DRN-5683794

The complaint

Mr W complains that National Savings and Investments (NS&I) hasn't accurately accounted for Savings Certificates (SCs) which he holds individually, as well as in trust for his sister and as a beneficiary of trusts. He's also unhappy NS&I is now saying he isn't entitled to continue holding some of these SCs. Mr W is represented by his mother, Ms W2. But for simplicity I'm just going to refer to Mr W throughout.

What happened

Mr W has held investments in NS&I SCs since the early 1990s. He's invested in various issues of certificates, and reinvested proceeds at maturity periodically.

He held certificates individually, and also has a number of holdings where he and his sister, Ms W, purportedly hold them in trust for each other. These holdings are generally arranged whereby where one sibling is the beneficiary, and they are joint trustees with the other sibling as lead trustee. For example there would be certificates held by Mr W and Ms W for the benefit of Ms W.

In 2022, Mr W and his sister complained to NS&I (Ms W has her own complaint with our service, this complaint is just about Mr W's holdings and beneficial holdings). They said there were inaccuracies in a number of the SC records, with missing trustees or the wrong lead trustee. They also said the valuations of their respective holdings weren't accurate.

NS&I issued a final response saying it thought its records were accurate. There followed substantial correspondence between Mr W and NS&I, and at the same time Mr W referred his complaint to our service.

NS&I continued to investigate Mr W's concerns and attempt to reconcile its records with what Mr W was saying. Due to the passage of time much of the original documentation relating to the application for some of the SCs wasn't available.

As the investigation into the record reconciliation moved forward, NS&I asked for evidence of the trust deeds establishing the trusts Mr W and his sister held for each other. Mr W said the trusts had been set up by NS&I when they took out the certificates.

At this point NS&I said it didn't set up trusts, but was only able to facilitate purchases of SCs by trustees of existing trusts. It acknowledged that until recently it didn't request evidence of the existence of a trust when accepting an application. It said that where no trust actually existed, the accounts would need to be repaid to the person named as the trustee – as they were listed as the holder of the SCs.

NS&I said that was what had happened here. It said Mr W and his sister's investments had never been in trust, and so they had held more than the maximum number of permitted SCs over the years. It said it wouldn't levy the normal penalty, and would allow Mr W to receive the proceeds of those SCs where he was named as trustee tax free and with interest. But that he wouldn't be able to keep the money in the SCs and would need to do something else with them.

Mr W maintained the trusts had been set up by NS&I with separate holder's numbers, and so he should be entitled to continue holding them as he had been.

Across two assessments of the case, our investigator said that NS&I should ensure it finished reconciling the records of Mr W's holdings and those purportedly in trust, if it hadn't already done so. But he thought for the SCs to be held in trust they needed to have a formal trust set up before the investment was made. So although he acknowledged NS&I should have done more to establish this when Mr W and his sister made various investments in to the SCs, he didn't think it was unfair that NS&I wouldn't allow the SCs to be held as they were going forward, and that the proceeds would be returned to Mr W for those where he was listed as trustee.

The investigator thought the overall experience and inaccurate information would have been distressing for Mr W, and recommended NS&I pay him £300 in light of that, which NS&I agreed to.

Mr W didn't agree and asked for an ombudsman's decision. He said it wasn't fair that he had to relinquish his holdings when other "undiscovered" trusts (that, according to NS&I, might not actually be trusts) could continue to be invested indefinitely. He said at the time of investment NS&I never asked for evidence of an existing trust, or required there to be one.

The matter was passed to me, and I wrote to the parties in December 2023. I said I thought that whether or not the SCs were held in trust, as Mr W was a beneficiary as well as a trustee, then he'd still have exceeded the maximum permitted holdings. So I thought it was fair that Mr W would now have to retain only those SCs which he held in his sole, personal capacity.

Given the many discrepancies and issues regarding the valuation and record keeping of Mr W's SCs, I also asked for NS&I to provide an updated valuation of the SCs to which he was attached as either holder, trustee or beneficiary. I said that at that time I thought a fair resolution would be for:

- The values of the certificates to be properly and accurately apportioned between Ms W and Mr W.
- Mr W to be able to retain SCs up to the value of his individual limit in his own name.
- The value of the remaining SCs to be distributed to Ms W and Mr W to be done with as they choose.
- NS&I to pay Mr W compensation for trouble and upset as set out in our investigator's assessment of 6 October 2023.

NS&I agreed with my proposal but Mr W didn't. He said the holding of SCs in trust for each other was allowed under the rules, and had been advertised in the national press. He said if NS&I had made a mistake, he shouldn't have to suffer the consequences. He said having to remove his money from the tax sheltered certificates would unfairly affect him by comparison to other existing trust holdings for NS&I customers invested in the same way.

I issued a provisional decision in which I said:

> This complaint began focussing on whether all Mr W's SCs, and those for which he was listed as trustee and/or beneficiary were correctly recorded. Mr W said the records were wrong in places and incomplete, and that some SCs had the wrong lead trustee. I understand from the most recent correspondence that this issue may now be resolved (albeit it has taken some time and I will address that further later).
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> I invite Mr W to confirm in response to this provisional decision that this is indeed the

case. Attached to this decision is the most recent list of holdings provided by NS&I.

The crux of the complaint now regards the status of those SCs which, for many years, both NS&I and Mr W have presumed were held in trust – either by him and his sister for his benefit or for hers.

In my last correspondence I said I didn't think it mattered whether the SCs had in fact been placed in trust or not – because Mr W would have exceeded the permitted allowances in any event. I no longer consider that to be the case.

I'm satisfied that the relevant regulations governing these certificates say otherwise. Mr W's SCs have been taken out at various times over a long period. The relevant regulations have changed – initially they were The Savings Certificates Regulations 1972 ("The 1972 Regulations"), and since 2015 it has been the National Savings (No. 2) Regulations 2015 ("The 2015 Regulations"). Both pieces of legislation say broadly the same thing where maximum holdings are concerned, of relevance to this complaint.

The 1972 Regulations say at Article 5 (2) – *"a person who is a trustee or who holds certificates as a beneficiary jointly with a trustee shall be treated separately in his personal capacity and in his capacity as trustee and in his capacity as beneficiary"*.

Similarly, the 2015 Regulations say at article 41 (4) - *"A person who is a trustee, or who holds a certificate as a beneficiary jointly with a trustee, must be treated separately in the capacity as a trustee or in the capacity as a beneficiary"*.

So for certificates Mr W held as trustee, he was to be treated separately as to when he was acting in his personal capacity. The same is true for those certificates where he held them as beneficiary jointly with trustees. I'm therefore satisfied that, were Mr W to have SCs where he is trustee or beneficiary, these would not form part of his individual personal maximum entitlement.

The question of whether or not the SCs which purported to be held in trust by or for Mr W were, in fact, in trust therefore becomes central to this complaint.

I've given this question very careful consideration. I think it is a complex and finely balanced question in these particular circumstances. Whether or not an arrangement takes the form of a legal trust is not always straightforward. And matters are complicated here due to the lack of evidence from the time of some of Mr W's investments into SCs.

Very broadly, Mr W's position is that the SCs were held in trust because that's what he'd asked for on application, that's how NS&I said they'd be held, and that's how up until very recently NS&I said they were held.

NS&I says that it doesn't carry out the setting up of trusts. It says it allows for holdings of certificates in trust, but only where an existing trust has been created.

Before explaining what I think here, I would emphasise and clarify the scope of my findings. It isn't for me to decide whether an arrangement is a trust under UK law – that is for the courts. But I have to take relevant law into account when deciding what is fair and reasonable here. So I've had regard for UK Trust law, and the evidence available to me, in order to decide whether or not NS&I has acted fairly and reasonably by concluding the SCs in question *aren't* held in trust.

I think it has been established in law (for example in *Tang v HMRC [2019] UKFTT 81*) that a trust can be established and in existence despite the absence of a formal trust deed or document.

I also think it is uncontroversial to say that a key indicator of a trust being valid is the presence of the *"three certainties"* provided for in *Knight v Knight (1840) 49 ER 58.* These are, in brief:

- Certainty of Intention – that the person providing the assets shows an intention to create a trust.

- Certainty of Subject Matter – it must be clear what property is to be subject to the trusts and what share each beneficiary is entitled to.

- Certainty of Object – it must be clear who the beneficiaries of the trust are.

I've thought about this in the context of the SCs that are the subject of this complaint. As I've noted, I don't have all the application forms or sets of terms and conditions for each of the series of SCs Mr W invested in. I have therefore given weight to what I do have, and in particular the application forms for SC investments dated 2011 and 2016. I appreciate the form and substance of these is likely to have changed in some ways over time. But given the intention of the forms hasn't changed materially, and the 2011 and 2016 forms are very similar, I currently find on balance that the key parts of the application which I refer to below are more likely than not to have been present each time Mr W applied for SCs to be held in trust.

If NS&I considers it is likely that previous forms said something materially different then I invite it to evidence this in response to this provisional decision.

The 2011 application form is headed *"application to purchase for trustees only – Savings Certificates"*. The first section asks for the amount you want to purchase, giving options to enter a monetary figure and a corresponding term of certificate, as well as whether the SCs are to be index-linked or not. In one copy I've seen, for example, Mr W states he wishes to invest £15,000 into a 5-year index-linked SC.

The form goes on to ask for details of the trustees, and beneficiaries. In the application I gave as an example above, Mr W and his sister are given as trustees and Mr W as the beneficiary. The trust title is give as *"trustee(s) of [Mr W]* and its purpose given as *"preservation of wealth"*.

The settlor's details are then provided and the form is signed by both Mr W and his sister as trustees.

Having considered this very carefully I think NS&I ought reasonably to have considered that there was clear intent to create a trust here. Mr W was filling out a form the sole purpose of which was to purchase SCs to hold in trust. The form was *"for trustees"* and the options were to purchase certificates either in the name of the trustee(s) or jointly between trustee(s) and beneficiary(ies). There were no other options. So I think it's reasonable to conclude anybody filling that form out intended for the SCs they purchased to be held in trust.

The form is clear precisely which issue of SCs are to be purchased, and that Mr W is the sole beneficiary. So I think NS&I would have been reasonably certain what property was to be held in trust, and for whose benefit.

Taking all this into account, my current view is that – whether or not Mr W and his sister had put in place an existing trust arrangement before applying to purchase SCs, it isn't fair and reasonable for NS&I to conclude now that these SCs aren't held in a valid trust.

It follows that I don't currently think it would be fair and reasonable for NS&I to require Mr W to withdraw and reinvest those SCs for which he is listed as trustee or beneficiary. Subject to the remaining terms of the SCs, I think NS&I should allow Mr W to keep his SCs as they are.

It may be that, moving forward, Mr W and/or his sister wish to provide themselves with more certainty. Our service can't advise them on this point, but they may wish to seek independent legal advice on the position of the assets held in trust and any other steps they might want to take to protect them.

In summary, I don't think NS&I has persuasively shown that the disputed SCs aren't held in trust, as both parties have taken to be the case for many years. I'm also satisfied, like our investigator, that this experience will have caused Mr W some distress and inconvenience. Both in liaising with NS&I to correct the details of his holdings, and in being told he may have to do something else with money he either holds on behalf of his sister or that is held for his benefit. Like our investigator, I think NS&I should pay Mr W £300 in light of that.

Both parties remained dissatisfied following my provisional decision. Mr W focussed on the reconciliation of the records of his and his sister's holdings. He said, in summary:

- NS&I's records still didn't reflect the instructions Mr W and his sister had given.
- In particular, those holdings which had been applied for to be held in trust by his sister as lead trustee, and Mr W as second trustee, for his benefit, didn't show him as second trustee.
- He requested I didn't close the complaint, or consider an award for compensation for the distress he'd been caused, until all the matters were resolved.

NS&I disagreed with my findings on whether Mr W's holdings were held in trust. It said:

- It has to carry out due diligence on applications as part of its obligations under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the AML regulations").
- It also has to take account of guidance issued by the Joint Money Laundering Steering Group (JMLSG).
- The combination of the AML regulations and the JMLSG guidance is such that NS&I is obliged to identify the trust, where assets are to be held in trust. The guidance says NS&I needs to do this *"on the basis of documents or information obtained from a reliable source which is independent of the customer"*.
- It says the application form alone isn't independent of the customer and so wouldn't allow NS&I to comply with its obligations.
- The AML regulations, and its precursors, have required a trust to be documented since 2007, with an implicit obligation since 2003. If NS&I don't document the trust, but allow Mr W and his sister to keep their holdings as if they were in trust, NS&I may

be committing an offence under the AML regulations.

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'm not persuaded to depart from the conclusions I reached in my provisional decision and prior correspondence. I'll first address NS&I's arguments in response to my provisional decision.

NS&I's points rest on its obligations under the AML regulations to verify and document customers who hold assets in trust. But this, in my view, is a distinct question from whether on not, in law, a trust was created when Mr W and his sister took out their SCs.

NS&I hasn't put forward an argument as to why my interpretation of the position there is wrong – it hasn't argued with reference to the legal definition of a trust or explained why it doesn't think I'm right that it ought to have considered Mr W and his sister's holdings to have been held in a legal trust formed for the reasons I gave in my provisional decision.

Instead, it has argued that a trust can't have been in place because it was obliged to check that one was in place, and the document it needs to verify a trust doesn't exist. But I don't find this argument persuasive. For many years NS&I considered these SCs to be held in trust, and reported on them as such to Mr W. It had all the obligations to verify the trust then as it says it has now, but no issues were raised.

The question of whether or not NS&I appropriately verified a trust isn't the same legal question as whether or not a trust exists.

So I'm not persuaded to change my mind that, on the basis of the legal principles underpinning the creation of a trust, NS&I ought fairly and reasonably to consider the holdings it has told Mr W are held in trust, are in fact held in trust. And so I don't think it would be fair and reasonable for NS&I to require Mr W to surrender those SCs he doesn't wish to.

Alternatively, I also say this because, even if I'm wrong that a trust was created, by NS&I's own admission this is something it ought to have uncovered at the beginning, had it carried out the due diligence it now says it needed to in order to comply with relevant regulations. Had NS&I done this, and told Mr W at the outset that he needed to register a trust in order to apply for the SCs he did over the years, I'm satisfied on balance that this is something Mr W would have done.

Mr W's intent was clearly to hold SCs on trust in this way, so I think he'd have taken the step of registering a trust if that was what he needed to do. This would also have led Mr W and his sister to retaining the level of holding they currently do, and so again I don't think it would be fair for NS&I to require them to surrender any of their SCs.

I'm conscious of the AML regulations NS&I has referred to, and for completeness if it now requires Mr W and his sister to register a trust independently so NS&I can comply with its obligations going forward, I don't think it would be unreasonable for NS&I to require them to do so. As this is something they may have had to do earlier anyway, but for NS&I's oversight, if there is a cost involved I don't think it would be fair to require NS&I to pay that cost – as it's one that would have been borne by Mr W and his sister in any event.

I'll now turn to the points raised by Mr W.

As I've established that Mr W and his sister ought to be able to retain the holdings in the form they were applied for (subject to NS&I requiring them to register an independent trust now) I also think those holdings should be accurately recorded. I said in my provisional decision that I understood the reconciliation to have taken place. Mr W says it hasn't.

I've seen copies of SCs applied for to be held by Mr W's sister as lead trustee, and Mr W as second trustee, for the benefit of Mr W. These show on statements as just having Mr W's sister as sole trustee. I think it's fair that NS&I correct this, and update those SCs to include Mr W as second trustee.

Mr W has then said he wants me to wait before issuing this decision until all the matters are resolved. And not to consider a distress award until everything is said and done.

I've considered this carefully, but I think it's appropriate for me to issue this decision now. Our service is intended to resolve cases quickly and with minimum formality. Due to the complexities of this case it has already taken a considerable time to resolve, and I don't think it would be fair to delay resolution further if that delay isn't necessary.

While I understand why Mr W doesn't want things to be closed down until everything is fixed, our role is to resolve the dispute, often through directing the respondent firm to take some action. Our decision doesn't need to wait until that corrective action has been carried out.

I would also note that my decision deals with the actions NS&I has taken to this point in managing Mr W's sole and trustee holdings. If he has further issues with that management and administration in future, he may be able to raise a separate complaint about that.

Putting things right

To put things right NS&I should allow Mr W and his sister to retain the SCs they hold in their sole names, and those which NS&I has recorded as being held on trust for each other. If NS&I requires Mr W and his sister to register a trust or trusts separately before doing so, I think that's fair.

It should ensure the holdings are recorded in line with the applications over the years, in particular that SCs held for the benefit of Mr W are held in trust by both Mr W and his sister.

I remain of the view NS&I should also pay Mr W £300 for the distress and inconvenience she's been caused, for the reasons I gave in my provisional decision.

My final decision

For the reasons I've given here and in my provisional decision, I uphold this complaint and direct National Savings & Investments to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 August 2025.

Luke Gordon
Ombudsman