

The complaint

The estate of Mrs H complain about the way National Savings and Investments (NS&I) dealt with the settlement of a savings portfolio. They say incorrect information provided by NS&I has led to the estate incurring additional costs.

What happened

Sadly, Mrs H passed away in 2019. The executors of her estate employed legal representatives to help administer the estate. Mrs H held a savings and investments portfolio with NS&I, which required information to be gathered in order for the correct tax to be paid and payments made to the beneficiaries.

In June 2022, representatives for the estate complained to NS&I as discrepancies in the information provided about the value of the portfolio was impacting the administration of the estate and resulting in additional costs. NS&I responded to say, having investigated the matter it didn't see any discrepancies in the information provided. But it did invite the representatives to return copies of the inaccurate values so it can look further into the matter.

Following further investigation, in July 2022, NS&I admitted two accounts had been missed from the original valuation, so it corrected the death value for these saving certificates. It requested details of the additional costs the estate had incurred. The estate responded and requested NS&I pay late payment interest due to HMRC, any penalties and a proportion of the solicitor's fees as compensation.

In October 2022, NS&I asked for a more detailed breakdown of costs before it can consider covering any fees and charges. It said it would only be covering additional costs to the estate which were as a direct result of its errors.

The legal representatives of the estate responded in December 2022 and said the costs were calculated to be:

- Interest payable on the IHT of £2,743.36
- Their fees in relation to time spent dealing with NS&I was £21,551.

The parties couldn't agree the amount that needed to be paid, so the estate referred the complaint to this service in January 2023 for an independent review.

During our investigation, NS&I made an offer to the estate. It offered to pay £12,478.63, which incorporates a proportion of the additional solicitor fees, the additional interest paid to HMRC and an apology payment of £500. The executors for the estate rejected this offer as it didn't think it covered all the solicitor costs incurred as a direct result of NS&I's shortcomings.

Our investigator issued an assessment stating NS&I needed to pay fees charged by the solicitors after 27 June 2022 covering the additional work required as a result of the incorrect valuation plus the HMRC interest and any penalties.

The executors responded to confirm they understood this to amount to £19,005 in total and said they would accept this amount as compensation.

NS&I didn't agree with the investigator's assessment. In summary it said:

- It didn't think it needed to pay fees from 27 June 2022 as it hadn't issued the revised date of death valuation at this point, so the legal representatives were not aware of any discrepancies. The revised valuation was sent on 6 July 2022, all work charged before this date was for the legitimate work that would need to be carried out for the estate.
- The figures it put forward in its offer are a fair reflection, and include the charges from 6 July 2022, along with additional interest payable to HMRC.

As no agreement could be reached the complaint has been passed to me to reach a decision.

The executors provided further submissions and requested that further costs incurred prior to 27 June 2022 are considered in the compensation. They said had NS&I provided correct figures on each occasion from August 2019 to June 2022, any checking would have been quick and easy. As it was, NS&I's errors resulted in an imbalance in the accounts, which the solicitors had to investigate by checking figures in the account against the correspondence received. It was only when the solicitors compared the NS&I correspondence with that received by the beneficiaries that they found NS&I was the cause. All of this work had to be done prior to any correspondence to NS&I to resolve the matter. NS&I then repeatedly stated its figures were all correct, which only prolonged an already-developed issue that had by then consumed considerable time to unravel.

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.

The crux of the complaint centres on the impact of errors by NS&I on the settlement of Mrs H's estate. The executors claim that as a result of errors the estate has incurred costs that it wouldn't have otherwise.

It isn't in dispute that incorrect information was provided by NS&I in relation to the savings held by Mrs H prior to her passing – and this has delayed the settlement of the estate.

This has resulted in the estate incurring a late payment interest charge from HMRC. As part of our investigation NS&I has agreed to pay the amount the estate has claimed in this respect. So, I haven't considered this point further as NS&I has agreed to cover the full interest charges claimed.

NS&I has accepted its errors have led to the estate incurring additional solicitor's fees that it wouldn't have otherwise needed to pay. It has agreed to pay a proportion of what has been charged, but what is in dispute is the amount of the solicitor's fees that NS&I is responsible for. The point of dispute specifically relates to the date at which NS&I became responsible for fees due to the identified errors.

I will focus my decision on this issue as the remaining point of dispute.

The investigator's opinion was that the date fees are relevant from was 27 June 2002. He felt the evidence available supported this is the date from which it was reasonable to conclude additional work was needed by the solicitors to resolve the valuation issues.

NS&I say the applicable date is 6 July 2022. Its argument centres on the fact this is the date after which it provided information to the solicitors that the previous valuation figures were incorrect. So, it says it was only from this date, the work charged can be legitimately attributed to its errors.

The executors say the relevant date is earlier than both of these dates. They believe had accurate information been provided at all times, checking and reconciliation by the solicitors would have been quick and easy, and not requiring the amount of work that was needed due to the imbalances identified.

I've looked at the available evidence. Firstly, I've considered the information provided by the solicitors to account for the work it completed for the estate. This includes the timesheets that detail the work the solicitors are charging for in relation to the NS&I errors. I note that the entry from 27 June indicates that work was carried out to amend accounts and considering historical information. The notes say contact was made with the executors to cross check documents. This then led to work completed on 28 and 29 June reviewing and meeting with the executors in relation to the NS&I documentation. So, it does appear that from 27 June 2022, the solicitors were working on resolving discrepancies in the information they received from NS&I.

I've also noted the letters sent by the solicitors to NS&I on 28 and 29 June. The first letter requests further information about the NS&I investments that were transferred as part of the settlement of the estate. The second letter, a day later (and it notes it supersedes the previous letter), is more direct in calling out discrepancies in the valuation statements and a large error in the transfer values provided in the previous statements. I'm satisfied these letters support the above point that work completed on 27 June was in relation to issues identified with information provided by NS&I.

I acknowledge 6 July letter sent by NS&I to the solicitors, is the point that confirmation is given of a difference in valuation. NS&I says this is the point where information was provided to the solicitors to establish there had been an error by NS&I. But it is clear that the solicitors were already concerned about discrepancies that they suspected were caused by information provided by NS&I. So I don't find it is fair and reasonable to exclude the work completed in the immediate lead up to confirmation of the error.

In NS&I's submissions to this service, it has confirmed that when it received 29 June letter, it treated it as a complaint. So, again I think this is evidence that NS&I was aware of potential errors on its part that were being raised. I find this evidence supports that the solicitors were completing work on the valuation issue prior to 6 July date that NS&I reference as the start point for when fees can be attributed to its errors.

I acknowledge the arguments put forward by the executors, but I'm not persuaded they are sufficient to say that fees from an earlier date should be taken into account. While I accept that it is possible work reconciling and understanding the valuation took place prior to 27 June 2022, it isn't sufficiently clear this can be directly attributable to failings by NS&I. This is part of the work that could be expected when a representative is employed by the estate.

In conclusion, I'm satisfied that it is fair and reasonable to require NS&I to pay any fees from 27 June 2022, that were incurred as a result of errors by NS&I (including any VAT charged on those fees).

Putting things right

I consider that my aim should be to put the estate of Mrs H as close to the position it would probably now be in but for NS&I's errors. This means it should not incur fees and costs that were as a result of the errors.

What should NS&I do?

To compensate the estate of Mrs H fairly, NS&I must:

- Refund the interest charges paid to HMRC for late payment.
- Cover the solicitors' fees incurred relating to the additional work that was carried out from 27 June 2022 as a result of its errors. A breakdown of the fees have already been provided to NS&I.

I note NS&I did make an offer to pay the executors £500 for the inconvenience they may have suffered due to the errors. As the investigator has explained, we do not have power to make this type of award to the executors of the estate. It is unclear if this offer is still available, but in any case, it doesn't form part of the direction I make. The estate can contact NS&I to discuss if it still intends to make the payment.

My final decision

I uphold this complaint and require National Savings and Investments to pay the estate of Mrs H compensation in line with the above methodology.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs H to accept or reject my decision before 12 April 2024.

Daniel Little
Ombudsman