

## Ombudsman's Determination

Applicant	Dr D
Scheme	Suffolk Life MasterSIPP ( <b>the SIPP</b> )
Respondents	Suffolk Life (part of the Legal & General Group)

## Outcome

1. I do not uphold Dr D's complaint and no further action is required by Suffolk Life.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Dr D was provided with an incorrect contributions statement as at 1 April 2013 (**the April 2013 Statement**), that indicated that a payment of £40,000 (net) had been received in the 2011/12 tax year.
4. He estimates his financial loss to be significant as he has potentially incurred an Annual Allowance (**AA**) charge for tax year 2013/14. In addition to compensation for non-financial injustice, he considers a reimbursement of any tax/other charges, or a refund of any excess contributions with interest, to be reasonable compensation. He is not happy with the offer made by Suffolk Life.
5. Suffolk Life has acknowledged a mistake was made in the April 2013 Statement and that they did not provide a corrected statement for April 2013. They have offered total compensation of £250. They do not accept responsibility for Dr D exceeding the AA regardless of which year the AA charge relates to.

## Background information, including submissions from the parties

6. Pension legislation sets an annual limit on the tax relievable amount of pension savings that an individual can make in a year. This limit is known as the AA. From tax year 2011/12 onwards, unused AA in recent previous tax years can be carried forward to offset against an excess in the current year. If an individual's AA for the current tax year, after allowing for any AA that can be carried forward, is more than their available AA, it will give rise to a tax charge on the amount over their available AA.

7. HM Revenue & Customs guidance PTM041000 states that the deemed date of a contribution made by cheque is the date the cheque is given or received by the scheme administrators.
8. Registered Pension Schemes (Provision of Information) Regulations 2006, states when an individual must be given details about their pension input amounts and also when an individual can request this information. The information must be provided in a pension savings statement (**PSS**).
9. On 2 April 2012, Dr D's adviser (named in Dr D's SIPP application), sent Suffolk Life a cheque for £40,000 for payment into the SIPP.
10. In the "Declaration" section of the application, Dr D authorised Suffolk Life to accept instructions from the adviser named in the application (unless Suffolk Life were advised otherwise).
11. Dr D made a separate employer contribution of £50,000 to his SIPP with the intention of making total gross contributions of £100,000 for the tax year 2011/12.
12. On 11 April 2012, the bank informed Suffolk Life that the cheque for £40,000 had bounced. Suffolk Life contacted the adviser to inform him of this. A replacement cheque was received by Suffolk Life on 12 April 2012.
13. Dr D contributed a further £50,000 into his SIPP in tax year 2012/13 and then around £70,000 towards the end of tax year 2013/14.
14. On 8 April 2013, Suffolk Life issued an annual report to Dr D as at 1 April 2013 (which included the 2013 Statement), with a copy to the adviser. The April 2013 Statement, showed a personal (net) contribution of £40,000 paid on 3 April 2012.
15. Neither Dr D nor the adviser queried the April 2013 Statement.
16. On 25 September 2013, Suffolk Life wrote to the adviser that Dr D had exceeded the AA in tax year 2011/12 or 2012/13, and detailed Dr D's contributions for both periods. The next day, Suffolk Life issued Dr D with a PSS for tax year 2012/13. In their cover letter to Dr D, they stated that the enclosed PSS summarised the contributions received by Suffolk Life and that these were in excess of the AA.
17. There is no evidence that either Dr D or his adviser contacted Suffolk Life to discuss the correspondence under paragraph 16.
18. On 2 October 2014, Suffolk Life sent Dr D a PSS for tax year 2013/14. At the same time, they wrote to the adviser saying Dr D had exceeded the AA in tax year 2013/14. Shortly after this, the adviser contacted Dr D to say that Suffolk Life needed details of any unused AA so that an AA charge would not arise.

19. Mr D did not have enough available AA or unused AA from previous years to make the contributions in tax year 2013/14. He had around £8,545 unused AA from prior tax years and a balance of £34,600 for tax year 2013/14, but he contributed £73,750 (gross) into SIPP.
20. Dr D has calculated that he exceeded the AA by £30,280 in tax year 2013/14. HMRC are awaiting the Ombudsman's determination before advising whether any additional tax is due.
21. Mr D says he relied on the April 2013 Statement in good faith; if he had received the correct details he would have acted differently.
22. Suffolk Life (and Legal & General) argue that the 2013 statement had no bearing on the contributions made to Dr D's SIPP for tax year 2012/13. They say, they informed Dr D of the correct position, by means of the PSS issued for 2012/13 and 2013/14. Consequently, the personal contributions made after 26 September 2013, were made at his discretion.

### **Adjudicator's Opinion**

23. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by Suffolk Life. In summary, the Adjudicator said there is no evidence Suffolk Life provided information indicating that the replacement cheque could be backdated to tax year 2011/12 and, given that the replacement cheque was sent in tax year 2012/13, it was not reasonable for Dr D to have relied on the April 2013 Statement.
24. Dr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr D has provided his further comments many of which help to clarify his position but do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will, therefore, only respond to the key points made by Dr D for completeness.

### **Ombudsman's decision**

25. Whilst a copy of the April 2013 Statement obtained from Suffolk Life, was not included with the Adjudicator's Opinion to Dr D, a copy of the April 2013 Statement was provided as part of Dr D's evidence. Consequently, Dr D had previously seen the April 2013 Statement. I do not consider that the rest of the annual report as at 1 April 2013, contains information that is material to the complaint.
26. Essentially, Dr D says the April 2013 Statement, which he assumed provided a definitive statement, led him to believe that the payment of £40,000 had in fact been received in tax year 2011/12. He made investments decisions based on that assumption. Whilst the payment in tax year 2012/13 did not lead to an AA charge

because of unused AA that he carried forward, a potential tax liability arose in tax year 2013/14 because of his misunderstanding about payments to 5 April 2014. Dr D says it was not until he received a second PSS from Suffolk Life, that it made him double check the position.

27. Dr D intended to make a personal (net) contribution of £40,000 to his SIPP in tax year 2011/12. When the first cheque did not clear Suffolk Life informed Dr D's adviser and a replacement cheque was issued in tax year 2012/13. Given that the replacement cheque was sent after the end of tax year 2011/12, Dr D should have known that the payment had not been received in that tax year.
28. Dr D says, contrary to the Adjudicator's view, there is evidence that Suffolk Life provided information indicating that the replacement cheque could be backdated to tax year 2011/12 (namely the April 2013 Statement). He also argues that they did not say the bounced cheque would lead to the payment falling in the next tax year. Nevertheless, Dr D should have known that the 2012/13 statement was incorrect.
29. Although the evidence supports a finding of maladministration on the part of Suffolk Life, I agree with the Adjudicator, that (notwithstanding the fact that Dr D and his adviser were later alerted that he had potentially exceeded the AA), Dr D cannot reasonably hold Suffolk Life responsible if he later acted on the April 2013 Statement, as he and his adviser should have been aware of the correct position at the time the first cheque was returned unpaid. Consequently, his complaint cannot be upheld on the basis that he relied on the April 2013 Statement.
30. I accept Dr D's argument that, as a retail investor, he cannot be expected to be familiar with HMRC's guidance on when a contribution made by cheque is deemed to be made. Nonetheless, Dr D had access to an adviser.
31. Turning now to Dr D's comments about the PSS. Whilst I sympathise that he found the presentation of the information to some extent confusing, Suffolk Life did provide the information they were required to under The Registered Pension Schemes (Provision of Information) (Amendment) (No.2) Regulations 2011. I agree with the Adjudicator that Dr D should have contacted Suffolk Life if he was unclear about any of the details contained in the PSS.
32. I am also mindful that, having been made aware of the correct position in the 2012/13 PSS, Dr D continued to make further pension contributions to his SIPP.
33. With regard to Dr D's claim for non-financial loss, it is my view that Suffolk Life has made an adequate offer of compensation and as this offer is still on the table, there is no residual injustice to be remedied.

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34. Therefore, I do not uphold Dr D's complaint.

**Anthony Arter**  
Pensions Ombudsman

2 June 2016