

complaint

Mr T and Mrs W complain that Secure Trust Bank Plc reduced the interest rate on their account when it had no right to do so. They complain that they were led to believe that there was no way Secure Trust would change the rate.

background

In 2011 Mr T and Mrs W deposited a significant amount of money in an account with Secure Trust. They say they did so as they understood they there was no way Secure Trust would change the rate they would get.

In early 2014 Secure Trust wrote to Mr T and Mrs W to say that it was going to be reducing the interest rate on their account to 1.61% above the Bank of England base rate from 3% above the Bank of England base rate. Mr T and Mrs W complained saying that they understood Secure Trust would not change the rate and that this was consistent with the product terms and related promotional and marketing material for the account.

Secure Trust investigated Mr T and Mrs W's complaint but did not uphold it saying that the 3% above the Bank of England base rate was not guaranteed to remain in place indefinitely and that the product terms and related promotional and marketing material made it clear that rates are subject to change. It also said that the terms and conditions applying to the account gave it the right to vary the product and associated rates by giving two months' notice. Mr T and Mrs W complained to us.

Our adjudicator did not recommend that this complaint be upheld as he did not consider Secure Trust had breached its terms and conditions when it made the change. Nor did he consider Mr T and Mrs W had relied on incorrect information that had been given to a third party when deciding to deposit their money with Secure Trust.

Mr T and Mrs W disagreed with our adjudicator's recommendation saying that if we upheld the complaint of the third party they spoke to then we had to uphold their complaint. They also said that our adjudicator was setting a higher evidential burden than a court of law would set when it came to establishing what the third party had said to them. An ombudsman was, therefore, asked to review the complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Before I make any findings, I want to say how I have approached this complaint. I believe this is important as Mr T and Mrs W say they believe our adjudicator has set a higher evidential burden than a court of law would. My approach has been, where there is a dispute about what happened, to base my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence.

a) *did the terms and conditions allow Secure Trust to do what it did?*

When Mr T and Mrs W originally complained, they said that the terms and conditions did not allow Secure Trust to change the account's interest rate. Our adjudicator considered that they did and explained why. Mr T and Mrs W have focussed on why they understood Secure Trust would not change the rate – saying that a third party they relied on told them that Secure Trust had confirmed

this – since then. For completeness' sake, however, I have dealt with the question of whether or not the terms and conditions allowed Secure Trust to change the account's interest rate before making any findings about what a third party may or may not have told Mr T and Mrs W.

The terms and conditions that applied to this account when Mr T and Mrs W originally opened it said:

"Interest will be calculated according to the Bank of England Base Rate as published by the Bank of England and subject to 3% above the Bank of England Base Rate."

In addition, they said that Secure Trust:

"may, at our discretion, vary ... c) any of these Terms and Conditions."

In order to do so, Secure Trust had to give at least two months' prior notice. Finally the terms and conditions also said that Secure Trust could terminate the account by providing two months' notice.

I am satisfied that Secure Trust's literature could have been clearer. However, I also agree with our adjudicator that taking these terms and conditions into account I cannot say that Secure Trust acted unfairly. I say this having taken into account, in particular, the fact that it could have closed Mr T and Mrs W's account giving no more than two months' notice.

b) what information did Secure Trust give to the third party?

I am satisfied that Secure Trust told an individual who invested a significant amount of money in the same type of account as Mr T and Mrs W that he would get 3% above the Bank of England base rate forever. I have upheld that third party's complaint as I was satisfied that they would have invested their money elsewhere had it not been for this incorrect information. Mr T and Mrs W say that this means I have to uphold their complaint too.

c) what information did the third party give to Mr T and Mrs W?

Mr T and Mrs W did not call Secure Trust and get a specific assurance that if the 3% above the Bank of England base rate would last forever. They say that a third party did and that the third party "reported the salient and material parts of that conversation to them".

I have considered evidence from both Mr T and the third party in question. Having done so, I am satisfied that Mr T spoke to the third party about Secure Trust. In other words, I do not doubt that they had a conversation about this account. As this was three years ago, both Mr T and the third party have (understandably) had difficulties remembering exactly what was said.

I am satisfied that Mr T told our adjudicator (early on in the investigation) that he remembers he and the third party were trying to work out what the "catch" was with the account. I am satisfied that the third party told Mr T that he had already thought about whether the rate would be withdrawn and had been told that it would not be. I am also satisfied that Mr T thought, before he deposited money, that the rate would probably last at least five years. More importantly, I am satisfied that Mr T believed the third party had done his homework as a result of the conversation the two of them had, and that Mr T was prepared to deposit money with Secure Trust (even though he had never heard of them before). I am satisfied that he was prepared to do so because he trusted the third party's judgment and the third party thought it was a good account. I am not satisfied he deposited money because the third party told him Secure Trust had said the rate would last "forever" because I am not

satisfied the third party went into that much detail about the conversation he had with Secure Trust. I have taken into account everything both parties have told me about the conversation, including the setting and context in which it took place.

I do not, given the above, agree with Mr T and Mrs W that we have to uphold their complaint. I am not satisfied that the third party told Mr T that the rate would last "forever". More importantly I am satisfied that Mr T and Mrs W decided to deposit money with Secure Trust because a third party they trusted had done their homework and thought it was a good account. I, therefore, agree with our adjudicator that this complaint should not be upheld.

my final decision

My final decision is that I am not upholding this complaint.

**Nicolas Atkinson
ombudsman**