

The complaint

Mrs T complains Solium Capital UK Limited trading as Shareworks by Morgan Stanley ("Solium") misled her and she lost employee share plan benefits as a result.

What happened

Mrs T's employee share plan gave her the right to buy shares in her employer at maturity using her plan savings. I gather this would happen at the end of October 2023. But Mrs T lost this right when she left her employer towards the end of April 2023 to take up a new job.

Mrs T spoke to Solium twice on 20 March 2023 to ask what would happen to her share plan if she decided to leave her employer. She says Solium led her to believe she could leave and still buy shares with her share plan savings, and she decided to leave because of this. I gather she resigned near to the end of March 2023.

After this on 31 March 2023 she spoke to Solium and was given standing order details to allow her to carry on paying to her share plan after she left. On 26 April 2023 there was another detailed conversation with Solium about carrying on with her plan contributions. But later on 26 April 2023 Solium told her she was leaving her employer too soon to buy shares using her plan savings and could only receive a return of her savings. This was confirmed in the plan letter sent to her on 30 April 2023.

Solium accepted it gave Mrs T incorrect information after her resignation in both March and April 2023 which led to her paying £600 more to her plan when she shouldn't have. It offered to pay her £15 for interest on this and £250 for inconvenience and disappointment caused.

Our investigator considered the complaint and thought Solium was also at fault in what it told Mrs T before her resignation too. But she thought Mrs T would've still left for her new job and lost her right to buy shares anyway even if Solium hadn't been at fault. She thought a payment of £350 for inconvenience was more appropriate for the disappointment caused. Solium agreed to offer this redress while not accepting fault in those earlier interactions.

Mrs T didn't accept this and said she could've negotiated a later start date for her new job and so stayed with her employer long enough to use her plan savings to buy shares. She provided a letter from her new employer to support the idea that she might've been able to postpone her joining date.

Mrs T told us she thought her plan savings could've made a profit of around £7500 on what she'd paid in. She said her loss of the expected plan profits affected her ability to refinance her mortgage and she had spent £3000 on a holiday due to expecting to get the plan profits.

Our investigator was persuaded Mrs T could have postponed her new job and would have chosen to do this in order to continue with the share plan and buy shares when she could.

Solium still didn't agree it was at fault in what it told Mrs T before she resigned. Also it didn't agree with the weight our investigator gave what Mrs T's new employer said about how her request for a later start date might've been accommodated. It noted the new employer was

only speculating on a situation that hadn't actually arisen and had reason to support its new employee, which could've influenced its testimony. It didn't think this evidence was sufficient to change the whole assessment and wanted more explanation from our investigator.

Our investigator explained why the further information had changed her view and also why she thought Solium was at fault in its earlier calls with Mrs T. In essence Solium knew Mrs T might base her decision on what it told her - and her decision involved a lot of money for her, so clarity mattered. But Solium didn't make clear the specific meaning that "*leaving on good terms*" had when it used this term. It wasn't clear that this wouldn't apply to Mrs T, who was thinking of resigning for a better job. Solium should have done more to explain what it meant.

In response Solium said that while it still didn't agree with the overall assessment, it was willing to accept our investigator's proposal and offer redress as she had suggested – so as to avoid further detriment to Mrs T and to Solium.

Our investigator suggested Solium pay redress to put Mrs T in the position she would've been in had she delayed leaving her employer until she was able to buy shares with her plan savings. Our investigator noted that in such a scenario Mrs T's share plan profit may have come at the expense of lower earnings during the period, as her salary was higher after she moved to her new job. So for redress her extra work earnings needed to be deducted from the share plan profit. The method our investigator proposed for this was broadly as follows:

(A) Mrs T intended to buy the maximum number of shares and sell them immediately. So Solium should work out the profit Mrs T would've made if she had stayed with her employer long enough to exercise her plan share option and bought the maximum number of shares she could from the plan and then sold those shares immediately.

(B) Solium should deduct from (A) the extra Mrs T actually earned from her new employer compared to what she would've earned instead by staying at her old employer during the extra period of service contemplated in the scenario outlined in (A) above. The earnings compared should be both her salary and her pension earnings.

(C) Solium should pay interest on the loss in (B) above at the gross rate of 8% simple from the date of the share sale in (B) until the date the redress is paid.

(D) Solium should also pay Mrs T £350 for distress and inconvenience.

Our investigator said Mrs T should provide Solium with evidence of her earnings to allow it to carry out the calculation. Our investigator also said Solium should pay Mrs T the interest on the extra contributions (which it had rounded up to £15 in its original offer).

Mrs T didn't wish to accept the investigator's proposal and said Solium's "incorrect guidance" had impacted her whole life. As the matter wasn't resolved, it was passed to me to decide.

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 don't think Solium needs to do more than it has already offered to do. I'll explain my reasoning briefly.

The first of Mrs T's two calls with Solium on 20 March 2023 was interrupted and incomplete. Also what she was told was rather confused. In view of this it is hard to see how Mrs T could reasonably rely on the contents of that call – and I don't think she did, because she called

back later with the same query. That said I note Solium did tell her she could carry on paying to the plan if she left *"if you're a good leaver"* but didn't explain what this meant.

At various points in the second call Mrs T was also told she could buy shares *"if you leave on good terms"* and *"if you fall under eligible terms"* but she wasn't told what this meant. The call explored what would happen if she could buy shares but what wasn't explained was what would happen if she was a *"bad leaver"* or what that was.

Also what was being asked was what happens *"if you decided to leave a company for any reason"*. If the leaving was to be something Mrs T would decide, and she could decide not to leave, this implies that what she was considering was resignation – which wasn't a reason that would allow her to buy shares (given she was less than three years into the plan, which Solium knew at the time) - rather than leaving due to disability, redundancy or retirement which were the reasons that would've allowed her to retain that right.

Solium didn't give Mrs T clear information like it should have done. Mrs T didn't know *"good leaver"* and *"bad leaver"* was jargon not words being used with their everyday meaning. She hadn't seen this terminology in the documents she had. Overall I don't think she could be faulted if she jumped to the conclusion during the call that she was probably a good leaver, given she wasn't leaving due to any shortcoming or bad action on her part.

That said I don't overlook that in all Solium said to Mrs T, there was a qualification - *"if you leave on good terms"* and - *"if you fall under eligible terms"* and so on. So it never told her that she was a good leaver or would certainly be allowed to buy the shares. Mrs T decided to proceed without checking this point further. There is force in the argument that making major financial plans based on guidance that contained such qualifications and so wasn't certain, was risky and Mrs T could instead have checked on this before proceeding. But given the offer that Solium has agreed to make, I don't need to consider this point further here.

I note also that while the share price at the time of these calls did imply a good benefit would arise from the plan, there was ample scope for this to change by the time Mrs T had qualified to buy the shares. Given also that by staying with her employer Mrs T would've been giving up an immediate benefit of a higher salary, the question as to how attractive staying for longer with her employer would've looked to Mrs T at the time, isn't straightforward either. But while what Mrs T might've done in that situation is uncertain, it is clear to me that Solium didn't do well in those calls and contributed to Mrs T making her decision without clear and full information on the implications that her leaving would have on her share plan.

Ultimately it isn't possible to know for sure what Mrs T might have done had she been given full information. Solium has agreed to offer redress which proceeds on the assumption that she would've stayed with her employer – which is also what she says she would've done. In view of this, I think it reasonable for me to also proceed on that basis in my determination.

I've carefully considered Mrs T's points, but I haven't identified reasons to award more for the extra costs she has claimed. With regard to her trip, at the time she committed to that spending no share profits were guaranteed – it would be a while before she could buy shares and the price could decline in that time. So if Mrs T did commit to that spending in reliance on the plan profits, I don't think that was reasonable or something Solium should pay to cover now. Also she did receive the benefit of that trip.

With regard to mortgage costs Mrs T has suggested she incurred due to not receiving plan profits in time to reduce or rearrange her mortgage, I'm not persuaded that I need to award Mrs T redress for this in order for Solium's redress offer to be fair. I say this in light of all I've said above and bearing in mind the extra sum Mrs T would've had for purposes like this would've been lower than her claim originally assumed – because it would've come at the

expense of her receiving a lower salary over the period. In my view interest on any net loss from the maturity date is a fair way to account for the delay of that net benefit.

I also note our investigator suggested Solium pay Mrs T interest on contributions Mrs T paid to the plan after she was no longer eligible to contribute - due to having left her employer. Solium originally offered this interest and rounded it up to £15. But in the redress method outlined by our investigator, as set out above, the return on Mrs T's plan contributions is covered by the profit calculated in point (A) – so it isn't necessary for Solium to also pay the £15 interest it had previously offered on some of those contributions.

But I do agree that Solium ought to pay Mrs T £350 for disappointment and inconvenience arising from its shortcomings, in particular in the two calls I've discussed above but also in later calls where Solium agrees it shouldn't have told Mrs T to set up a standing order.

So, for the reasons I've given, I uphold Mrs T's complaint in part – on the basis I've outlined.

Putting things right

Solium Capital UK Limited trading as Shareworks by Morgan Stanley should put things right by carrying out its offer to calculate redress as outlined in points (A) and (B) above.

Solium should also pay interest on any loss found as described in (C) above. Solium should also pay Mrs T the £350 it has offered, as set out in point (D) above, for inconvenience and distress caused by the failings I've discussed above.

Mrs T has told us her old job paid £53000 with a 12% pension and her new job paid £72000 with a 4% pension – but I've not seen proof of this. Mrs T should give Solium proof of her earnings and pension entitlement to allow it to carry out its calculation. She should provide this promptly and within six weeks of Solium requesting this from her. From the figures she has given so far, it appears her extra earnings were reduced by tax at the higher rate.

My final decision

For the reasons I've given and in light of all I've said above, I uphold this complaint.

Solium Capital UK Limited trading as Shareworks by Morgan Stanley should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 20 December 2024.

Richard Sheridan
Ombudsman