

## The complaint

Mr H is complaining about Suffolk Life Pensions Limited (Suffolk Life) who is Mr H's SIPP (self invested personal pension) operator. The complaint concerns the provision of incorrect bank details for Suffolk Life, which resulted in rent and service charge payments due to Mr H's SIPP going astray.

## What happened

I issued a provisional decision on 1 March 2023. I set out the background to Mr H's complaint, what his complaint was, how we'd investigated it and the findings I'd made in the jurisdiction decision I'd issued on 27 June 2022, together with Suffolk Life's further comments. I went on to explain that I'd thought about jurisdiction again but my view was still that we could consider the complaint. And I maintained it shouldn't be dismissed. I then set out my provisional findings on the merits of the complaint. I've recapped all that here:

*'Mr H has a SIPP with Suffolk Life which holds several commercial properties. These include a leasehold commercial property ('the Property') from which Mr H operates his own business. Legal title to the Property is held by SLA Property Company Limited as nominee for Suffolk Life Annuities Limited. Mr H's company pays rent and service charges to Suffolk Life as the SIPP trustee and landlord of the Property.*

*There's a property manager in place, who I'll refer to as Firm G. Firm G was appointed in September 2012 by Suffolk Life's predecessor. I've seen what appears to be the original Property Management Agreement (PMA) between Firm G and the original SIPP provider, although the copy I've seen is unsigned. When Suffolk Life took over, the properties held in Mr H's SIPP were transferred into the legal ownership of Suffolk Life.*

*Suffolk Life wrote to Firm G on 7 February 2014, noting that Firm G would be managing the Property (and others held in the SIPP) on Suffolk Life's behalf. It asked Firm G to arrange for payments to be sent by cheque or by BACS. Amongst other things, Suffolk Life said it required copies of all invoices which Firm G sent out to the tenants with Firm G to collect all money owed in respect of those invoices. Copies of Suffolk Life's PMA (one for each property) was enclosed. Firm G was asked to insert the management fees it would be charging and sign and return the PMA to Suffolk Life who would complete and sign it and then send Firm G a copy for its records. I haven't seen a completed and signed copy of the PMA for the Property.*

*In 2016 Suffolk Life's banking arrangements changed. Suffolk Life says Firm G was given the new details by email on 26 October 2016.*

*Firm G emailed Mr H's company on 9 March 2017, attaching an invoice for rent and service charges due on 25th March 2017. I understand that the payment was made by Mr H's company but returned (presumably because it was made to Suffolk Life's 'old' account).*

*On 22 June 2017, Mr H's co-director (who I understand is the company finance officer) emailed Firm G saying:*

"Could you confirm what is the correct bank account for our rent and charges to be paid as the recent payment I made has been returned."

Firm G replied the same day with the details it had for Suffolk Life– the sort code and account number. The details given were wrong. Only the first two digits of the sort code were correct. The other four digits were wrong. And the account number was wrong. It was nine digits long. A digit (a 4) had been duplicated. The account number given ended 4417. The correct number ended 7417.

Mr H's company made an electronic payment of £24,537.04 the same day. But, as the account number was too long, the last digit of the incorrect account number was omitted. It's not entirely clear whether Mr H's co-director left off the last digit and actioned the payment, or if it was somehow processed using a truncated account number.

The payment wasn't returned. And, on 21 September 2017, a further payment of the same amount was processed using the same (incorrect) account number and sort code. That meant a total of £49,074 had been sent to what turned out to be an incorrect account.

On 20 October 2017 Suffolk Life emailed Firm G asking when the next rent payment would be received. Firm G replied saying it had copied in Mr H's company as Firm G didn't collect the rent for the Property. On 6 November 2017 Suffolk Life emailed Mr H's company asking when the SIPP could expect to receive the next rental payment. £49,434.08 was currently outstanding in respect of rent and service charges. The email said that the bank account details had recently changed and gave the new details.

Suffolk Life sent further emails on 20 November and 4 December 2017 to Mr H's company. Mr H's co-director replied on 4 December 2017. She said both invoices had been paid but, unfortunately, into an account number ending 4417. She said the first email she'd received with the new account number was in early November, by which time both invoices had been paid. She asked Suffolk Life to locate the outstanding funds and allocate to clear the outstanding rent. I've seen an email sent on 5 December 2017 from Mr H's co-director to Firm G:

'... I think it looks like the details you send me were incorrect as it had too many digits which didn't allow me to input the last digit. So cock up on both sides to be fair.'

Initially Mr H's company asked the bank involved to disclose the identity of the third party account holder. But, for confidentiality or privacy reasons, the bank refused. Mr H's company instructed solicitors to make an application to the court requiring the bank to disclose the identity of the third party account holder. An order was made in February 2018. The account holder was a limited company. Solicitors instructed by Mr H's company corresponded with the owner of the third party company.

Some money was recovered. An initial payment of £10,000 was made on 5 March 2018 and an agreement was reached with the third party to repay the balance in instalments of £1,000 per month. I understand that a total of £14,000 was in the end recovered from the third party.

It seems, by about May 2018, Mr H had started to think about looking to Firm G for reimbursement. I suspect he was concerned as to whether the third party would keep to the agreement to repay and, even if it did, the time it would take to recover in full. And possibly the costs involved too – Mr H's representative has confirmed that Mr H's company incurred legal fees of £8,452 plus VAT.

Whatever the reason, initially Suffolk Life was able to agree it would also instruct Mr H's company's solicitors to advise about making a claim to Firm G. An emailed letter dated 2

May 2018 to Suffolk Life from the solicitors confirms that Suffolk Life had asked for advice regarding a potential claim against Firm G for providing incorrect bank details to the tenant of the Property, resulting in a loss of £49,074.08 in rental payments. The letter said Mr H had agreed that the solicitors' fees for acting for Suffolk Life were to be met from his SIPP. Any steps taken by Suffolk Life in pursuing the claim would be carried out with his agreement and advice and information about the claim could be shared with him. It was anticipated that the costs of preparing a letter before claim to Firm G wouldn't exceed £500 plus VAT.

At the outset the solicitors were happy there was no conflict of interest in acting for both Suffolk Life and Mr H's company. The solicitors considered both clients had the common goal of recovering the missing rent from Firm G. Suffolk Life's interests were aligned with those of Mr H's company as Suffolk Life intended to pursue Firm G, and not Mr H's company.

A pre-action letter was issued to Firm G on 29 May 2018. Amongst other things it said:

- It was a letter of claim sent in accordance with the Practice Direction on Pre-Action Conduct (Civil Procedure Rules).
- Firm G managed the Property for Suffolk Life in return for annual management fees met from the SIPP. Firm G sent Mr H's company invoices for rent and service charges on a quarterly basis.
- The account details Firm G had provided to Mr H's co-director were incorrect. In reliance on the (incorrect) bank details provided by Firm G, Mr H's company transferred a total of £49,074.08 to the third party account.
- Mr H's company had received total payments of £12,000 from the third party but it appeared the prospects of recovering the balance outstanding were poor. Mr H's company's legal costs were £8,452.42 excluding VAT. That left a balance £3,547.58 available to be paid into the SIPP which left the SIPP out of pocket by £45,526.50.
- Firm G had breached a contractual duty owed to Suffolk Life. There was no signed formal contract but there was no doubt that a contractual relationship existed between the parties. Firm G had managed the Property prior to the transfer of the SIPP to Suffolk Life. A proposed PMA had been sent to Firm G on 7 February 2014. It was clear from the terms of the covering letter that Suffolk Life intended Firm G to continue to manage the Property. A signed copy of the PMA wasn't returned to Suffolk Life, but Firm G continued to manage the Property on behalf of Suffolk Life and invoice Mr H's company for rent and service charges. A court would conclude that Firm G had assented to the terms of the PMA by its conduct and a contract was concluded on those terms.
- Under 'Duties of the property manager, Section A', the PMA says Firm G should act in accordance with the generally accepted principles and procedures for the time being recommended by the Royal Institution of Chartered Surveyors (RICS) in relation to the management of the Property. Principle 2 of the 'Professional standards and guidance, global; Real Estate Management' (3rd edition, October 2016) (RICS Principles) requires work to be carried out 'with due skill, care and diligence...'
- In supplying incorrect bank details to Mr H's company, Firm G failed to meet the RICS standards and so breached Section A of the PMA. Alternatively (if the PMA was not incorporated into the contract) Firm G acted in breach of the implied term to manage the Property with due skill, care and diligence.
- The sum of £45,526.50 was claimed plus interest at 8%.

Firm G replied on 11 June 2018. It said the claim should be brought under the Pre-Action Protocol for Professional Negligence. That required an acknowledgement within 21 days and a Letter of Response within three months. Firm G said the letter was the acknowledgement and its Letter of Response would follow. It requested a breakdown of the £12,000 recovered.

*The solicitors replied on 20 June 2018 saying, putting aside the question of whether the Pre-Action Protocol for Professional Negligence applied, it would be reasonable for Firm G to reply by 20 July 2018. The letter set out the payments made by the third party: £10,000 on 5 March 2018 and two payments each of £1,000 on 26 March 2018 and 2 May 2018. In its response dated 22 June 2018 Firm G maintained the Professional Negligence Pre-Action Protocol applied.*

*The solicitors instructed by Suffolk Life and Mr H sent a copy of the letter to Suffolk Life and Mr H. In the covering email the solicitors said they hadn't invoiced for their work and they'd like to bring their fees up to date. They said they'd originally estimated £500 excluding VAT for preparing the letter of claim, but costs had actually reached £1,750 excluding VAT. They proposed to invoice £1,000 plus VAT and write off the balance and requested confirmation that was acceptable.*

*Solicitors instructed by Firm G and its professional indemnity insurers responded on 27 July 2018 saying, amongst other things:*

- Despite Firm G's invoices setting out its own bank details, Mr H's company had never made payment of rent/service charges to Firm G but had paid Suffolk Life direct. Firm G consented to that arrangement on 5 January 2015 provided Mr H's company emailed Firm G to confirm payment had been made each time. Mr H's company had never done so.*
- It was agreed that Firm G owed a duty to Suffolk Life to act with due skill, care and diligence in respect of their instructions to manage the Property although the position as to how that arises was reserved. It was arguable that providing Suffolk Life's bank details to Mr H's company fell within the scope of Firm G's instructions but, if it did, it was conceded that Firm G had provided incorrect details. But Suffolk Life hadn't suffered any loss as it was still entitled to collect the rent due from Mr H's company.*
- Any duty of care owed to Mr H's company was denied. And the third party had agreed to repay the monies at a rate of £1,000 pm or more quickly if possible. No evidence had been provided for the statement that the prospects of recovering the balance outstanding from the third party appeared to be poor. That should be Mr H's company's primary source of recovery.*
- If a breach of duty causative of loss could be established there'd been significant contributory negligence. Firm G's sole error was to make a typo in an email to Mr H's company. But Mr H's company and/or its bank had been negligent:*
- Mr H's co-director, an experienced finance director, should've known the account number provided by Firm G was too long and checked it before inputting the details into Mr H's company's payment systems.*
- Mr H's co-director had claimed that system allowed her to input all nine digits and the bank then proceeded to truncate the number and make payment to the account corresponding to the first eight digits provided. It was highly unlikely a commercial bank's systems would be structured in this way: Mr H's co-director either knowingly or recklessly only inputted eight digits. Mr H's co-director's email to Firm G on 5 December 2017 was referred to. But, if Mr H's company's bank did accept all nine digits and then unilaterally truncated them to eight, the bank had been significantly negligent. Mr H's company's/its bank payment system didn't include sufficient checks to ensure only eight digits could be input into the account field or, where payment is made to a new payee, a warning is given to the payor.*
- Contrary to Firm G's express request, Mr H's co-director didn't confirm to Firm G, following the June payment, that payment had been made. Had she done so, it's likely the issue would've come to light in advance of the September payment.*
- Suffolk Life didn't check that Mr H's company's rent had been received in June 2017.*

*Suffolk Life is the trustee of the SIPP and had it checked, it's likely the issue would've come to light in advance of the September payment.*

- The company's usual standing order to Suffolk Life failed in June 2017. Suffolk Life hadn't explained the reasons for that and it may be that Suffolk Life and/or its bank is at fault – for example if Suffolk Life changed banks without informing other parties.*
- The issue should've been discovered following the June payment. That would've prevented the September payment and reduced the sum claimed for interest and increased the prospects of recovering a greater amount from the third party. Details of the costs in pursuing the third party hadn't been provided but £8,452.42 appeared high. And interest rates had essentially been nil for the relevant period.*
- In conclusion, it was possible that Firm G had breached its duty of care to Suffolk Life if providing the requested bank details to Mr H's company was within the scope of Firm G's instructions. But it was denied any breach was causative of loss to Suffolk Life. Firm G didn't owe a duty of care to Mr H's company. Firm G's sole error was to make a typo in an email to Mr H's company. His company's and/or its bank's negligence superseded that.*

*A without prejudice letter was also sent on 27 July 2018. Firm G maintained it didn't owe a duty of care to Mr H's company. But there was a small risk that a court might take a broad view of the events and apportion some liability to Firm G as a result of its typo. Although, as a proportion of the entire liability for the incorrect payment, Firm G's exposure was minimal. Given the potential for costs to escalate if proceedings were issued, Firm G was prepared to offer £16,500 in settlement of the claim on the terms set out.*

*Firm G's letters were considered by Suffolk Life, Mr H, and the solicitors instructed. Mr H asked, amongst other things, about a possible counterproposal and how the claim against the third party could be escalated. The solicitors set out their views on those issues and said, if they were to continue to carry out work, they'd need confirmation as to the agreed position as to who would be responsible for their fees.*

*There was discussion between Suffolk Life and Mr H about the solicitors' fees. In an email on 7 August 2018 Suffolk Life referred to an earlier email to Mr H enclosing a letter dated 25 July 2018 following a discussion on 10 July 2018 about the solicitors' invoice due for payment in the sum of £1,000 plus VAT from Mr H's SIPP. Suffolk Life said it was disappointed Mr H hadn't replied with instructions on paying this invoice and further solicitors' costs had been incurred. Suffolk Life asked for Mr H to revert as soon as possible, adding that any costs incurred by the solicitors would be deemed to be incurred by him personally and not Suffolk Life.*

*Mr H replied on 8 August 2018. He said Suffolk Life were employed to look after his interests and had clearly failed – the offer letter from Firm G's solicitors had raised contributory negligence by Suffolk Life. As Suffolk Life were clearly at fault, he didn't feel obliged to pay the solicitors' costs. He added that Suffolk Life hadn't told him his SIPP would be liable for those costs.*

*Suffolk Life replied the same day referring to a conversation on 4 April 2018 and Suffolk Life had raised with Mr H that all legal costs pertaining to instructing the solicitors on behalf of his SIPP to pursue Firm G would be payable by Mr H's SIPP. Suffolk Life said it did say that some of those costs might be recoverable but explained this depended on how any claim progressed. Suffolk Life had followed up with an email forwarding the solicitors' terms of business and reiterating the position. Suffolk Life said it couldn't comment on if there'd been contributory negligence and would need to consider that in more detail.*

*What Mr H had said about led Suffolk Life to question with the solicitors whether a conflict of interest had arisen. The solicitors agreed it had, saying the disagreement over responsibility*

*for fees had created the situation where the solicitors were caught in the middle of a disagreement between two clients. And which meant the solicitors had no choice but to step back from advising either client.*

*Suffolk Life sent Mr H a final response letter on 21 August 2018. In summary:*

- Suffolk Life didn't agree it had failed to fulfil its responsibilities or failed to inform Mr H that his SIPP would be liable for legal fees incurred in pursuing Firm G. All relevant parties had been notified of the change to Suffolk Life's banking arrangements and Firm G was given the new details by email on 26 October 2016. Firm G didn't forward the new bank details to Mr H's company until 22 June 2017 by which time a payment made by Mr H's company had been returned. It wasn't clear why the new bank details hadn't been provided to Mr H's company sooner.*
- The (new) account number provided by Firm G was wrong. It had nine digits, not eight. And the sort code was wrong. On 22 June 2017 Mr H's company made a payment without questioning the accuracy of the account number, even though the system wouldn't accept the full nine digits. That was confirmed in Mr H's co-director's email of 5 December 2017. It also confirmed that errors had been made by Mr H's company and Firm G.*
- Mr H's company pays rent to Suffolk Life on a quarterly basis. Suffolk Life received funds in March 2017 for rent owed from March to June 2017. All the paperwork was received, and the account reconciled in April 2017. It was only when the rent wasn't received for the June to September 2017 quarter that Suffolk Life contacted Firm G to chase it.*
- Suffolk Life's process for chasing rent, where a property is externally managed, is to start chasing one month after the end of the billing quarter. So, it wasn't due to chase Firm G until the end of October 2017. A first chaser email was sent to Firm G on 20 October 2017. Firm G only invoiced the rent for the Property and didn't physically collect it so Firm G forwarded the email to Mr H's company. Suffolk Life then chased Mr H's company on 6 November 2017 and included a prompt of the new bank details. When no response was received Suffolk Life chased again on 20 November and 4 December 2017. Mr H's company responded on 4 December 2017, confirming that payments had been made, but to an incorrect bank account.*
- As to Mr H's claim that he hadn't been informed his SIPP would be liable for any legal costs in pursuing Firm G, Suffolk Life said it had been made clear, during Mr H's telephone call (on 4 April 2018), that, in the first instance, any legal fees would need to be met from his SIPP fund. It had then been explained that the solicitors instructed could then look to recover those costs as part of the claim. But the solicitors would need to be asked about that and the likelihood of a successful claim ascertained. It wasn't guaranteed that the costs would be recovered. That was reiterated in an email dated 3 May 2018 and is detailed in the terms and conditions. Unless Mr H agreed to settle the solicitors' invoice, the claim against Firm G couldn't be progressed.*

*Suffolk Life instructed new solicitors in connection with the claim against Firm G. The new solicitors wrote to Firm G's solicitors on 8 October 2019 on a without prejudice basis and in connection with the offer of £16,500 and enquiring if Firm G was open to negotiation. I've seen Firm G's solicitors' reply. The offer wasn't increased.*

*I've also seen that Mr H's representative issued a pre-action letter to Suffolk Life on 15 November 2018. Amongst other things it said:*

- Suffolk Life, as the SIPP trustee, had a number of non-delegable duties in respect of Mr H. Including a duty to administer the SIPP with care and skill and in the best*

interests of Mr H. That encompassed a duty to establish good internal controls for the proper administration of the assets of the SIPP, which incorporated a duty to obtain rent in respect of the Property.

- In 2012 the trustee entered into a PMA with Firm G. Whereas the trustee can delegate its duties to an agent (Firm G) the trustee remains liable to Mr H as beneficiary for the actions of its agent.
- Firm G adopted a process of sending out invoices for rent and service charges on a quarterly basis to the tenant, Mr H's company.
- Mr H's co-director had requested payment details for Suffolk Life. The details Firm G provided were incorrect. Both the account number and the sort code were wrong. In reliance on the incorrect bank details provided by Firm G, Mr H's company transferred a total of £49,074.08 to the account provided.
- Following discovery of the error and the court application to get details of the account holder, Mr H's company had been unable to recover the funds in full. £14,000 had been recovered at a cost of £8,452 plus VAT (in total £10,142.40). The third party company was dissolved on 2 October 2018.
- Mr H held the trustee to account for the loss caused to him, in the amount of £49,074.08. The trustee, through its agent Firm G, had advised the tenant to make a payment to an account other than that of the trustee. A trustee acting with due skill and care would've ensured the correct information was provided to the tenant in order that the correct rent was received.
- The duty owed to Mr H is a non-delegable duty. The extent to which the trustee may have a claim for a contribution or indemnity from Firm G is of no concern to Mr H and a matter between the trustee and Firm G only.
- Mr H claims £49,074.08 in losses. Mr H will give credit for the amount received by way of recovery to date, net of the costs of the recovery action. And he was willing, as part of any settlement agreement to assign to the trustee all of his rights in respect of the third party company and its owner. And the bank which made the transfer.

The new solicitors instructed by Suffolk Life replied on 10 December 2018 saying, amongst other things:

- Suffolk Life had engaged Firm G to manage the Property. Management of the Property by Firm G and its appointment was, at all times, at Mr H's discretion.
- Firm G's duties included invoicing Mr H's company for rent and service charges. It was accepted that Firm G had relayed the wrong account details. But Mr H's co-director, an experienced finance director, should've known the account number provided by Firm G was too long and, exercising due skill and care, checked before inputting it. The co-director's email to Firm G on 5 December 2017 was cited.
- Suffolk Life had in place appropriate management arrangements in relation to the Property and Suffolk Life denied any wrongdoing. Any claim against it would lead to it including Firm G and Mr H's company as Part 20 defendants. The tenant's acts amount to significant contributory negligence. There remains an outstanding sum of rent due, liability for which ultimately rests with the tenant.

I understand that Suffolk Life considered issuing proceedings against Mr H's company for the outstanding rent payments. But Suffolk Life decided against taking any legal action against Mr H's company as Mr H had complained to Suffolk Life.

#### Mr H's complaint

In February 2019 Mr H, through his representative, referred his complaint to our service. On his complaint form, in the section titled, 'please tell us what your complaint is about' Mr H said: 'The complaint is in respect of services provided by Suffolk Life Annuities Limited

and/or Suffolk Life Trustees Limited and/or SLA Property Company Limited. The details of the complaint are set out in full in the following items of attached correspondence.' That included: Suffolk Life's letter to Mr H dated 21 August 2018 (Suffolk Life's final response); Mr H's representative's letter to Suffolk Life dated 15 November 2018 (the pre-action letter); and the response dated 10 December 2018 from the solicitors instructed by Suffolk Life. I've summarised all of those above. The following complaint points appear to be raised by/on behalf of Mr H and/or addressed by Suffolk Life:

- Suffolk Life failed in its responsibilities and did something wrong;
- Suffolk Life had a duty to administer Mr H's SIPP with care and skill in the best interests of Mr H. That duty encompasses a duty to establish good internal controls for the proper administration of the assets of the SIPP, which incorporates a duty to obtain rent in respect of the Property.
- Suffolk Life, via its alleged agent, Firm G, advised Mr H's company to make a payment to an account other than that of Suffolk Life. If acting with due skill and care, Suffolk Life would've ensured the correct information was provided to Mr H's company to ensure the correct rent was received by Suffolk Life.
- The duty owed to Mr H is a non-delegable duty.
- Suffolk Life failed to inform Mr H that his SIPP would be liable for any legal fees incurred in pursuing Firm G.

When we asked Suffolk Life for its comments in response to the complaint, Suffolk Life made a number of points: In summary:

- It wasn't responsible for the negligent actions of the external third party property manager, or the tenants of the Property, which led to payments being made to an incorrect account not owned by Suffolk Life.
- When Suffolk Life acquired Mr H's SIPP it already held the Property and Firm G had already been appointed as external property managers.
- As property manager, it is the responsibility of Firm G to invoice and collect rent from the tenant as set out in Suffolk Life's letter of February 2014.
- In 2017 Suffolk Life wrote to Firm G to inform it of a change in Suffolk Life's bank details for remittance of rental payments. But Firm G later provided incorrect details to Mr H's company and payments were made to the wrong account. Despite Suffolk Life's efforts, and initial legal action, it hadn't been possible to retrieve all the funds. What happened wasn't Suffolk Life's fault and, as rent hasn't been paid successfully to the SIPP, Mr H's tenant company still owes the SIPP that money.
- Mr H's co-director's email to Firm G confirms that the error was between them.

### Our investigation

Our adjudicator upheld the complaint. In summary, he said it was clear an error had been made which could be traced back to the email from Firm G on 22 June 2017 which gave the incorrect account number and sort code. Suffolk Life had simply outsourced some of its duties in connection with the management of Mr H's SIPP to Firm G. Any error that Firm G made was Suffolk Life's responsibility. Suffolk Life should compensate Mr H for the rent and service charge payments that went missing because of Suffolk Life's agent's error. As to whether some responsibility might rest with Mr H's company, the adjudicator concluded that Mr H's co-director didn't notice the account number was too long and only entered the first eight digits. But, even if she'd queried the longer account number, the sort code provided incurred. The adjudicator didn't think Suffolk Life should meet the legal costs incurred.

Mr H's representative agreed with most of the adjudicator's findings but said Mr H's

company had spent £8,452 (excluding VAT) trying to recover the missing payments and had recovered, in total, £14,000, so a net balance of £5,548. Mr H's company still had that money and hadn't been asked to pay it into Mr H's SIPP. The net missing amount was £43,526.08. Suffolk Life should pay Mr H interest (at 8%) on the payments that should've been paid into his SIPP. Mr H's legal fees should also be met. Mr H had been advised that payment couldn't be made into his pension and should be made direct to him.

Suffolk Life didn't agree with the adjudicator's view. In summary Suffolk Life said:

- All third parties had to be appointed by Suffolk Life as the legal owner and landlord of the Property. But the decision as to whether an appointment is made and maintained is the client's. Suffolk Life accepted no liability for the service of a third party company the client had requested be appointed. The situation wasn't one where Suffolk Life required a property manager to be appointed. It was Mr H's decision to have Firm G appointed and retained.
- Firm G had already been appointed when Suffolk Life acquired the SIPP as part of the transfer from the previous SIPP operator. Suffolk Life hadn't outsourced its responsibilities to an external party. It had inherited the relationship. In February 2014 it had written to Firm G to confirm its understanding that Firm G would continue as property manager and asking Firm G to sign a new PMA.
- Suffolk Life referred to the PMA and Suffolk Life's SIPP terms and conditions (in particular sections 10.22, 10.29 and 10.30 which I've referred to further below).
- There's a link between Firm G and Mr H. Firm G manages three separate properties held in Mr H's SIPP.
- Suffolk Life hadn't made any error. This service has no jurisdiction over Firm G. We shouldn't assign financial liability for Firm G's actions to Suffolk Life. The claim against Suffolk Life should be dismissed as there was no failure on its part.
- Suffolk Life can pursue the unpaid sums legally via a claim for negligence against Firm G, if Mr H wants. But all legal costs will need to be covered by the SIPP and form part of the claim. Legal action has been taken against Firm G. It made an offer. The solicitors appointed were unwilling to continue to act unless their costs were paid. Mr H hadn't accepted the offer or appointed new legal representation.

The adjudicator, after sharing each party's comments with the other and considering everything that had been said, wrote to the parties again on 9 December 2019. He didn't think the further submissions changed things. I've summarised his further findings:

- Even if Firm G was already in place when Suffolk Life became the SIPP provider, Suffolk Life had formally appointed Firm G, albeit at Mr H's request.
- Suffolk Life's PMA said Firm G indemnified Suffolk Life from any losses arising from dishonesty or negligence. But that was an agreement between Suffolk Life and Firm G. If Suffolk Life felt that Firm G's actions had caused financial loss, Suffolk Life could pursue Firm G independently.
- Section 10.30 of the PMA says the property manager will carry out duties on Suffolk Life's behalf. The primary relationship was between Suffolk Life and Mr H. Suffolk Life may not have made any mistake but, even if the error was Firm G's, that simply gave Suffolk Life a way to pursue Firm G for the losses.
- The adjudicator didn't agree that Mr H should get 8% interest on the missing rental payments or that any award for legal costs should be made.

Again, both parties commented. Mr H's representative maintained that Mr H's legal fees And Suffolk Life said, in summary:

- We had to be fair and reasonable to all parties. The adjudicator had accepted that

*Suffolk Life hadn't made any error. But we'd suggested Suffolk Life was responsible for financial losses which stemmed directly from the failures of external third parties. And we'd disregarded the SIPP terms and conditions. Just because Firm G didn't come within our jurisdiction didn't mean we could say responsibility lay elsewhere.*

- There are far reaching consequences on how the SIPP market works for commercial property investments. In all property transactions the SIPP provider is reliant on the services of third parties, including solicitors, property surveyors and, in some cases, external property managers. All are appointed at the instruction of the underlying customer on the understanding that Suffolk Life accepts no liability for the service. Such companies aren't regulated by the Financial Conduct Authority but they have their own industry regulation and action can be taken against them.*
- The costs of any legal action against a third party would initially be borne by the SIPP although the costs incurred may form part of any claim as clarified in section 10.37 of the terms and conditions.*
- The SIPP terms and conditions make it clear that Suffolk Life doesn't accept responsibility for the service provided by third parties - see clause 10.22 which is the principle on which the appointment of third party professionals is allowed.*
- It wasn't reasonable to disregard the contract terms which Mr H had agreed to when establishing his SIPP. And it was his choice to have Firm G appointed as an external property manager. It has suitable qualifications and must have sufficient indemnity insurance in place.*
- Suffolk Life has every sympathy with the tenant company. But it can't waive the sums due. The tenancy is on a connected basis and, if funds are not paid to the SIPP, HMRC will view the matter as Mr H having received an unauthorised benefit. That would mean punitive tax measures against Mr H personally, his SIPP and Suffolk Life as the SIPP administrator.*

*As agreement couldn't be reached, the complaint was referred to me to decide. But it seemed to me there were jurisdiction issues which should be considered – in particular whether Mr H was an eligible complainant. I issued a provisional decision on 19 January 2021, dealing with both jurisdiction and merits. I said we could consider the complaint and I upheld it in part. I thought some responsibility rested on Mr H's company and so I said Suffolk Life should only be liable for half of the payments which had gone astray.*

*Mr H didn't agree. He said Suffolk Life was liable. And the second payment going into the wrong account could've been avoided. Suffolk Life didn't accept we could consider Mr H's complaint. Suffolk Life also argued that the complaint should be dismissed.*

*We shared each party's comments with the other. We also asked Suffolk Life to clarify what it had said about possible issues with HMRC. Suffolk Life's view was, if we were to order it to make a payment into the SIPP, that would be classed as an unauthorised payment, leading to a tax charge of 40% and possibly an additional surcharge of 15%. And it would trigger the loss of Enhanced Protection, Fixed Protection or Fixed Protection 2014 as relevant.*

*After obtaining more information and comments I issued a provisional jurisdiction decision on 4 October 2021 followed by a jurisdiction decision on 27 June 2022. I said we could consider the complaint and it shouldn't be dismissed.*

#### *My jurisdiction decision dated 27 June 2022*

*I explained that we're governed by the DISP (Dispute Resolution) rules set out in the Financial Conduct Authority's (FCA's) Handbook. The version that applies is the one in force at the time Mr H's complaint was brought to this Service. DISP 2.7.1R says we can only deal with a complaint if it is brought by or on behalf of an eligible complainant. There are two*

requirements to meet in order to be an eligible complainant. First, DISP 2.7.3R sets out the categories of eligible complainants and, in so far as is relevant here, says:

*'An eligible complainant must be a person that is:*

*(1) a consumer,'*

Secondly, DISP 2.7.6R says:

*To be an eligible complainant a person must also have a complaint which arises from matters relevant to one or more of the following relationships with the respondent:*

*(1) the complainant is (or was) a customer, payment service user or electronic money holder of the respondent;*

*...*

*(4) the complainant is a beneficiary of, or has a beneficial interest in, a personal pension scheme or stakeholder pension scheme;'*

*I considered first if Mr H met the definition of 'consumer'. My main findings were:*

- *Subsection 7 of the FCA's Glossary definition said, for the purposes of DISP 2.7.3R, the definition is: 'an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession ...'. Mr H had to be acting 'mainly' and not 'wholly' outside his trade, business, craft or profession. So some link with his trade, business, craft or profession wouldn't mean he couldn't meet the applicable definition of 'consumer'.*
- *The case of Bluefin Insurance Services Ltd v Financial Ombudsman Service [2014] EWHC 3413 (Admin) was relevant. The facts were very different from the current case, as was the applicable definition of 'consumer'. But the case did assist in determining if Mr H met the relevant 'consumer' definition and in setting out the approach that should be taken in addressing that question: an analysis of what a complainant is doing and for what purposes when bringing a complaint was required.*
- *Mr H's complaint points addressed losses he'd incurred in his personal capacity as a beneficiary of the SIPP and which went beyond the payments that went astray. Bluefin noted that personal loss may not be determinative of an individual being a 'consumer'. But I thought it was a relevant factor to take into account.*
- *At the time the complaint was brought to this Service, the SIPP held properties, some of which were tenanted to businesses which Mr H had an interest in and some he didn't. I considered the purpose for which the SIPP had been established. In my view, it hadn't been set up to facilitate Mr H's business interests or to purchase the Property (or any other commercial property) but to make retirement provision. The aim was to create a pension fund with a diverse investment strategy to provide income in retirement via rents and capital growth via equities.*
- *Mr H had concluded the Property was a suitable investment for his SIPP as it provided the opportunity for both rental income and capital growth. The arrangement would've been convenient from a business perspective but the purchase was driven by the Property's viability as a SIPP investment and not for reasons to do with Mr H's company and/or to further his business interests.*
- *Buying the Property was the start of an investment strategy Mr H had decided to pursue using commercial property as an asset class and which he went on to develop by adding more properties to the portfolio of commercial properties held in his SIPP. The dominant purpose of the SIPP was personal rather than commercial or business related. The fact that the SIPP held some properties which were connected with Mr H's business interests could be said to be incidental.*
- *Mr H's complaint could be characterised as a one of alleged maladministration of his*

*SIPP. His aim in bringing his complaint was to seek compensation for his alleged losses as a beneficiary of the SIPP. That supported a conclusion that, in bringing his complaint, he was acting as a 'consumer' as defined.*

- *The payments which went astray were due from Mr H's company as it was the tenant of the property. And Mr H's company was the client in terms of the legal fees. But those factors were, in my view, incidental to Mr H's key and overall complaint that he'd suffered a loss due to alleged maladministration of his SIPP.*
- *Firm G's mistake in giving the wrong bank account details could've arisen in connection with another property held in the SIPP with which Mr H had no business connection, especially as Firm G also managed other properties held in the SIPP. That supported a conclusion that the link with Mr H's trade, business, craft or profession was incidental and the complaint wasn't inextricably linked to his trade, business, craft or profession.*
- *Overall, the complaint could be characterised as one of alleged maladministration of Mr H's SIPP by Suffolk Life and/or Firm G which had caused personal losses to Mr H as the beneficiary of the SIPP. Mr H could be said to be acting mainly outside his trade, business, craft or profession in bringing his complaint. Any link to his trade, business, craft or profession was incidental. At the time Mr H brought his complaint to this Service, he met the Glossary definition of 'consumer'.  
In reaching that conclusion I'd considered Suffolk Life's arguments. There was no dispute that Mr H (as one of the directors of the Property's company tenant whose rental payments went into the wrong account) was linked to the company. But whether he was a connected party wasn't the issue. The Glossary definition of 'consumer' admitted some connection with the individual's business, trade, craft or profession. An individual acting 'mainly' outside his trade, business, craft or profession will still meet the Glossary definition. I'd explained how it came about that the Property was held in the SIPP and why I thought that was incidental.*
- *Suffolk Life had described Mr H as the 'controlling force' behind the company. But that wasn't conclusive. What mattered was if he met the definition of 'consumer'. And, as per Bluefin, what, on a true analysis, Mr H was doing in bringing his complaint and for what purpose.*
- *Suffolk Life had referred to what it termed the separation of the 'common interest' position and the conflict in Mr H's combined roles which led to the solicitors being de-instructed. And which Suffolk Life said demonstrated a clear consolidation of the two roles – Mr H being a director of the company which was liable to make the rental payments and the beneficiary of the SIPP – which I'd said were separate and distinct. But the fact that someone can operate in a number of capacities is reflected in the definition of 'consumer' and the inclusion of 'mainly'. So long as, in bringing the complaint, the individual is acting for purposes which are mainly outside that individual's trade, business, craft or profession, the definition will be met.*
- *The arrangement was convenient and advantageous for both Mr H's company and his SIPP. The company enjoyed security in terms of the premises it operates from (albeit the lease is on an arm's length basis). The SIPP benefits from a tenant whose financial position, including its ability to meet the rent, is known to Mr H. But, again, some connection or link with his trade, business, craft or profession won't mean Mr H can't be said to meet the definition of 'consumer' in bringing his complaint.*
- *Taking into account all the evidence and considering what Mr H was doing in bringing his complaint and for what purpose, there was, in my view, sufficient evidence to conclude that, at the time of bringing his complaint, Mr H was acting for purposes mainly outside his trade, business, craft or profession and that he met the Glossary definition of 'consumer' applicable at the time for the purposes of DISP 2.7.3R.*
- *I went on to consider if there was an eligible relationship between Mr H and Suffolk Life at the time Mr H brought his complaint to this Service and based on what DISP 2.7.6R said then, which included where the complainant is a customer of the*

respondent (DISP 2.7.6R (1)) and where the complainant is a beneficiary of, or has a beneficial interest in, a personal pension scheme (DISP 2.7.6R (4)). I said Mr H had a relationship with Suffolk Life as the beneficiary of a personal pension scheme (Mr H's SIPP) which Suffolk Life provides and operates.

- Mr H's complaint must also arise from matters relevant to that relationship with Suffolk Life, as the respondent to the complaint. Mr H's complaint includes Suffolk Life's alleged failures (itself and/or by Firm G) in its duties as the SIPP operator, to administer the SIPP with the requisite care and skill and in the best interests of Mr H as the SIPP beneficiary. More specifically, Mr H complains that Suffolk Life, as the SIPP operator and acting via Firm G, advised his company to make a payment to an account other than Suffolk Life's and which led to rent and service charge payments not being received by his SIPP. All those matters were relevant to Mr H's relationship, as beneficial owner of the SIPP, with Suffolk Life as SIPP operator.
- Mr H had also said Suffolk Life didn't tell him that legal fees would be payable by his SIPP. That complaint was about the alleged failure by Suffolk Life, as the SIPP operator, to make Mr H aware of something that would affect him as the beneficiary of the SIPP. That complaint also arose out of matters relevant to Mr H's relationship as a beneficiary of, or having a beneficial interest in, the SIPP operated by Suffolk Life and the respondent to Mr H's complaint.
- DISP 2.7.6R (1) also applied. Mr H was Suffolk Life's customer. His complaint arises out of matters relevant to that relationship with Suffolk Life: He says Suffolk Life didn't treat him, as a customer, properly and there were mistakes and/or service failings by Suffolk Life and/or Firm G which led to payments due to Mr H, as Suffolk Life's SIPP customer, going astray. And to legal fees being incurred which would be payable by his SIPP, which Mr H says he wasn't told about.
- All in all, and for the reasons I'd set out, I concluded Mr H was an eligible complainant. First, he met the definition of 'consumer' under DISP 2.7.3R. He also had one or more of the requisite relationships with the respondent set out in DISP 2.7.6R. And his complaint arose from matters relevant to both relationships.

Having concluded the complaint was in jurisdiction, I then considered Suffolk Life's arguments as to why the complaint should be dismissed. In certain circumstances, we may decline to deal with a complaint that's within our jurisdiction. Suffolk Life had referred to DISP 3.3.4R (10). But that provision only applied to complaints referred to this Service before 9 July 2015. Mr H's complaint was referred to us in February 2019. DISP 3.3.4AR sets out the grounds on which I may dismiss a complaint which has been referred to this service on or after 9 July 2015 without considering its merits. And included (see DISP 3.3.4AR (4)) where 'the subject matter of the complaint is the subject of current court proceedings, unless proceedings are stayed or sisted (by agreement of all parties, or order of the court) so that the matter may be considered by the Financial Ombudsman Service...'.

Suffolk Life had said, although no legal proceedings were issued, pre-action protocols in anticipation of litigation were commenced. And it had taken the decision to pause any further action pending our decision but it now felt it had been penalised for that. I understood what Suffolk Life was saying – that the scene was set for legal action and the groundwork had been done. But the fact remained that no court proceedings were issued. So the ground for dismissal in DISP 3.3.4AR (4) hadn't been made out and it wasn't open to me to dismiss the complaint under that provision.

DISP 3.3.4AR (5) says I may dismiss a complaint if I consider that dealing with such a type of complaint would otherwise seriously impair the effective operation of this service. DISP 3.3.4BG gives examples of that type of complaint, including where it would be more suitable for the complaint to be dealt with by a court. So, even if no legal proceedings were on foot, I still needed to consider if it would be more suitable for the complaint to be dealt with by a

court.

*Suffolk Life had pointed to the complaint being complex, involving multiple parties and raising difficult questions of legal personality. I didn't disagree. But the central matter to be determined (once jurisdiction issues had been resolved) was whether Suffolk Life was responsible for the losses Mr H's SIPP has sustained including and arising from the lost rental and service charge payments. What had happened is largely agreed. There were no complex factual issues in dispute and which needed to be resolved. One of Mr H's complaint points was that he wasn't told his SIPP would be liable for legal fees incurred. Suffolk Life maintains he was informed. So there was a dispute about that. But I didn't think that was a complex issue and such that meant we should decline to deal with the complaint.*

*There was also an issue about whether Mr H's company was responsible for or had contributed to the losses the SIPP had sustained. But it isn't uncommon for us to deal with complaints which involve other parties who might share some responsibility for what's happened but against whom no complaint has been made or where we don't have jurisdiction to consider that party's actions (or inaction). And, in some cases, the complainant may have recovered (or have the right to seek recovery of) some of his losses from another source. Those sorts of, admittedly potentially difficult, questions won't mean we should decline to deal with the complaint. That would leave complainants with the only option of pursuing potentially prohibitively expensive legal action and risk not just their own legal costs but an order for costs being made against them.*

*Suffolk Life considered there were potential wider consequences. But the problem that arose in Mr H's case didn't come about as a result of how SIPP operators generally deal with situations where the SIPP member or beneficiary is connected to the tenant of a commercial property held in the SIPP. What happened arose out of a unique set of circumstances. I couldn't see how a decision in that situation was likely to have the sort of wider impact on the industry generally and on how SIPP operators operate that Suffolk Life had suggested. I didn't agree it was a matter of public interest and that a court should deal with the issue.*

*Against that background I didn't agree it would be appropriate to dismiss Mr H's complaint for any of the reasons Suffolk Life had suggested.*

#### Suffolk Life's further comments

*Mr H's representative didn't comment in response to my jurisdiction decision. Suffolk Life did. It remained disappointed by my conclusion that Mr H met the definition of 'consumer' and that in bringing his complaint he was acting mainly outside his business and trade. Suffolk Life made the following main points (some of which relate to jurisdiction or dismissal and others to merits):*

- *Mr H's co-director's reference, in her email sent on 5 December 2017 to Firm G, to a mistake 'on both sides' was an acknowledgement that both she (a company director and the finance officer for the (company) tenant) and the property manager, Firm G, were at fault. Not Suffolk Life.*
- *The co-director had claimed that the company's payment system allowed her to input all nine digits and the company's bank then proceeded to truncate the number and make payment to the account corresponding to the first eight digits. Suffolk Life suggested it was highly unlikely that a commercial bank's systems would be so structured and that the co-director either knowingly or recklessly only inputted eight digits. That wasn't Suffolk Life's fault but the tenant's. Suffolk Life shouldn't be responsible.*
- *Prior to Suffolk Life taking steps to recover from Mr H's company, he'd (as a director of the company tenant) instructed solicitors to recover the money, thus adopting a*

*dual role as the protagonist progressing the claim but also avoiding any action against his company to recover the arrears. He'd instigated the appointment of the solicitors and then required Suffolk Life to join in on behalf of his SIPP. The separation of the 'common interest' position, largely due to Mr H not recovering the funds in full (and having spent what was recovered on legal fees), resulted in him issuing proceedings against Suffolk Life when it pointed out the rent remained due.*

- An email from the solicitors to Suffolk Life sent on 19 April 2019 (I think that should be 2018) confirmed the solicitors already acted for the company tenant and £11,000 had been recovered from the third party company. As to whether that sum must reduce the amount which Suffolk Life as trustee of the SIPP could recover from Firm G, the solicitors' view was that it depended on what Mr H's company did with it. If it was paid into the SIPP, the claim against Firm G would reduce by £11,000. If not, the shortfall to the SIPP would remain £49,074.08.*
- Further, Mr H's company had incurred its own legal fees and in principle would be entitled to its legal costs in pursuing its unjust enrichment claim against the third party. If Mr H's company recouped its legal costs before paying anything into the SIPP, it was hard to see why Suffolk Life shouldn't seek to recover from Firm G an amount equal to £49,074.08 less the sum paid into the SIPP by Mr H's company after deduction of its costs to date.*
- Subsequent correspondence from Suffolk Life acknowledges that the recovered funds were to be used to offset legal costs incurred by Mr H's company. That's correct as during the instruction when the fees were incurred, the solicitors were only acting for Mr H's company. Suffolk Life received no value or benefit from the advice, nor could it seek to rely on it up to the point when engagement terms were issued to include Suffolk Life/the SIPP.*
- It remained the intention for the SIPP to recover the outstanding payments in full. Mr H chose not to recompense the SIPP with the funds recovered but to retain it for his own company's benefit. That not only supports the distinction in the entities involved, but also Mr H's adjustment in his own position.*
- Strictly speaking, court proceedings hadn't been initiated. But pre-action protocols in anticipation of litigation had been commenced. If they hadn't, the payment from the third party wouldn't have been received, nor the offer from Firm G. Proceedings had also been threatened against Mr H's company for repayment of the arrears. The reality is that appropriate pre-proceedings steps had been taken. Suffolk Life repeated that it was being penalised for not having taken action earlier on. What Suffolk Life termed the 'legal positioning' hadn't been appropriately assessed.*
- Suffolk Life's duty is to consider every formal step it takes and act to the benefit, not the detriment, of the SIPP member's fund. Formalising court proceedings would've meant a significant cost outlay for all parties involved. Any such decision is never taken lightly. Suffolk Life acted in support of Mr H's instructions to engage with the recovery of funds from the third parties at fault. But, because one of those third parties was connected to him, the unity in instruction was lost and blame misdirected.*
- Suffolk Life reiterated that the issues it had raised, as confirmed by the length and number of comments across all my provisional decisions, gave rise to complex legal arguments over the inter-relationship between a beneficiary and the commercial tenant. There are points which, if not considered properly, will have consequences for all SIPP operators, not just Suffolk Life. If my provisional decision was ratified, the industry would likely have to review policies in relation to the management of SIPP assets. One possible consequence was that SIPPs will choose to avoid contracting with legal entities which are in any way connected with the beneficiaries of the SIPP. That would seem counter intuitive but a possible outcome.*
- Suffolk Life remained increasingly concerned the conclusion I'd reached was unsustainable either in law or on a true application of the factual position. The issue was of such significance to it and all other SIPP operators that it was arguably a*

*matter of public interest which should only be dealt with by the court.*

### **What I've provisionally decided – and why**

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I've thought again about this complaint and some of my views have changed from what I set out in the provisional decision I issued on 19 January 2020 as to the merits of the complaint and how I thought Mr H should be redressed. I'm issuing this provisional decision to give both parties the opportunity to comment on my revised findings.*

*But, before I consider the merits of the complaint, I've thought again about jurisdiction. In my jurisdiction decision dated 27 June 2022 I noted that the question of jurisdiction remains open throughout the course of this complaint. I'm required to consider any further evidence or arguments regarding jurisdiction which may be made.*

*But I don't think Suffolk Life has really said anything new. Some of its comments repeat early made points. Suffolk Life referred again to Mr H adopting a dual role in instructing solicitors to pursue the third party company/its owner and avoiding action being taken against his own company to recover the arrears. But, as I said in my jurisdiction decision, I don't see that seeking to recover the funds from the third party was an attempt to avoid action against his own company. The third party had received money to which it wasn't entitled. I think Mr H's company would logically look first to the third party for repayment of money paid to it in error.*

*Suffolk Life says it remains the intention for the SIPP to recover the outstanding payments in full. Suffolk Life points to Mr H's decision not to reimburse the SIPP with the funds recovered as supporting the distinction in the entities involved and Mr H's adjusted position in issuing proceedings against Suffolk Life. As I've noted previously, as no proceedings were actually issued, so Suffolk Life is referring to the pre-action letter sent on 15 November 2018 to Suffolk Life. I don't fully follow Suffolk Life's argument here. If a distinction in the entities involved is accepted, I think that supports what I've said about the capacity in which Mr H is bringing his complaint and why I think he meets the 'consumer' definition, even if he has other roles (a director of the company tenant) in the matter too.*

*Suffolk Life has reiterated that the complaint should be dismissed. Again I don't think Suffolk Life's arguments here are new. In particular, I don't agree I've failed to assess what Suffolk Life terms the legal positioning. I've taken into account that proceedings against various parties (the third party, Firm G, Suffolk Life and Mr H's company) were contemplated and pre-action letters were issued against Firm G and Suffolk Life. So, the scene was set for legal action. But no court proceedings were actually issued (aside from at the outset against the bank to disclose the third party's details). So it isn't open to me to dismiss the complaint on the basis the subject matter of the complaint has been the subject of court proceedings where there's been a decision on the merits or is the subject of current court proceedings.*

*I'm still not persuaded to dismiss the complaint on the basis that it would be more suitable to be dealt with by the court or that, for any other reason, dealing with the complaint would seriously impair the effective operation of this service. As I've said before, the facts aren't complex and what happened is largely agreed. I don't think the powers a court has are required to determine the complaint fairly. It isn't unusual for us to deal with complaints which involve several parties, not all of whom we may have jurisdiction over. And I'm still unable to agree with what Suffolk Life says about the significance of this complaint to other SIPP operators. As I've noted, the case arises out of unique facts and circumstances. I can't see there are wide-reaching ramifications for SIPP operators generally.*

*But, although my view remains that Mr H is an eligible complainant and I don't agree his complaint should be dismissed, there's another matter – a jurisdiction issue – I need to consider. That's because, although Mr H's complaint has been made against Suffolk Life, the complaint arises from something Firm G did.*

*Can we consider a complaint about what Firm G did?*

*DISP 2.3.1R says: 'The Ombudsman can consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on one or more of the following activities.'*

*Those activities include regulated activities which are relevant here and include 'establishing, operating or winding up a personal pension scheme' (which a SIPP is).*

*The crux of this matter is whether Suffolk Life can be held accountable for the actions of Firm G, which isn't an authorised firm. DISP 2.3.3G says:*

*'Complaints about acts or omissions include those in respect of activities for which the firm, payment service provider, electronic money issuer, CBTL firm, designated credit reference agency or designated finance platform is responsible (including business of any appointed representative or agent for which the firm, payment institution, electronic money institution, designated credit reference agency or designated finance platform has accepted responsibility).'*

*As Firm G isn't an authorised firm, for this service to be able to consider a complaint about something Firm G did, we need to be satisfied that Suffolk Life is responsible for Firm G's act or omission. Suffolk Life's responsibility extends (pursuant to DISP 2.3.3G) to any agent for which Suffolk Life has accepted responsibility.*

*I've thought first in general terms about what Suffolk Life's duties were. A SIPP is a trust-based pension. The legal owner of the SIPP and its assets is the SIPP provider who is the trustee of the SIPP. Some SIPP providers allow the member to be a co-trustee but that isn't the case here and Mr H isn't a trustee. As the trustee, the SIPP operator (Suffolk Life) owes certain legal and fiduciary duties to the SIPP beneficiary (Mr H). These include acting honestly, in good faith and in the best interests of the beneficiary.*

*There are also regulatory duties. SIPPs are regulated – I've mentioned the regulated act of 'establishing, operating or winding up a personal pension scheme'. SIPP operators are bound by the regulator's Principles for Businesses (PRIN). For example, Principle 6 (Customers' interests) says a firm must pay due regard to the interests of its customers and treat them fairly. Further, and as set out on the FCA's website (see, for example, <https://www.fca.org/firms/fair-treatment-customers>) all regulated firms must be able to show consistently that fair treatment of customers is at the heart of their business model. The regulator sets out six consumer outcomes that firms should strive to achieve to ensure fair treatment of customers. These include (Outcome 3) providing clear information and keeping customers appropriately informed.*

*The SIPP terms and conditions will also include express and implied contractual duties. SIPP operators may delegate or outsource the day to day running of the SIPP or certain aspects of it. For example, where the SIPP contains commercial property, it is common for the SIPP operator to delegate management of it to a property manager. But the SIPP operator may remain responsible for any duties it chooses to delegate in accordance with the principles of agency law.*

*Against that background I've gone on to consider the relevant documentation such as the*

*PMM and the SIPP terms and conditions to decide if Firm G was Suffolk Life's agent.*

*The SIPP terms and conditions set out at paragraph 10.29 what Suffolk Life is responsible for. They include (see paragraph 10.29b) dealing with tenant and third party enquiries and (see paragraph 10.29k) invoicing and collecting rent and other sums due under the tenancy agreement. And paragraph 10.30 expressly says, where Suffolk Life has appointed a property manager, the property manager will carry out the activities set out at paragraph 10.29 on Suffolk Life's behalf in accordance with the terms of their (the property manager's) appointment.*

*Section A of the PMA includes the following duties:*

- Demand, collect and receive rent and service charges and keep detailed records for rent, service charges and other payments (including Value Added Tax) due to or from Suffolk Life in respect of the Property.*
- Deal with all enquiries, complaints, reports and correspondence relating to the Property and regularly inspect the Property, including any common parts, to ensure that it is in a proper state of repair.*

*So, although the wording isn't identical, the duties of the property manager set out in Section A of the PMA are consistent with Suffolk Life's responsibilities set out in paragraphs 10.29b and 10.29k of the SIPP terms and conditions. Reading the PMA alongside the SIPP terms and conditions, I think it's clear that Firm G, in carrying out its duties, was undertaking activities for and on behalf of Suffolk Life in accordance with Suffolk Life's responsibilities under the SIPP terms and conditions.*

*As far as I've seen, the signed PMAs were never returned to Suffolk Life. But I think it's clear that Suffolk Life intended Firm G to remain in place as the property manager and that Firm G's appointment would be in accordance with the terms and conditions set out in the PMA sent to Firm G on 7 February 2014. The argument put forward in the pre-action letter dated 29 May 2018 is reasonable – namely that by its conduct Firm G assented to the terms of the PMA sent to it on 7 February 2014. And by permitting Firm G to manage the Property (and presumably paying a fee to Firm G for doing so) Suffolk Life assented too. So, although the formalities of Firm G's appointment may not have been properly completed, I don't think there's any doubt that Suffolk Life appointed Firm G as the property manager and in accordance with the terms of the (unsigned) PMA. The following conclusions can be drawn:*

- Suffolk Life had certain responsibilities as set out in paragraph 10.29 of the SIPP terms and conditions.*
- Suffolk Life could (see paragraphs 10.26 to 10.28 which apply where, as here, the property is owned by Suffolk Life) appoint a property manager.*
- Firm G was appointed as the property manager even if the formalities of the appointment weren't properly completed.*
- Paragraph 10.30 expressly provides, where Suffolk Life has appointed a property manager, the property manager will carry out the activities set out in paragraph 10.29 on Suffolk Life's behalf in accordance with the terms of their appointment – the unsigned PMA.*

*Looking at what happened here, the tenant company made an enquiry by email on 22 June 2017 as to Suffolk Life's bank details for payment of the rent and service charges. Suffolk Life was responsible, under paragraph 10.29b, for dealing with tenant enquiries. But Suffolk Life had appointed Firm G to carry out that activity on Suffolk Life's behalf. So, in responding to the tenant enquiry the same day, Firm G was acting for Suffolk Life. And Firm G was also acting in accordance with its own duties in Section A of the PMA (to deal with all enquiries*

relating to the Property). The fact that Firm G's response to the enquiry was flawed and the information Firm G gave was wrong doesn't mean that, in dealing with the enquiry, Firm G wasn't acting for and on behalf of Suffolk Life.

Suffolk Life's responsibilities under the SIPP terms and conditions also included invoicing the rent (paragraph 10.29k). Under the PMA Firm G's duties were very similar – demanding, collecting and receiving rent. I think providing Suffolk Life's payment details to the tenant in order that the tenant could make the rent payments to Suffolk Life falls under and is part of invoicing/collecting rent. So, although the wording differs slightly, I think both amount to the same thing and that Firm G was further acting for and on Suffolk Life's behalf to ensure the tenant company paid the rent due to Suffolk Life.

In saying that I note that Firm G didn't actually collect the rent itself. Firm G sent invoices to Mr H's company on a quarterly basis, but Mr H's company made payment direct to Suffolk Life and not through Firm G. In its letter dated 7 April 2014 Suffolk Life asked Firm G to arrange for the payments to be sent either by cheque or BACS. It didn't specify the payments should be made via Firm G. And Firm G says it confirmed to Mr H's company on 5 January 2015 that payment could be made direct to Suffolk Life.

Firm G says that was on the condition that Mr H's company confirmed to Firm G when each payment was made (and which Mr H's company failed to do). But the accepted practice was that Mr H's company would make payments direct to Suffolk Life. In providing Suffolk Life's payment details, Firm G was carrying on the activities in respect of rent (invoicing and collecting) set out in paragraph 10.29k of the SIPP terms and conditions and in Section A of the PMA (demanding, collecting and receiving rent). That would include providing the correct payment details to Mr H's company so it could make payment direct to Suffolk Life, as had become the accepted practice.

But even if there's any argument about that, I think it's clear that, in any event and in dealing with the tenant company's enquiry, Firm G was clearly acting on Suffolk Life's behalf. The SIPP terms and conditions say that Suffolk Life is responsible for dealing with tenant enquiries (paragraph 10.29b) and that where Suffolk Life appoints a property manager the property manager will carry out that activity in accordance with the terms of its appointment. So I'm satisfied that the tenant company's enquiry about Suffolk Life's bank details was being dealt with by Firm G on Suffolk Life's behalf and Firm G was carrying that out in accordance with the terms of its appointment under the PMA.

Suffolk Life has pointed to paragraph 10.22 of the SIPP terms and conditions. But I don't think that provision operates in the way Suffolk Life has suggested. All it says is that Suffolk Life can't guarantee the service provided by third party professionals. That doesn't mean that a third party professional can't be acting on Suffolk Life's behalf or that Suffolk Life won't remain responsible for certain matters. Although the definition of third party professional in the SIPP terms and conditions includes a property manager, I don't think that definition and the provisions about a property manager in paragraphs 10.26 to 10.33 are mutually exclusive.

Paragraph 10.26 says 'Paragraphs 10.27 to 10.33 will apply where the property is owned by us', that is, Suffolk Life. As here the Property is owned by Suffolk Life, those provisions will apply regardless of whether the property manager may also meet the definition of a third party professional.

Against that background, I'm therefore satisfied that, in dealing with the tenant company's enquiry and providing Suffolk Life's bank details, Firm G was acting on behalf of Suffolk Life and that Suffolk Life remained responsible for those activities – dealing with enquiries and collecting rent.

*In my view, Firm G was undertaking duties which Suffolk Life would otherwise have had to carry out itself (as per the SIPP terms and conditions) but had instead delegated to Firm G to carry out on its behalf (in accordance with the terms of the PMA). I think it's very clear (and even if Firm G was as defined a third party professional) that, in dealing with the tenant company's enquiry and providing Suffolk Life's bank details Firm G was acting on Suffolk Life's behalf (as stipulated in paragraph 10.30 of the SIPP terms and conditions) and as Suffolk Life's agent.*

*But a finding that Firm G was acting as Suffolk Life's agent isn't, on its own, sufficient for this service to be able to look at a complaint against Suffolk Life about Firm G having supplied the incorrect bank details. We can only consider certain types of activity. DISP 2.3 deals with the activities to which our Compulsory Jurisdiction (which is the relevant jurisdiction here) applies. DISP 2.3.1R says:*

*'The Ombudsman can consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on one or more of the following activities:*

*(1) regulated activities (other than auction regulation bidding and administering a benchmark)'*

*The other activities listed aren't relevant here. So Firm G would need to be carrying on a regulated activity.*

*Was Firm G carrying on a regulated activity?*

*Regulated Activities are set out in the Financial Services and Market Act 2000 (Regulated Activities Order) 2001 as amended and include (see Article 52(b)) establishing, operating, or winding up a personal pension scheme. In my view, operating a personal pension scheme is relevant here. Guidance on what that involves can be found in PERG (The Perimeter Guidance Manual) Chapter 12. It sets out a series of questions and answers to help those involved in the running of a personal pension scheme to understand the relevant regulated activities.*

*Q2 deals with what is a personal pension scheme for the purposes of this regulated activity and says that SIPP's are included. Q4 sets out what's involved in operating a personal pension scheme. It says the 'operator' is the person (and that includes a legal person such as a company like Suffolk Life) responsible to the members for, amongst other things, managing and administering the assets and income of the personal pension. I don't think there's any dispute that Suffolk Life is the operator of the SIPP or that operating Mr H's SIPP would include managing the commercial properties held in the SIPP. And administering those properties as an asset of the personal pension would include collecting the rent as an income of the asset held and/or dealing with enquiries from the tenant about paying the rent.*

*Q6 deals with delegation by the operator of a personal pension scheme of day-to-day functions such as the management of the scheme assets. It says such functions can be delegated or outsourced but the operator will remain as such. And the operator's position isn't affected by the underlying assets, such as commercial property, as it's the establishment, operating or winding up of the personal pension that's the regulated activity, regardless of the assets held.*

*All in all I'm satisfied that the collection of rent is a regulated activity as it forms part of the regulated activity of operating a personal pension scheme. As is dealing with enquiries concerning the rent. The upshot is that we can consider a complaint about what Firm G did. There's an agency relationship between Firm G and Suffolk Life and, in giving Mr H's*

company Suffolk Life's bank details, Firm G was acting as an agent for Suffolk Life and was carrying on the regulated activity of operating a personal pension scheme.

### The merits of the complaint

I've set out above what I understand Mr H's complaint to be, based on what he said on his complaint form and the documents referred to. I think the complaint can be broadly summarised as alleged breaches of duty by or on behalf of Suffolk Life in administering and/or managing Mr H's SIPP. To determine that complaint, I've considered if Firm G did anything wrong and, if so, did anything Firm G do wrong cause Mr H's losses. I've also considered the legal fees that were incurred and Mr H's complaint that Suffolk Life didn't tell him that Suffolk Life's legal fees for pursuing Firm G would be paid from his SIPP.

### Did Firm G do anything wrong?

There's no dispute that Firm G made a mistake – the bank details it gave to Mr H's co-director weren't correct. Suffolk Life has said that it hasn't done anything wrong and what happened was between Mr H's company and Firm G. I can see that: Suffolk Life wasn't directly involved in the mistake about the account number as it was Firm G who gave the incorrect account details to Mr H's co-director. There's no suggestion the incorrect details had been supplied to Firm G by Suffolk Life. But Suffolk Life will still be responsible if Firm G was acting on behalf of Suffolk Life and as its agent. In that situation, even though the mistake was actually made by Firm G, it's effectively Suffolk Life's mistake as Firm G was acting on Suffolk Life's behalf.

In so far as the account number was concerned, it may have been an easily made typing error. But that doesn't explain why the sort code was completely wrong. And it's always very important, when asked for bank details in order to make a payment, to ensure the details given are correct. Making an error can lead to serious consequences. It's easy to get a digit wrong or make some other mistake so it should be a matter of routine to check (and double check) that the account details are correct. And I think in this case particular care was needed because:

- The quarterly rent and service charges due were very substantial.
- Firm G knew (because Suffolk Life had told it by email on 26 October 2016) that Suffolk Life's bank details had recently changed. Mr H's co-director's query about the bank details was made not too long after that change. Firm G ought to have anticipated that the change in Suffolk Life's banking arrangements might generate confusion and so Firm G ought to have been careful to respond with the correct new details.
- Mr H's co-director said she was querying the bank details because a payment she'd made (presumably using the 'old' bank account details) had been returned. So Firm G knew there was some issue with the bank details that Mr H's co-director had and that she'd tried, unsuccessfully, to make a payment.
- Even though Mr H's company usually made rent payments direct to Suffolk Life, Firm G knew (because it was set out in Suffolk Life's letter of 7 February 2014) that the rent payments for the different properties held in the SIPP were paid into different accounts. So, there was potential for confusion.

I've found above that, in giving Suffolk Life's bank details to the company tenant, Firm G was acting on Suffolk Life's behalf. As I've explained, that's in accordance with the SIPP terms and conditions which expressly provide (see paragraph 10.30) that, where Suffolk Life has appointed a property manager, the property manager will carry out the activities set out in paragraph 10.29 on Suffolk Life's behalf and in accordance with the terms of the property

manager's appointment – the PMA. So any act or omission in relation to those activities, such as Firm G's provision of the incorrect bank details or Firm G's failure to provide the correct bank details, remains Suffolk Life's responsibility. And that's in accordance with the general principles of agency law where the principal, Suffolk Life, will remain responsible for what its agent, Firm G, does (or doesn't do).

There's no dispute that the bank details which Firm G provided to Mr H's co-director were incorrect. Because Firm G was acting on behalf of Suffolk Life, Suffolk Life is responsible for Firm G's error. I've gone on to consider the consequences of Firm G's error and if it caused loss to Mr H.

#### Did Firm G's error cause financial loss to Mr H?

It isn't disputed that Firm G made a mistake by providing the incorrect bank details to Mr H's co-director. But, it isn't entirely clear as to exactly how that led to the two rent and service charge payments being made into the wrong account. And if other parties may have been at fault too.

DISP 3.6.1R requires me to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And DISP 3.6.4R says, in considering what's fair and reasonable in all the circumstances of the case, the ombudsman will take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and (where appropriate) what the ombudsman considers to have been good industry practice at the relevant time.

As I've said, it isn't unusual for us to have to determine a complaint where other parties have been involved and may also have been at fault. Sometimes those other parties are regulated entities and we might have jurisdiction to consider a complaint about them. But, in other situations, we won't have jurisdiction over all of the parties involved.

In the letter dated 27 July 2018 (which was the response to the pre-action letter sent on behalf of Suffolk Life and Mr H's company to Firm G), Firm G's solicitors alleged contributory negligence on the part of Mr H's co-director – both in relation to processing the rent payments and in failing, contrary to Firm G's express request, to confirm to Firm G that the June 2017 rent and service charge payment had been made. Issues were also raised about Suffolk Life's alleged failure – as the trustee of the SIPP – to check that Mr H's company's rent payment had been received in June 2017. And possible issues with Mr H's company's and/or its bank's payment systems were also mentioned.

When I issued my provisional decision on 19 January 2021, I thought it fair to take into account what another party (albeit one that was connected to Mr H) had done. I agreed there had been contributory negligence on the part of Mr H's company and I said Suffolk Life should only be responsible for 50% of the rent and service charge payments that never reached Mr H's SIPP.

But, on reflection, I'm not now satisfied that would be right here. So I've revised my approach as to how I should consider the actions of all parties, including Mr H's company, as well as how their actions may have contributed to the SIPP's losses. Essentially, I've tried to separate out Mr H's complaint, made in his capacity as a beneficiary of the SIPP, from his position as a director of the company tenant of the Property. As a result, I've looked at the complaint from a somewhat narrower perspective than I did before. Although I recognise that other parties were involved, I've tried to confine myself to what's happened between Mr H, as the beneficial owner of the SIPP, and Suffolk Life, in its capacity as the SIPP trustee and operator.

*And, on the one hand, and as has been pointed out, Mr H's co-director seems to accept some responsibility – her email of 5 December 2018 implies that she recognises she was, in part at least, at fault. It's possible that had she acted differently the outcome would've been different. Had she noticed the account number Firm G had given her was too long (nine digits instead of eight) and queried it with Firm G, it's not unreasonable to assume Firm G would've checked and given Mr H's co-director the correct details. But it isn't clear if, when making the payments, Mr H's co-director simply missed off the last digit of the account number and just inputted the shortened account number. Alternatively, it's been suggested she was able to input the full (incorrect) account number she'd been given and then the banking system somehow truncated the number, with the result that the payment went through but to an account number corresponding to the only the first eight digits that had been input.*

*I think it's highly unlikely, so long after the event, that further enquiries would enable us to get to the bottom of exactly what happened, including what real time screens the co-director saw, what options were available to her and exactly what details she inserted and with what result. But, had Firm G provided the correct bank details, there'd be no possibility that Firm G and/or Suffolk Life could be responsible for the payments going astray. So it isn't unreasonable to conclude that the payments went astray howsoever they did because of Firm G's error.*

*There's also the issue of whether Mr H's company was further at fault by failing to confirm to Firm G when a rent and service charge payment had been made. But I'm not sure how that would've changed things, given that Mr H's co-director thought she'd made both payments successfully and so would've simply confirmed to Firm G that the payments had been made. I don't think Firm G would've looked beyond that.*

*But there's also potentially fault on the part of other parties too, including Suffolk Life. It's been suggested that Suffolk Life didn't chase up the missing rent payment quickly enough. The SIPP terms and conditions (paragraph 10.29) provide that Suffolk Life will be responsible for pursuing any late payments in accordance with normal commercial arrears processes. Suffolk Life has explained its procedure for chasing unpaid rent and service charges. It seems Suffolk Life didn't query the non receipt of the rental payments until October 2017, by which time two quarters' rent and service charge payments were outstanding. In my view, Suffolk Life should've acted quicker to query sooner with Firm G or Mr H's company why the June 2017 rent and service charge payment hadn't been received. That might have prevented the September 2017 payment going astray in the same way.*

*And prompter action may have meant it was possible to recover more from the third party account holder. As things stood, some months had passed by the time the third party account holder was contacted in connection with the payments that had been wrongly made and, by then, the money had been spent and so couldn't simply be repaid. I recognise the delay was in part due to the need to seek a court order against the third party's bank. But, even if tracing and contacting the third party account holder would still have taken time, I think the quicker the issue was addressed, the better the outcome was likely to have been.*

*All in all I think there's considerable uncertainty as to the extent to which other parties may also have contributed to the loss. And deciding if Mr H is an eligible complainant hasn't been straightforward. But I've concluded I can consider a complaint from Mr H in his capacity as a beneficiary of the SIPP. Against that background, I think it would be logical for me, in deciding Mr H's complaint, to try to confine my findings to what happened between Mr H and Suffolk Life and Firm G, who I've found was acting as Suffolk Life's agent.*

*My starting point is that Firm G, acting on behalf of Suffolk Life and as its agent, made a serious error. Had Firm G relayed the correct bank account number and sort code there's no*

reason to think Mr H's co-director wouldn't have inputted those details correctly and the rent and service charge payments would've been safely received by Suffolk Life and credited to Mr H's SIPP. So, but for Firm G's error, the rent payments wouldn't have gone astray. And, as I've said above, I think Firm G should have taken more care, both generally and for the reasons I set out. Further, from Mr H's perspective as the beneficiary of the SIPP, he wasn't involved and he did nothing wrong. There's been no, what might be termed contributory negligence on Mr H's part personally and as the beneficiary of the SIPP.

I recognise that Mr H's company as the tenant of Property D is obliged to pay the agreed rent to Suffolk Life. If the rent doesn't reach Suffolk Life then, unless it agrees to reduce or write off the payments which weren't received, Mr H's company remains liable. In the provisional decision I issued on 19 January 2021 I took the view that Suffolk Life should write off the rent arrears. I cited paragraph 10.44 of the SIPP terms and conditions which refers to third party advice being received which allows Suffolk Life to write off all or part of any arrears due under a tenancy agreement. But I now think that's outside the scope of this complaint which is brought by Mr H in his personal capacity. So I'm not going to make any order about the arrears as that's a matter between Suffolk Life and Mr H's company. I've also considered below the money that Mr H's company was able to recover, with legal assistance, from the third party account holder.

### Legal fees

I've considered the legal fees that have been incurred, including Mr H's complaint that he wasn't told Suffolk Life's legal fees incurred in pursuing Firm G would be payable by his SIPP. Section 18 of the SIPP terms and conditions deals with fees, charges and expenses of the SIPP. Paragraph 18.4 says Suffolk Life will be entitled to charge the costs set out to the SIPP. The list includes all expenses incurred in acquiring, holding, disposing or, transferring or valuing any investment or other asset of the SIPP. And all fees, commissions, charges, disbursements and other costs charged by, amongst others, any third party professional (the definition of which as set out above includes a solicitor or other legal professional). I think that's quite comprehensive and that, on the face of it, Suffolk Life was entitled to charge the legal fees to Mr H's SIPP.

If Suffolk Life didn't tell Mr H that his SIPP would be liable for the legal fees, I don't think that would change the contractual position and Suffolk Life's entitlement, under the SIPP terms and conditions (subject to what I've said below), to pay the legal fees from Mr H's SIPP. And it could be argued that Mr H was or should've been aware of that anyway, as he'd have been provided with the SIPP terms and conditions. So he knew or should've known that any legal fees would, ordinarily at least, be paid out of his SIPP.

Suffolk Life also says it made the position clear to Mr H (over the telephone and by email) when action against Firm G was contemplated. There's also an emailed letter dated 2 May 2018 from the solicitors to Suffolk Life, confirming that Suffolk Life had asked for advice in relation to a claim against Firm G and that Mr H had agreed that the solicitors' fees for acting for Suffolk Life were to be met from his SIPP. I think the solicitors would've been careful to have checked the position with Mr H before confirming to Suffolk Life that Mr H knew the legal costs would be paid by his SIPP. I think that supports what Suffolk Life has said about having told Mr H that. It seems Mr H became unhappy about the legal fees being paid by his SIPP because of what Firm G had said in response to the pre-action letter, namely that Suffolk Life had some responsibility for what had happened. On balance, and from what I've seen, I think Mr H was told his SIPP would be liable for the legal fees.

But I think Mr H's complaint about not being told falls away anyway, given what I've gone on to say about whether Suffolk Life can deduct the legal fees from Mr H's SIPP and taking into account paragraph 18.6 of the SIPP terms and conditions. It says that paragraph 18.4:

*'will not apply to the extent that the relevant costs and event is attributable, directly or indirectly, to any fraud, negligence, wilful default or breach of regulatory duty on the part of any member of the Suffolk Life Group or any of their employees or agents.'*

*I've found that Firm G was Suffolk Life's agent. And that Firm G did something wrong. And, arguably its mistake in giving the wrong bank account details was negligence. If that's right then paragraph 18.6 applies and Suffolk Life isn't entitled to charge the legal fees to Mr H's SIPP.*

*Further, even if I'm wrong about that, I don't think it would be fair and reasonable for the legal fees to be deducted from Mr H's SIPP. I've found that Firm G, acting as Suffolk Life's agent, made a serious mistake in giving the wrong bank details to Mr H's company which led to two very substantial rent and service charge payments going astray. Mr H's SIPP didn't get the benefit of the two payments which were made but which, because of Firm G's error, didn't reach his SIPP. In the circumstances, I don't think it would be fair and reasonable to say Mr H's SIPP should bear the costs of unsuccessfully pursuing Firm G for the legal fees Suffolk Life incurred. I've found that Firm G was acting as Suffolk Life's agent. That would mean Suffolk Life recovering from Mr H's SIPP legal costs in connection with something for which Suffolk Life itself, as Firm G's principal, is responsible for. I don't see that's fair.*

*All that said, Suffolk Life has confirmed that no legal fees have been deducted from Mr H's SIPP. According to Suffolk Life, the solicitors instructed jointly by Mr H's company and Suffolk Life did raise an invoice – which I haven't seen and neither has Suffolk Life – for £1,000 plus VAT. Mr H disputed the invoice directly and it seems the solicitors didn't issue any reminders or demands to Suffolk Life for payment. Suffolk Life considers it unlikely that they'd raise the issue now. I agree. But, for the avoidance of doubt, should the issue arise, Suffolk Life shouldn't deduct those costs from Mr H's SIPP.*

*Legal fees - £8,452 plus VAT - were also incurred by Mr H's company in pursuing the third party account holder/the owner of that company. Previously I said those legal fees should be split with Suffolk Life. But that was on the basis I thought liability for the missing rent and service charge payments should be shared and which now isn't my view. Further, and as I've stressed, I'm considering the complaint brought by Mr H in his capacity as beneficiary of the SIPP. The actions of his company aren't relevant to Mr H as the beneficiary of the SIPP.*

*I've also thought about what should happen about the money Mr H's company recovered from the third party – in total £14,000 or a net balance of £3,547.58 after taking into account the legal fees I've just mentioned. Had any money been paid into the SIPP (whether the full amount recovered or the balance after deduction of Mr H's company's legal fees) I think that would reduce the amount which Suffolk Life would need to pay to redress Mr H – the shortfall to the SIPP would be correspondingly less. But my understanding is that no money has been paid into the SIPP.*

*I've thought about whether Suffolk Life should be entitled to deduct the £14,000 or any of it from the award I've made below. But I've concluded not. I've again taken into account that I'm not considering Mr H's company's position. I'm only looking at his complaint as a beneficiary of the SIPP. And I've tried to separate out Mr H's complaint made in that capacity from his position as a director of the company tenant of the Property. And, although other parties were involved, I've tried to confine myself to what's happened between Mr H as the beneficial owner of the SIPP and Suffolk Life (and/or its agent) in its capacity as the SIPP trustee and operator. And that's underlined my approach to jurisdiction too.*

*As the beneficiary of the SIPP, Mr H wasn't involved and he did nothing wrong. And whatever the obligations of Mr H's company, Mr H as a beneficiary had no such obligations*

to Suffolk Life. It was Mr H's company who is responsible for making rent and service charges payments to Suffolk Life. In awarding redress my aim is to put Mr H as far as possible in the position he'd be in now, but for Suffolk Life's agent's error. But for that the two rent and service charge payments would've gone into Mr H's SIPP on the relevant dates. To put Mr H in the position he'd be in now but for the error, his SIPP should receive the full amounts totalling £49,074.08 plus investment growth as set out below.

As I've mentioned above, Suffolk Life may have a cause of action against Mr H's company and/or Firm G. The £14,000 that has been recovered will be a consideration there. But the contractual or other obligations of Mr H's company and/or Firm G and the outcome of any future litigation are outside the scope of what I'm considering here – Mr H's relationship with Suffolk Life as the provider of his SIPP.

Suffolk Life might say there's an element of 'double recovery' for Mr H. But he and his company are separate legal entities. Mr H may be able to access money from his company but its funds and assets are not Mr H's. His company has its own financial and other obligations (including its contractual obligation to pay rent to Suffolk Life) which Mr H doesn't have. And his SIPP is for his personal benefit and not his company's.

In awarding redress I've also considered the points made by Suffolk Life in its letter of 14 April 2021 about possible tax implications. But I don't agree that a payment by Suffolk Life to Mr H's SIPP would constitute an unauthorised payment for the purposes of FA 2004.

An unauthorised payment would be a payment by a registered pension scheme to a member which is either deemed an unauthorised payment under section 160(5) FA 2004 or another payment which is not an authorised payment under section 160(2)(a) FA 2004. A payment of compensation into Mr H's SIPP by Suffolk Life would be a payment and Mr H is a member of his SIPP. But, while his SIPP qualifies as a registered pension scheme within the meaning of section 150 FA 2004, Suffolk Life is the SIPP provider, not a registered pension scheme. A payment from Suffolk Life into Mr H's SIPP wouldn't be a payment by a registered pension scheme to a member of that scheme and so it isn't an unauthorised payment. To clarify, my proposed award doesn't require a payment from the SIPP to Mr H but a payment from Suffolk Life's own assets. In that situation I don't see that Mr H will be penalised by an unauthorised payment charge and surcharges. And I've dealt with what should happen if a payment into the SIPP will cause allowance or protection issues.

I note that Mr H's representative has said Mr H should get interest at 8% on the compensation. We might award interest at that rate where someone has been kept out of their money. But it won't usually be appropriate where, as here, the payments would've been held in Mr H's SIPP and not accessed by him. So I'm not going to say that 8% should be added to the payments that went astray. But I've said that compensation should be calculated as at the date of my final decision and that interest at 8% pa simple should be added to any compensation that remains unpaid 28 days after notification to Suffolk Life of Mr H's acceptance of my final decision. That's to provide certainty in terms of the redress calculation and to avoid the need, if redress isn't paid promptly, for any recalculations.

I also think Mr H should be compensated for investment loss. In assessing that, although the rent and service charge payments would've been credited to the cash account in the SIPP initially, I think, given the amounts involved, they wouldn't have remained there but would've been invested in line with Mr H's prevailing investment strategy. I don't know precisely what investments were held in the SIPP during the relevant period and it may be difficult to say now, and without the benefit of hindsight, exactly how and where the payments would've been invested throughout the period in question and which spans some years. I think it would be fairest to add a return equivalent to the overall rate of return achieved by the SIPP during the period(s) in question. That fairly reflects the overall investment strategy Mr H has

*adopted for his SIPP and represents a fair rate of return to compensate for lost investment growth on the missing payments.*

*I've said that the return should be calculated from the date each payment would've been credited to the SIPP to the date of my final decision. As I've said, the payments Suffolk Life should've received would've been paid into the SIPP cash account. I don't know how long it would usually have taken for those payments to have then been invested. But I'd assume, given the amounts, that there were investment instructions in place and that the payments would've been invested reasonably promptly. So the investment return should be calculated from the date the two payments that went astray should've been credited to the SIPP bank account, had the payments been sent to Suffolk Life's correct bank account.*

*Suffolk Life should also make a payment to Mr H for the distress and inconvenience this matter – the going astray of the rent and service charge payments – will have caused him. The payments that didn't reach his SIPP were substantial amounts. Mr H will have been concerned about the potential losses to his SIPP and the impact on his retirement provision and planning. I think a payment of £200 would be fair and reasonable in all the circumstances of this case.'*

I went on to set out in more detail what Suffolk Life needed to do to put things right for Mr H.

#### Responses to my provisional decision dated 1 March 2023

Suffolk Life made six main points in response to my provisional decision. In summary:

1. In setting out what had happened when Mr H's company had made the electronic payment, I'd said, as the account number was too long, the last digit of the incorrect account number was omitted. I'd gone on to say it wasn't entirely clear if Mr H's co-director left off the last digit and actioned the payment or if the payment was somehow processed using a truncated account number.

Suffolk Life said, comparing the account number provided to the co-director with Suffolk Life's correct bank account details, shows Firm G added an extra digit (a 4) to the middle of the account number. So it wasn't an omission or a truncated number as I'd suggested. And, in her email sent on 5 December 2017 to Firm G, Mr H's co-director herself acknowledged that the error had been made between them – and not between or against any Suffolk Life entities.

2. About the appointment of the same solicitors Mr H's company had instructed, I'd commented: *'Whatever the reason, [Suffolk Life's emphasis] initially Suffolk Life was able to agree it would also instruct Mr H's company's solicitors to advise about making a claim to Firm G ...'*. In Suffolk Life's view there was an explicitly clear reason why Suffolk Life instructed Mr H's chosen solicitors. Suffolk Life said Mr H required Suffolk Life to join on behalf of his SIPP having acknowledged the debt was owed to his SIPP, not to his company or to him personally.

Irrespective of that, the choice of any third party professional (which includes property managers and solicitors) is made by the underlying investor. That's due to the nature of the SIPP and the pension portfolio being administered on the basis that all [Surrey Life's emphasis] investment led decisions are taken by the underlying investor personally and not the SIPP trustees or operator. The only instance where that isn't correct is where the investor's decision is contrary to the scheme rules or otherwise not considered in the best interest of the scheme beneficiaries as a whole.

The only reason Suffolk Life appointed the solicitors was as a result of Mr H's instruction to Suffolk Life to do so. At his request Suffolk Life provided joint instructions to the solicitors to support Mr H's previous instruction by his company.

The solicitors accepted the instruction irrespective of the conflicting duties they had to both Mr H's company and the SIPP separately and which they later identified. The conflicts position is for the solicitors to manage and not for their clients to determine for any given instruction.

It is evident and arguably convenient that Mr H, having been unsuccessful in pursuing the full return of the funds in 2018 from the third party or Firm G, then turned against the only remaining party who, up to that point, had been seeking to support the investor's own decision making and instructions – that is Suffolk Life.

3. In my provisional decision, under the heading, 'Can we consider a complaint about what Firm G did?', I'd said I'd thought first in general terms about what Suffolk Life's duties were. Suffolk Life said what I'd said was entirely inaccurate and I'd confused the roles of a SIPP operator and SIPP trustee – which implied an inherent misunderstanding of the arguments put forward by Mr H's solicitors around statutory duties and liabilities of Suffolk Life and which, as a result of not being argued fully in court or otherwise, hadn't been materially discussed.

Suffolk Life set out the various Suffolk Life entities involved, each of which had very specific duties and responsibilities both in terms of FCA [Financial Conduct Authority] regulation, statutory trustee duties and as a result of the devolved and contractual framework of the Trust Deed and Rules of the SIPP. Suffolk Life referred to the clear separation between the entities in law and the responsibilities and roles relevant to the arguments considered in relation to the duties of '*Suffolk Life*'. Suffolk Life entities had at all times acted in accordance with their duties and roles and in the best interest of the investor and underlying beneficiary of the SIPP. Investor led decisions and instructions given to adopt third party management of the asset had created the loss to the SIPP, not any derogation of the duties owed by Suffolk Life as trustee or separately as operator of the SIPP.

4. The fundamental basis of my provisional decision was that Firm G was acting as Suffolk Life's agent and Suffolk Life had devolved regulatory responsibility. Suffolk Life's view was, as an execution only SIPP provider, appropriate documentation was in place to ensure that investors and third parties understood the limits of Suffolk Life's role in administering and managing any investment within a SIPP portfolio. Firm G wasn't an agent of Suffolk Life. Mr H was fully sighted to that, acquiescing to the arrangements by providing instructions as to that particular property manager and the solicitors used in respect of the particular investment. It remains within Mr H's gift to support alternative arrangements for the management of his chosen investment assets and to move away from using Firm G for the management of this property asset and he hadn't done so.
5. About what I'd said about a payment by Suffolk Life (out of Suffolk Life's own assets) not constituting an unauthorised payment for the purposes of FA 2004, Suffolk Life said any contribution into a pension scheme other than by the member or employer is a third party contribution. Where compensation is awarded and paid directly into the member's SIPP, it will trigger the loss of protection. Suffolk Life said the taxation of any payment would be determined by specialist tax advice and not Suffolk Life who considered taxation consequences would arise.
6. Suffolk Life didn't accept that any investment loss had been sustained in relation to the missed rental payments. In 2017 Mr H had an investment account with a third party provider and during that time there was a significant cash surplus, well in excess of the amounts contested. Cash was available for investment but Mr H chose not to make further investments. Suffolk Life said it shouldn't have to pay compensation for a loss which hadn't materialised.

In summary Suffolk Life appreciated I'd carried out a further analysis of the position but believed the conclusion I'd reached wasn't a true application of the factual position, given what it termed '*obvious inaccuracies*', some of which it had outlined. Suffolk Life did agree to pay £200 for distress and inconvenience as a gesture of goodwill, especially as the matter remains contested some six years after the error made between the company tenant and Firm G. Suffolk Life was otherwise confident in its positioning and didn't agree with my (provisional) decision or what it termed the punitive compensation awarded against Suffolk Life. It remained of the opinion that no fault should be found on Suffolk Life's part for the failure of an investor appointed and investor led third party.

Mr H's representative didn't comment in response to my provisional decision. After expiry of the deadline we'd set for responses to my provisional decision we sent a reminder but we still didn't hear further. So I've proceeded on the basis that Mr H's representative didn't have any further comments.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As I've explained before, the question of jurisdiction remains open throughout the course of our consideration of the complaint. Before issuing my final decision I've thought again about jurisdiction. But, and in the absence of any new arguments or evidence, my views remain as set out previously. I maintain, for the reasons I've explained before, we can consider the complaint. And I still don't think it should be dismissed.

I've considered very carefully Suffolk Life's comments in response to my provisional decision.

As to the first point, I don't agree I've misunderstood what happened when Mr H's co-director made the rent and service charge payment or exactly what error had been made by Firm G. I set out that Mr H's co-director had emailed Firm G on 22 June 2017 asking for confirmation of the correct bank account for the rent and service charges to be paid, a recent payment having been returned. Firm G had replied the same day with the details it had for Suffolk Life – the sort code and account number. I went on to say the details given were wrong. Only the first two digits of the sort code were correct. The other four digits were wrong. And the account number wrong. It was nine digits. One digit (a 4) had been duplicated.

I think it's clear that I understood precisely what details had been given by Firm G and what error had been made in respect of the account number. I noted that the sort code was largely wrong too, although the reason for that wasn't clear.

I then went on to deal with what had actually happened when Mr H's co-director came to try to make the rent and service charge payment, using the (incorrect) account details supplied by Firm G. I said it was unclear exactly how the payment was actually processed using the incorrect account number. That is, whether Mr H's co-director inserted the first eight of the (incorrect) nine digit number she'd been given and then actioned the payment. Or if, once she'd entered the first eight digits, the bank's systems then somehow processed the payment. I also recorded that, after it had come to light that the payments had gone astray, Mr H's co-director emailed Firm G saying that it looked like both she and Firm G had made an error.

In reaching my (provisional) findings I took all that into account. I concluded, given the time elapsed, it was unlikely we'd be able to find out precisely what had happened when Mr H's co-director came to make the payment and exactly how it came to be processed. But I

noted, had Firm G provided the correct bank details, there'd be no possibility that Firm G or Suffolk Life could be responsible for the payments going astray. So it wasn't unreasonable to conclude the payments went astray, howsoever they did, because of Firm G's error. That remains my view. I acknowledge the error was made by Firm G and not any Suffolk Life entity. But, if Firm G was acting as Suffolk Life's agent, then Suffolk Life is responsible as principal.

Turning to Suffolk Life's second point, I set out the solicitors' involvement, including that the particular firm had originally been instructed by Mr H's company to seek to recover against the third party account holder. I noted that, by about May 2018, it seemed Mr H had started to think about looking to Firm G for reimbursement. I said I suspected he was concerned about whether the third party would keep to the agreement to repay and, even if it did, the time it would take to recover in full. But I didn't think Mr H had actually said that so I couldn't be sure that was his reason. Hence my '*Whatever the reason*' comment in noting Suffolk Life's initial agreement to instruct the same solicitors about a potential claim against Firm G.

I don't see, as Suffolk Life suggests, that Mr H required Suffolk Life to join on behalf of his SIPP because he acknowledged the debt was owed to his SIPP and not to his company or to him personally. I'd agree the debt wasn't due to Mr H personally. And the ultimate recipient of the rent and service charge payments was Mr H's SIPP. But, in the first place, the money was owed to Mr H's company – it had made the two payments into the third party's account. As I said in my provisional decision, I think, logically, Mr H's company would look first to the third party for repayment of money paid to it in error and to which it had no entitlement.

Suffolk Life seems to be suggesting it had little choice and, in effect, had to agree to Mr H's request to jointly instruct the solicitors. I don't see that was the situation. Paragraphs 10.19 to 10.25 of the SIPP terms and conditions deal with third party professionals (the definition of which includes a solicitor and other legal professional). Paragraph 10.19 says the lead member (which here is Mr H as he's the sole member/client – see the definition of '*lead member*' in the SIPP terms and conditions) is required to specify the choice of third party professional in writing. But that's for what's termed subsequent transactions (that is after the acquisition of the property) and day-to-day management relating to the property. I don't think that was the situation and in respect of which a third party professional – the solicitors – was being appointed.

I think the circumstances were exceptional and such that Suffolk Life could, under paragraph 10.24, appoint solicitors without Mr H's approval or refuse to appoint his choice of solicitors. That's borne out by the fact that later on Suffolk Life did appoint a different firm of solicitors and without (as far as I've seen) Mr H's input or approval. The contemporaneous correspondence between Suffolk Life and the solicitors doesn't indicate that Suffolk Life considered it was under any obligation to accede to Mr H's request to instruct the solicitors his company had been using. I don't agree the appointment of that firm was simply at Mr H's request or that Suffolk Life had to agree.

Although I agree it is for the solicitors acting, in accepting instructions, to satisfy themselves they have no conflicts of interest, as the matter proceeds a conflict may arise. A client may raise concerns that may cause the solicitors to reconsider their position and decide that they're unable to continue to act. That seems to be what happened here. As I recorded in my provisional decision, at the outset the solicitors were happy there was no conflict of interest in acting for both Suffolk Life and Mr H's company. But that later changed. The disagreement over responsibility for fees meant the solicitors had to step back from advising either client.

In any event, I can't see that Mr H's motives or whether Suffolk Life could've refused his request are directly relevant. Irrespective of what might have led Mr H to ask Suffolk Life to

jointly instruct the same solicitors as his company had been using, I can see why (whether because it seemed recovery against the third party might be problematic or more generally) Mr H started to think about if another party might have some responsibility in what had happened and for the rent and service charge payments going astray. I think making a claim against Firm G simply reflects what had actually happened and, in particular, the fact that Firm G had given the wrong bank details to Mr H's co-director. And that's the focus of Mr H's complaint.

Nor do I agree that, when attempts to fully recover from the third party and Firm G weren't successful, that Mr H '*turned against*' Suffolk Life as a party who, up until then, had been supporting him and the decisions he'd made. Mr H had by then instructed new solicitors (his current representative). The claim made in the pre action protocol letter dated 15 November 2018 issued by those solicitors against Suffolk Life was based on Firm G being Suffolk Life's agent. I think that's simply an extension of the claim which had earlier been made against Firm G and based on the legal advice Mr H had been given by his current representative as to who might have some responsibility for Firm G's error.

As to Suffolk Life's third point, I don't think that any very general remarks I made indicate any misunderstanding on my part of the arguments put forward, whether by Mr H's representative or indeed Suffolk Life. I've undertaken a very detailed analysis of what happened, Mr H's complaint, and the arguments put forward both on behalf of both Mr H and Suffolk Life against the legal and regulatory background and taking into account what, in my opinion, is fair and reasonable in all the circumstances of the case.

I didn't agree, for the reasons I set out in my provisional decision, that it would be more suitable for the complaint to be dealt with by a court. That remains my view. As I've said before, what happened is largely agreed. There are no complex disputed factual issues. I don't see that any wider powers a court might have are required to determine the complaint fairly. I've set out my views in detail and both parties have had the opportunity to respond in full as to their respective positions and provide evidence in support.

I note all Suffolk Life says about the various Suffolk Life entities involved. I recognise there are different, albeit related, legal entities with different roles and responsibilities. For example, Suffolk Life Trustees Limited is the SIPP trustee. Other Suffolk Life entities are also involved, such as SLA Property Limited.

The respondent to Mr H's complaint is Suffolk Life Pensions Limited as the SIPP administrator and operator and described as such in the paragraph 1.5 of the SIPP terms and conditions. As I've said previously, Mr H's complaint can be characterised as alleged maladministration of his SIPP. The complaint is about Suffolk Life (that is Suffolk Life Pensions Limited) undertaking (whether itself or by an agent) the regulated activity of operating a personal pension scheme. That's the basis of my decision. Any references to Suffolk Life in another capacity are generic and don't materially impact on my decision or the rationale.

I don't agree it was investor led decisions and instructions given to adopt third party management of the asset (the Property) that caused the loss to the SIPP. I think the losses stem from Firm G's error. Even if Firm G was appointed at Mr H's request, I don't think that means he's responsible for any losses sustained if Firm G, acting on behalf of Suffolk Life, failed to carry out its duties properly.

That leads me to Suffolk Life's next point – that Firm G wasn't an agent of Suffolk Life. Suffolk Life referred to being an execution only SIPP provider and having appropriate documentation in place to ensure that investors and third parties understood the limits of Suffolk Life's role in administering and managing any investment within a SIPP portfolio. In

my provisional decision I explained why, taking into account the relevant documentation – the SIPP terms and conditions and the PMA – I thought it clear that Firm G was acting as Suffolk Life’s agent.

Essentially Suffolk Life’s duties are set out in the SIPP terms and conditions and include (see paragraph 10.29b) dealing with tenant and third parties enquiries and (see paragraph 10.29k) invoicing and collecting rent and other sums due under the tenancy agreement. And paragraph 10.30 expressly says, where Suffolk Life has appointed a property manager, the property manager will carry out the duties set out at paragraph 10.29 on Suffolk Life’s behalf in accordance with the terms of the property manager’s appointment.

I explained why, although Firm G never returned the signed PMA for the Property to Suffolk Life, I nevertheless considered that Firm G had been appointed by Suffolk Life as the property manager on the terms of the (unsigned) PMA. Section A of the PMA set out Firm G’s duties, including duties which, although not identical, were consistent with Suffolk Life’s responsibilities in paragraphs 10.29b and 10.29k of the SIPP terms and conditions. I concluded, given the express provision in paragraph 10.30 of the SIPP terms and conditions, that, in carrying out the duties I’d pointed to, Firm G was acting for and on behalf of Suffolk Life.

I set out what had actually happened. The company tenant had made an email enquiry on 22 June 2017 of Firm G as to Suffolk Life’s bank details for payment of rent and service charges owed by the company tenant. And why, in dealing with that enquiry, and consistent with the SIPP terms and conditions and the PMA, I considered Firm G was acting on behalf of Suffolk Life. I also said why I didn’t think paragraph 10.22 of the SIPP terms and conditions meant that a third party professional such as Firm G couldn’t be acting on behalf of Suffolk Life.

In my view, Firm G was undertaking duties which Suffolk Life would otherwise have had to carry out itself (as per Suffolk Life’s responsibilities under the SIPP terms and conditions) but had instead delegated to Firm G to carry out on Suffolk Life’s behalf (and in accordance with the PMA). Although, in dealing with the company tenant’s enquiry, Firm G gave wrong information, that didn’t mean Firm G wasn’t acting on behalf of Suffolk Life. My view was that Firm G was acting for and on behalf of Suffolk Life and as the latter’s agent.

I still think that’s the case. And that, in accordance with the general principles of agency law, Suffolk Life, as principal, is responsible for what Firm G did. I explained in my provisional decision why Firm G’s mistake (and there’s no dispute that the bank details Firm G gave to Mr H’s co-director were wrong) had caused financial loss to the SIPP and ultimately to Mr H as the beneficiary of the SIPP.

I’ve already explained why I don’t think a payment of compensation will constitute an unauthorised payment for the purposes of FA 2004. I’ve also dealt with what should happen if payment of compensation into the SIPP will trigger the loss of protection. If a cash payment direct to Mr H is to be made, I’ve adjusted the amount that should be paid to take into account the tax he’d otherwise have paid and to ensure he isn’t over compensated.

As to any investment loss, I don’t think the fact that Mr H’s SIPP may, at times, have had a cash surplus makes any real difference and when I’ve said any investment loss should be calculated using the actual (net of charges) return achieved by the SIPP during the two periods in question. If money was held in cash during those periods that will be reflected in the overall rate of return. I think it’s reasonable to assume, if Mr H’s SIPP had received the two rent and service charge payments, that money would’ve been invested similarly to other money held in his SIPP and so it’s fair to use the overall rate of return achieved by the SIPP to calculate any investment loss.

I maintain the findings I made in my provisional decision are fair and reasonable in all the circumstances of this case. I've set those out above in full and they form part of this decision. And I still think what I proposed as to how Suffolk Life needed to put things right for Mr H is fair and reasonable. I've repeated that here.

### **Putting things right**

My aim, in awarding redress, is to put Mr H as far as possible in the position he'd be in now, but for Suffolk Life's/its agent's error. I consider that responsibility for the rent and service charge payments (in total £47,074.08) going astray rests with Suffolk Life Pensions Limited.

To compensate Mr H fairly, Suffolk Life Pensions Limited must:

- Pay Mr H the amount of the two rent and service charge payments which went astray and which I've indicated total £47,074.08.
- Mr H has also lost out on investment growth on those missing payments. Suffolk Life Pensions Limited must pay Mr H a return on those funds calculated from the date each payment would've been credited to the SIPP bank account to the date of my final decision.
- That rate of return should be equivalent to the overall rate of return achieved by the SIPP (net of charges) during the two periods in question.
- These payments should be made into Mr H's SIPP to increase its value by the amount of the compensation and any interest. The payments should allow for the effect of charges and any available tax relief.
- In carrying out that calculation any additional sums paid into the investment should be added to the calculations from the point in time when they were paid in. Any withdrawal, income or other distribution out of the investment should be deducted from the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I'll accept if they are totalled and all those payments deducted at the end instead of deducting periodically.
- Suffolk Life Pensions Limited shouldn't pay the compensation into the SIPP if it would conflict with any existing protection or allowance. If Suffolk Life Pensions Limited is unable to pay the compensation into Mr H's SIPP, it should pay that amount direct to him. But had it been possible to pay it into the SIPP, it would've provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.
- The notional allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age. On the assumption that Mr H is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if he'd have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.
- Interest at 8% pa should be added to any redress unpaid after 28 days of when Suffolk Life Pensions Limited receives notification from this service of Mr H's acceptance of the final decision.
- Details of the calculations should be provided to Mr H in a clear and simple format.
- Suffolk Life Pensions Limited must also pay Mr H £200 for the distress and inconvenience he's suffered.
- Income tax may be payable on any interest paid. If Suffolk Life Pensions Limited considers it's required by HM Revenue & Customs to deduct income tax from that interest, Suffolk Life Pensions Limited should tell Mr H how much has been taken off and give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

I uphold the complaint. Suffolk Life Pensions Limited must redress Mr H as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 April 2023.

Lesley Stead  
**Ombudsman**