

The complaint

Mr T has complained about the interest rates National Savings and Investments ('NS&I') applied to his Guaranteed Growth Bonds ('GGB') when he renewed them in 2020 upon maturity.

What happened

Mr T had two bonds which were coming to maturity in December 2020. One on 11 December (account number ending 1845 – 'Bond A') and the other on 12 December (account number ending 7356 – 'Bond B'). The auto-renewal option for both bonds was for a three-year term at an interest rate of 0.4%. The NS&I system allowed for a customer to go online to choose their options for maturing bonds a month before maturity.

After receiving the maturity letters in November Mr T went online to review the options available and was offered the following:

- One-year term at 1.10%
- Two-year term at 1.20%
- Three-year term at 0.4% (the auto-renewal rate)
- Five-year term at 1.65%.

On 16 November Mr T chose the following options online:

- For Bond A he chose –
£10,675.26 invested into a five-year term GGB at 1.65%
- For Bond B he chose –
£7,472.68 invested into a one-year term GGB at 1.10%.

The interest rates that were actually applied were different:

- For Bond A the interest rate was 0.55%
- For Bond B the interest rate was 0.10%.

Mr T wasn't happy with the interest rates that were applied, and he raised a complaint.

In NS&I's final response letter it said:

- On 11 and 12 November it had sent him secure messages confirming his two GGBs were coming up to maturity. When Mr T had gone online to make his choices on 16 November the website showed incorrect interest rates.
- After the bonds matured Mr T was sent maturity statements confirming the new investments with the correct interest rates.

- It offered Mr T the option to close his account without penalty and it offered its apologies and paid £30 into Mr T's bank account for the inconvenience caused.

Mr T wasn't happy with the response and told us:

- What NS&I had done may be illegal under online consumer contract law. NS&I should honour the interest rates he had committed to.
- NS&I's application of its rules was one-sided.
- The point made about the maturity letters was irrelevant. His correspondence with NS&I was electronic. He had received an email saying his GGBs were coming up for renewal and was directed to the website. He had gone onto the website to renew his maturing bonds and selected the term lengths and the interest rates that were offered. He didn't read the letters that had been sent separately and even if he had, the interest rates may have changed in the meantime, and he questioned how was he to have known they were wrong when he applied online.
- Mr T also told us he had checked the terms and conditions and they were showing even higher interest rates so contacted NS&I via an online chat to let them know and the person he chatted to didn't understand what he was trying to say and closed down the chat.
- Mr T had committed to the interest rates he was offered when he made his online selection.
- The option NS&I offered of closing his account would cost him hundreds of pounds over five years and he thought legally and morally NS&I should honour the original rates.

The investigator who considered the complaint thought that NS&I should do more than it had already offered. They said:

- It had been agreed this was an error on NS&I's website but rather than asking NS&I to honour its mistake the investigator would consider what Mr T would have done if he had been provided with the correct information at the time he renewed his bonds.
- Mr T had said that if he had known the actual rates he would likely have shopped around and thought that those comparable interest rates would have been about 1% or more.
- The investigator thought Mr T had lost out financially because of NS&I's error.
- The final response letter clarified the correct interest rates and it was the point at which Mr T could have moved his money to earn a better interest rate.
- The investigator didn't think it was unreasonable for Mr T to have relied on the information he saw online.
- As it couldn't be known what Mr T would have invested into if he had been aware of the correct interest rates, the investigator reviewed interest rates from the time. She thought for Bond A Mr T could have earned around 0.90% on a five-year bond. For Bond B he could have earned around 0.5% on a one-year bond.
- The investigator said NS&I should pay those rates from the start date of the new bonds to one week after the final response letter was issued.
- The investigator also thought Mr T should not pay any exit fees if he chose to

leave. In response to the investigator Mr T made some points:

- With reference to consumer finance law, surely this service had a role in upholding the law for consumers. Mr T had made an online contract with NS&I and why was it that NS&I could walk away from the contract.
- He didn't think it was right to stop the higher interest payment in March 2021. Mr T had left his money in the bonds as he believed NS&I should honour the rates.

NS&I didn't agree with the investigator. In its response it said:

- It didn't agree redress should be offered to one week after the final response letter was issued. It said that after maturity of the bonds it had sent Mr T maturity statements showing the correct interest rates and gave him the right to cancel within 30 days.
- When Mr T called in December it had explained the difference in rates.
- It had offered Mr T cancellation in December, but he hadn't taken that option and the funds remained invested.

The second of our investigators who considered the complaint asked for further information from NS&I. And after reviewing the information received issued an additional opinion about the complaint. He said:

- He remained of the opinion it wasn't unreasonable for Mr T to have relied upon the online interest rates at the time of the renewal and he thought it was fair to use the final response letter dated 18 March 2021 as notification of the correct rates that applied.
- Mr T had been caused frustration and inconvenience and some financial loss and could have shopped around for a higher interest rate. But he also thought it wouldn't be fair to expect NS&I to provide the higher interest rate for the entire bond term after Mr T had been made aware he could cancel without charge.
- He thought the £30 payment was fair for the inconvenience caused but that Mr T should be refunded the difference in interest rates between the start date of the new bonds in December 2020 and one week after the final response letter was issued – so 25 March 2021. Again, this was to allow a week for Mr T to shop around if he wanted to. He also thought Mr T should be able to exit without penalty.

NS&I didn't agree with the investigator:

- Mr T called NS&I on 5 January 2021 requesting the cooling off period be extended until the complaint was investigated by NS&I, to which it agreed, as well as a penalty free exit in its final response. Mr T remained invested.
- The maturity letters it said it sent in November included a summary box which confirmed the correct interest rates as did the maturity statements dated 9 and 14 December as well as including the cooling off period of 30 days in the latter.

Both parties asked for an ombudsman to consider the complaint. And Mr T made some comments for the ombudsman to review:

- Mr T didn't recall in detail the call of 5 January 2021 but thought that what NS&I had said made sense. He had not been told of the outcome to his complaint at that point and it would have been logical for him to ask for an extension to the 30-day cooling off period until the outcome was known.
- Mr T had remained invested as he hoped the ombudsman would find in his favour and compel NS&I to honour the interest rates that he had applied for.

- NS&I had agreed its website showed the wrong interest rates at the point of renewal. There was nothing in the terms and conditions tick box compelling Mr T to read the renewal letters or that NS&I could unilaterally break the online contract. The maturity letters were irrelevant as Mr T went straight to the renewal options on NS&I's website. And he reiterated the point about how he was to know the rates hadn't changed from when the letters were sent to when he went online – which he would expect to be more up to date than the letters.
- Mr T said that he believed he had agreed to an unbreakable online contract and if NS&I was legally allowed to unilaterally change the contract they had with him then the investigator's proposed solution was fair. But if NS&I was not legally allowed to change an interest rate unilaterally then it wasn't a fair outcome and he would welcome an ombudsman's view.
- He felt strongly this service needed to take a view on the legality of what NS&I had done in changing the terms of the contracts.

As both parties requested the complaint be reviewed by an ombudsman, it was passed to me for decision. I issued my provisional decision explaining that I intended on reaching a different conclusion than the investigator. But I asked both parties to give me anything further they wanted me to consider before I issued my final decision. Here's what I said;

"The contract

Mr T has requested that I consider whether NS&I was legally allowed to unilaterally change the contract he had with it when it altered its interest rates that applied to his renewed bonds. This service's role is to decide whether a firm acted fairly and reasonably in the individual circumstances of a complaint. While its clear it would be for a court to decide whether a contract was formed, breached or how to remedy it – I consider it appropriate for me to have regard to the relevant law when considering what leads me to a fair and reasonable outcome.

And for Mr T's complaint, the relevant law I have to take into account is contract law. I say this because I don't think it's unreasonable to conclude – or that its disputed by the parties – that a contract was entered into between Mr T and NS&I when he renewed his bonds online. Mr T was offered interest rates specifically for his account and which he went onto accept. NS&I offered terms to Mr T and he accepted those terms.

I also think it's reasonable to say that it's accepted by the parties that NS&I made an error when it says it misquoted – on its website – the interest rates that would apply to the renewal of Mr T's bonds. It acknowledged this in its final response letter to Mr T's complaint. The error wasn't caused by Mr T.

So, this was an error made by only one of the parties. In other words, it was a unilateral mistake – or unilateral change – as referred to by Mr T in his response to the investigator. And inevitably, in some circumstances, a unilateral mistake can lead to an unfair advantage to one of the parties to the contract. That is the case here and that party is Mr T as NS&I has said the rates he renewed his bonds at should never have been offered and were higher than the rates that it actually offered.

Bearing the above in mind, I have gone onto consider the impact of this unilateral mistake on the outcome to Mr T's complaint and what would be a fair resolution.

In order for a unilateral mistake to void a contract – which is effectively what NS&I wants to do here – there are two key points that need to be considered. The first is whether the

mistake relates to the fundamental terms and conditions of the contract. And the second is whether, in this case, Mr T was aware of the mistake and used it to his advantage.

*Did the mistake relate to the fundamental terms and conditions of the contract?
Here, the mistake related to the interest rates to be paid on the bonds being renewed. I don't think it's unreasonable to conclude that the interest rates are fundamental to the terms and conditions of the contract for both parties.*

From Mr T's perspective, it was the sole purpose of the bonds. For him, in exchange for investing his funds with NS&I, he was to receive a fixed interest rate for a fixed term in return. Mr T has made clear he would have looked elsewhere – he would have shopped around or invested for a longer term with another provider – if the interest rates NS&I offered weren't attractive. So, I think it's reasonable to conclude that from Mr T's point of view those rates were fundamental to the terms and conditions of the contract he entered into. It was his primary reason for investing with NS&I.

And equally I would say the same for NS&I. As part of its business, it needed to offer competitive enough interest rate returns for it to be an attractive opportunity for investors over and above other product providers.

Overall, I'm satisfied both parties would have considered the interest rates being offered as fundamental terms and conditions of the contract.

The second key point that needs to be considered for a contract to be void due to a unilateral mistake is whether the other party was aware of the mistake, and then used it to their advantage in forming that contract.

Was Mr T aware of the mistake and did he use it to his advantage?

I need to consider whether the interest rates were so obviously wrong, that Mr T was aware of the fact but continued investing in any event, to his advantage and consequently to NS&I's disadvantage.

First, I've considered the interest rates themselves and whether they were so fundamentally different to what was available in the market at the time so as to have caused Mr T alarm about their accuracy. Would those rates have appeared to Mr T as being a manifest error in that the rates quoted were so obviously wrong?

I think it's fair to say Mr T did have questions about the interest rates being offered. As I've mentioned above, he told us he had checked the terms and conditions at the time of the renewal in mid-November which he says he had to confirm he had read, and they were showing even higher interest rates. He told us he tried to tell NS&I – via its online chat system – that its online system was showing lower interest rates than its terms and conditions. But he said the person he chatted to didn't understand what he was trying to say, and the chat was cut off.

NS&I has referred to the maturity letters which were sent to Mr T in November 2020 which included the correct interest rates. Mr T has said they were irrelevant as he went online and relied on the rates that were quoted there. I don't think that's an unreasonable point to make. And as mentioned above, I accept his point that the rates could have changed between the time he was sent the maturity letters and when he applied online which no doubt he would have considered to be more up to date in any event. I also accept he could only select what he was offered when he went online, and I agree that he wouldn't know if NS&I were displaying incorrect interest rates when he made his choice.

After reviewing the research carried out by the investigator – who established that for both a one- and five-year bond using deposit amounts of £5,000 or more and £10,000 or more Mr T could have earned around 0.90% on a five year bond and around 0.5% on a one-year bond – I don't think the difference was so significant so as to make Mr T aware that they were obviously wrong and that he shouldn't commit to them.

And as evidenced by the varying rates Mr T was being quoted by NS&I online and in its terms and conditions etc, rates changes constantly, so any change from what he may have been quoted at the outset would not be unexpected, and I don't think would have caused concerns. In conclusion, I don't think that Mr T would have, or ought reasonably to known he was being offered mistaken terms.

Overall, I'm satisfied Mr T did act in good faith when committing to the bonds and I don't think that as a result of his reviewing the interest rates he would or ought reasonably to have concluded they were wrong. I haven't seen anything to suggest that Mr T was aware that the interest rates were wrong, and that he then went on to take advantage when he agreed to those rates.

I'm satisfied that for both tests – whether the mistake related to the fundamental terms of the contract, and whether the Mr T knew (or ought to have known) of the mistake and used it to his advantage – neither have passed for the consideration of whether the contract could be voided by NS&I.

As I've referred to above, I have to have regard to the relevant law when considering this complaint. But my remit is broader, taking account of all the circumstances to decide what is fair and reasonable. And having done so, here I'm satisfied it wouldn't be fair for NS&I to avoid the agreement it made with Mr T to pay interest rates of 1.65% for Bond A and 1.10% for Bond B. I accept it made a legitimate mistake, but both parties need to ensure they enter into agreements carefully. I've not seen anything here to persuade me it would be fair or reasonable for NS&I to change the term it offered to Mr T and that he accepted, after the fact.

I have to reach an outcome that I think is fair and reasonable and in the particular circumstances of this complaint it's the law that leads to the fair outcome. I don't think it would be fair and reasonable for NS&I to depart from the contract taking into account the two tests I have referred to. I'm satisfied it's important to be fair to both sides. And when a customer enters into an agreement in error, it isn't just the case they can back out. I think the same applies here so, I don't think it would be fair for NS&I to void the contract under similar circumstances such as are apparent here. I think the contracts Mr T entered into when he renewed his two bonds should stand.

Putting the matter right

I've concluded that I don't think the tests have been passed that would allow NS&I to void the contracts it entered into with Mr T when he renewed his bonds. It follows, that I'm currently of the opinion that it would be fair and reasonable for NS&I to honour those contracts – and the terms it agreed to – in November 2020.”

In response to my provisional decision Mr T said he was happy with the outcome. And he confirmed that he remained invested in the five-year bond, the one-year bond having matured in December 2021.

We didn't receive a response from NS&I.

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

In my provisional decision I said that in the particular circumstances of Mr T's complaint it was the relevant law – contract law – that I have to take into account, and which leads to the fair outcome. And in order for NS&I to void the contract the two elements of that law that I had to consider was whether the mistake related to the fundamental terms and conditions of the contract and whether Mr T was aware of the mistake and used it to his advantage.

In my provisional decision, I concluded that a unilateral mistake had been made by NS&I – that was accepted by the parties – and that mistake related to the fundamental terms and conditions of the contract – the interest rates. I also thought Mr T acted in good faith when he entered into that contract and hadn't knowingly taken advantage of NS&I's error. And I am still of the opinion that is what is relevant to the complaint.

On a similar case NS&I sent me a screenshot of what customers would see when they renewed their bonds and I think its likely Mr T would have seen similar. When Mr T gave his instructions, the website explained that the interest rate could change before the maturity date and he would be given the rate on offer when the investment matures. The customer was asked to tick to confirm they read the terms and conditions. And Mr T would have seen the annotation '*This interest rate could change between now and your maturity date. We will give you the rate on offer when your investment matures.*'

I've carefully considered this point, but I don't think that the inclusion in the summary box that interest rates could change between date of application and date of maturity makes a difference to my decision in this case. I say this because its known that the interest rates that Mr T was offered – and which I think he accepted in good faith – were actually offered in error. And I don't think it would be right for NS&I to rely on the summary box annotation to be a catch all for any potential errors it may make. I don't think that would be fair and reasonable to the consumer.

I think it would be reasonable to apply warnings to interest rates which were correctly offered and then did fluctuate, but this is a different. It's not the case here that the interest rates offered to Mr T fluctuated between acceptance and maturity. It's the case that the interest rates he was offered were wrong in the first instance so it doesn't follow that those particular interest rates would fluctuate as they were outside of the rates that were actually being offered by NS&I.

So, and referring back to the relevant contract law that I'm of the opinion applies to this complaint, I remain of the view that the tests haven't been passed that would allow NS&I to void the contracts entered into when Mr T renewed his bonds online.

Putting things right

To put the matter right NS&I should honour the contracts entered into and the interest rates that Mr T agreed to when he went online to renew his bonds in November 2020. Those interest rates should be applied from the date the earlier bonds matured and the renewed bonds started in December 2020 to the date of maturity.

My final decision

For the reasons I've explained I uphold Mr T's complaint and National Savings and Investments should put the matter right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 28 October 2022.

Catherine Langley
Ombudsman