

The complaint

Ms H complains that Suffolk Life Pensions Limited caused delays when she was transferring her Self-Invested Personal Pension to a Qualifying Recognised Overseas Pension Scheme (QROPS). As a result of the delays Ms H says she will have to pay an additional social security charge.

What happened

I issued my provisional decision on this complaint on 23 August 2023. I've reproduced the relevant parts of it below, and it forms part of this final decision.

Ms H's complaint was considered by one of our investigators. He sent both parties his opinion on the complaint in which he set out his understanding of the background and circumstances to it. Both parties are aware of all the background so I won't repeat it all again in detail here. But briefly, Ms H had a SIPP which was valued at around £126,000. She'd had discussions with another firm (which I will refer to as Firm A) about a transfer to a QROPS in July 2021. Ms H was told if the transfer was completed before 31 December 2021 she would be exempt from paying a particular social security charge in her country of residence.

Suffolk Life (trading under a different name but I will refer to as Suffolk Life for consistency) received the relevant signed transfer documentation on 3 November 2021. Suffolk Life wrote to Ms H on 11 November 2021 confirming that it had received her transfer application. It said it had a duty to carry out checks on the pension scheme that Ms H was intending to transfer to. This was to ensure it met with HM Revenue and Customs' requirements and was a 'recognised overseas pension transfer'. It also e-mailed Ms H to complete and return some additional paperwork which she did on the same day.

Firm A chased Suffolk Life on 22 November 2021 and the firm says it identified it needed some further information – a certificate of company incorporation and a bank statement for the scheme.

This was requested on 1 December 2021. The case was sent to senior management for 'sign-off' on 5 December 2021. Suffolk Life provided instructions to the provider of the underlying investments in the SIPP to disinvest on 15 December 2021.

Ms H's husband had in the meantime been in contact with Suffolk Life to chase the transfers. He had contact on 17 December 2021 where he explained that he needed the transfer to complete in the current calendar year in order to avoid having to pay the social security charge (9%).

There were subsequently a number of exchanges of e-mails and information between Suffolk Life and the investment provider through December 2021 and January/February 2022. Ms H and her husband had further discussions in telephone conversations with Suffolk Life in late December 2021 leading up the deadline date. The transfer payment was eventually sent by Suffolk Life to the QROPS on 15 March 2022.

The investigator didn't recommend that Ms H's complaint should be upheld. In brief, he didn't think that Suffolk Life was responsible for any undue delays given that the transfer was to a QROPS and Suffolk Life had to carry out appropriate due diligence on the receiving scheme. The investigator didn't think that Suffolk Life had been alerted to the urgency of the transfer (Ms H's requirements for it to be completed before 31 December 2021) until 17 December 2021 by Ms H's husband. And by that time Suffolk Life was reliant on the funds to be disinvested by the investment provider – and this was ultimately completed too late.

The investigator acknowledged that Suffolk Life had accepted that it could have provided better communications through the process and it had given Ms H £100 compensation for that failing. But overall he didn't think that had caused a delay in the transfer itself, and he didn't think Suffolk Life was responsible for any undue delays in processing it.

Ms H didn't agree with the investigator's findings. She provided further submissions which I have considered in my provisional findings outlined below.

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.

Ms H's husband has also complained about the delay to his transfer in very similar circumstances. There may have been some slight differences in the circumstances, but I don't think they are largely material and so haven't gone into detail about them. Where I think something is material I have referred to it below.

Like the investigator, I haven't seen any persuasive evidence that Suffolk Life was alerted to the 31 December 2021 deadline prior to 17 December 2021. Suffolk Life has a written note of the conversation it had with Firm A on 8 November 2021. But it doesn't mention any deadline. And Suffolk Life don't have a recording of that conversation.

And whilst it's clear that Suffolk Life was alerted to the deadline on 17 December 2021 (by Ms H's husband), I don't think it's clear it was alerted on 10 December 2021 as has been suggested. Suffolk Life doesn't have a record of Ms H's husband contact on that date. There was an exchange of e-mails between Firm A and Suffolk Life on 13 December 2021 where Firm A said it had tried to contact Suffolk Life that morning asking for a timeframe for the completion of the transfer; a Suffolk Life internal e-mail on 14 December 2021 asking for the transfers to be completed as a priority; and an e-mail to Firm A dated 15 December 2021 saying it had asked the relevant team to prioritise chasing the investment managers for disinvestment. So Suffolk Life were aware to treat the transfers as a priority on 14 December 2021 in any event. Whilst I accept that the request to prioritise may have resulted from an unrecorded telephone conversation it may also just have been the result of Firm A's chasing e-mail.

Whilst I agree with the investigator that Suffolk Life wasn't responsible for any significant delays, I do think it could have acted in a timelier manner in some instances. In particular Suffolk Life wrote to Ms H on 11 November 2021 confirming that it had received her transfer application. But my understanding is it didn't request any further information until 1 December 2021. So I think this took a few more working days than was reasonable. However, as I've said above, Suffolk Life didn't receive the funds until March 2022. Whilst there may have been instances where that period post 31 December 2021 could have been shortened, what's key is whether it would have been possible for Suffolk Life to have completed the transfer by 31 December 2021. And looking at the circumstances and information required and exchanged once the disinvestment instruction had been given on 15 December 2021, I don't think it could.

So overall, I don't think those few working days where Suffolk Life could have acted in a timelier manner were the cause of the deadline being missed – I don't think there was any guarantee it would have been met but for those few days.

Ms H's husband had a telephone conversation with the firm on 24 December 2021. The firm hasn't got an actual recording of this call. However a note of it includes:

"...explained that any delays we or the investment manager would be looked into and any financial detriment including the 9% tax charge should we not be able to complete before EOY."

Ms H's husband sent an e-mail to the firm on 29 December 2021. It said, amongst other things:

"Should the funds not be available for transfer by Wednesday, 29 December, which should remain the objective, you committed for [Suffolk Life] to subsequently make good the [name of country of residence] social security once assessed by the [name of country of residence] tax authorities."

The e-mail from the firm to Ms H's husband in response dated 30 December 2021 said, amongst other things:

"I write with reference to your email below as well as our conversations this afternoon and yesterday. I can confirm that despite us chasing for the information we needed from the Investment Manager, we have unfortunately not received confirmation of the cash values we are due to receive which would have allowed us to prefund the balance in time to make a payment that would reach your new provider by the end of the year.

Once the transfer has completed we will produce a full timeline of the transfer which will involve us contacting the investment managers involved as well as the receiving scheme so that we can establish a detailed and true reflection of your transfer which will allow us to understand why the 31 December deadline has not been met. This will allow us to work out any appropriate compensation owed to you and [Ms H] and allow us to ensure this is paid to you by the appropriate party in relation to the tax burden you would incur as a result of this deadline not being met."

In my view Ms H's husband – and it follows Ms H - was clearly led to believe if Ms H went ahead with the transfer she would be compensated for any costs arising from missing the 31 December 2021 deadline. I don't think this binds the firm to paying Ms H compensation as it says it will effectively look into the matter and pay any 'appropriate compensation'. It appears that Suffolk Life, having looked into the matter, doesn't think compensation is appropriate.

However I think it was reasonable for Ms H to believe she would be 'adequately protected', and she'd be compensated, so wouldn't have needed to think about cancelling the transfer (irrespective of whether it was suggested by Suffolk Life or Firm A). I've therefore gone on to consider whether Ms H would likely have gone ahead with the transfer knowing it wouldn't be completed before the 31 December 2021 deadline and she would therefore be subject to the social security charge.

On the face of it, there appear to be benefits to the transfer despite incurring the charge. And this is consistent with Ms H confirming she would probably have gone ahead with the transfer in any event. So although I think Ms H was misled into believing that Suffolk Life would compensate her if the deadline wasn't met, I think she would more likely than not have gone ahead with the transfer even knowing that wasn't the case. I think it's also worth

pointing out that if I thought Ms H wouldn't likely have gone ahead with the transfer the remedy for being misled into doing something she wouldn't otherwise have done would be to put her back into the original position i.e. comparing the relative positions if Ms H hadn't transferred which, if the transfer is ultimately more advantageous, may not show a financial loss in any event.

For the reasons I've explained, I don't think the transfer not being completed by the 31 December 2021 deadline was a result of errors by Suffolk Life. However I do think Ms H would have reasonably believed that Suffolk Life would 'make good' on the charge following the transfer. So I do think that having been led to believe that she would be compensated, but then be told she wouldn't, would have caused additional distress and inconvenience to Ms H. She thought there wasn't going to be a problem with the charge but then discovered she was going to be liable for payment of what is likely to be a considerable sum. This would reasonably cause a lot of worry and distress, as well as the inconvenience arising from sorting the matter out.

My provisional decision

Accordingly, my provisional decision is that as well as Suffolk Life Pensions Limited paying Ms H £100 in light of the poor communication through the transfer process, it should also pay her an additional £400 for the distress and inconvenience caused for misleading her into thinking it would compensate her for the charge. So in total it should pay Ms H £500 (less any payment already made).

I asked Ms H and Suffolk Life Pensions Limited to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Ms H said that she was disappointed with my provisional decision, albeit reluctantly accepted it. She also provided a copy of an e-mail that her husband had sent to Firm A dated Friday 10 December 2021. The e-mail referred to a conversation Ms H's husband had had with Suffolk Life on that date about the importance of meeting the year-end deadline. She said this therefore showed that Suffolk Life knew – at the latest – of the deadline on 10 December 2021 which was five additional working days before the 17 December 2021 date I'd referred to in my provisional decision. She said Suffolk Life had promised the funds within 10 working days from the initial instruction given to the asset manager on 15 December 2021, but that they hadn't been received until 16 March 2022. This showed something was "...clearly awry with Suffolk Life's process."

Suffolk Life Pensions Limited said it would increase its offer in line with the provisional decision.

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.

Having done so, I've seen no reason to depart from the findings set out in my provisional decision.

The e-mail from Ms H's husband to Firm A dated 10 December 2021 did say that he had spoken to Suffolk Life that morning and that the person he had spoken to "...knows (now?) about the extra social security and confirmed, as far as she knew, nothing was outstanding from either you or us."

So I accept it's highly likely that Ms H's husband did alert Suffolk Life to the charge on 10

December 2021, even though Suffolk Life hasn't got a record of that conversation. However Suffolk Life was aware to treat the transfers as a priority on 14 December 2021 in any event. 10 December 2021 was a Friday. And as I said in my provisional decision, although I think Suffolk Life could have acted in a timelier manner in some instances, overall I don't think those few working days where it could have been timelier were the cause of the deadline being missed. Even taking into account the additional working days here, I still don't think it was more likely than not that the deadline would have been met but for those few days when taking the overall circumstances into account.

My final decision

Accordingly, my final decision is that as well as Suffolk Life Pensions Limited paying Ms H £100 in light of the poor communication through the transfer process, it should also pay her an additional £400 for the distress and inconvenience caused for misleading her into thinking it would compensate her for the social security charge. So in total it should pay Ms H £500 (less any payment already made).

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 5 October 2023.

David Ashley
Ombudsman