

Ombudsman's Determination

Applicant	Mr S
Scheme	Suffolk Life SIPP (the SIPP)
Respondents	Suffolk Life

Outcome

1. I do not uphold Mr 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. Mr S has complained about Suffolk Life's decision to require him to transfer his SIPP to another provider.
4. Mr S has complained that this action is unreasonable and unjustified and has caused him significant distress.

Background information, including submissions from the parties

5. In 2002 Mr and Mrs S each set up SIPPs with Suffolk Life. The only SIPP asset was a jointly owned commercial property. At the time the SIPP was established, Mr S signed the relevant application and acceptance forms and was provided with a copy of the SIPP's terms and conditions, alongside other documents associated with this type of SIPP product.
6. Over subsequent years Suffolk Life received a number of complaints and correspondence from Mr and Mrs S regarding the operation of their SIPPs, and in particular issues with the rental proceeds from the property.
7. Suffolk Life investigated and resolved each complaint and Mr S's invoices were amended where appropriate.
8. On 28 August 2014, Suffolk Life met with Mr and Mrs S in an attempt to reconcile the issues regarding Mrs S's SIPP and agree a way forward. It was agreed at this meeting that Suffolk Life would write off a significant sum in unpaid fees owed by Mrs S and to additionally credit her SIPP with sufficient fund to reduce her overall debt to

£20,000. Suffolk Life agreed to this resolution on the basis that Mrs S would clear the remaining £20,000 debt over the following six months.

9. The funds owed in inter-policy debt were to be transferred to Mr S in order to reconcile his SIPP. At this same meeting, Mr S requested information regarding the balance of his own SIPP.
10. On 2 September 2014, Suffolk Life wrote to Mrs S to confirm the points of the August meeting and provided her with an acceptance form to sign and return.
11. On Friday 19 September 2014, Mrs S signed and returned the acceptance form. Following receipt of this, Suffolk Life was able to begin the process of reconciling the group account and transfer the necessary funds to Mr S' SIPP.
12. Early the following week, Mr S contacted Suffolk Life to enquire on when he would receive the information requested regarding the balance of his SIPP. Suffolk Life estimated that this would be available by Friday 26 September 2014.
13. On 26 September 2014, Mr S again phoned Suffolk Life and was informed that the final figures had not yet been confirmed, but the balance was estimated to be in the region of £3,800. Mr S was promised a final response by 1 October 2014.
14. From 29 September 2014, Suffolk Life received on-going communications from Mr S regarding concerns he had about the administration of his SIPP, as well as the balance. These communications reiterated previous complaints made by himself and Mrs S, which had been resolved by Suffolk Life.
15. In their responses, Suffolk Life explained that it had spent a significant amount of time reviewing each transaction on his SIPP since its inception, to ensure accuracy, and enclosed an extensive breakdown of the payments made from the group property account. Suffolk Life did not uphold Mr S' complaint.
16. On 28 November 2014, Suffolk Life wrote to Mr S in response to his latest query regarding the delay in the provision of a reconciled statement of account and the need for Mrs S to sign and return the acceptance form. Suffolk Life explained that, although Mr and Mrs S's SIPPs were separate entities, the bank account held for their property investment was held jointly. Therefore, as the monies owed by Mrs S were owed to the property account, Mrs S's signed acceptance form was required to reconcile the account before transferring the funds to Mr S.
17. On 10 February 2015, Suffolk Life wrote to Mr S as part of the continued exchange of correspondence concerning issues regarding the operation of his SIPP. In this letter, Suffolk Life provided Mr S with formal notification that it required him to transfer his SIPP to another pension scheme not operated by Suffolk Life, in accordance with clauses 26.6 and 26.7 of the SIPP's terms and conditions. These clauses read as follows:

“26.6 We may after giving you at least six months’ prior written notice, require you to transfer the investments and cash held in respect of your SIPP net of any liabilities (less the amount required to satisfy all charges due to us and all costs chargeable to your SIPP) to another pension scheme that is a registered scheme within the meaning of section 153 of the Finance Act 2004 or which under that section is treated as a registered scheme as chosen by you. Investment transactions already initiated by us will be completed. We will not charge you any fee or costs in respect of the transfer.

26.7 We may ask you to transfer your SIPP in accordance with the provisions of paragraph 26.5 for reasons including but not limited to the following:

- a. changes in legislation;*
- b. where the scheme becomes too expensive for us to operate;*
- c. if we make an alternative scheme available that provides the same benefit;*
- d. if the registration of the scheme is removed by HMRSC.*

We also reserve the right to ask you to transfer your SIPP in accordance with paragraph 26.6 in those cases whereby in our reasonable opinion your behaviour is deemed inappropriate or unreasonable, including but not limited to abuse, offensive or threatening language or action.”

18. In this letter, Suffolk Life explained that it had taken this course of action because it was clear from the correspondence that Mr S had no confidence in its ability to administer his SIPP and there had clearly been a breakdown in the relationship. Suffolk Life also referred to the considerable amount of time and resources spent dealing with Mr S’ continuing concerns and complaints. Suffolk Life enclosed a copy of the relevant clauses from the SIPP’s terms and conditions with this letter.
19. On 2 March 2015 Mr S complained to Suffolk Life about its decision. He argued that the decision was unjustified because the majority of the issues had concerned Mrs S’ SIPP and there had been no specific difficulties with his own. Mr S referred to his previous complaints and his on-going complaints regarding the reconciliation of his SIPP and argued that due to the numerous errors relating to his SIPP, it was reasonable to scrutinise the reconciliation as further mistakes may have been made.
20. On 10 March 2015, Suffolk Life’s Managing Director rejected Mr S’ complaint, explaining that he considered that a breakdown in the relationship had occurred that could not be overcome. Suffolk Life cited Mr S’ continued dissatisfaction over the transfer of funds to his SIPP and his numerous requests for further financial concessions, as having made the SIPP impossible to manage.
21. On 6 April 2015, Mr S wrote again to Suffolk Life to further contest its requirement for him to transfer his SIPP to another provider.

22. On 8 May 2015, the Managing Director responded to this letter, in which he confirmed that, as Mr S had raised no additional queries requiring further investigation, the decision remained unchanged. Suffolk Life also confirmed that it saw no value in arranging a further meeting, as it had nothing to add to its previous correspondence.
23. On 13 July 2015, Mr S wrote to Suffolk Life informing it that the refusal to withdraw notice of requirement for him to transfer his SIPP to another pension provider had been reported to the Financial Ombudsman Service (**FOS**).
24. On 7 August 2015, emailed Mr S, and explained to him that his complaint would be more appropriate for this service.
25. Both Mr and Mrs S subsequently complained to this service and asked that their complaints be looked at together, as the cases were “inextricably linked”. As such, both complaints were dealt with by the same Adjudicator.
26. During the course of our investigation Suffolk Life confirmed that it was prepared to cover reasonable costs for Mr S to obtain independent financial advice and would contribute up to £2,000 for this. Such payment would be made direct to the financial adviser upon receipt of the appropriate invoice. Suffolk Life also confirmed that it would cover its own costs of dealing with one of its panel solicitors to arrange the transfer, the establishment cost of the alternative provider and their reasonable legal costs.

Adjudicator’s Opinion

27. Mr 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 terms & conditions of the SIPP are clear in that Suffolk Life has the ability to require a member to transfer their SIPP to another pension provider in the event that, in Suffolk Life’s reasonable opinion, that member’s behaviour is inappropriate or unreasonable.
 - Suffolk Life gave Mr S the required 6 months notification of its requirement for him to transfer his SIPP and had not acted contrary to the policy terms and conditions in this regard.
 - There had been a breakdown in the relationship that existed between Mr S and Suffolk Life and, in such circumstances, it was reasonable for Suffolk Life to have sought to terminate this relationship by requiring Mr S to transfer his SIPP to another provider.

- Suffolk Life is fully entitled to prefer its own interests or the interests of other clients and customers, in reaching a decision as to who it chooses to do business with. Such decisions are commercial and are at Suffolk Life's discretion.
 - Such an exercise of discretion can only be interfered with if this service is satisfied either that the decision making process was flawed in some way or if the decision reached is perverse i.e. one that no reasonable person could have reached.
 - Suffolk Life's decision is rational and has been explained to Mr S, and moreover Suffolk Life has offered to cover reasonable costs relating to the transfer of Mr S' SIPP, including the procurement of independent financial advice.
28. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and therefore, I will only respond to the key points made by Mr S for completeness.

Ombudsman's decision

29. It is clear from Mr S' comments that he believes Suffolk Life has behaved unreasonably and are unjustified in requiring him to transfer his SIPP to another provider. In this respect, he does not consider that there has been a breakdown in his relationship with Suffolk Life.
30. As I understand matters, Mr S appears now to accept that the terms and conditions of his SIPP do provide Suffolk Life with the ability to require a member to transfer their SIPP to another pension provider. As set out in paragraph 17 above, the terms and conditions allow for this in a number of scenarios, the one which is applicable in this case specifically refers to occasions where the member is deemed to have demonstrated unreasonable or inappropriate behaviour.
31. As the Adjudicator set out in detail in the Opinion, such a decision is at Suffolk Life's discretion and I will only interfere if I am satisfied that, either the decision making process was flawed in some way, or if the decision reached was perverse, i.e. one that no reasonable person could have reached. I cannot interfere just because I may have made a different one based on the same facts.
32. While I accept that Mr S does not believe there has been a breakdown in his relationship with Suffolk Life, I consider the fact that he and Suffolk Life are unable to even agree on this point is an indication that just such a breakdown has taken place. As I am sure Mr S will understand, the relationship between client and provider can only operate successfully if there is mutual respect and trust on both sides.
33. In this respect, it is clear from the papers that Mr S no longer trusts the figures provided to him by Suffolk Life and Suffolk Life no longer believe that Mr S is willing to accept any explanation it provides. Given these facts, I do not consider it was

unreasonable for Suffolk Life to have reached the view that its business relationship with Mr S had irretrievably broken down. I have seen no indication that Suffolk Life took this decision lightly, but ultimately it is a matter for Suffolk Life to decide what services it will offer to its clients and with whom it will do business. Suffolk Life has explained in detail the rationale behind its decision, although I accept that Mr S does not agree with it.

34. Lastly, in reaching my decision I have also taken into account that Suffolk Life has confirmed that it is willing to cover Mr S's reasonable costs for any independent financial advice taken in respect of the transfer, up to a maximum of £2,000, and that it would cover its own costs of dealing with a panel solicitor to arrange the transfer, the establishment cost of the new provider and their reasonable legal costs. This seems to me to be an appropriate offer given the circumstances of the case.
35. Therefore, I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
12 August 2016