

The complaint

Mr O has complained that Solium Capital UK Limited ('Solium') didn't exercise his option to buy his employer's shares in his save as you earn ('SAYE') share save scheme and transfer them to his ISA account. Mr O has now lost the opportunity to exercise his options and take up the shares. To put the matter right Mr O would like for the employer shares he intended on purchasing to be reinstated and to be paid for missed dividends.

What happened

Mr O was employed by a business which I shall refer to as 'B' in my decision. While employed by B Mr O took advantage of its SAYE share save schemes which at the end of the fixed savings period would allow him the option to buy B's shares at a pre-agreed price with the funds already contributed or take the savings out in cash. If Mr O chose to buy the shares, he could then either continue to hold or sell them and keep the proceeds.

Mr O retired from B on 9 April 2021. Mr O was sent his 'leaver letter' on 10 April 2021 which outlined the choices available to him for his share save schemes now that he was no longer employed by B. He called Solium as he wanted to transfer the shares he held in his share save schemes to his ISA.

Shares in two share save schemes were transferred but a further two remained with Solium as he was advised that he could continue paying into the 2019 and 2020 share save schemes for a further five months, exercise the share options, and the resulting shares could then be transferred to Mr O's ISA.

Mr O took this course of action. He contacted Solium again on 28 September at which point he was told he could pay into the plans for a further month, and he was to call back before 9 October, the expiry date of the share options.

Mr O didn't call again in by the exercise deadline – 9 October – but said that as Solium already had been given the transfer instructions twice – in April and September – the transfer could have gone ahead without further instruction. But when Mr O logged onto his account, he saw the choice to exercise his options to take up the shares was no longer available.

Mr O complained to Solium who said it was unable to reinstate the 2019 and 2020 share save schemes. It said that Mr O's leaver letter of 10 April 2021 stated the maturity instructions for the exercise must be given six months after his leaving date of 9 April 2021. This information was displayed in his online portal account and during a call of 28 September 2021 he was advised to call Solium before the lapse date of 9 October to exercise his share options after his last contributions made in October were allocated to his share save schemes.

Mr O wasn't happy with the outcome and brought his complaint to this service.

Our investigator who considered the complaint didn't think it should be upheld. She said;

- A screenshot of Mr O's account stated the lapse date for the taking up the options to buy the shares was on 9 October 2021. Mr O was also advised of this during the call of 28 September and that he should call Solium before 9 October to exercise his options.
- It was reasonable to have expected Mr O to have contacted Solium to give his instructions. As Mr O didn't give any instruction our investigator couldn't agree Solium had done anything.

Mr O didn't agree. No reference had been made that he had contacted Solium twice before 9 October 2021 to inform it he wanted to transfer the shares to his ISA account. Solium's written instructions didn't state that call must be made after the last payment, he was only told this verbally by a junior member of staff. His funds were still with Solium.

Our investigator confirmed that she would not have expected Solium to act on an earlier instruction. She was satisfied that Mr O had been advised to call Solium before the deadline date.

Mr O asked that his complaint be decided by an ombudsman, so it has been passed to me.

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.

After doing so, I have reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

Mr O has given us a copy of the 'leaver letter' provided by Solium dated 10 April 2021. That letter outlined the four choices available to Mr O;

- Exercise the option to buy B's shares at the option price immediately without adding any further contributions using the savings already accumulated.
- Make a further six months contributions and exercise the option to buy B's shares at the option price.
- He would withdraw his savings plus interest earned.
- Continue with the savings contract until the end of the savings period and receive a maturity bonus – if applicable. If the end of the savings period was more than six months after leaving, the options to buy the shares would lapse.

The letter went onto say;

***Exercise Deadline**

You must provide your instruction online [link provided] within 6 months of your leave date or 6 months from the maturity date if earlier.' [original emphasis]

After Mr O called Solium shortly after receipt of the above letter he chose the second option and continued contributing to two of his share save schemes for a further five months. This was financially to Mr O's advantage as he could exercise additional options with the further contributions made.

The two other share save schemes referred to had, I assume matured previously, the options exercised hence the resulting shares from those two plans had already been transferred to Mr O's ISA as per his earlier instruction in April.

For the two plans that remained with Solium, Mr O wanted the options exercised and those shares to also be transferred to his ISA. Mr O called again on 28 September and was informed he could make one more contribution to the schemes which would be on 1 October. He was also informed he would have to call Solium again before the deadline of 9 October to exercise his options for the remaining two share save schemes he was still contributing to.

In bringing his complaint Mr O told us that he had already contacted Solium twice 'and on both occasions stated that I wanted the shares transferred to my DIY ISA account, (details of which they already had as I had transferred other Shares in April) and as such they had been given notice of my requests and they should have informed me that after they had received the final payment in October they would transfer the shares.' But I don't agree with Mr O's assumption here. I'll explain why.

Mr O chose to add a further five monthly payments to his 2019 and 2020 share save schemes as outlined in the leaver letter of 10 April 2021. That letter explained that;

'You can make up to 6 further months contributions and then *exercise your option(s) to buy [B's] shares at the option price(s)*. The number of shares you will be able to buy will depend on your total savings and any interest (if applicable) after you have made your additional contributions.' [my emphasis]

I think the above makes clear that after the final contribution was made Mr O would then have the opportunity to exercise his options to buy the shares in B. The option to buy the shares wasn't automatic. That wasn't something that Solium could do for him. It would be for Mr O to make that decision and give the instruction sometime between the last payment date and the exercise deadline. I understand the last payment was made on 1 October and the exercise deadline was 9 October, so Mr O had around a week to give the instruction to exercise the share options.

While Mr O is satisfied he gave the instruction to transfer the shares to his ISA, I don't agree that was the case. I accept that the instruction had already been carried out for two of his share save schemes where the option to take up the shares in B had already been exercised, and resulting shares transferred. But in the case of the 2019 and 2020 share save schemes Mr O hadn't given any instruction to exercise his option of taking up the shares in B before the deadline. So, there weren't any shares to transfer to Mr O's ISA as he had not given any instruction prior to the deadline of 9 October to take them up and the opportunity to do so expired. So, Mr O no longer had the ability to exercise his options of taking up the shares.

And Solium couldn't act without Mr O's instruction to exercise his options. That's because any action in the share save scheme would be for the account holder to instruct. It could have been the case that Mr O may not have wanted to exercise his options if it wasn't financially beneficial for him to do so – if the option price was higher than the prevailing market price – as an example. In that case Mr O may have chosen to just have his cash returned to him. So Solium wasn't in a position to know what Mr O wanted to do on his account without instruction.

And I'm satisfied that Mr O was made sufficiently aware of the deadline by which he would have to give instruction – 9 October 2021 – both in correspondence and notifications on Mr O's online portfolio with Solium and during phone conversations.

Mr O has suffered a loss of expectation in that he intended on exercising the options to buy the shares and which would have been financially beneficial for him. But I don't agree the

loss of expectation was caused by any inaction of Solium. I'm satisfied sufficient information was provided to Mr O for him to have been aware that he needed to give instruction to exercise his options in the first instance, and which would then have allowed him to transfer the resulting shares to his ISA account.

Taking all of the above into account, I don't uphold Mr O's complaint. No doubt this will be a disappointment to him. It's clear he feels strongly about his complaint, but I hope I have been able to explain how and why I have reached that decision.

My final decision

For the reasons given above, I don't uphold Mr O's complaint about Solium Capital UK Limited.

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

Catherine Langley
Ombudsman