

The complaint

Mr H complains that he was given incorrect information by Solium Capital UK Limited trading as Shareworks by Morgan Stanley, referred to as “*Solium*”, in relation to exercising his options as part of an employee share scheme (*‘the scheme’*).

Mr H says he’s lost out financially as a consequence and would like compensation to replace his losses.

What happened

One of our investigators considered the complaint but didn’t think it should be upheld. In summary, he said:

- Solium acted in line with the rules of the scheme, as set out by Mr H’s former employer.
- On 21 September 2021, Mr H left his former employer. Around this point he was supplied with documentation stating that he had to provide instructions between the 1st and 21st of each month, and that instructions would be processed on the 24th (or the next working day) of each month.
- The processing also had to be completed before the option expiry date, which was six months from Mr H leaving his employer – in this case 21 March 2022. So, Mr H had to send in his instructions in February, as if they were being made in March.
- But the process wouldn’t complete until 24 March 2022, which is after (six months) of him leaving his employer.
- In the circumstances, Solium acted in accordance with the scheme. As Mr H’s six-month date was 21 March 2022, it couldn’t allow him to exercise options after 21 February 2022, as per his former employer’s rules.
- In February 2022 Solium provided a chaser stating that Mr H’s awards were expiring in 31 days. This was factually correct so far as the awards and expiry was concerned and had nothing to do with exercising options.
- Mr H didn’t have six months in this instance due to his former employer’s rules. If he’d left his employment on 25 September 2021, or after, he would’ve been able to exercise in March.
- This above matter isn’t down to Solium but based on Mr H’s former employer.

Mr H disagreed with the investigator’s view and asked for an ombudsman’s decision. There’s been much correspondence between him, the investigator and Solium. But in summary, he made the following key points:

- On 21 September 2021, when he left his former employer, he didn’t receive the document referred to by the investigator – regarding when he had to provide his instructions by. This document was uploaded by Solium on the platform, but he doesn’t know when as he wasn’t notified.
- He was notified that he had six months to exercise the options. He wasn’t aware of the document that had been uploaded. He was only notified by Solium that he had enough time to provide instructions.

- The leavers letter mentioned that he needed to go on the platform and indeed he did go onto the platform to check the value of his portfolio and see if he needed to exercise his options, but he didn't see or find the document where the details were provided. The first time he saw it was in March 2022, when it was too late.
- Either the document wasn't uploaded, or it was too difficult to find because it wasn't easily accessible.
- In any case, the expiry date is mentioned as March. He received messages from Solium confirming that he had time. If he didn't this should've been made clear in red that he should go on to the document tab to find more information, but this wasn't the case.
- He should've been notified that an important document had been uploaded. There's an issue with the way that Solium communicates information which in his case was misleading.
- He'd be happy to accept the value of the shares from February as compensation.

The investigator having considered the additional submissions wasn't persuaded to change his mind. In summary, he said:

- The leavers letter was meant for Mr H's former employer to send to him. The letter confirmed that it was for Mr H to go on to the portal, and on the document tab, see all the information and documentation which related to the scheme.
- Solium provided screenshots which show that Mr H went onto the portal on several occasions where he had the opportunity to see the leavers letter, containing the relevant details, as well as the other relevant documentation.
- Despite what Mr H says, on balance of probabilities, it's more likely than not the information was there on the portal, as per the screenshot. So, he had the opportunity to access this information regarding his options and when they had to be exercised by.
- Even if there was evidence of an error, or poor communication – which is not what he's saying – the amount Mr H would be entitled to is the amount from February 2022 and not March 2022. But that's not what he's saying should happen.

As no agreement has been reached the matter has been passed to me for review.

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 agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr H says, I'm unable to safely say that he was given inaccurate information about exercising his options.

In the circumstances I can't say that Solium has done anything wrong by refusing to reinstate the relevant contract allowing Mr H to exercise his options out of time, because it hasn't behaved unreasonably and it's not something it can do in any case.

Before I explain further why this is the case, I think it's important for me to note I very much recognise Mr H's strength of feeling about this matter. He's provided submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised by the parties under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. My role is to consider the evidence presented by Mr H, and Solium, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case. I don't need any further evidence to make my decision.

I don't uphold this complaint, in summary, for the following reasons:

- Mr H didn't have the right to exercise his options in March 2022 – it simply couldn't be done given the timings from when he left his employer, therefore it's not something I can blame Solium for.
- I note the last chance to place instructions was February 2022, as the last day was before the processing date set on 24 February 2022 (or the next working day) – but this wasn't done.
- I'm mindful that Mr H decided not to exercise his options despite being written to on or around 19 February 2022, notifying him that his options were expiring in 31 days.
- Without the benefit of hindsight, there was also no way of knowing that Mr H would want to exercise his options the next month – following another alert dated 7 March 2022 – when it was too late. In any case, without instructions at the appropriate time, Solium couldn't have acted on its own initiative and without authority to do so.
- Despite what Mr H says, in the circumstances and on balance, I'm not persuaded that the above information was misleading. The information was factually correct, so far as the awards and expiry was concerned. It's arguable that it ought to be read in conjunction with the leaver letter and not just in isolation.
- I appreciate the information didn't directly apply to Mr H's situation given that he'd left his employer, and this had an impact on the timeframe which he'd been written to about at the outset.
- I'm satisfied that the leaver letter (dated September 2021) made clear that the election window was open between 1st and 21st of each month and that it would process election instructions on the 24th or the next working day of each month - presumably if it was a weekend or bank holiday.
- Whether or not the actual letter was sent to Mr H or was made available to him on the portal along with other important correspondence, based on what Solium says and on balance, I'm satisfied that Mr H had access to this key information. I'm mindful Solium says that the former employer confirmed that it sent the leaver letter to him, and extract confirmed the following: *"Please ensure you access the My Share portal prior to your last day and register a personal email address where you want your notifications issued to."*
- If Mr H didn't access it, or read through this documentation, in the circumstances it's not something I can blame Solium for. Despite what Mr H says, on balance I can't safely say that it wasn't available for him to access on the portal. In other words, I think more likely than not, the document was available for him to access.
- In additional, I note Solium makes clear the following:
 - If there were expiration dates upcoming, the "upcoming events" box would populate with any upcoming vesting dates.
 - If Mr H clicked on his "portfolio" all the lapse dates would come up.
- I'm aware that the processing of the election had to complete before the option expiry date of six months of his leave date. So, in this instance the instructions would have to be given on the fifth month in order for it to complete within the six-month timeframe and be valid. I've seen no persuasive evidence that Mr H didn't understand this, and indeed that's not his complaint.
- Put differently, as Mr H's six months expired in March 2022, his instructions had to have been submitted by February 2022, but this wasn't done. This would explain why on 17 March 2022 Mr H had to call Solium because the button to exercise his option

- wasn't there – presumably because the option was no longer available.
- Overall, it was Mr H's responsibility to provide correct instructions to Solium, and to do so in a timely manner. Failing to do so, despite a timely reminder, meant that he couldn't exercise his options in the way that he wanted to. This isn't something I can blame Solium for.

I appreciate that Mr H will be thoroughly unhappy that I've not been persuaded to uphold this complaint.

Furthermore, I realise my decision isn't what he wants to hear. Whilst I appreciate his frustration, I'm not persuaded to require Solium to do anything. In other words, on the face of the available evidence, and on balance I can't uphold this complaint and give Mr H what he wants.

My final decision

For the reasons set out above, I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 May 2024.

Dara Islam
Ombudsman