

The complaint

Mr and Mrs F complained that Santander UK Plc misled them about risk when they invested in a Direct Share scheme in 2011. They are unhappy that their investment lost nearly £12,000 in value and they want Santander to pay them financial compensation and redress for the stress they've been caused.

Mr and Mrs F are being assisted in this matter by their representative. I am grateful to the representative for the assistance provided throughout in dealing with this complaint.

What happened

Mr and Mrs F opened a joint Direct Share investment in August 2011 and paid in £48,640. The Direct Share produced over £21,000 in income in the 11 years they held it, before full surrender in June 2022, when they received back £47,039.76.

Mr F mainly complained that this investment didn't reflect their attitude to risk and that there had been a '*long and careful*' conversation with Santander when Mr F said he had made it very clear, repeatedly, that he and his wife did not want to invest in any policy where '*we had any chance whatsoever of losing funds.*' He also relies on a '*sheet of workings*' – handwritten notes which Mr F says the advisor prepared during the meeting, as evidence that the investment was described to him as 'SAFE' at the point of sale.

When Mr F complained to Santander, it didn't uphold the complaint. It explained that due to the passage of time it no longer had paperwork from the point of sale in 2011. But it said its investment advisor would have known that a Direct Share investment would constantly fluctuate in value in line with the underlying assets the fund was invested in, and so would not have told a customer that this was a '*safe*' investment. Santander also said the Sterling Bond Income Portfolio Mr and Mrs F were invested in was designed to produce regular income for them – which it had done.

Mr F was unhappy with this response and brought his complaint to us. Based on the limited information the parties were able to provide, our investigator felt there wasn't enough information to be able to say that Santander had made an error or treated Mr and Mrs F unfairly. So she didn't uphold this complaint.

Mr and Mrs F disagreed with the investigator. On their behalf, their representative mainly expressed concern that the investigator had come to a premature view which was unfairly based on information provided by Santander that she had not shared with Mr and Mrs F and said that there were factual inaccuracies in her view.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

'I've carried out an independent review and having done so, I've reached the same conclusion as our investigator. I'll explain my approach and how I've reached my decision.

Where complaints concern something that happened more than six years ago, the Financial Ombudsman Service can't always look into what happened. Santander has however given its consent to us investigating Mr and Mrs F's complaint about what happened in 2011 so I am satisfied this is a complaint I can look at.

....It's my understanding that the crux of Mr F's argument is that Santander told Mr and Mrs F the Direct Share investment would not expose them to the risk of financial loss.

There's only limited information available. Unsurprisingly, after so many years Santander cannot now provide point of sale documents, but that's not a reason for me to uphold the complaint.

I've taken into account that Mr F says he has a clear recollection of the meeting with Santander in 2011 and based on what he told Santander about his risk approach, he understood that the Direct Share scheme would hold no risk at all. Mr F put things this way: *'...I made clear repeatedly that everything had to be made safe, because I was not in a position where I could afford to lose a penny. I repeated this over and over. In response, the bank official stated that in the policy in which I was encouraged to place my money there was no chance of my losing money at any stage, and that "every penny in the account will be totally safe"...*

Mr F says this exactly reflects what Mrs F also remembers about the meeting.

I have no reason at all not to think that Mr and Mrs F are certain about what they've told us. But what Mr F recalls about what Santander said concerning the risk presented by the Direct Share investment isn't enough for me to be able to uphold their complaint. I must look at all the available information and decide what I think is most likely on a balance of probabilities. This means making some reasonable assumptions where there's only limited information. And I must be impartial.

It wouldn't be surprising to me that Mr and Mrs F had forgotten some of the exact details of discussions from twelve years ago and I'm mindful that they believe the Direct Share investment has returned a loss for them, which I think might unconsciously have coloured their memories of that meeting in 2011. I must also consider that what actually happened following the meeting seems to be at odds with Mr F's recollection of events and how he's described his feelings about risk at the time.

For example, Mr and Mrs F also each invested £10,680 in Individual Savings Accounts ('ISAs') as a result of their discussions with Santander at the same meeting. Described by Santander as 'Investment ISAs', I think these were probably stocks and shares ISAs – so liable to fluctuate in value according to how stock and assets they were invested in performed in the markets and potentially more risky than cash ISAs. From what he's said, Mr F seems to have been aware that the money invested *'...could have garnered interest safely: for example, in an appropriate bank deposit account...*'. So it does look like Mr and Mrs F wanted to obtain investment advice and they each took out other investments at some risk, which they haven't complained about, which suggests they were open to the idea of investment. They were aware that there were lower risk investment options available when they chose to invest in the Direct Share scheme. I think it's fair to say that this information suggests Mr and Mrs F were prepared to take at least some risk with some of their money.

I don't find that the 'sheet of workings' Mr F relies on in support of his complaint could have been produced by the advisor Mr and Mrs F took advice from in 2011. I say this because the other information recorded shows details that reflect account balances and money movements in March 2019 – not 2011.

I think it's likely that Mr F may be recalling a different meeting with Santander that took place around the time Mr and Mrs F closed their ISAs. The sheet records that the ISAs were '*closing*', which happened on 18 March 2019, and the proceeds Mr and Mrs F received when this happened very closely reflect the value that was written on the sheet (allowing for price movements during the time it took to process their instructions). Their joint investment, the subject of this complaint, shows a balance (...) which is more than the opening balance. It's reasonable to conclude from this that the sheet can't have been written at the initial meeting in 2011 since Mr and Mrs F hadn't at that stage invested in the ISAs or the Direct Share scheme so there would have been no values for the '*ISAs*' and the '*Joint Investment*', nor would the ISAs be '*closing*'. For these reasons, I don't consider that the '*sheet of workings*' can be relied on to show that Santander told Mr and Mrs F that their joint investment was '*safe*' in 2011. And, on balance, I consider it unlikely that Santander would have made any such claim.

It looks like the fund risk rating in 2011 was '*lower*' so it's possible that this is why Mr and Mrs F recall thinking this investment was '*safe*' as it could have been described as less risky than some other investment options.

Santander has said that Mr and Mrs F were looking for an investment that provided regular income. Mr and Mrs F had lump sums available to invest and the Direct Share scheme invested in the Sterling Bond Income portfolio offered them this option. Given the investment goal of receiving regular income, I think that Mr and Mrs F likely would've needed to invest some money in a risk-based investment – not least because of the risk that inflation could erode the value of deposit based savings over future years and money kept in a savings account would be unlikely to generate the sort of income returns that investment in the Direct Share could potentially (and in the event, did actually) offer.

Santander said Mr and Mrs F were sent twice-yearly statements on the Direct Share until late 2016, when the investment was migrated to Santander's Investment Hub online platform and quarterly statement information was then available. I've seen information showing that regular statements were produced and sent to Mr and Mrs F at their correct address. I can't fairly hold Santander responsible for Mr and Mrs F feeling that they didn't need to check their statements too carefully so that they were surprised to discover the value of their investment falling after August 2021.

Mr and Mrs F have referred to their Direct Share investment making a financial loss, which they have worked out by assuming that on 16 August 2021 it was worth £58,700 and they got back only £47,039.76 on surrender the following June – a difference of around £11,661 which they view as a shortfall. But there's another way to look at this.

Their August 2021 Hub quarterly statement shows that on 16 August 2021 in their Direct Share investment Mr and Mrs F had (just under £3,500) in cash, accumulated from monthly income distributions in the Hub Cash Account, and the actual Direct Share investment was worth (over £55,000). Whilst that's still more than the amount achieved on surrender, this investment was geared towards providing a regular income – this impacted on how much (if at all) the investment was likely to grow in value. And the nature of this sort of investment is that values go up and down – as Mr and Mrs F's regular statements over the years would have shown.

I hope it is some reassurance to Mr and Mrs F to consider that the way they have worked out their 'loss' doesn't properly reflect the fact that the investment wasn't primarily designed to provide capital growth and they actually made a 40% return over the 11 years they held it, taking into account the amount of their investment, the income it paid them and the surrender value.

In order to uphold Mr and Mrs F's complaint, I would have to find that Santander made an error or acted unfairly or unreasonably. To sum up, I haven't seen enough to be able to conclude that Santander wrongly told Mr and Mrs F that investment in the Direct Share was 'safe' in 2011. And, looked at overall, the Direct Share appears to have fitted Mr and Mrs F's investment purposes at the time (giving them the prospect of a regular income) and it was, relatively speaking, a 'lower' risk investment which broadly reflected what seems to have been Mr and Mrs F's attitude to risk at the time, as evidenced by what they've said and how they invested elsewhere. After having taken into account everything that Mr F and Santander have told me, I haven't seen enough to show that Santander did anything wrong or that it treated Mr and Mrs F unfairly or unreasonably. So I can't uphold this complaint.

If I have not referred to each and every point mentioned during the course of the correspondence about this complaint, that's because I've concentrated on what seems to me to be the core issue I need to address when deciding the complaint. But I will just mention a particular concern raised by Mr F, about the way Santander handled his complaint.

The industry regulator, the Financial Conduct Authority (FCA), says our service can only look into complaints about regulated activities, and complaint handling isn't a regulated activity. I appreciate Mr F feels that Santander should have looked more thoroughly into the meeting in 2011, by trying to trace the advisor he spoke to for instance, and he disagrees with what Santander has said in response to his complaint. Based on a phone call, there seems to have been a misunderstanding about whether Mr F was also complaining about Santander not having closed an account in 2011. Santander addressed the complaint issues it understood Mr F was raising. I don't think the way it responded to this complaint was unreasonable and it doesn't affect the outcome I've reached.

I hope setting things out this way helps to explain how I've reached my conclusions and that this will assist Mr and Mrs F and their representative to direct any further comments they may still wish to make.'

What the parties said in response to my provisional decision

Mr and Mrs F reiterated their main argument that Santander had assured them that their investment was 'safe', even going so far as to write this down, and repeated that '*it was made clear to them the relevant funds could not go down*'. They say that had they not received this assurance, they would not have moved these funds and not suffered loss. In support of their position, they point out that they moved other monies where there was risk.

Santander told me it agreed with what I'd said and had nothing further to add.

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.

I appreciate that Mr and Mrs F feel strongly about what happened and they hold a different view to me. I would like to assure them that I've taken carefully into account everything that's been said, including all their comments in response to my provisional decision. Mr and Mrs F haven't however provided me with any new information that changes what I think about this case. I'd already considered the main points mentioned above when thinking about my provisional decision and addressed all the points raised which had a bearing on the outcome.

After taking carefully into account everything that's been said in response to my provisional decision, and as no further comments have been received that change what I think about this case, I still think it's fair not to uphold this complaint for the reasons I explained in my provisional decision.

My final decision

For these reasons, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 5 February 2024.

Susan Webb
Ombudsman