

**PENSION SCHEMES ACT 1993, PART X**  
**DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN**

<b>Applicant</b>	Mr Malcolm Hutchinson
<b>Scheme</b>	Suffolk Life SIPP ( <b>the SIPP</b> )
<b>Respondent(s)</b>	Suffolk Life (Administrator)

**Subject**

Mr Hutchinson complains that Suffolk Life have failed to administer his SIPP properly. In particular, he says that they:

- failed to provide him with financial statements over a number of years
- failed to clarify the legal basis and requirements for their income review procedure
- deducted inappropriate fees
- set up both unnecessary insurance for the SIPP owned property and an overdraft facility for the SIPP in contravention of their terms and conditions
- caused him unnecessary inconvenience and distress by their poor handling of his subsequent complaints.

**The Deputy Pensions Ombudsman's determination and short reasons**

The complaint should not be upheld against Suffolk Life as the fees have been charged in accordance with their terms and conditions and do not appear unreasonable. I also do not find that Suffolk Life acted outside of their terms and conditions or failed to inform him of the legal basis of their income review basis. Suffolk Life has also offered to reimburse Mr Hutchinson for the additional insurance costs, overdraft fees and a property accounting fee as well as an offer of £200 in compensation for distress and inconvenience which I do not find unreasonable.

## DETAILED DETERMINATION

### Material Facts

1. Mr Hutchinson set up a SIPP with Suffolk Life in November 2005 and on the application form gave his address as a property in Suffolk. The terms and conditions attached to his application form said that “the fees and charges payable in respect of your SIPP are set out in the schedule of fees as amended from time to time”. In the application form signed on 23 November 2005, Mr Hutchinson agreed that he had read and understood the Suffolk Life SIPP key features and the term and conditions and accepted the terms of each document and that he accepted their fees as set out in the current schedule of fees”.
2. The full terms and conditions document had various clauses relating to the charging of fees, and included a 2005 fee schedule.
3. The 2005 fee schedule set out the following fees and where applicable a description of those fees. Mr Hutchinson was subject to the Bespoke SIPP scale of charges.

#### Schedule of fees 2005

	Starter SIPP	Bespoke SIPP
	£	£
<b>Administration fees</b>		
Establishment fee	130	375
Annual fee	130	420
Single contributions, variations to regular contributions and commission rebated to your SIPP	35	35
Transfers in (minimum charge)	35	35
<b>Investment transaction fees<sup>2</sup></b>		
Where the nominee is appointed or the investment manager is able to report in a form acceptable to us	N/A	10 per transaction
All other cases (up to)	N/A	35 per transaction
<b>Property fees<sup>3</sup></b>		
Acquisition fee	N/A	Time charge
Annual management fee	N/A	Time Charge
Sale or transfer out	N/A	Time Charge
Additional services	N/A	Time Charge

**Drawdown fees<sup>4</sup>**

First drawdown fund	N/A	275 p.a.
Each additional drawdown fund	N/A	150 p.a.

The following notes were also made in relation to the fees.

Note 2: Please note that a sale and purchase will count as 2 transactions and that the fees and charges of the Nominee or your investment manager are payable from your SIPP in addition to our fees and charges.

Note 3: The fees and charges of solicitors, surveyors, lenders and third party property managers (where appointed) together with all disbursements relating to the acquisition, sale or management of any property are payable from your SIPP in addition to our fees and charges.

Note 6: The establishment fee and the first annual fee are payable in advance on the policy date (as defined in your policy schedule). The annual fee is therefore payable in advance on the next reporting date (as defined in your policy schedule), and each subsequent anniversary. Other fees quoted are due on completion of each transaction, interest is payable at 2% per month on overdue balances after 30 days.

Fees and interest are automatically payable from your SIPP on the appropriate date.

Note 7: We may increase fees annually by a percentage not materially exceeding the percentage increase in the monthly index of average earnings of all employees GB all industries and services covered ('the National Average Earnings Index' or 'the NAE') over the previous year. If the NAE ceases to be published or if the calculation of the NAE is altered we may substitute a comparable index.

Note 9: Investment transaction fees relate to the auditing and recording of investment transactions to us and do not include investment manager or Nominee costs which, where applicable, are payable in addition.

Note 10: All expenses, charges and outgoings whether in respect of the investments contained in your SIPP (including the costs of purchase, sale, management, maintenance and valuation of freehold and leasehold properties (if any) and other investments) or other expenses however incurred shall be charged to your SIPP.

Note 11: Notwithstanding these provisions we may, in addition, at any time, after consultation with our appointed Actuary, and after giving you one month's written notice increase or amend all or any of the fees or charges made under this policy in such manner as we may determine.

Note 12: We reserve the right to charge for additional services on a time and cost basis relevant to the expertise and seniority of our staff involved.

4. In 2007, Mr Hutchinson whilst living in Harrogate, Yorkshire purchased a hotel property in Cumbria (**the SIPP property**) for inclusion in his SIPP. In doing, so he signed a property form dated 28 February 2007 which stated that:

- I have read and understood 'A guide to SIPP property purchase' published by Suffolk Life.

- I authorise Suffolk Life to instruct the above mentioned solicitor, valuer and, where appropriate, lending source or such other solicitor, valuer or lender as may be decided.
  - I agree that Suffolk Life should arrange an environmental audit if advised as expedient by the valuer or other appropriate professional
  - I agree that all costs, fees and charges associated with the purchase and administration of the property (including, where applicable, an environmental audit) should be borne by my fund.
  - I agree to indemnify Suffolk Life in respect of all liabilities, losses, damages and costs which they may incur in acquiring and holding this property in my pension fund.
5. Following the purchase Mr Hutchinson moved into the SIPP property in April 2007 as the owner/occupier and took on responsibility for the management of the property, including arranging insurance and collecting rent/income.
6. On 19 August 2008 Suffolk Life sent to Mr Hutchinson at the Harrogate address a summary of transactions to 29 February 2009. Also enclosed with the transaction statement was a 2007 Schedule of Fees. This Schedule made some changes to the basis of fees and restated the Property fees as:
- |   |                  |
|---|------------------|
| Property facility fee (per member per property) | £100p.a          |
| Annual administration fee                       | Time/cost charge |
7. From around March 2012 Mr Hutchinson was in contact with Suffolk Life regarding the need to carry out a market valuation of the SIPP property. Mr Hutchinson disputed the need to appoint a valuer to do this. He had obtained a written valuation from a surveyor at no cost. Suffolk Life when responding also raised the issue of outstanding fees due to them of £451.26.
8. Mr Hutchinson and Suffolk Life were also in correspondence regarding the SIPP property insurance and the amount of public liability insurance required. Mr Hutchinson had arranged public liability insurance cover of £2.5 million but Suffolk Life said that £10 million of cover was required. On 10 August 2012 Suffolk Life wrote to Mr Hutchinson to inform him that they had taken out additional public liability insurance coverage to increase the cover to £10 million and that the cost had been charged to the SIPP. Suffolk Life also said that they would raise the matter with their insurance brokers and if they agreed that the £2.5 million cover was sufficient they would cancel the additional cover.

9. On 27 August 2012 Mr Hutchinson wrote to Suffolk Life via email to outline his complaints and listed these as:
- Suffolk Life's failure to provide clarification of HMRC's specific requirements for a market valuation of the SIPP property
  - Suffolk Life's unnecessary decision to obtain additional cover without first checking with him if he could obtain cover. Mr Hutchinson said he expected all unnecessary expenditure to be reimbursed.
  - He had not received all the annual statements from Suffolk Life as some of these were sent to incorrect addresses. He was therefore unable to verify the amount and purpose of all the debits from his pension fund and it seemed likely that available sums within his pension fund had been depleted by unauthorised deductions, for example the property management fee.
  - An overdraft had been set up without his authority.
  - He had previously asked that his dissatisfaction of Suffolk Life's management of his SIPP be referred through its formal complaints procedure but he had not received a response to this request.
10. Suffolk Life replied on 2 November 2012 and said:
- Suffolk Life had not received Mr Hutchinson's email of 27 August 2012 despite the "out of office" message received by Mr Hutchinson.
  - On a one time only basis Suffolk Life would accept the property valuation received from Mr Hutchinson but all future valuations should be properly prepared. All property valuations should be addressed to Suffolk Life so that they can be relied on and would usually be more detailed.
  - Suffolk Life's insurance brokers had confirmed that the public liability cover should be for £10 million.
  - Copies of the annual summaries for 2008 to 2011 inclusive were enclosed as well as the annual statement for the period 24 November 2005 to 1 November 2006.
  - An overdraft was permitted under clause 11 of the terms and conditions of the SIPP.

- The property management fees referred to in the annual plan summaries should refer to property accounting fees as set out in the 2012 Schedule of Fees.
11. Mr Hutchinson replied on 21 January 2013 and asked a number of questions relating to the property valuation and income review and whether Suffolk Life received any commission or payments in respect of referrals to their preferred Chartered Surveyors. He also said that Suffolk Life had not answered his previous questions regarding why they had not contacted him prior to arranging the additional insurance cover.
12. Mr Hutchinson also said that in each year Suffolk Life had purported to charge fees under the heading Property Management fees and now sought to suggest a heading error in each of those years without even offering any apology for this claimed carelessness. Mr Hutchinson also said “the fact is that you have not been engaged in any of the activity listed under property accounting fee except during 2012.” Mr Hutchinson summarised his complaints as:
- Suffolk Life has failed to clarify the legal basis and requirements for Income Review and unnecessarily delayed accepting the valuation he had offered, resulting in protracted correspondence, unnecessary cost, frustration, anxiety and distress.
  - Repeated failure of Suffolk Life to respond to his requests for these issues to be dealt with as a formal complaint.
  - Suffolk Life had purported to charge costs of property management to his SIPP which had not been agreed and which they had no right to charge.
  - Suffolk Life had charged insurance costs to the SIPP which had not been agreed and which they had no right to charge.
  - Having depleted the SIPP with inappropriate charges Suffolk Life had then purported to establish and to charge to him the costs of an overdraft facility to cover the inappropriate charges. Clause 11.2 of the SIPP Terms and Conditions which has been cited in support of this action is only available to Suffolk Life 'to meet any costs or liabilities that they are entitled to charge.' As indicated above Suffolk Life have not been and are not entitled to charge insurance or property management fees to his fund.

- Ongoing failure to provide financial statements to enable him to effectively monitor fees charged against the SIPP and other aspects of the management of the SIPP.

13. Suffolk Life replied on 21 February 2013 and apologised if their level of service had fallen below Mr Hutchinson's expectations. The issues that Mr Hutchinson had raised had been recorded as a formal complaint. Suffolk Life also said that they should have taken more care to provide Mr Hutchinson with a copy of their complaint procedure and to confirm that they were dealing with the issues as a complaint and enclosed a cheque for £200 as compensation for the distress and anxiety caused which Mr Hutchinson did not accept and the cheque has not been cashed. Suffolk Life also responded under the following headings:

**"Income Review**

The HMRC may not stipulate the exact method for establishing the market value of a property asset but it does say that it should be calculated in accordance with Section 272 of the Taxation of Chargeable Gains Act. In order to avoid any potential tax charges on your SIPP our company policy is to instruct a surveyor accredited with the Royal Institution of Chartered Surveyors (RICS) to provide a market valuation of property assets. Our requirements in relation to this are stated in sections 16.1 and 17.6 of our terms and conditions (copy enclosed).

HMRC require that pension income is recalculated at set intervals. As stated in [Suffolk Life employee]'s letter to you of 2 November 2012, we can only rely on the valuer's report if the valuer has addressed their report to us (Suffolk Life),

... .

To demonstrate, to HMRC, that we have obtained an accurate market value for the property asset within the SIPP, a valuation by a RICS qualified valuer who can provide their professional opinion in consideration of all the material circumstances specific to the property and the local market conditions is preferable to a generalised pricing index and leaves the valuation process less open to challenge from HMRC.

You are free to instruct us to appoint any valuer of your choosing as long as they have the required qualifications. You are also free to negotiate the fee directly with the valuer of your choosing. For the avoidance of any doubt, Suffolk Life are not involved in any fee setting or negotiation with the valuer you wish us to appoint.

...

At the point at which you commenced your pension income, HMRC required that the same was recalculated on a 5 year basis. Under current legislation, this has moved to a 3 year review. The valuation is used in order to establish the value of your SIPP at the point at which the pension income is calculated. I have enclosed a copy of our terms

and conditions (section 16.1) which gives you details of when we are required to obtain a true market value of your SIPP.

We do not operate a panel of surveyors and we are happy to instruct any surveyor of your choice as long as they are RICS qualified.

Suffolk Life does not receive any commission or payment from valuers as a result of instructions to carry out such valuations.

...

We have agreed to accept the letter provided by your valuer on this occasion.

...

You are free to use this company again but as per my answer to point three we must co-ordinate the instruction to the valuer to ensure we get the level of detail required.

## **Insurance**

As a SIPP administrator we have an obligation to act in the best interests of the SIPP and to protect your position as SIPP investor. Where a SIPP holds an interest in a property then we must ensure that both the SIPP and Suffolk Life are protected against the possibility of a third party liability claim. This is outlined in [Suffolk Life employee]'s letter to you of 2 November 2012. We state in our property insurance notes that "Where we cannot reasonably establish that we are protected to an adequate level, in line with standard industry benchmarks, under any existing policy then it is reasonable that we seek to put in place our own public liability cover."

Suffolk Life are sold public liability cover by our underwriters, RSA. The cover was removed in May 2012 at your request. Premium in the amount of £112.67 for the period 1 May 2012 to 30 April 2013 has already been refunded to your SIPP.

...

We have agreed that you insure the property. As such, Suffolk Life does not insure the property (standard property insurance i.e. buildings cover in the event of any usual insured peril). Suffolk Life had separately put in place cover for public liability in respect of third party claims arising from any incidents at the property, but removed this at your request. Effectively, additional insurance cover for public liability has been in place between 2 March 2010 and 30 April 2012. As the requirement for this additional cover was not discussed with you prior to being put in place we will refund the £236.70 paid in premiums during this time as compensation.

## **Statements**

You have raised concerns that there is a gap in the statements we have provided. I must advise however that this is not the case. As your plan was placed into drawdown in March 2007, this caused your plan to have a new annual review date of 1 March each year. The annual statement produced as at 1 March 2008 covers the time period from 1 November 2006 to that date.



...

**Overdraft**

I am sorry for the confusion caused by the title of property management appearing in your statements. This heading does not define either an annual property management fee or annual property accounting fee. It is a generic term used when providing a breakdown of the overall Suffolk Life fees charged for the period.

I can see that as an accompaniment to the annual report, we have provided an invoice which explains what this fee relates to. I have enclosed a copy of this for your information. The fees we have charged are in relation to the work we have completed and as such we will not be offering any refund in relation to this.

14. Mr Hutchinson did not accept the compensation offered and asked that his case be reviewed by a senior manager in accordance with Suffolk Life's complaint procedure.
15. Suffolk Life responded on 15 March 2013 and said that they accepted there were two areas where they were at fault. The first was in relation to the way that Suffolk Life had handled Mr Hutchinson's complaint and the second was that they had not discussed with him the requirement for additional public liability insurance before putting this in place. Suffolk Life were however satisfied with their explanations for establishing property valuations and that they had clearly explained their fees.
16. Suffolk Life also confirmed that no overdraft fee was charged but there had been debit interest charges of £1.23 whilst the account was overdrawn and this would be refunded. Suffolk Life also confirmed that the following compensation offers were available to Mr Hutchinson:
  - A £200 cheque (already sent) for the distress and inconvenience for the way the complaint was managed
  - Offer to refund £236.70 paid from the SIPP for previous years' public liability insurance. Suffolk Life would cover the cost of the cover that was in place.
  - Offer to refund £1.23 in debit interest from the overdraft.
17. Mr Hutchinson was not satisfied with the explanation or compensation offered and brought the complaint to the Pensions Ombudsman Service.

## Fees Charged

18. In the period to the year end 1 March 2008, Suffolk Life charged the fees listed below:

<b>Fees charged in the period to 1 March 2008</b>		
<b>Fee</b>	<b>Actual Amount Charged</b>	<b>Fee description in relevant Schedule of fees (2007) and any fee estimate included.</b>
Annual 01/11/06-29/02/08	580.00	This was listed in Schedule of fees but estimated as £445 for the year.
Unsecured Income Establishment	150.00	Listed in Schedule of fees and estimated as £150 for the year.
Annual Property Facility	91.66	Listed in Schedule of fees and estimated as £100 for the year.
Property Management	1850.00	Property Management is not listed on the 2007 schedule of fees

19. The notes attached to the 2007 fee schedule stated at Note 11:

“Our property fees are calculated principally on a time cost basis, reflecting time expended and the degree of responsibility involved.”

20. Note 12 stated:

“The fees and charges of solicitors, surveyors, lenders and third party property managers (where appointed) together with all disbursements relating to the acquisition, sale or management of any property are payable from your SIPP.”

21. The annual summary outlining these fees was sent to Mr Hutchinson at his previous Yorkshire address on 19 August 2008. The covering letter also enclosed an invoice for £229 which described this charge as “Professional charges for the period to 29 February 2008 in respect of the SIPP Property to include rent collection, insurance and all other matters, attendances, advice and correspondence.” The invoice also said that in accordance with the business agreement/terms and conditions the sum due had been deducted from the group property bank account operated by Suffolk Life Annuities Limited.

In the period from 2 March 2008 to 1 March 2009, Suffolk Life charged the fees listed below:

<b>Fees charged in the period to 1 March 2009</b>		
<b>Fee</b>	<b>Actual Amount Charged</b>	<b>Fee description in relevant Schedule of fees (2008) and any fee estimate included.</b>

Annual Property Facility	100.00	This fee was listed on Schedule and estimated at £100 a year.
Annual	475.00	This fee was listed on Schedule and estimated at £475 a year.
Property Management	229.00*	Property Management is not listed on the 2007 schedule of fees but this had been deducted following the invoice issued on 19 August 2008.

22. Suffolk Life have provided the following summary of the work carried out for the fee of £229 in the period March 2007 to 28 February 2008:

- Letter dated 27 July 2007 confirming to Mr Hutchinson that the property was not insured on its block policy.
- File review and letter dated 23 August 2007 requesting that the required financial information as per the Declaration of Trust including income expenditure and mortgage payments be provided.
- Correspondence with solicitors in relation to the ownership percentages to-be inserted in the trust deed in early August 2007.

23. The annual summary outlining the 2009 fees was sent to Mr Hutchinson at his previous Yorkshire address on 6 April 2009. The covering letter also enclosed an invoice for £310 which described this charge as "Professional charges for the period to 28 February 2009 in respect of the SIPP property to include liaising with the nominee and accountants, obtaining information, reconciling and updating our system to reflect the information, and arranging insurance where relevant, attendances, advice and correspondence throughout." The invoice also said that in accordance with the business agreement/terms and conditions the sum due had been deducted from the group property bank account operated by Suffolk Life Annuities Limited.
24. In the period from 2 March 2009 to 1 March 2010, Suffolk Life charged the fees listed below:

Fees charged in the period to 1 March 2010		
Fee	Actual Amount Charged	Fee description in relevant Schedule of fees (2009) and any fee estimate included.
Annual Property Facility	100.00	This fee was listed on Schedule and estimated at £100 a year.

Annual Administration	490.00	This fee was listed on Schedule and estimated at £700 a year.
Property Management	310.00*	Property Management is not listed on the 2007 schedule of fees but this had been deducted following the invoice issued on 19 August 2008.

25. Suffolk Life have provided the following summary of the work carried out for the fee of £310 in the period 1 March 2008 to 28 February 2009:

- Internal discussions regarding the lack of financial information and net rent proceeds and contact from Mr Hutchinson and the next steps to be taken.
- Telephone calls requesting the information

26. Covering letter of 19 April 2010 (sent to address in Yorkshire) refers to “note of our property management fee” and invoice of same date for £125\*\*\* says Professional charges from 1 March 2009 to 28 February 2010 in respect of the SIPP property, to include liaising with the nominee(s) and accountants where appropriate, obtaining information, reconciling and updating of our system to reflect the information, and arranging of insurance where relevant attendances, advice and correspondence throughout.
27. In the period from 2 March 2010 to 1 March 2011, Suffolk Life charged the fees listed below.

<b>Fees charged in the period to 1 March 2011</b>		
<b>Fee</b>	<b>Actual Amount Charged</b>	<b>Fee description in relevant Schedule of fees (2010) and any fee estimate included.</b>
Annual Property Facility	100.00	This fee was listed on Schedule and estimated at £100 a year.
Annual	490.00	This fee was listed on Schedule and estimated at £490 a year.
Property Management	125.00*	Property Management is not listed on the 2007 schedule of fees but this had been deducted following the invoice issued on 19 August 2008.

28. Covering letter of 31 March 2011 (sent to address in Yorkshire) refers to “note of our property management fee” and invoice of same date for £125\* says Professional charges to 28 February 2011 in respect of the SIPP property, to include liaising with

the nominee(s) and accountants where appropriate, obtaining information, reconciling and updating of our system to reflect the information, and arranging of insurance where relevant attendances, advice and correspondence throughout.

29. In the period from 2 March 2011 to 1 March 2012, Suffolk Life charged the fees listed below:

<b>Fees charged in the period to 1 March 2012</b>		
<b>Fee</b>	<b>Actual Amount Charged</b>	<b>Fee description in relevant Schedule of fees (2011) and any fee estimate included.</b>
Annual Property Facility	100.00	This fee was listed on Schedule and estimated at £100 a year.
Annual	490.00	This fee was listed on Schedule and estimated at £490 a year.
Property Management	125.00*	Property Management is not listed on the 2007 schedule of fees but this had been deducted following the invoice issued on 19 August 2008.

30. Covering letter of 29 March 2012 (sent to correct address) refers to “note of our property management fee” and invoice of 12 December 2012 for £125\* says Professional charges to 28 February 2011 in respect of the SIPP property to include liaising with the nominee(s) and accountants where appropriate, obtaining information, reconciling and updating of our system to reflect the information, and arranging of insurance where relevant attendances, advice and correspondence throughout.
31. In the period from 2 March 2012 to 1 March 2013, Suffolk Life charged the fees listed below:

<b>Fees charged in the period to 1 March 2013</b>		
<b>Fee</b>	<b>Actual Amount Charged</b>	<b>Fee description in relevant Schedule of fees (2012) and any fee estimate included.</b>
Annual Property Facility	100.00	This fee was listed on Schedule and estimated at £100 a year.
Annual	500.00	This fee was listed on Schedule and estimated at £500 a year.

Drawdown Review	155.00	This fee was listed on Schedule and estimated at £155 a year.
Property Management	125.00*	Property Management is not listed on the 2007 schedule of fees but this had been deducted following the invoice issued on 19 August 2008.

32. The covering letter of 11 March 2013 was sent to the correct address. The letter also enclosed a capped drawdown review illustration.

### **Summary of Mr Hutchinson's position**

33. Mr Hutchinson says that he disputes all fees other than the annual management and administration fee on the basis that he was not made aware of them when he set up the SIPP. Suffolk Life unnecessarily extended the period of time that they were writing to him them about the valuation issue, (Income Review) and that they repeatedly failed to deal with the issues he raised as a formal complaint.

### **Summary of Suffolk Life's position**

34. Suffolk Life say that the SIPP property was purchased through the SIPP and as a result they became a part owner of some 45% of the commercial part of the property. Suffolk Life does not manage the property and accept that it was incorrect to state that the fee applicable to Mr Hutchinson's SIPP was in respect of property management. This is an issue with the terminology Suffolk Life has used and which is to be changed.
35. The property annual facility fee was introduced in 2006. An updated schedule of fees was sent to all investors in March 2006 to notify them of changes to the fees. Each year, when Suffolk Life sends out its annual statements, a link is given to Suffolk Life's website in the covering letter where a copy of the current schedule of fees can be downloaded. The 2005 schedule of fees that Mr Hutchinson received does state in note 11 that Suffolk Life may change or amend its fees in such manner as it may determine.
36. Suffolk Life charge two different fees in respect of property investment, one fee is for properties owned by Suffolk Life (known as the property management fee). The other fee is charged for properties owned by external nominees as in Mr Hutchinson's case (known as the annual property accounting fee). Both the property management fee and the annual accounting fee were termed 'property management fee' until 2009 when the Schedule of Fees introduced the annual property accounting

fee and differentiated between the two fees. Although the term property accounting fee was used in the 2009 Schedule of Fees, the terminology in the annual reports was not changed to reflect this change.

37. Suffolk Life have reviewed the activity and correspondence sent each year in relation to the fees. As Suffolk Life have not been able to identify the activity or any correspondence for the period 1 March 2008 to 28 February 2009 it has been agreed that the property accounting fee of £310 for this period will be refunded.
38. Mr Hutchinson did agree when he signed the Property application form in 2007 to meet all costs, fees and charges associated with the purchase and administration of the property.
39. Mr Hutchinson did not formally advise Suffolk Life of his change of address either when moving from the Suffolk address shown on the initial application in 2005 or the Yorkshire address when completing the property application form.
40. Mr Hutchinson has not provided any financial information or net rent receipts since the property was acquired which does form part of his responsibility as the nominee holding the property, in part, on behalf of his SIPP.
41. Mr Hutchinson has never responded to Suffolk Life's requests for the necessary financial information. Mr Hutchinson has been advised that outstanding rents from a connected party can be deemed a value shift under HMRC's regulations and can lead to penal sanction charges being applied of 55% of the outstanding amount. Suffolk Life has estimated that Mr Hutchinson needs to provide accounting information on approximately £85,000 of rental income due to the SIPP. No overdraft would have been required if Suffolk Life had received the rent due to the SIPP.

## **Conclusions**

42. Mr Hutchinson's complaint is mainly concerned with the level of fees and service that he has received in connection with his Suffolk Life SIPP. The SIPP was set up primarily to facilitate the purchase of the property which would form both Mr Hutchinson's home and business. The property was purchased by Mr and Mrs Hutchinson through the SIPP and Suffolk Life became a part owner of 40% of the commercial part of the property.

43. Mr Hutchinson was to act as the property manager and Suffolk Life would administer the SIPP. As property manager Mr Hutchinson was responsible for ensuring that rents were collected and accounted for and Suffolk Life had responsibility for ensuring the SIPP was run in accordance with HMRC guidelines.
44. Rent was to be paid on the commercial part of the property and Suffolk Life expected 40% of this to be paid into the SIPP to meet the SIPP expenses or for this to be accounted for.
45. The initial set up and property purchase appears to have been completed without any difficulty. But problems occurred over the future running of the SIPP and Mr Hutchinson queried the property fees that were chargeable. I have obtained a statement from Suffolk Life of the fees that have been or are prospectively payable on the SIPP and these are set out in the Appendix.
46. The fees cover the following main areas and Suffolk Life have provided the following description of these fees:

#### Annual Administration fee

The annual fee includes the preparation of the reconciled annual statement, regular reconciliations during the year and fulfilling all regulatory requirements including all general communications. Where appropriate, the annual fee also covers any requests to transfer out (subject to conditions) or to facilitate annuity purchase, and processing a death claim.

#### Annual property accounting fees

It applies when Suffolk Life own a share of the beneficial interest in the property and the legal title is held by a nominee. The fee covers time spent corresponding with the nominee; chasing the nominee for accounting information if necessary; receiving funds from and transferring funds to the nominee; reconciling the nominee's accounts; posting this information on Suffolk Life's system; and obtaining and recording details of the property insurance where the nominee insures or insuring the property where it has been agreed Suffolk Life will arrange the insurance.

#### Annual property facility fee

A flat fee charged for holding a property via a Suffolk Life SIPP. The annual property facility fee was introduced in 2006. An updated schedule of fees was sent to all investors in March 2006 to notify them of changes to the fees. This is a fixed fee that reflects the increased risks involved in owning a property. We charge this fee across all investors to allow the holding of a commercial property within our SIPPs. Suffolk Life is concerned mainly about the potential risks and liabilities which fall with property ownership including exceeding the value of assets that we are holding for the investors involved. An example of this would be environmental contamination and remediation.



47. Mr Hutchinson has questioned why he should pay any fees other than the annual management/administration fee on the basis that he was not made aware of them when he set up the SIPP. I see however from the 2005 Schedule of Fees that in addition to the annual administration fee there is an annual property management fee due which is on a time charge basis.
48. Suffolk Life have said that this property management fee has been redefined into two elements, an annual property facility fee and an annual property accounting fee. I surmise from the above, the list of fees payable in the appendix and the Schedule of Fees that the annual administration fee and annual property facility fee are in effect a fixed fee for Suffolk Life providing the SIPP vehicle and allowing a property to be held within this. This does not seem to be an unreasonable approach and I do not uphold Mr Hutchinson's view that the annual property facility fee should not be payable.
49. Mr Hutchinson also says that the property accounting fee should not be payable but Suffolk Life do have a duty to ensure that the SIPP is properly run in accordance with HMRC's guidelines. The property accounting fee is effectively the charges Suffolk Life make for the day to day activity on the SIPP including providing the annual statements and recording details of insurances and valuations on their systems. From the list of fees payable in the Appendix I do not consider these unreasonable and Suffolk Life has provided an explanation of why the accounting fees were higher in 2008 and 2009.
50. Mr Hutchinson has complained that some of the annual summaries were not sent to the correct address. Suffolk Life have said that they were not formally informed of Mr Hutchinson's change of address. I also find that it would have not been unreasonable for Mr Hutchinson to question why he had not received any annual statements in the intervening years before 2012.
51. Mr Hutchinson has also complained that Suffolk Life have set up unnecessary insurances and an overdraft facility in contravention of their terms and conditions. Suffolk Life say that they considered the amount of public liability cover to be insufficient and therefore arranged an increase in the coverage to mitigate any potential risk to them. Mr Hutchinson's disagrees with this view but the property insurance notes provided at the time that Mr Hutchinson completed the purchase of the SIPP property gave Suffolk Life the right to put in place their own public liability cover. Suffolk Life have admitted that they completed this insurance transaction without discussing or letting Mr Hutchinson know about this in advance and have

reimbursed the additional insurance and overdraft costs associated with this which I consider reasonable.

52. Mr Hutchinson has questioned the legal basis of Suffolk Life's requirement to obtain an independent market valuation for the income review and to pay the costs associated with this. I can understand Mr Hutchinson's wish to minimise the costs to his SIPP but Suffolk Life have explained that they are required to carry out periodic income reviews and the need to have an independent valuation. The procedure they follow is similar to the approach adopted by other SIPP providers and is an approach accepted by HMRC. Mr Hutchinson did agree to meet all costs and fees associated with the purchase and administration of the property and this market review fee is one of the costs associated with holding a property within a SIPP.
53. Finally Mr Hutchinson has complained that Suffolk Life have caused him unnecessary inconvenience and distress by their poor handling of his subsequent complaints. Suffolk Life have admitted that they were at fault in two areas, firstly in the way they handled Mr Hutchinson's complaint and secondly that they did not discuss with him the requirement for additional public liability insurance before putting this in place. Suffolk Life have offered to reimburse Mr Hutchinson for the fees that were deducted for the additional cover including the overdraft fees, the property accounting fee for the period 1 March 2008 to 28 February 2009 and have offered Mr Hutchinson the sum of £200 for distress and inconvenience which I consider reasonable. If Mr Hutchinson wishes to accept this offer of redress then he should contact Suffolk Life direct.
54. For these reasons I do not uphold Mr Hutchinson's complaints.

**Jane Irvine**  
Deputy Pensions Ombudsman

30 March 2015

**Appendix**

<b>Date</b>	<b>Description</b>	<b>Amount</b>	<b>Remaining Amount</b>
29/12/2005	Plan Establishment fee	£375.00	£0.00
21/12/2005	Transfer in fee	£35.00	£0.00
29/12/2005	Annual administration fee	£420.00	£0.00
01/11/2006	Annual administration fee	£435.00	£0.00
01/01/2008	Annual administration fee		
	01/11/2007-29/02/2008	£145.00	£0.00
01/03/2008	Annual administration fee	£475.00	£0.00
01/03/2009	Annual administration fee	£490.00	£0.00
01/03/2010	Annual administration fee	£490.00	£0.00
01/03/2011	Annual administration fee	£490.00	£0.00
01/03/2012	Annual administration fee	£500.00	£326.26
01/03/2013	Annual administration fee	£505.00	£505.00
01/03/2014	Annual administration fee	£515.00	£515.00
05/09/2007	Property Acquisition fee	£1,850.00	£0.00
01/03/2008	Annual property accounting fee	£229.00	£0.00
01/03/2009	Annual property accounting fee	£310.00	£0.00
01/03/2010	Annual property accounting fee	£125.00	£0.00
01/03/2011	Annual property accounting fee	£125.00	£0.00
01/03/2012	Annual property accounting fee	£125.00	£125.00
01/03/2013	Annual property accounting fee	£125.00	£125.00
01/03/2014	Annual property accounting fee	£125.00	£125.00
28/08/2007	Annual property facility fee		
	01/04/2007-29/02/2008	£91.66	£0.00
01/03/2008	Annual property facility fee	£100.00	£0.00
01/03/2009	Annual property facility fee	£100.00	£0.00
01/03/2010	Annual property facility fee	£100.00	£0.00

01/03/2011	Annual property facility fee	£100.00	£0.00
01/03/2012	Annual property facility fee	£100.00	£0.00
01/03/2013	Annual property facility fee	£100.00	£100.00
01/03/2014	Annual property facility fee	£100.00	£100.00
19/04/2007	Establishment Drawdown fee	£150.00	£0.00
01/03/2012	Drawdown review fee	£155.00	£0.00

Total outstanding	£1,921.26
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