

The complaint

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

What happened

Mrs T had two bonds which were coming to maturity in December 2020. One on 9 December (account number ending 0956 – 'Bond A') and the other on 14 December (account number ending 2061 – '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 Mrs 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 Mrs T chose the following options online:

- For Bond A she chose two new bonds –
 1. £26,752.56 invested into a one-year term GGB at 1.10%
 2. £80,000 invested into a five-year term GGB at 1.65%.
- For Bond B she chose –
 1. £21,350.51 invested into a two-year term GGB at 1.20%.

The interest rates that were actually applied were different:

- For Bond A the interest rates were 0.10% and 0.55% respectively
- For Bond B the interest rate was 0.15%.

After she checked the renewal interest rates for Bond A Mrs T complained to NS&I on 9 December. In NS&I's final response letter it said:

- The maturity letter of 9 November 2020 gave the correct information.
- When Mrs T had gone online to make her choice on 16 November the website

showed incorrect interest rates.

- After the bond (Bond A) matured on 9 December Mrs T was sent a maturity statement confirming the new investments with the correct interest rates.
- It offered Mrs T the option to close her account without penalty.
- It offered its apologies and paid £30 into Mrs T's bank account for the inconvenience caused.

(NS&I only referred to one of the bonds in its final response letter but confirmed with us that the complaint about both bonds could be considered.)

Mrs T wasn't happy with NS&I's response and told us:

- What NS&I had done may be illegal under online consumer contract law. NS&I should honour the interest rates she had committed to.
- NS&I's application of its rules was one-sided, and she gave the example that if she had made a mistake in committing to a five-year bond and then went back to NS&I later, she would not be able to withdraw from the contract.
- The point made about the maturity letter was irrelevant. Her correspondence with NS&I was electronic. She had gone onto the website to renew her maturing bonds and selected the term lengths and the interest rates that were offered. She didn't read the letter that had been sent separately and even if she had, the interest rates may have changed in the meantime, and she questioned how was she to have known they were wrong when she applied online. She hadn't been asked to confirm she had read the letter with the different interest rates shown.
- The option NS&I offered of closing her account would cost her thousands of pounds. She 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 there was an error on NS&I's website but rather than asking NS&I to honour its mistake the investigator would consider what Mrs T would have done if she had been provided with the correct information at the time she renewed her bonds.
- Mrs T had said that if she had known the actual rates she would likely have shopped around and thought that those comparable interest rates would have been about 1% or more.
- The investigator thought Mrs T had lost out financially because of NS&I's error between the date she invested into the new bonds (with effect from December) to the date NS&I issued its final response letter in March 2021.
- The final response letter had clarified the correct interest rates and was the point at which Mrs T could have moved her money to earn a better interest rate.
- The investigator didn't think it was unreasonable for Mrs T to have relied on the information she saw online.
- As it couldn't be known what Mrs T would have invested into if she had been aware of the correct interest rates, the investigator reviewed interest rates from the time. She took the average between the lowest and highest interest rates that were available for both a one- and five-year bond using deposit amounts of £10,000 or more and £50,000 or more. If that was the case, for Bond A Mrs T could have earned around 0.47% on a one-year bond and 0.81% on a five-year bond. For Bond B she

could have earned around 0.5% on a two-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. That additional week was to acknowledge it may have taken Mrs T that amount time to find another provider and arrange a transfer.
- The investigator also thought Mrs T should not pay any exit fees if she chose to leave.

In response to the investigator Mrs T made some points:

- With reference to consumer finance law, surely this service had a role in upholding the law for consumers. Mrs T had made an online contract with NS&I and why was it that NS&I could walk away from the contract.
- Mrs T's complaint was about the principle of financial institutions doing the right thing.
- She didn't think it was right to stop the higher interest payment in March 2021. Mrs T had left her money in the bonds as she believed NS&I should honour the rates and she was still going through the complaint procedure.
- She could have invested her money in many different ways and could have invested for longer terms with other institutions.

NS&I didn't agree with the investigator. In its responses 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 Mrs T maturity statements showing the correct interest rates and gave her the right to cancel within 30 days.
- Mrs T's husband had called NS&I in December and the different rates had been explained.
- It had offered Mrs T cancellation of the bonds in December, but she 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 a further opinion about the complaint. He said:

- He didn't think it was unreasonable for Mrs T to have relied upon the online information she looked at subsequent to the maturity letters being sent.
- When Mr T called the NS&I on 11 December 2020 one of bonds was discussed, and he didn't it was fair to apply this to the issues surrounding Mrs T's bonds. Other general points about interest rates were discussed so they also thought Mrs T wouldn't have been sure of the correct interest rates as they weren't clarified to the point it would've removed any doubt.
- And it was fair to say that Mrs T wouldn't want to make the significant decision of closing her account until she was certain of the correct interest rates as clarified in the final response letter.
- Therefore, he thought it was fair to take the notification of the correct rates as at the date of the final response letter of 18 March 2021 as there wouldn't have been any doubt about the interest rates that applied to the account in December 2020 wouldn't be changed and if Mrs T didn't accept those she could cancel.
- He thought the £30 payment was fair for the inconvenience caused but that Mrs 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 Mrs T to shop around if she wanted to. He also thought Mrs T should be able to exit the bonds without penalty.

NS&I didn't agree with the investigator:

- The maturity letters sent on 9 and 13 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.
- Mrs T had 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 penalty free exit in its final response. Mrs T still remained invested.

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

- Mrs T didn't recall in detail the call of 5 January 2021 but thought that what NS&I had said made sense. At that point she had not been told of the outcome to her complaint and it would have been logical for her to ask for an extension to the 30-day cooling off period until the outcome of her complaint was known.
- Mrs T had remained invested as she hoped the ombudsman would find in her favour and compel NS&I to honour the interest rates that she 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 Mrs T to read the maturity letters or that NS&I could unilaterally break the online contract. The maturity letters were irrelevant as Mrs T went straight to the renewal options on NS&I's website. And she reiterated the point about how would she have known the rates hadn't changed from when the letters were sent to the date when she went online – which she would expect to be more up to date than the letters..
- Mrs T said that she believed she had agreed to an unbreakable online contract and if NS&I were legally allowed to unilaterally change the contract they had with her then the investigator's proposed solution was fair. But if NS&I were not legally allowed to change an interest rate unilaterally then it wasn't a fair outcome and she would welcome an ombudsman's view.
- She 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 the complaint remained unresolved, it was passed to me for a decision. I issued my provisional decision that I thought it should be upheld but I asked both parties to give me anything they wanted me to consider before I issued my final decision.

In my provisional decision I said that the error was NS&I's and was a unilateral mistake. And in that case, in order for the contracts entered into to be voided under contract law there were two points to be considered. Whether the mistake related to the fundamental terms and conditions of the contract – which I concluded it did. And whether Mrs T was aware of the mistake and used it to her advantage – I concluded that she didn't.

So, I didn't think the tests had been passed which would allow NS&I to void the contracts Mrs T entered into when she renewed her bonds. And as a result NS&I should honour the contracts and the terms it agreed to in November 2020.

In response to my provisional decision Mrs T was happy with the outcome. She went onto explain that the one-year bond had matured on 9 December 2021 and after discussion with this service that it wouldn't prejudice her case, she encashed the two- and five-year bonds on 16 December 2021. She had taken up NS&I's offer to release her from the contracts early following its mistake.

NS&I also replied. It said the renewed contract dates should start with effect from 9 and 14 December 2020 when the earlier held bonds matured and not on the date Mrs T gave her instruction on 16 November.

Mrs T said she didn't read the letters NS&I had sent her. NS&I said if she had Mrs T would have been aware that it mentioned that *'we will give you the rate on offer when the investment matures.'* And that when Mrs T gave her instructions the website explained that the interest rate could change before the maturity date and she 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. NS&I has sent us a screenshot of what it says Mrs T would have seen at the time and I note it says *'This interest rate could change between now and your maturity date. We will give you the rate on offer when your investment matures.'*

It said it makes clear to a customer they will receive the rate on offer at maturity and gave 30 days cancellation if they no longer wished to invest. This was extended in the case of Mrs T who had encashed the two- and five-year bonds early.

Because of the information the parties had given me I issued a second provisional decision which said;

"In my provisional decision I said that in the particular circumstances of Mrs 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 condition of the contract and whether Mrs T was aware of the mistake and used it to her 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 Mrs T acted in good faith when she 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.

As I've mentioned above NS&I sent me a screenshot of what Mrs T saw when she renewed her bonds which was annotated that the interest rates could change and that the rate on offer when her investment matured would be applied to her renewed bonds. And Mrs T also had to acknowledge her acceptance of the underlying terms and conditions. I've carefully considered whether this should make a difference to the overall outcome to this complaint.

But I don't think 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 Mrs T was offered – and which I think she 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 Mrs T fluctuated between acceptance and maturity. It's the case that the interest rates she 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 currently remain of the view that the tests haven't been passed that would allow NS&I to void the contracts entered into when Mrs T renewed her bonds online.

Putting things right

Mrs T has told us the one-year bond has matured and that she encashed the two- and five- year bonds on 16 December 2021. In my provisional decision I said that for redress purposes the interest rates Mrs T agreed to in November 2020 should be applied until maturity of the bonds. At that time, I wasn't aware that Mrs T had encashed two of the bonds. This has an impact on how I think the matter should be put right.

We asked Mrs T what she had done with the funds she had received when she encashed the two- and five-year bonds. She told us she had reinvested the proceeds of both sales – less £50,000 – into a variable NS&I account and the interest rate is currently 1.2%.

So this changes how I propose to put the matter right as Mrs T can't benefit by receiving two lots of interest – the interest rates that applied to the two and five year bonds until maturity – as she would effectively be receiving interest from her reinvested funds in the variable NS&I account as well.

For the £50,000 that Mrs T didn't reinvest, it's impossible for me to know for sure whether she would have encashed her NS&I two- and five-year bonds early if it weren't for the website interest rate errors caused by NS&I. But it was Mrs T's decision to use this sum for other personal purposes. So, on balance I think it most likely Mrs T would have taken this amount out of her bonds and bearing in mind the amounts invested, I think it would be most likely have come from the five year bond where £80,000 was invested.

- *For the one-year bond which has already matured, Mrs T should be paid the offered rate of 1.1% until the maturity date.*
- *For the five-year bond, which was encashed in December 2021, Mrs T should be paid the agreed interest rates on the total £80,000 until the date of encashment. And thereafter should be paid the difference between the five-year bond rate and the NS&I variable account rate but on the reduced amount of £30,000 as a reflection of the £50,000 Mrs T chose not to reinvest.*
- *For the two-year bond, again which has been cashed, the interest rates agreed should be paid from the outset until the date of encashment. And after that Mrs T should be paid the difference between the interest rate she should have earned and what she earns on her NS&I variable account until maturity which is in December this year.*

Clearly the variable NS&I account interest rates may have changed over the period of investment and NS&I should reflect those changes to the interest rates that apply to the redress calculations.

I should also confirm that I remain of the view that the new contract dates were on the date that Mrs T agreed to the new terms. But accept that the new interest rates aren't applicable until after the original bonds matured."

Both parties responded to my provisional decision. NS&I said;

- It appeared that I was saying that if correct interest rates had fluctuated between renewal application and the start of the new contract then its warnings about the offer not being guaranteed would stand. But because it had quoted incorrect interest rates it has to honour those rates and its warnings about the wrong offer not being guaranteed didn't stand. It said this didn't seem fair to customers where it happens, and the rates are correct. Mrs T was getting treated more favourably and I'm allowing her to take advantage of what was essentially a mistake.
- It questioned my comment about whether Mrs T had been aware of the mistake and whether she used it to her advantage. In particular it mentioned the three-year term rate at 0.4% that was clearly lower than the other incorrect rates but Mrs T didn't query this with NS&I. The correct rates were always quoted in the summary, so it considered Mrs T had used the mistake to her advantage.
- It didn't agree that a customer entered a new contract at the renewal instruction stage but when the new contract begins, and the existing bond matures. That is why it offered a 30-day cancellation period from the start of the new terms. A customer can change or edit their instruction up to the point of the maturing date of the existing bond.

Mrs T was pleased with the outcome but was concerned I was being too generous to her. She said;

- She agreed with my point about the interest rates and warnings NS&I gave that they could be changed.
- There wasn't normally the opportunity to withdraw from these bonds once the 30-day cooling off period has passed. But NS&I had allowed Mrs T to get her money out of these products early. She initially wanted to wait until the outcome of her complaint with the Financial Ombudsman before she made any decision to withdraw but decided to do so in December 2021 and moved the money into an NS&I Direct Saver account. That account is more flexible, and she could do other things with the money, for example, invest in other higher interest-bearing accounts or use the money for other purposes.
- She thought it would be fairer along the following lines;
 - Mrs T agreed NS&I should honour the interest rates that were offered on the one-year bond and for the two- and five-year bonds but only up to the point she withdrew her funds in December 2021.
 - For the two and five year bonds NS&I should either pay no further interest in settlement as Mrs T was then free to do what she liked or it should honour the interest rates up to the point of my decision net of the money she has taken out of her Direct Saver account as described in my provisional decision. It didn't seem fair for NS&I to continue to pay extra interest beyond then as Mrs T was free to invest in other products – another product provider was now paying 3.5% on one of its bonds. Mrs T wasn't sure for what period I had meant NS&I to pay extra interest for.
 - Mrs T also said that the £50,000 I referred to in my provisional decision was in fact the sum of £30,000 and was taken out of the Direct Saver account –

£10,000 was withdrawn on 31 May 2022 and £20,000 on 16 September 2022.

In conclusion, Mrs T agree with the outcome albeit the redress should be as per one of the choices she referred to above.

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.

NS&I has said that I am favouring Mrs T over other customers when I say the interest rates she was offered should stand because it quoted the wrong rates and I was allowing her to take advantage of its mistake.

In my second provisional decision I said that I didn't think it would be fair for a summary box annotation – saying that interest rates could fluctuate between the date of application and the date of maturity of the existing bond – should be used as a catch all for any potential errors NS&I may make.

And I remain of that view. I think the two scenarios are distinct from each other. I think it would be fair to apply it when interest rates fluctuated, and the correct interest rates were given at the point of application. But in the case of Mrs T those rates were wrong. And I don't think NS&I can't rely on that annotation in order for it to void a contract it offered and agreed to and which was also agreed to by Mrs T in good faith.

NS&I has said the three-year rate in particular was clearly lower than the other incorrect rates and Mrs T didn't query this and used the mistake to her advantage. I addressed this point in my first provisional decision where I discussed whether Mrs T was aware of the mistake and whether she used it to her advantage. I concluded that Mrs T did have questions about the correct rates as evidenced – by amongst other things – her husband contacting NS&I via an online chat about the various rates he and Mrs T had seen, but after doing all they could to try and find out more, that Mrs T had acted in good faith when she made her application.

With reference to the point at which a new contract begins – it should be when the existing bond matures and the new contract (and interest rates) begins.

Mrs T has been able to come out of the contracts early for the two- and five-year bonds and now has her funds in an account where she can move them around and so she can take advantage of that. And the fact is that interest rates have moved in her favour – the Bank of England raising them eight times since December 2021. So, it's not a surprise she can obtain a higher return than she would otherwise have obtained.

With regard to Mrs T's comment that my proposed redress is generous to her, in my provisional decision I explained that Mrs T should be paid the *difference* between the interest rates she accepted and the interest rates she was now receiving. So, if the interest rate she is now receiving is higher than the interest rates she applied for then nothing is owed to her. So I agree with Mrs T's comment that any redress should be up until the date of this decision as Mrs T is now able to obtain a higher fixed term account and I have clarified this point in how NS&I should put things right below.

Mrs T has confirmed that she only removed £30,000 from her NS&I Direct Saver account and not £50,000 as I had previously stated. This will have an impact on how the matter should be put right.

Putting things right

Your text here Mrs T has told us the one-year bond has matured and that she encashed the two- and five- year bonds on 16 December 2021.

We asked Mrs T what she had done with the funds she had received when she encashed the two- and five-year bonds. She told us she had reinvested the proceeds of both into a variable rate NS&I Direct Saver account and the interest rate at that time was 1.2%. Mrs T confirmed that she had withdrawn a total of £30,000 from her Direct Saver account. £10,000 on 31 May 2022 and £20,000 on 16 September 2022.

So this changes how I propose to put the matter right as Mrs T can't benefit by receiving two lots of interest – the interest rates that applied to the two and five year bonds until maturity – as she would effectively be receiving interest from her reinvested funds in the NS&I Direct Saver account as well.

- For the one-year bond which has already matured, Mrs T should be paid the offered rate of 1.1% until the maturity date.
- For the five-year bond, which was encashed in December 2021, Mrs T should be paid the agreed interest rates on the total £80,000 until the date of encashment. And thereafter should be paid the difference between the five-year bond rate and the NS&I Direct Saver account rate on the amount invested but reduced by £10,000 (with effect from 31 May 2022) and a further £20,000 (with effect from 16 September 2022) as a reflection of the total withdrawal of £30,000. And I agree with Mrs T's point that this should only be up to the date of this decision, as we don't know what's happening in the future and Mrs T can now obtain a far higher fixed term account.
- For the two-year bond, again which has been cashed, the interest rates agreed should be paid from the outset until the date of encashment. And after that Mrs T should be paid the difference between the interest rate she should have earned and what she earns on her NS&I account until maturity which was in December 2022.

Clearly the variable NS&I Direct Saver account interest rates will have changed over the period of investment. NS&I has confirmed that with effect from 25 October 2022 rates stood at 1.80% and with effect from 13 December 2022 it stands at 2.30% - both rates are higher than the 1.65% which was originally offered on the five year bond and which would mean that nothing was due to Mrs T during those periods. NS&I should reflect those changes to the interest rates that apply to any redress calculations.

My final decision

My final decision is that I uphold Mrs T's complaint and National Savings and Investments should put the matter right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 3 February 2023.

Catherine Langley
Ombudsman