

Because the Investigator wasn't persuaded to change their opinion, the complaint was referred to me for a decision.

What I've provisionally decided – and why

Why I can't look into part of Ms C's complaint

I can't look at all the complaints referred to me. The rules applying to this service say that, where a business doesn't agree, I can't look at a complaint made more than six years after the event being complained about – or (if later) more than three years after the complainant was aware, or ought reasonably to have been aware, of their cause for complaint. Unless the complainant referred the complaint to the business or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received. Or unless, in the view of the Ombudsman, the failure to comply with the time limits was as a result of exceptional circumstances. This is Dispute Resolution rule 2.8.2R(2) – which can be found online in the Financial Conduct Authority's ('FCA') handbook. And in this case Santander hasn't agreed.

Ms C complained to Santander about her investment ISA in December 2022. This is more than six years after Ms C took out her ISA – in 2012 – which I think is the event Ms C is complaining about. Ms C has referred back to the original advice when talking about her

complaint and that she has not received any proactive contact from Santander since it began in the form of reassessments, reviews or advice to see if the investment was still suitable for her.

So, I need to think about whether Ms C's complaint about these things was made within three years of when Ms C knew, or ought reasonably to have known she had cause to complain.

Ms C says that she noticed in March 2022 that her investments were losing money. She says this is when the problems first came up and she wasn't able to get the help she wanted from Santander. But given what Mrs C is complaining about and how she's articulated her complaint to both Santander and to us, I think she should reasonably have been aware she had cause to complain about these things more than three years before she did. I'll explain why.

Santander has quoted the values of Ms C's investments from the statements she received covering the period from September 2017 to November 2018. These show that Ms C's investments showed losses of just under £3,500 in total during this period. And given the value of Ms C's investments, in percentage terms the drop was relatively large. So, by November 2018 Ms C was reasonably aware her investments were losing money. She was also aware by this point that she had not received any proactive contact from Santander in the form of annual reviews, ongoing advice or any reassessment of the suitability of her investments based on any change in her circumstances or the drop in value of her investments.

Furthermore, in September 2019, Ms C phoned Santander because she was concerned about the fall in the income she was receiving from her investments and she wanted to understand why. I've listened to the recording of this call. Ms C describes the fall in her income payments as "drastic." In my view, Ms C appears concerned about the falls and the reasons why. Importantly in my view, during this call the Santander staff member made it clear that they were unable to provide advice. They told Ms C that the advisers in the branch network cannot provide her with advice, and that if she wanted advice she would need to seek independent financial advice. The staff member also said that it was Ms C's responsibility for the ongoing suitability of the investments she held.

So, at the latest, this is the point that I think Ms C ought reasonably to have been aware she had cause to complain. Ms C was sufficiently concerned about the performance of her investment and the fall in her investment income to make contact with Santander and seek an explanation. And she was told here that it was her responsibility to ensure the ongoing suitability of her investment. So, if as Ms C says she understood that she had been paying an annual fee to Santander since 2012 for ongoing advice, which she hadn't and wasn't going to receive, I think she was reasonably aware at this point that something might have gone wrong and so had cause for complaint.

Three years from September 2019 is September 2022. As Ms C didn't complain to Santander until December 2022, this part of her complaint is out of time under the rules I have to apply.

I can still look into complaints made outside of the time limits, if I'm satisfied the failure to comply with them was due to exceptional circumstances. But I've not seen anything to persuade me that exceptional circumstances apply in this case.

So, I'm sorry to disappoint Ms C, but I intend to reach a decision that I cannot consider the part of her complaint which relates to the lack of ongoing or proactive advice from Santander on her investments since 2012.

Ms C's complaint about the events in 2022

What I've provisionally decided – and why

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

I think Ms C has had some difficulty in expressing or articulating the precise nature of her complaint. I think part of the reason for this is because Ms C felt that she had to go back to the beginning of her investment in 2012 and tell the whole story because Santander couldn't initially locate her details. But part of our role is to help establish this so that we can provide an answer that fully addresses the complaint made. I'm not persuaded our Investigator did that in this case.

Ms C has referred in her complaint to distinct events in 2022 – i.e. being told by Santander to hold onto her investments for a further three months and that she couldn't then get any help from them – which led to further investment losses she wasn't expecting and couldn't afford. She says this led to her selling her investments in September 2022 at a substantial loss.

I've therefore considered these things – events complained about which I'm satisfied have been made in time.

Firstly, I can see that Ms C spoke with a Santander financial planning manager about her investments in February 2022 – a meeting arranged following her call into Santander's investment contact centre in which she expressed her concern about the fall in the value of her investment. Santander's system file note records that the adviser provided Ms C with factual information, which I consider reflects what's recorded in the file note. The note says that Ms C wanted to look at whether other funds might be more suitable and was made aware there would be a fee for any advice given. The note also says that Ms C was aware that her investment value was affected by international events having an impact on the markets. Santander says Ms C did not pay a fee for any advice.

So, while I accept it is possible Ms C was told by the adviser she should wait and hold onto her investment for another three months and come back to them again if she remained unhappy, the evidence from the time does not suggest to me that this is more likely than not what happened. And importantly, I've seen no evidence to persuade me that Santander provided Ms C with advice to maintain her investments or that the ongoing suitability of it was considered in light of her circumstances at the time. I think the discussion Ms C had with the adviser was a general one as the system note describes.

Ms C has also said that following this she couldn't get any help from Santander, which led to her selling her investments at a substantial loss. And as part of this she has referred to not being able to get back in touch with the financial planning manager.

Santander has provided evidence (call recordings) of three further phone calls Ms C had with Santander in June and September 2022. I've listened to these calls. There is nothing within these calls to suggest that Ms C was prevented from getting back in touch with the financial planning manager or that she was having problems reaching them. It seems to me that Ms C didn't have the name or contact details of the person she spoke to. So, I don't think there was any failing here.

I've also not seen anything to show that Ms C couldn't or she was prevented from getting help from Santander at this time. The investment contact centre agents she spoke to could only talk in general terms and carry things out on an execution-only basis – i.e. on Ms C's explicit instruction only. And while there was a degree of misunderstanding on Ms C's part

about what she was told her options were for her investment during the phone call in September 2022, I think she was presented with the appropriate options and it was made clear to her that things could only be carried out on an execution only basis.

I think it's likely that the reason Ms C says she couldn't get any help from Santander in 2022, which led to her selling her investments is because she wanted Santander to provide her with advice on what she should do in light of its fall in value. But it should not have come as a surprise to Ms C that its investment contact centre agents could not provide investment advice. She'd been told this on a number of previous occasions. She'd also been told that an advice fee applied if she wanted advice from a financial planning manager or she could seek independent financial advice. And if Ms C's point about this is broader to the extent that she thought she was paying an annual fee for ongoing advice from Santander, then as I said in the first part of my decision, any complaint about this is out of time.

So, while I understand Ms C is disappointed and feels Santander did not help her in 2022 when her investments continued to fall in value, I don't think Santander did anything wrong here or is responsible for the losses she describes. Ms C's decision to sell her investments was ultimately her decision and if she wasn't sure what she should do, she could've sought advice.

So, I don't intend to uphold this part of Ms C's complaint.

My provisional decision

My provisional decision is as follows:

- I cannot consider Ms C's complaint that Santander has not contacted her since 2012 to review the ongoing suitability of her investment, which is what she thought she was paying for because it has been brought out of time. And I'm not persuaded there are exceptional circumstances here.
- I do not uphold Ms C's complaint that Santander told her to hold onto her investments and the subsequent lack of help she says led to further substantial losses. So, I intend making no award in Ms C's favour.

Both parties should now let me have anything they want me to consider in response, in writing by the deadline provided and before I reach my final decision.

Paul Featherstone
Ombudsman