

Ombudsman's Determination

Applicant	Miss R
Scheme	Suffolk Life SIPP (the SIPP)
Respondents	Suffolk Life Pensions Limited (Suffolk Life)

Outcome

1. I do not uphold Miss R'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. Miss R has complained that Suffolk Life acted negligently when arranging her SIPP (a self-invested personal pension) and the property investment within it. This error went undetected for two years, has resulted in no rent being paid and she has been unable to make further payments into the SIPP until the issue is resolved.
4. Additionally, due to oversights when the SIPP was set up a new Declaration of Trust will need to be established and Miss R does not think she should bear the cost of the necessary revision.

Background information, including submissions from the parties

5. On the basis of financial advice, Miss R established the SIPP and used it to purchase a beneficial interest in her business premises of 20.96%. This was completed by 14 October 2011.
6. Suffolk Life wrote to Miss R's financial adviser in September 2011, to explain the structure of the SIPP. Miss R would act as nominee, and in that capacity would hold the property in trust for the beneficial owners, Suffolk Life and her business (Old Manor House Keynsham Limited). The nominee, as landlord, would be responsible for billing the rent and providing accounting information to Suffolk Life. A declaration confirming her understanding of the arrangement was signed by Miss R on 28 February 2012.

7. Over the same period Suffolk Life corresponded with the appointed solicitor. In January 2012 the solicitor confirmed that a lease was not necessary as the owner was also the occupier.
8. Once the arrangement had been established, Miss R followed financial advice and started making personal contributions to the SIPP.
9. In August 2013 Suffolk Life started investigating the absence of accounts being provided, and rental payments into the SIPP. It also noted that there was no lease in place. As a result it contacted the solicitor to investigate the position. It was in possession of the necessary information by the end of October 2013.
10. In February 2014 Suffolk Life contacted Miss R, in her role as nominee, to clarify the position concerning the lease and rent. There followed a period when it was considered further by Suffolk Life and additional evidence gathered. In June 2014 Miss R confirmed that the personal contributions had been intended to be allocated as rental distributions.
11. Suffolk Life considered whether the personal contributions could be re-categorised as rental payments. Initially it was understood that this had been a genuine error, but it came to light that Miss R was acting on financial advice. In December 2014 Suffolk Life wrote to Miss R to confirm it would not be able to re-categorise the contributions.
12. A complaint was raised. upheld Miss R's complaint in part. It agreed it could have raised the absence of rental payments sooner and had caused delays, but it highlighted that Suffolk Life was only the administrator and had been acting on Miss R's instruction. It also accepted that an error had been made when the property was purchased and the absence of a lease should have been considered more closely. This would need to be remedied through an implied lease.
13. As an apology it refunded the property management fees paid over the period, provided a distress and inconvenience payment of £835 – and later a further £150. Suffolk Life also agreed to pay 50% of the costs involved in putting an implied lease into place.
14. I understand that Suffolk Life has now come to an agreement with the solicitor that any outstanding costs associated with the implied lease will not be met by Miss R or the SIPP.

Adjudicator's Opinion

15. Miss R's complaint was considered by one of our Adjudicators who concluded that no further action was required by Suffolk Life. The Adjudicator's findings are summarised briefly below:
 - The property arrangement within the SIPP had not been established correctly, but this was in the process of being rectified at no cost to Miss R.

- Miss R's personal contributions could not be re-categorised by Suffolk Life as rental payments, and that had been a reasonable stance for Suffolk Life to take. It had been following Miss R's instruction when receiving and acting on these contributions. Miss R has not suffered a financial loss because she will eventually be able to take these as pension benefits.
 - Suffolk Life should not be required to pay the rent arrears that had accrued. Although, it could have noted the absence of rent being paid sooner, as, indeed could Miss R, or her financial adviser. The error in the categorisation of the contributions was a result of the financial advisor's actions. There had been a requirement for her to provide the accounts for reconciliation which she had confirmed she understood.
 - Miss R was responsible for the rent and will, in the long term, have to pay it. Suffolk Life has agreed that subject to provision of certain information it will consider an affordable repayment plan for the arrears. The Adjudicator considered that this would be reasonable.
 - Suffolk Life had refunded all management charges and made a distress and inconvenience payment of £985 in total. The Adjudicator considered this was sufficient compensation in the circumstances.
16. Miss R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss R provided her further comments which 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 Miss R for completeness.

Ombudsman's decision

17. Miss R has argued that the Adjudicator has not placed enough emphasis on the delay in Suffolk Life noticing the absence of rent, and in particular the six month delay in informing the financial adviser once the issue had been identified. Had this delay been shorter the impact of the error would have been lessened.
18. I appreciate that Suffolk Life should have noticed the issue earlier and acted on it. However, it is difficult to attribute financial loss to this where, in lieu of the rent being paid Miss R was making personal contributions which she will ultimately benefit from, and the financial adviser has not set out what it considers to be the extent of its responsibility, for its part in the error.
19. Additionally, I cannot discount Miss R's role as nominee and the responsibilities she owes to the SIPP in that capacity.
20. Regarding the annual statement, Miss R and her financial adviser questions how she could have been aware of the absence of rent. In my view, between Miss R and her financial adviser, they ought to have been aware, even without the annual statement, that rent was required to be paid and that it was not being paid.

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21. This does not excuse Suffolk Life's failings, but in the absence of a quantifiable financial loss, or the financial adviser attributing part of that loss to itself, the redress offered by Suffolk Life is in my view is reasonable.
22. Therefore, I do not uphold Miss R's complaint.

Anthony Arter

Pensions Ombudsman
23 January 2017