

## **complaint**

Mr D complains that Nationwide Building Society, trading as Cheshire Building Society, gave him contradictory information about if, and how, he could receive gross interest on two fixed-rate bonds he held with it.

## **background**

Mr D lives abroad. He has various savings and was receiving gross interest. At the end of 2012 this was changed to interest being paid net of tax, despite his tax status remaining the same. He says he has contacted the society a number of times to try to sort this out. But it has ultimately told him it couldn't help and he must claim back the tax he's paid from Her Majesty's Revenue & Customs (HMRC).

The adjudicator recommended that this complaint should be upheld in part. She said that Cheshire had given Mr D contradictory information and he had spent some considerable time trying to sort it out. She thought Cheshire should pay £150 for the inconvenience caused and said that Mr D would need to claim a refund of tax from HMRC.

Mr D disagreed. He said he was told that the interest would be paid gross when he opened the accounts so he has been mis-sold the products.

## **my findings**

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

Mr D opened two three year bonds in 2010 and says that he was told, after the branch had checked with its head office, that interest would be paid gross for the entire term of the bonds. The accounts were opened using his UK address and he completed HMRC's form R85 to register as a non UK tax payer. Gross interest was paid for the first two years.

Having reviewed the terms of Cheshire's savings accounts, I am satisfied that they clearly set out that all interest is credited after the deduction of income tax at 20% or, subject to the required certification, gross. Interest is normally paid net of income tax and can only be paid gross if Cheshire is provided with an appropriately completed R85 form which complies with HM Revenue & Customs' regulations. For non-taxpayers, or where total taxable income is only just over the starting point for paying income tax, then it may be possible to claim a repayment of the tax deducted from HMRC. Furthermore, Cheshire doesn't ordinarily open accounts for overseas residents.

I find that Mr D knew that he had completed forms R85 for the accounts when he opened them and this was why Cheshire initially paid the interest gross. It was for Mr D to decide whether he was entitled to complete the form.

In late 2012 Mr D received letters to say that the interest would be changed to net as he had requested. Mr D is quite clear that his tax status had not changed and he didn't ask Cheshire to start paying interest net of tax. I think it unlikely that he would have asked Cheshire to make a change to his detriment and then complain fairly shortly after receiving the letters about the change. So I am persuaded that, following an internal review, it was Cheshire that decided that it wasn't able to pay the interest gross any more, in all likelihood because Mr D wasn't ordinarily resident in the UK.

At the end of January 2013 Mr D sent HMRC forms 105 – an application for not ordinarily UK resident savers to receive interest without tax taken off – to the Cheshire. The Society wrote to Mr D in March to say that it didn't participate in the R105 scheme for non UK residents. This is the legitimate exercise of its commercial judgement, with which I cannot properly interfere. The R105 form itself says that not all banks and building societies provide the facility. Cheshire also said that it didn't pay gross interest on the accounts of customers not resident in the UK. After Mr D questioned this he was asked to send the R105 forms in again.

Despite knowing that Mr D was not resident in the UK, in April I find Cheshire then asked Mr D to complete HMRC's R85 form – Getting interest paid without tax taken off. Cheshire knew that Mr D doesn't ordinarily reside in the UK so this was inappropriate for his circumstances. I therefore consider Cheshire has given Mr D misleading and confusing information.

Mr D has made numerous phone calls and sent letters trying to get this sorted out. I accept this has caused him some inconvenience. Having considered the full circumstances of this complaint, I conclude that an award of £150 is a fair and reasonable amount for the upset and inconvenience caused.

I understand Mr D's frustration, in that if the interest had continued to be paid gross it would have made things simpler. But Cheshire does not operate the R105 scheme. Whilst I understand that Mr D says that he isn't able to reclaim the tax that was paid in 2013 it is not reasonable for Cheshire to be aware of Mr D's personal tax status and, as such, it is open to him to reclaim the tax he's paid from HMRC if he is entitled to do so.

### **my final decision**

My final decision is that I uphold this complaint in part. I require Nationwide Building Society, trading as Cheshire Building Society, to pay Mr D £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 November 2015

Karen Wharton  
**ombudsman**