DRN-4213314

The complaint

Mr J says Suffolk Life Pensions Limited (Suffolk Life), failed to carry out its responsibilities as administrator of his Self-invested Personal Pension (SIPP). He says this poor service has caused him financial detriment and significant inconvenience and stress.

What happened

Mr J is a member of a group of investors (the Syndicate), who each hold shares in a commercial property (the property) within their SIPPs. The complaint is made by the Syndicate, but as shares in the property are held separately in members' individual pensions, each has brought their own case to be considered by this Service.

I will generally refer to the Syndicate throughout my decision unless it's appropriate to refer to specific members of the Syndicate, for example in determining any appropriate redress for complainants.

It's helpful to identify the group of companies that have had a role in what happened to the Syndicate. The legal title to the property is held by SLA Property Company Limited which acts for the landlord. Suffolk Life Annuities Limited is the SIPP provider. And Suffolk Life is the administrator of members' SIPPs. It is an execution only administrator, with no autonomy of decision making, instead carrying out the instructions of the members. The issues arising in the Syndicate's complaint relate to Suffolk Life's administrative failings. All the entities mentioned here are part of the Curtis Banks Group.

On 21 March 2020 the tenant of the property (A), which operated a national chain of retail stores, wrote to Suffolk Life Annuities Limited seeking a three month cessation of rent. The Syndicate agreed the request and instructed a rent deferral agreement was put in place. This covered the period of 25 March until 23 June 2020. Provision was made for a review of the position by the landlord at the end of the period.

Suffolk Life didn't undertake a review at the end of the rent deferral period. No contact was made with the tenant at that point. It didn't take any action until the Syndicate asked for an update on 7 August 2020. It then sent an email to the tenant seeking engagement on 10 August 2020 but received no reply. Nothing further was done until the Syndicate asked for a further update on 28 August 2020. After some exchanges where Suffolk Life provided information on its arrears chasing procedure to the Syndicate, an invoice was produced and issued to the tenant on 1 September 2020.

Again, no further contact was made with the tenant until Suffolk Life received an email on 5 October 2020 from an Administrator appointed for A. It included a letter, dated 12 August 2020 addressed to Suffolk Life, which confirmed the tenant had gone into administration on 4 August 2020. It advised that a new tenant (B) had been granted a licence to occupy and would meet any ongoing costs from 4 August 2020 onwards.

It's helpful to set out the relationship between the original and subsequent tenant businesses. Suffolk Life says the Administrator granted a licence to occupy to business B to allow for the company to continue and pay the obligations of the lease for business A. It says

there was an established link between business A and business B, with the latter brand being a ‘trading as’ business of A.

Suffolk Life didn’t proactively contact the Syndicate and it was only on 11 November 2020, when a Syndicate member called in, it was made aware A had entered into administration and about the new tenant. From this point onwards there were a number of exchanges between Suffolk Life and the Syndicate and eventually the new tenants.

In December 2020 the Syndicate, having engaged the services of its own solicitor, served a Section 146 notice to the Administrator in response to an alleged breach of the tenancy agreement. Whilst this action was taken to safeguard the Syndicate’s position, no further legal action was pursued.

Instead, the Syndicate engaged in talks and negotiations with the new tenant directly which eventually led to a new agreement – this included a reduction in annual rent from £95,000 to £70,000. The Syndicate was also able to recover missing rent payments plus interest from 4 August 2020 onwards (so, post the administration event).

The Syndicate was unhappy with the service it received from Suffolk Life raising a complaint on 13 September 2022. Specifically, members expressed concerns that from 25 March 2020 it had failed to:

- Take appropriate, timely and rigorous action to recover debt including a failure to assess, monitor and act on clear risks.
- To effectively communicate so that the Syndicate could take direct action in what was manifestly a situation of heightened risk.
- To maintain proper records including issuing timely invoices, reconciling accounts and correcting erroneous entries.

In setting out its position the Syndicate said:

“…We have considered these matters carefully and concluded that your systems, controls, record keeping and communication failed to safeguard our assets. We have suffered significant cash losses and the value of our investment has been damaged. These losses are further exacerbated by the substantial and unnecessary waste of our time because of systemic and prolonged failings in your organisation. In particular the failure to properly monitor and alert us immediately of unpaid rent denied us the opportunity to take the timely and decisive action which [Suffolk Life] clearly did not take. Your omission significantly compromised our negotiating position leaving us with little choice but to accept a lower rental with an inevitable reduction in the value of our property…”

“…In summary we believe we should be fully compensated for our direct cash loss, excess costs and lost interest together with the return of fees and compensation for time and skills we had to deploy because of the lack of service from Suffolk Life.”

Suffolk Life responded to the Syndicate on 8 November 2022. It apologised for the service it had provided. It seemed to conclude the outstanding rent arrears had been recovered (this was incorrect), but noted it could only chase for rent and that any non-payment was a risk inherent with investment in commercial property. It went on to acknowledge failings in its administration and communication and it said to put things right it would waive two years of property administration fees, cover certain solicitor’s fees and pay each member of the Syndicate £200 for the trouble and upset it had caused.

The Syndicate wasn't satisfied with Suffolk Life's response. It felt it hadn't got to grips with its case. Members of the Syndicate brought their individual complaints to this Service. They identified five areas where they considered compensation was warranted:

- Cash losses - unpaid rent of just over £41k, plus interest.
- Lost value – impairment of the property by at least £400,000.
- Poor service.
- Ability to move on – cost barriers to exiting the relationship with Suffolk Life.
- The significant inconvenience and stress experienced.

An Investigator considered Mr J's complaint and partially upheld it. She noted the failings which Suffolk Life had accepted and concluded these had more likely than not contributed to the Syndicate's loss of some rental income prior to the tenant going into administration. She said it should be responsible for 50% of the potential lost income. She didn't find a strong case had been made by the Syndicate to demonstrate impairment of the property value, which she thought was more likely to relate to the unprecedented prevailing economic circumstances at the time.

Neither party agreed in full with the Investigator's findings and conclusions.

For example, Suffolk Life said it was for the tenant to pay rent due and it can't be held responsible for its failure to do so – that was a risk inherent with the investment made by the Syndicate. While it acknowledged it should've been quicker to make contact with members after the end of the agreed rent deferral period on 23 June 2020, there was no evidence to suggest had it done so the tenant would've settled any further rent. Suffolk Life also said the approach taken by the Syndicate in relation to its negotiations with the new tenant effectively removed any possibility of a claim in relation to the debts of the former company.

On the other hand, with regard to the loss in value of the property, the Syndicate said:

"We believe that contact with the Tenant at the cessation of the deferral would have created dialogue supportive of a better outcome. We would have engaged with the Tenant at this stage, our approach would likely have been conciliatory and understanding not aggressive. The dialogue we would have sought both regarding the outstanding debt and future rent would have enabled us to deal with these matters in an orderly fashion…"

As both parties couldn't agree with the Investigator's view, Mr J's complaint was passed to me to review afresh. I issued my provisional decision earlier this month. As neither party has provided any new evidence or arguments, I see no reason to depart from my initial findings and conclusions.

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 part of my provisional decision I requested further information from the parties to help me form a more rounded picture of what happened, about:

- The Syndicate's negotiations and agreement with new tenant B, which I understand bought out tenant A's business and appears to have had close connections with it. For example, what linkages were made, undertakings given, or matters agreed to, that had any relation to the pre-administration rent arrears?

- Why the Syndicate decided not to pursue the pre-administration rent arrears with the Administrator or with the Guarantor? There was no instruction to Suffolk Life to do so. Was that avenue still available? If so, is it/will it be pursuing the matter? And if not, why?
- What information the Syndicate received from the commercial property agent it commissioned to review the market situation at the time it entered negotiations with tenant B?

I note no additional information has been provided.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr J's complaint, but not to the extent he'd like. I'll explain why.

I've considered the extensive regulation around transactions like those performed by Suffolk Life for Mr J. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6 - which requires a firm to pay due regard to the interests of its customers.
- Principle 7 - which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. As such, I need to have regard to them in deciding Mr J's complaint.

I'll now consider each of the Syndicate's claims for redress against Suffolk Life in the order listed earlier.

Cash losses - unpaid rent of just over £41k, plus interest (pre-administration period)

It's helpful to consider the terms and conditions of Syndicate members' SIPPs. The following extract is of relevance:

"Section 10.29 – we [Suffolk Life] will be responsible for the following activities:

a. Maintaining records relating to the property;

b. Dealing with tenant and third parties enquiries;

i. Taking appropriate action where a breach of the tenancy agreement has been identified;

k. Invoicing and collecting rent and other sums due under the tenancy agreement and where required, pursuing any late payments;

l. Managing all tenancy events and tenant transactions which require our consent under the tenancy agreement,…"

Suffolk Life's administrative duties are clearly set out. It was responsible for collecting the rent, pursuing the tenant for any outstanding payments and dealing with other events and transactions with the tenant.

Suffolk Life has accepted it's responsible for various administrative and communication failings. For example, with regard to the rent deferral agreement, provision was made for the landlord to review the concession at the end of the deferral period (23 June 2020). It would then decide whether or not to extend any agreement, for what period and on what terms.

Suffolk Life did not complete a review, did not contact the tenant to enquire about its situation or next steps, nor did it take action to recover the debt.

Suffolk Life said it was in the midst of the pandemic, and it was getting to grips with a new way of working as a consequence of the lockdowns. Government guidance for landlords was often vague and ever changing during that time, which only made it more difficult to take appropriate action. Whilst it acknowledges it did not follow its own processes, it maintains that this does not make it responsible for the loss of the rent. It said:

"We agree that further action could have been taken following the end of the deferment period. That is not in dispute. I believe it is reasonable to refund property management fees for not undertaking the required level of administration and to award compensation for trouble and upset. It is however unreasonable to suggest that not informing the Syndicate or instigating our normal debt recovery process makes [Suffolk Life] financially liable for the tenants' failure to settle rent due."

Suffolk Life pointed to the following section of its SIPP terms and conditions:

"Section 10.42 – we do not undertake credit checks on tenants and will not be liable for any losses associated with the failure of any tenant to meet the obligations contained within the tenancy agreement."

In broad terms its reasonable for Suffolk Life to point to its terms and conditions in support of its case. They are an important part of the contract it had with the Syndicate. But I don't think it can rely on such if it could be shown that through its negligence it was responsible for a financial loss. In those circumstances I would place more weight on what was fair and reasonable.

The Syndicate's strong view is that Suffolk Life's handling meant action to mitigate any potential losses wasn't taken. It said had the SIPP Administrator told members of the issue at an earlier time, then the chances of recovery would've been substantially higher.

The Syndicate comprised 9 members, all of whom were chartered accountants. They had substantial professional experience having held senior roles and could also have drawn on insolvency expertise. They had a good knowledge of landlord and tenant rights and a significant understanding of what was required for successful recoveries. The Syndicate maintains timely action may well have made a difference, something Suffolk Life denied them as they were not promptly informed.

The counter-argument advanced by Suffolk Life, was made in the following terms:

"…There is however no evidence to suggest that had we done so [acted in line with the provisions of the rent deferral agreement], the tenant would have settled any further rent. Clearly the business faced financial difficulty, hence the need for a rent deferment in the first

place. This coupled with the subsequent administration application, shows it was unlikely the tenant would have been able to pay."

"…As we have established the responsibility was for the tenant to settle rent on quarter days. Those being,24 March, 24 June, 29 September and 25 December. With the agreed deferment period coming to an end on 23 June, the next quarter day would not have been until 29 September. As the tenant went into administration midway through the quarter, this would not constitute prolonged difficulties, nor would we have commenced our internal debt recovery process."

"However, let's assume there had been no delay and we contacted the tenant immediately following the end of the initial deferment period, the steps taken would have been as follows:

24 June – email and letter to the tenant informing them the deferment period had ended, confirming rent had been reinstated, providing an invoice and requesting payment for the quarter. The cover letter would also have requested the tenant contact us with proposals, if they were continuing to experience financial difficulties. After 3 weeks without payment or contact from the tenant, it would be considered overdue and the internal debt recovery process would begin.

15 July – No payment received, inform Syndicate and issue 1st debt recovery letter.

29 July – Still no payment 2nd debt recovery letter would have been sent.

5 Aug – Attempt to call tenant.

12 Aug – 3rd demand would have been sent in the last step of our internal recovery process, threatening letter before action. Also request instruction from Syndicate as to next steps.

Taking the above into consideration, the tenant would have still entered administration on 4 August. Which would have been before the internal debt recovery process would have been completed."

Suffolk Life went on to say:

"It is unreasonable to expect [Suffolk Life] to compensate for the unpaid rent or any interest or growth the Syndicate members may have experienced had it been paid. The facts of the case show that the tenant would not have made a payment following the end of the deferment period, regardless of whether invoices or debt recovery letters had been sent."

"The correct process of recovery would be to place a claim with the Administrator. An initial claim was submitted, however this was withdrawn at the request of Syndicate members in favour of instructing solicitors to issue a Section 146 Notice. It is our view that the investment decisions made by the Syndicate removed any possible avenue of claim against the tenant."

"Subsequently the Syndicate entered into active negotiations with the new tenant. As part of those negotiations, the new company agreed to settle rent from the date the previous company entered administration, as they continued occupation of the building. It is however our view that the new company having acquired the previous tenant also accrued their arrears and were responsible for all outstanding sums."

"It was the decision of the Syndicate not to pursue the arrears through the administrators for the pre-administration arrears…The Syndicate was…informed of Guarantors to the lease which could also be pursued. However they gave no instructions to do so."

The Syndicate doesn't argue that Suffolk Life's debt recovery process would've had a good chance of success had it been followed proactively. Indeed, it says the process is irrelevant because it wouldn't have followed it. Rather, the Syndicate says it wasn't afforded the opportunity to bring its own considerable knowledge and experience to bear on the situation, which it asserts would've improved outcomes across the board.

The Syndicate said:

"…There were significant arrears due from the Administration (c £100,000). I had to establish this figure myself because of [Suffolk Life's] failure to maintain proper books and records with regard to our account (fully documented in my earlier submissions). The settlement of this debt was a requirement we placed on the new tenant prior to signing any lease for obvious reasons but was not part of the negotiation. We simply were not going to enter into any arrangement with a party who owed us £100k. You may recall from my earlier submissions that [Suffolk Life] recommended we left this debt outstanding until after the lease was signed so really they should know this was not part of any value negotiation."

The Syndicate acknowledges there was no guarantee it would've recovered the rent for the pre-administration period. But it went on to make the point:

"…we do not and would never see [Suffolk Life] as an insurance policy against debt recovery. We are not holding [it] to account for tenant failure we are holding [it] responsible for not taking reasonable and timely actions to inform [its] client so that action could be taken to protect assets when [it] ought reasonably to have known that the assets were at risk."

A member of the Syndicate made the following observation drawing on his own experience as an insolvency practitioner:

"My career background is Insolvency Practitioner. I have advised both company directors and lenders (banks) on distressed situations and in particular the on short term cash management. In my experience the landlord claims are usually prioritised as their ability to distrain or lock up premises can cause reputational damage to the business. In my opinion the lack of communication on arrears from [Suffolk Life] put us in an ignorant position. We were a proper fee paying client…so they owed us a standard duty of care to appraise of any issues or arrears. I think on this occasion they "fell asleep on the job". Otherwise their systems (and people) failed them."

Another member commented on Suffolk Life's argument about the strategy adopted by the Syndicate in negotiations with the new tenant B.

"I really take exception to [Suffolk Life] stating the issuance of a section 146 notice "removed all avenues" of claim against the tenant. Upon legal advice, and with [its] knowledge, we were advised to issue the 146 notice to register we had not agreed to accept the new occupier installed by the Administrator as the new tenant. It was done to protect our interests should we wish to evict them later. Accepting rent is implied acceptance so legal advice was to instruct [Suffolk Life] not to pursue rent but this is the new rent due post 12 August 2020 and not the outstanding pre-admin bad debt of c. £40k. The serving of the 146 notice and the pursuit of the outstanding rent are two completely separate and unconnected issues and would not have had any negative impact on any attempts to collect the arrears."

In responding to a question from the Investigator about what action the Syndicate would've taken had it been informed earlier about the tenant's failure to pay rent from the end of the deferral period, it said:

"We consider the pivotal point to be when the Deferral Agreement expired on 23 June 2020. Our position for both recovery of debt and renewal of the lease would have been considerably enhanced had we been informed immediately payment had not been made..."

"…If we had been informed, we would have taken control of the process and considered our options. As landlords we could have (i) sought to distrain on the assets in situ, (ii) Locked up the premises if the Tenant was not engaging constructively and make payment on time."

"We understand the environment at the time placed constraints on certain direct action, but we do not accept that the situation could not have been influenced. Our experience is that

outcomes can be considerably improved for creditors that take TIMELY action. We believe that our property was amongst the stronger performing [tenant A] outlets and that an established dialogue would likely have borne fruit. I'm sure you will appreciate that even in a decline leading to Administration certain key suppliers would have been paid and if we were given the opportunity to put pressure on payment, we could have extracted some rental. The directors probably only paid those that "shouted loudest"."

The Investigator summarised on this matter in the following terms:

"…I think it likely that Suffolk Life's failure to make any meaningful attempt of recovery, considerably reduced the syndicates chances to mitigate their losses…Its duties were to ensure timely collection of rent and to act accordingly if there were any issues. To say that its failure to do so had no impact on the loss is essentially saying that any action to recover debt is pointless. There is never a guarantee in these cases, but prompt and meaningful actions are very important in order to increase the chances of recovery."

The Investigator noted Suffolk Life had responsibility for overseeing the rent deferral agreement and should've conducted a review at the end of June 2020. She noted its normal process for debt recovery but given the circumstances found it more likely it would've contacted the Syndicate to discuss next steps:

"And so the Syndicate would have been informed of the situation towards the end of June, allowing them to use their considerable experience and knowledge to take meaningful action. And whilst I can't say for certain whether this would have allowed the Syndicate to recover all of its losses, I think it quite likely that it would have improved their chances of recovery."

The Investigator went on to conclude that Suffolk Life's failure to act promptly and meaningfully clearly reduced the likelihood of recovery and so effectively contributed to the Syndicate's loss. And, because the parties agree there was no guarantee the rent would have been recovered she considered an award against Suffolk Life for 50% of the outstanding rent was a fair and reasonable outcome.

While I agree with many of the Investigator's findings, for example in terms of Suffolk Life's failings, I think she takes a leap too far in concluding it was responsible for a financial loss here.

The Syndicate has set out a plausible argument that has some merit. It had significant expertise in matters relevant to the problems it was facing with the property. Had it brought this to bear at the end of June 2020, this might have made a difference. It might have secured all or some of the arrears. It has cited examples of its successful handling of a similar situation when in 2022 it had to chase B for late rental payments. It did so at pace and successfully. It also had to deal with B going into administration later in the same year.

However, I'm mindful of the following matters, which I think are important to my consideration:

- Both parties to the dispute knew about the parlous financial state of tenant A. In its letter of 21 March 2020 to Suffolk Life, it said:
    - *"To date, [A] has managed its affairs in a responsible manner and not had to implement a CVA [Company Voluntary Arrangement] or restructuring exercise. We have always paid our property outgoings timeously, but we need landlords support in these unprecedented times. We are already experiencing a catastrophic 60% sales reduction and expect some stores to close in the next few weeks due to UK lockdown."*

    - *"Given the significant drop in income we have carried out a forward projection and our ability to meet our future liabilities will be challenging unless we discuss payment terms with all our suppliers and landlords. Accordingly, we are seeking from yourselves a 3-month rent and service charge cessation from 25 March 2020 which is critical to the long-term viability of our business. We hope with your support, that we will not incur penalty charges or consultancy costs associated with this action."*

- It took two months from receipt of the tenant's request for a three-month period of rent cessation until a letter of agreement to terms with the landlord (and the Syndicate) was issued.
- Suffolk Life was providing an execution only service – it was reliant on instruction from the Syndicate where it was required to move away from established and agreed process. In respects of the rent deferral agreement, the agreed process was known by the Syndicate to have been:
    - *"The Concession will be reviewed by the Landlord at the end of the Period and the Landlord will use its sole discretion in deciding whether or not to extend the Concession and, if so, for what period and on what terms."*
- Both parties knew the rent deferral period ended on 23 June 2020. We know Suffolk Life took no proactive action, and seems to suggest had it got things right it would've followed its usual debt management process. I'm also mindful that the Syndicate didn't bring to bear its significant expertise at this time, only seeking an update from the SIPP administrator on 7 August 2020.
- The period between the end of the concession on 23 June 2020 and when business A entered administration on 4 August 2020 was short. If we assume it took a period of a few weeks to formulate and execute its strategy towards this point, the window within which the Syndicate could've operated was very short.
- While I have no doubt about the skills and experience available to the Syndicate, as we know, the period in question and its impacts was without modern precedent.
- I can't see that the Syndicate instructed Suffolk Life to pursue the pre-administration arrears with the Administrator or through the Guarantor. It also had a responsibility to mitigate losses.

The Syndicate has suffered a loss of opportunity/expectation. But on balance, based on the evidence I've seen, I've concluded that had it been able to engage in direct discussions with tenant A from the end of June 2020 it's more likely than not this wouldn't have resulted in it securing rent arrears from the pre-administration period.

I say this because of the financial status of tenant A at the time; the very short period of time available for negotiations prior to it going into administration; the unprecedented circumstances which were unfolding; and the absence of a telling rationale for A to have made good the arrears when it was already heading towards administration.

<u>Lost value – impairment of the property by at least £400,000</u>

The Syndicate has advanced an argument that as a result of Suffolk Life's failings, its property has suffered impairment. Essentially, it says the capital value has been eroded because the yield it can command in terms of rent has fallen significantly. It says its earlier engagement in negotiations with tenants A and B would've put it in a much stronger position.

"We would also have established interest amongst prospective tenants…This would have placed us in a much stronger position when it came to renegotiating the lease. Essentially,

we were deprived of this opportunity."

On this point the Investigator said:

"I don't think the causation is quite as strong with this point. I agree that the Syndicate should have been allowed to engage at an earlier point and, as above, I appreciate their experience and knowledge would have helped them to mitigate potential losses. And I don't disagree that it may have left them with more leverage during the subsequent lease negotiations."

"However, I still think there would have been a number of factors which affected the reduction in rent, some of which would have stayed the same regardless of when any engagement began. For example, the fact that the administrators issued a licence to occupy to the new tenant as soon as the original tenant had gone into administration. Even if the Syndicate took action prior to the administration, there is nothing to indicate that the Administrator wouldn't have acted in the same way – effectively allowing the new tenant to occupy the property when no new agreement was yet in place. And so, the Syndicate would be left with the less favourable position to negotiate with a 'sitting tenant' in the midst of the pandemic, regardless of anything [Suffolk Life] may have done differently."

I think more telling here is the unprecedented impact of COVID 19 on the economy which left a lot of commercial property landlords in a very difficult position. This came on top of declining footfall at 'bricks and mortar' retail outlets, a pattern established for several prior years. There were concerns regarding tenant viability and whether they would find new tenants if there were business failures. As the Investigator noted, many landlords had to resort to providing 'incentives' to retain existing tenants or secure new ones.

In responding to the Investigator's view the Syndicate said:

"…You allude yourself to landlord's incentives being used during this period. Had we had time to consider and established dialogue this would have been an option, i.e., they wanted to reduce rent and we did not want a diminution in value so an obvious solution would have been for us to forego some rent to support the tenant whilst retaining the underlying rental."

I note the Syndicate's position on the possibility of foregoing rent, as a potential avenue in negotiations.

I think it's instructive to consider exchanges between members of the Syndicate in January 2021 when it was in negotiations with tenant B. These acknowledged difficulties in the sector. Having received a proposal from B, one member observed:

"…Few interesting facts emerge:

Guarantor expires this September - 15 years after commencement, I thought we were covered for the whole 25 years, obviously not.

[B] occupy the premises next door and have "knocked through" - does anyone recall us giving our permission, I don't but might have forgot.

Feels like a gun to our head but not sure we have much choice, reference to giving notice to break in September and trade from next door only. Also says terms have been agreed on similar terms with 108 other landlords- we should consult FHP for market comparatives."

Another member of the Syndicate said:

"I spoke to [FHP] last week and got some initial feedback but he is considering a more location specific view which I think I will get tomorrow. However I am not sure these will materially change the more general view which is broadly that he thought we would struggle to get a better term of lease elsewhere in the current market (i.e. the best he would be able to get would be a 3 to 5 year term). However he also clearly felt that the discount on the

lease proposed was well below what was happening generally (20 to 30%). Considering the potential downsides in seeking a new tenant (void period, rent free incentives) I think this gives a clear steer towards cautiously seeking to negotiate up the rent proposal - £60k to £65k (seems sensible to understand a bit more on the local dynamics to see if we do have a negotiating position) and keeping the tenant we have until times improve."

I'm not persuaded by the case made by the Syndicate that its property has lost value as a result of the actions of Suffolk Life. Like very many other landlords it experienced the effect of the considerable financial stress on tenants resulting from the pandemic and its unprecedented financial, regulatory and social consequences.

Poor service

There's no dispute Suffolk Life didn't provide the service it should've as SIPP administrator. As part of its proposal to put things right, it said it would refund two years of the Syndicate's property administration fees. I think this is an appropriate element of the redress required.

Ability to move on – cost barriers to exiting the relationship with Suffolk Life

In responding to the Investigator about its desire for Suffolk Life to meet the costs of it being able to find another SIPP provider, the Syndicate said:

"The point on exit costs was made because we felt as clients that had lost confidence in Suffolk Life as a provider, we should be afforded the opportunity to move our business without the constraint of cost, i.e., essentially Suffolk Life should not retain poorly serviced clients purely because the barrier to exit is high. You say that 'the choice to remain or leave is entirely theirs' whereas it does not feel that way."

"Whilst this point was raised partly because we genuinely felt we should be afforded this opportunity it also has an eye to the regulatory environment. I may of course be wrong but my dealings with Suffolk Life, particularly in the initial complaint, led me to the view that as an organisation they would rather invest in resource to fight complaints than on resource to prevent the failings in the first place. I understand that running the organisation in this way is a business decision with the higher level of complaints being an 'occupational hazard' but I don't think this is in the best interests of clients. It follows therefore that a deterrent (not a punishment) is needed to change behaviour. Facilitating exit of clients where they have clearly lost confidence (distinguishing from single service failures) would support better quality providers and improvement in the overall quality of provision rather than allowing inertia created by exit cost to support continuing poor service."

I do understand the Syndicate's argument here. It would of course have been aware of the fees and charges levied by Suffolk Life when members entered into their respective SIPP arrangements. And, while I appreciate any fees charged on exit wouldn't have been something planned and would represent a drag on investment returns, I'm not persuaded given the scale of investments held these costs represent a real barrier to exit if members remain unhappy with Suffolk Life's service performance.

The role of this Service is to put customers back into the position they should've been in now had it not been for any failings of regulated firms that have been found. Directing a business to meet the costs associated with a complainant moving their custom to another provider, in the circumstances of this case, goes beyond what would be reasonable.

Putting things right

The significant inconvenience and stress experienced.

When I'm considering a complaint like Mr J's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of Suffolk Life's acts and omissions were greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

The Syndicate has suffered a loss of opportunity/expectation.

The Syndicate undertook a large part of the work required during the engagement with the tenants and the recovery of the post administration debt. Much of this work was not caused by Suffolk Life directly and it was its choice to be as involved as it was.

However, it's also clear Suffolk Life's poor service caused Mr J and the rest of the members of the Syndicate stress over a prolonged period. The failure to communicate promptly forced it to chase on many occasions, having to make many calls and send emails to ensure they were kept updated.

Additionally, there were considerable delays when asked to produce invoices and the completion statement, which the Syndicate required to recover the post administration rent and negotiate a new agreement. When the records were provided, they included a number of errors which forced certain members to spend a substantial amount of time in order to correct these.

The Investigator considered that Suffolk Life's offer of £200 for the distress and inconvenience it caused didn't reflect the impact its failings on Mr J. She thought this should be increased to £300. I see no reason to disturb that recommendation.

My final decision

For the reasons I've set out, I'm upholding Mr J's complaint but not to the extent he'd like. Suffolk Life Pensions Limited should now put matters right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 31 July 2023.

Kevin Williamson
Ombudsman