

## **The complaint**

Mr L complains about the service provided by Solium Capital UK Limited trading as Shareworks by Morgan Stanley, referred to as “*Solium*”.

In summary, he says:

- Solium deducted a high amount of taxes from his shares due.
- It provided misleading information.
- It sent funds (from the second sale) to his employer instead of him.

## **What happened**

In or around January 2023, Mr L was offered an opportunity to be a part of a Share Incentive Scheme (‘the scheme’) by his employer, which he accepted. He agreed to pay £150 a month and between January and May 2023, he paid a total of £750.

I understand that for every three shares purchased one matching share would be added by the company. But in early June 2023, Mr L left his employer and lost his eligibility to free shares. In other words, he forfeited the right to receive matching shares because he left within three years of the scheme being active.

On 5 May 2023, Mr L sold 15 of his shares (in the Genus PLC fund) for a total of £397.50 gross. But he was charged £45 in commission and fees, and £352 in taxes, meaning he was left with no funds from the sale.

On 12 July 2023 Mr L sold the remainder of his assets (in the Cash fund) amounting £315.10. But Solium sent the funds to his former employer, where they deducted £63 in tax (plus £8.77 in national insurance contributions) and didn’t forward the funds to him afterwards.

Mr L contacted Solium and was told that the funds would be sent to his (former) employer who would include it in his payroll, but this never happened.

Unhappy with the service provided by Solium Mr L complained.

One of our investigators considered the complaint and thought it should be upheld. In summary, he said:

- Mr L paid over £400 in taxes in total from his two sales but did so in line with Rule 9 and 10 of the scheme through which he agreed to let the trustee sell shares and pay the taxes due. So, based on this, Solium were allowed to deduct taxes due once the shares were sold.
- Having considered a breakdown of the taxes, he’s satisfied that the correct tax was paid using a standardised and pre-established criterion. If Solium is happy for the calculation to be shared with Mr L, he’s happy to do so.
- Mr L was also charged £20 for the wire fees, and £25 brokerage commission on the

sale of the shares, but only on the initial sale.

- Mr L was sent a breakdown, prior to the sale of the shares, confirming that fees and taxes would be deducted from the sale.
- Due to taxes, fees, and commission due on the first sale, Mr L didn't receive any funds. He can't say that this was unreasonable.
- The funds from the second sale were sent to Mr L's former employer, Solium did this in line with the agreement it had with him. Rule 13 confirmed that the funds from the shares would be sent to the employer to deduct any tax or national insurance contributions. So, Solium hasn't done anything wrong by doing so in this case.
- Solium accepts that it incorrectly advised Mr L that the shares would be paid into his personal account. Although this information hasn't led to any financial loss, Solium offered to pay Mr L £100 compensation for any distress and inconvenience caused which is broadly fair and reasonable.
- Solium has acted in line with the agreement. He can't speak as to why Mr L's former employer hasn't passed on the funds to him.

Mr L disagreed with the investigator's view and asked for an ombudsman's decision. In summary, he said:

- He accepts that he forfeited the right to receive matching shares on the scheme because he left his employer.
- However, he doesn't understand how he's had to pay £352 tax from a total sale value of £397.50. He'd like a breakdown, and an explanation, as to why he wasn't told about this before he decided to sell. He would also like confirmation of payment to HMRC.
- The investigator just accepted Solium's lies and taken the easy way out.
- Despite being told the funds from the subsequent sale would be transferred to him this wasn't done.
- He was advised of the wire transfer fees but wasn't told that no funds would be available due to the tax. He also doesn't understand why he's had to pay £20 'wire fees' when no funds were actually transferred to him or his employer following the first sale of shares.
- He still believes that he was misled and is extremely unhappy with the investigator's conclusion. The compensation amount is also derisory.

The investigator having considered the additional points wasn't persuaded to change his mind.

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 going to uphold this complaint.

On the face of the evidence, and on balance, I'm satisfied that Mr L was incorrectly led to believe (on several occasions) that the proceeds from the sales of his shares would be paid direct to his personal bank account which was incorrect. However, I think the £100 compensation offered by Solium – but not yet paid – for this and the loss of expectation is broadly fair and reasonable.

Despite what Mr L says, I can't safely say that Solium did anything wrong by passing on the funds to his employer, or that it was wrong to make deductions for tax and or charges in line with its methodology.

Before I explain further why this is the case, I think it's important for me to note I very much recognise Mr L'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 L, 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 uphold this complaint, in summary, for the following reasons:

- I think Solium quite rightly accepts that on several occasions it gave Mr L incorrect information. It led him to believe that the proceeds from the sales of his shares would be paid to his personal bank account when this wasn't true.
- However, I think £100 compensation offered by Solium for the distress and inconvenience caused by this, after the case was referred to us, is broadly fair and reasonable.
- Aside from loss of expectation that the funds would be transferred to his bank account, Mr L didn't suffer any financial loss as a result of this error, therefore isn't entitled to any greater compensation.
- I can't safely say that Solium did anything wrong by sending the proceeds from the second sale to Mr L's former employer. In line with Rule 13 of the agreement, this is what it was obliged to do, so that the employer could make the appropriate deductions for tax.
- If Mr L is still waiting for his funds he should contact his former employer. I don't think this is something I can blame Solium for. I'm satisfied that it has otherwise acted in line with the agreement it had with him. In the circumstances I don't think Solium did anything wrong by passing on the proceeds from the July sale to his employer.
- Turing to the tax from the 05 May 2023 sale. I'm aware that Mr L accepts that he'd have to pay tax on the sale of any shares and has no issue with this. I note that according to the agreement, in particular Rules 9 and 10, any taxes due on the shares would also have to be paid, and that his employer would have to pay/deduct any tax before paying the money to him.
- I note Rule 9 of the agreement states:
  - *"I understand that I may ask the Trustee for my Partnership Shares at any time, but I may have to pay income tax and national insurance contributions (or similar, including the Health and Social Care Levy) ("NiCs") when they are taken out of the Plan".*
- I note Rule 10 states:
  - *"I agree to allow the Trustee to sell some or all of my Shares to pay any income tax and NICs in respect of my Shares ceasing to be subject to the Plan, unless I provide them in advance with sufficient cleared funds to pay these amounts".*
- Based on what Solium says, I note that the amount of tax due on the sale of shares was calculated using the Shareworks platform – using an income tax and National Insurance contribution formula based on the relevant tax code (in this case 0T) – which I understand is a standardised and pre-established code. On the face of it, I

can't say that there's anything (inherently) wrong with this methodology which Solium appears to apply when calculating tax from the sale of shares.

- In other words, having considered this issue, I'm broadly satisfied that the tax to be deducted was calculated using a standardised and pre-established criterion.
- It's unfortunate that the tax amount from the sale of shares was greater than what Mr L expected to receive. I'm mindful Solium said that this occurred partly due to partnership shares not being held for the full term.
- In any case, it's unfortunate that the proceeds weren't enough to pay tax and have funds left over from the sale of the shares.
- I should point out that share price values aren't something that Solium could predict or control, therefore isn't something that it's responsible for.
- Despite what Mr L says, I think it's more likely than not that he was presented with the breakdown containing details of the fees/charges and taxes. If Mr L still requires a breakdown of the calculations, and Solium doesn't consider this commercially sensitive, it should provide this to him if it hasn't done so already.
- I appreciate the point Mr L makes about the wire fees however I understand that this was deducted in relation to the initial sale only – it's possible that this was a one-time payment made in anticipation of having to transfer funds following the sale of the shares. I note a brokerage fee was also deducted as part of the sale of the shares, which is reasonable.
- In any case, no such fees were taken in relation to the second transaction, involving the cash transfer, other than a deduction for tax, which I believe is fair and reasonable in the circumstances. So, it's arguable that L hasn't paid for a service that he hasn't received.
- Despite what Mr L says, I don't think Solium was required to specifically make clear in the documentation provided prior to the first sale that he'd be left with no funds after factoring in charges/fees and taxes due. So, I don't think it has done anything wrong by already having made clear that tax and charges were due.
- Despite what Mr L says about being extremely unhappy about the whole situation, I'm unable to say that he's entitled to the sale proceeds of his shares without any deductions.
- Aside from the oversight, I can't say that Solium hasn't acted in line with the agreement in term of its fees/charges and taxes.

I appreciate Mr L will be thoroughly unhappy that I've not upheld this complaint.

Furthermore, I realise my decision isn't what he wants to hear. Whilst I appreciate his frustration, I'm not persuaded to ask 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 L what he wants.

### **Putting things right**

Solium Capital UK Limited should pay Mr L £100 compensation which is fair and reasonable.

### **My final decision**

For the reasons set out above, I uphold this complaint.

Solium Capital UK Limited should pay Mr L redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 10 May 2024.

Dara Islam  
**Ombudsman**