

## The complaint

Mr R complains he was given incorrect information by Solium Capital UK Limited trading as Shareworks by Morgan Stanley ("Solium Capital") about his ability to continue to participate in an employee share scheme, after he finished working for his employer.

## What happened

On 29 November 2022 Mr R called Solium Capital to let them know he'd resigned from his employment, and to ask what his options were regarding the share scheme he had joined in 2020, which Solium Capital administered. He was told that he would be able to contribute a further six payments toward the scheme after he left employment, and then he'd be able to exercise his option to buy shares and sell them. Mr R called again in January 2023 when he'd left employment and was told the same thing – so he set up a standing order and made further contributions of £300 each to the scheme.

In March 2023 Solium Capital sent Mr R an email explaining the scheme had lapsed and that there were steps he needed to take to have the cash paid out to him. He raised a complaint as he was under the impression that he'd still be able to exercise options, due to the calls he'd had with Solium previously. Solium Capital didn't uphold his complaint, and so he brought the complaint to our service. Solium Capital then made an offer to settle Mr R's complaint – they offered:

- £150 for the distress and inconvenience caused by providing Mr R with incorrect information in the calls.
- £60 interest on the additional payments he had made into the scheme after January 2023. This was calculated at a rate of 8% over a period of 172 days.

An investigator at our service considered this offer and found it was fair – she said that under the scheme rules, Mr R wasn't able to keep contributing towards the scheme. Mr R didn't accept the offer as he had spent a long time trying to resolve the situation and it caused him "significant distress and frustration". The investigator wasn't persuaded to change her mind, and as no agreement could be reached, the complaint was passed to me for a decision.

I issued a provisional decision on the complaint, as follows:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where I consider a firm has made an error, my aim is to make a finding as to what position the customer would be in now, but for that error. In this case, that means considering what Mr R would have done, if he'd been given correct information in the phone calls.*

*I can see that under the scheme rules, as Mr R resigned from his employment within three years of the scheme beginning, he wasn't eligible to continue contributing or to buy and sell shares. So, in the call in November 2022, he ought to have been told that his only option was to have his savings returned to him as cash.*

*If he'd been given correct information in his initial call to Solium Capital in November 2022, I think it's likely he'd have stopped his contributions at that time as there was no benefit to the money being held in the scheme. I also consider it likely that he'd have requested return of his savings as soon as possible. There is no interest payable on the cash in the scheme, so there's no persuasive reason for him to keep his savings in the scheme, if he couldn't buy and sell the shares. By giving him wrong information and causing him to leave his money in the scheme account, he's been deprived of use of the full amount he'd saved, from November to the date he withdrew it. I'm satisfied it would be fair and reasonable for Solium Capital to pay Mr R interest on that amount to compensate Mr R for not having use of his savings during that time.*

*Solium should calculate the amount Mr R would have received had he requested withdrawal in the call on 29 November 2022 and pay 8% simple interest on that amount from that date, until the date he withdrew the funds from the scheme. 8% simple interest should also be paid on any additional contributions made after that date, from the date each contribution was paid by Mr R to the date he withdrew.*

*In addition, I'm satisfied that Solium Capital has caused a loss of expectation here – Mr R has explained that the profit he was expecting if he had been able to buy the shares at the option price, and sell them at market price, would have almost doubled his savings. I'm satisfied an amount of £300 is reasonable here, rather than £150. This better reflects the value attached to the loss of expectation, the fact that two separate call handlers gave Mr R the incorrect information, and that when investigating his complaint, Solium Capital failed to acknowledge they had given incorrect information, which furthered Mr R's frustration.*

## **Replies to my provisional decision**

Mr R replied and said that he agreed with the provisional decision.

Solium Capital replied and partly agreed – they said:

- They agreed to pay £300 for the distress and inconvenience caused.
- Mr R's contributions were still held in the plan.
- They would be willing to pay interest – however they felt that Mr R could have requested the return of his capital at any point after they issued their final response to the complaint on 3 April 2023. So, they felt interest should not be payable for the full time they've held his money – instead they made a counter-offer:
  - Interest on the original contributions Mr R paid in prior to leaving his employer, totalling £8,100 from 29 November 2022 to 3 April 2023, totalling £221.92, which Solium Capital offered to round up to £222.
  - Interest on the additional contributions Mr R made after leaving totalling £1,500, calculated from 1 February 2023 to 29 June 2023, totalling £48.33, which Solium Capital offered to round up to £50.

## **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, my decision remains the same as set out in my provisional decision, and I'll explain why. I've carefully considered the points Solium Capital has put forward about the

date ranges for the interest award. In this particular case, I'm not persuaded this would be fair because:

- In their final response to his complaint, Solium Capital didn't admit to any wrongdoing, despite there being evidence of errors on their part. This meant that Mr R (reasonably, in my view) didn't trust the complaint had been properly investigated. This includes him reasonably thinking the outcome might change from an independent review, and so didn't remove the money from the scheme, in the hope he may be able to purchase shares. This is supported by the fact he continued making contributions past the date of the final response letter.
- The only time Mr R was given instructions on how to remove his funds was in the email from March 2023, which Mr R was sure was incorrect, based on the information he'd previously been given in the phone calls.
- If a full and fair offer had been made in the final response letter, then I may agree that interest shouldn't be brought up to date. However, that isn't the case here.
- Mr R escalated the case to our service on 4 April, the day after Solium Capital's response to the complaint. So, he's not unreasonably delayed matters.
- Due to the lack of detailed information given to Mr R I don't think Solium Capital gave him enough clear fair and not misleading information for him to make an informed decision about requesting the return of his money. So, I don't find it unreasonable that he kept the money in the scheme while bringing the complaint to our service.

Overall, I'm satisfied that it's not unreasonable for Solium Capital to compensate Mr R for the full time he's not had these funds. I'm satisfied that if he hadn't been given incorrect information, Mr R would have requested the return of his funds on 29 November 2022 and wouldn't have made any further contributions after that date.

### **Putting things right**

If he hasn't yet done so, Mr R should request return of his capital as soon as possible. Interest will only be payable up until the date Solium Capital settles the complaint – so if Mr R leaves his money in the scheme past that date, he won't receive any interest.

Solium Capital should:

- Pay £300 for the distress and inconvenience caused.
- I understand the value of the plan as of 29 November 2022 was £7,500. Interest at the rate of 8% simple should be paid on this amount from 29 November 2022 until the date he withdrew the funds from the scheme – or the date of settlement, whichever is earlier.
- I understand Mr R made seven further contributions to the scheme – totalling £2,100. 8% simple interest should be paid on those additional contributions, from the date each contribution was paid by Mr R to the date he withdrew – or the date of settlement, whichever is earlier.

### **My final decision**

I uphold the complaint. Solium Capital UK Limited trading as Shareworks by Morgan Stanley

should pay Mr R compensation as set out above. It should provide details of its calculation to Mr R in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 January 2024.

Katie Haywood  
**Ombudsman**