

Ombudsman's Determination

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

Outcome

1. I do not uphold Mrs 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. Mrs S complained about Suffolk Life's decision to require her to transfer her SIPP to another pension scheme.
4. Mrs S has complained that this action is unreasonable and unjustified and has caused her 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 point the SIPP was established, Mrs S signed the relevant application and acceptance forms and was provided with a copy of the SIPP's terms and conditions, together with other documentation 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 Mrs 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' 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 funds 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. 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.
13. In their responses, Suffolk Life explained that it had spent a significant amount of time reviewing each transaction on Mr S' 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.
14. On 10 February 2015, Suffolk Life wrote to Mrs S following the continued exchange of correspondence concerning issues regarding the operation of Mr S's SIPP. In this letter, Suffolk Life provided Mrs S with formal notification that it required her to transfer her 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 benefits:*
- 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.”

15. In this letter, Suffolk Life explained that it had taken this course of action because it was clear from the correspondence that she had no confidence in its ability to administer her SIPP and there had clearly been a breakdown in their relationship. Suffolk Life also referred to the considerable amount of time and resources spent reconciling her account, the unpaid fees that had been written off, and dealing with Mr S’ continuing complaints. Suffolk Life enclosed a copy of the relevant clauses from the SIPP’s terms and conditions with this letter.
16. On 2 March 2015, Mrs S complained to Suffolk Life about its decision, citing the previously resolved complaints and her adherence to her obligations resulting from the August meeting. Mrs S drew attention to the fact that she believed all of her issues had been amicably resolved, and therefore Suffolk Life could not justify requiring her to transfer her SIPP on that basis. Mrs S requested a meeting to clarify the situation, and to discuss further grievances she and Mr S had with Suffolk Life.
17. On 10 March 2015, Suffolk Life’s Managing Director rejected Mrs S’ complaint, explaining that he considered that a breakdown in the relationship had occurred that could not be overcome. Suffolk Life cited the balance of over £19,000 Mrs S still owed on her overdraft (which she now had just 21 days to clear) and the continued requests for further financial concessions without acceptance of her inability to provide the appropriate funding, as having made the SIPP impossible to manage.
18. On 6 April 2015, Mrs S wrote again to Suffolk Life to further contest its requirement for her to transfer her SIPP to another provider.
19. On 8 May 2015, the Managing Director responded to this letter, in which he confirmed that, as Mrs S had not raised any new points for consideration, 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.
20. 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 in this by the same Adjudicator.
21. During the course of the investigation Suffolk Life confirmed that it was prepared to cover reasonable costs for Mrs 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

22. Mrs 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 Mrs S the required 6 months notification of its requirement for her to transfer her 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 Mrs S and Suffolk Life and, in such circumstances, it was reasonable for Suffolk Life to have sought to terminate this relationship by requiring Mrs S to transfer her 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 Mrs S, and moreover Suffolk Life has offered to cover reasonable costs relating to the transfer of Mrs S' SIPP, including the procurement of independent financial advice.

23. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her 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 Mrs S for completeness.

Ombudsman's decision

24. It is clear from Mrs S' comments that she does not believe that Suffolk Life has acted reasonably in requiring her to transfer her SIPP to another provider. She considers

that Suffolk Life's decision is unjustified because she believes that all of her concerns had been resolved and the relationship had been repaired. As such, she does not consider that there has been a breakdown in her relationship with Suffolk Life and it was Mr S, rather than herself, who had raised continued concerns regarding his SIPP.

25. As I understand matters, Mrs S appears now to accept that her SIPP's terms and conditions do provide Suffolk Life with the ability to require her to transfer her SIPP to another provider. As set out in paragraph 14 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.
26. As the Adjudicator set out in detail in the Opinion, such a decision is at Suffolk Life's discretion. In cases where I am asked to consider how discretion has been exercised, I must look at whether the correct questions were asked, the applicable terms and conditions correctly identified and correctly applied, and that all relevant, but no irrelevant factors, have been taken into account during the decision making process.
27. I can only seek to interfere in the exercise of a discretion 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 with a decision just because I might have reached a different one based on the same facts. In terms of Suffolk Life's decision to require Mrs S to transfer her SIPP to another provider, it did not have to act in Mrs S' interests in exercising this discretion; indeed it is quite entitled to prefer its own interests and/or take into account the interests of other clients.
28. Having carefully considered all the available evidence, I am satisfied that Suffolk Life correctly identified the applicable paragraphs of the terms and conditions and correctly applied those requirements. I am satisfied that Mrs S was provided with the stipulated notice period and has been provided with Suffolk Life's rationale behind its decision.
29. While I can appreciate that Mrs S does not agree with this decision, the fact remains that it is for Suffolk Life to decide with whom it wants to do business and any such decisions are at its discretion.
30. Given the facts of this case, I am satisfied that Suffolk Life has not acted with maladministration in respect of the decision to require Mrs S to transfer her SIPP to another provider.
31. I am aware that Suffolk Life has confirmed that it is willing to cover Mrs 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

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reasonable legal costs. This seems to me to be an appropriate offer given the circumstances of the case.

32. Therefore, I do not uphold Mrs S' complaint.

Anthony Arter

Pensions Ombudsman
12 August 2016