

The complaint

Miss S complains about the lapsing of her employer's Save As You Earn (SAYE) plan administered by Solium Capital UK Limited t/a Morgan Stanley at Work.

What happened

Miss S enrolled in her employer's SAYE plan as from 3 September 2020 but had to stop payments into her plan.

The plan rules allow for up to 12 payments to be missed after which the plan would lapse. Miss S received an email on 2 January 2022 informing her that she had a message in her Solium account which asked her to log in, which she did on 3 January 2022, after changing her login password.

The message in her account informed her of her latest missed payment for the plan, warning that if she missed more than twelve payments the plan would be cancelled. Miss S logged onto her Solium account the following month, on 10 February 2022, with a view to restarting her payments to avoid her plan being cancelled.

Miss S subsequently emailed Solium on 25 March 2022 stating that she had logged onto her Solium account at the beginning of February 2022 to restart her payments but noted in March that payment hadn't been taken and when she logged onto her account found that her plan had been cancelled. She said she had tried to get through on the telephone but without success.

Miss S subsequently complained and not satisfied by the response from Solium - which didn't address all the issues she had raised and didn't amount to a 'final response' to a complaint within the relevant rules – she referred her complaint to our service.

One of our investigators considered the complaint but didn't uphold it. In short she made the following points:

- Solium followed its process regarding the lapsing of the plan and she isn't in a position to ask it to reinstate it.
- Miss S tried to restart payments for her plan in February 2022 but the salary deduction for this would have been March 2022 by which time she would have missed 13 payments which is an automatic option lapse.
- It isn't possible to reinstate the plan.

Miss D didn't agree with the investigator. In summary she made the following points:

- She tried to restart her payments in February 2022 before her employer's payroll cut-off date and it was her belief that as long as she reinstated before that date her payment for the plan would be deducted in February.

- She understands that it isn't possible to reinstate the plan but that doesn't mitigate the financial loss suffered.
- What hasn't been addressed is that:
 - Solium didn't log a complaint regardless of how many times she asked.
 - Solium didn't provide a final response letter and didn't address her complaint in its email response and provided no information about contacting our service.
 - The technical issues that meant she couldn't access customer support by telephone.

As Miss S didn't agree with the investigator the matter has been referred to me for review and decision.

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.

In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, in line with our rules, I'm primarily deciding what I consider to be fair and reasonable in all the circumstances of the case.

The purpose of my decision isn't to address every point raised and if I don't refer to something it isn't because I've ignored it but because I'm satisfied I don't need to do so to reach what I think is the right outcome. Our rules allow me to do this, and it simply reflects the informal nature of this service as a free alternative to the courts. So I will be focusing on the key issue in this complaint, which is to do with the plan lapsing.

The plan rules made clear that it was possible to defer up to twelve monthly contributions but that if thirteen payments are missed the plan will be cancelled automatically and that this is in accordance with HMRC rules and that there is no discretion. In other words, once thirteen payments were missed there was no option to continue the plan, it had to be lapsed.

Miss S has indicated that it was her belief that, as she had sought to resume payments in February 2022 before the payroll date, the deduction from her salary to make the contribution to her plan would be taken in that month. However, she was mistaken in her understanding.

The terms of the plan make clear that payments will be resumed from the month *following* the month the instruction to resume is received. This was also stated in the notice sent to her account on 2 January 2022 - which she confirms she saw when she logged onto her online account on 3 January 2022 – with the notice stating:

“but remember that an instruction takes effect in the month following your instruction.”

So, although I accept that Miss S may have mistakenly believed that she had acted soon enough when she sought to resume payments on 10 February 2022, the information she was provided with when she took out her plan and subsequently made it clear that she needed to have made the instruction to resume payments the previous month.

I am satisfied that Miss S was given clear and fair information as to how the plan operated and in the circumstances the lapse of her plan isn't the result of anything that Solium did wrong but was the result of her seeking to resume payments into her plan when it was already too late to do so. Miss S acknowledges that once the plan had lapsed it cannot be reinstated but for the avoidance of doubt Solium are unable to reinstate the plan due to HMRC requirements, which it has to comply with.

I note the additional issues raised by Miss S. As I said at the outset of my findings, I am not required to address everything that has been raised. I am mindful that all of these additional points relate to what happened after her plan lapsed, so aren't relevant to the main issue in this complaint.

I will nevertheless make some brief comments on the points she has made. In terms of her being unable to contact Solium by way of telephone, Solium has said there were no technical issues affecting its phone system over the relevant time in question and has provided evidence that it did deal with calls from employees in that period. So, whilst I note Miss S's suggestion as to why she might not have been able to get through, there is no persuasive evidence to support there was an issue at Solium's end.

I would also make the point that whilst I acknowledge that not being able to get through on the telephone will have been frustrating, the plan had already lapsed and there was nothing Solium could do about that even if she had been able to speak to it.

The other issues that she has raised revolve around how Solium dealt with her complaint and complaint handling isn't an activity that we would generally consider where it has no bearing on the complaint itself.

I appreciate the decision I have come to will be disappointing for Miss S, as I note what she intended to use the SAYE plan for if she had resumed the payments into this in time.

My final decision

I don't uphold this complaint for the reasons I have set out above.

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

Philip Gibbons
Ombudsman