

The complaint

Mr D has complained that Suffolk Life Pensions Limited, trading as Curtis Banks Pensions, has caused him to unnecessarily accrue losses in his self invested personal pension (SIPP) plan due to delays in taking action relating to rent arrears for a property held within his plan.

What happened

The investigator who considered this matter set out the timeline and background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

On 19 July 2018, Suffolk Life wrote to the tenant of the property in question requesting payment of rent arrears of £3,205.81 in respect of rent and insurance to be settled within the next ten working days.

Then, on 21 August 2018, Mr D e-mailed Suffolk Life about the arrears, following notification from Suffolk Life. In that e-mail, Mr D asked Suffolk Life to confirm that, if payment wasn't received by 28th August 2018, recovery proceedings would be undertaken.

On 8 January 2019, Suffolk Life wrote to Mr D, confirming that arrears of £9,893.40 were outstanding and it requested instruction as to which course of action it should take, with the options set out as being a Suffolk Life solicitor issuing a letter with the cost paid by the SIPP and potential other legal action also chargeable to the SIPP.

Alternatively, Suffolk Life could continue to chase the arrears or remove them if Mr D wished to do so. The correspondence also provided a timeline as to what had happened so far as follows:

- On 16 August 2018, Suffolk Life sent a further chasing letter.
- On 6 September 2018, following a review with Mr D, Suffolk Life sent a final chasing letter.
- On 10 September 2018, the tenant notified Suffolk Life of a new correspondence address, so it updated its system accordingly.
- On 19 September 2018, Suffolk Life received an email from the tenant to ask about the bank details it should use, and so it updated the tenant accordingly.
- On 1 October 2018, the tenant contacted Suffolk Life to confirm that remittance would be sent the following day to evidence that payment had been made.
- By 4 October 2018 there was no update from the tenant, so Suffolk Life sent a chaser.
- On 8 January 2019, Suffolk Life sent a further chaser letter to the tenant.

On 17 April 2019, Suffolk Life wrote to the tenant requesting payment of arrears of £5,762.51 in respect of the rental invoice raised for the March to June quarter and asked for the outstanding arrears to be settled within the next ten working days.

On 2 May 2019, Suffolk Life e-mailed the tenant, saying that the account stood at £5,762.51 and Suffolk Life would be referring the case to its Solicitors, adding any legal fees

associated with the recovery of the arrears would be recharged to the tenant in line with the terms of the lease.

On 5 May 2019, the tenant responded saying that it had recently changed bank details. Suffolk Life then responded on 7 May 2019 asking for payment to be made that week.

On 26 June 2019, Suffolk Life wrote to the tenant asking for arrears of £225.71 in respect of the annual insurance premium and asked for the outstanding arrears to be settled within the next ten working days.

On 5 September 2019, Suffolk Life acknowledged receipt of an email from the tenant, saying the following:

"Thank you for your email and for making full payment of the balance on the account, once this has cleared our account, we can update our records."

On 8 October 2019, Suffolk Life e-mailed the tenant requesting payment of arrears of £5,876.86 in respect of rent due and asked for the outstanding arrears to be settled within the next ten working days.

On 27 April 2020, Suffolk Life wrote to the tenant requesting payment of arrears of £5,876.86 and asked for the outstanding arrears to be settled within the next ten working days as no response had been received.

On 21 September 2020, Suffolk Life e-mailed the tenant requesting payment of arrears of £234.47 and asked for the outstanding arrears to be settled within the next ten working days.

On 2 December 2020, Suffolk Life e-mailed its solicitor asking that a letter before action notice be issued at a cost of £180 plus VAT. Mr D was included in that e-mail which confirmed that £234.47 was outstanding for insurance renewal for the period 1 May 2020 to 30 April 2021, as well as total rent of £11,753.72 for rent in advance for the period from 24 June 2020 to 24 March 2021.

The e-mail also said the following:

'We have taken the following action to date:

- *21 September 2020 – first chaser sent*
- *15 October 2020 – second chaser sent*
- *16 October 2020 – Client requested we take legal action if no payment is made in 10 working days*

No communication from the tenant following the above correspondence'

On 4 January 2021, the solicitor issued a letter to the tenant, confirming that it was a formal "Letter Before Action" sent as a precursor to legal proceedings and requested a response by 3 February 2021. The letter said the following:

"We are instructed that you failed to keep up with the payments falling due under clause 6.1 of the Lease. Please see the enclosed schedule of arrears, which provides a breakdown of the invoices issued by our client and the payments you have made to date.

As a result, the arrears have now accrued in the sum of £17,865.05. This sum remains outstanding despite our client's previous reminders, proposals and demands for payment.

Sums which have been added, and due:

We would also remind you that under clause 13.1 of the Lease you are indebted to our client for interest at the rate of 3% per annum above the base rate for the time being of Lloyds TSB Bank plc.

We note that interest has accrued in respect of the insurance, rent has accrued in the sum of £180.41 and is now payable under the terms of the Lease. Interest continues to accrue at a rate of £2.02 per day.

In addition, our client has also incurred legal costs of £180 plus VAT which you are also liable for under clause 14.1.1 of the Lease.

These sums have been added to your arrears resulting in a total amount, immediately payable, in the sum of £18,294.79.'

On 14 January 2021, Suffolk Life e-mailed Mr D saying that the tenant had verbally confirmed that they had just seen the solicitor's letter. Suffolk Life added that the tenant had explained the rent hadn't been paid as its office had been shut for the last seven months and so the tenant hadn't seen the invoices sooner.

The tenant also explained that, due to the pandemic, clients had been withholding funds or taking longer to make payments to the company and it had therefore been a difficult time for the company. The tenant had confirmed that they would seek to make the latest quarter rental payment the following week and then bring the whole arrears balance up to date at the end of the month. The email asked Mr D if he was in agreement with the proposal.

On 2 February 2021, the tenant emailed Suffolk Life saying that £18,294.79 had been sent via BACS and on 3 February 2021 Suffolk Life e-mailed Mr D informing him the tenant had said that the funds had been paid.

On 25 May 2021, Suffolk Life contacted the tenant by email, copying in Mr D. The email confirmed there was currently £5,863.12 outstanding for rent in advance for the period from 25 March 2021 to 23 June 2021 and asked when payment would be made.

On 1 October 2021, Suffolk Life wrote to the tenant confirming that there were arrears of £287.02 for renewal for the period 1 May 2021 to 30 April 2022. A copy was also issued to Mr D on the same date.

On 26 October 2022, Suffolk Life wrote to Mr D confirming the tenancy arrears and providing a breakdown of funds due. The letter confirmed £30,347.26 was overdue from OTT which began with the insurance renewal for the period 1 May 2021 – 30 April 2022 for £287.02.

The letter said that Suffolk Life had written to the tenant on 1 October 2021, 20 October 2021, 10 December 2021 and 4 July 2022 and also said that copies of that correspondence had been issued to Mr D.

A letter requesting payment from the tenant was also issued on the same date.

On 6 February 2023, Mr D's representative raised concerns with Suffolk Life, saying that it had allowed the tenant of a separate property to run up arrears of £10,000 and the tenants of the property in question here to run up arrears of £36,000, none of which was likely to be recovered as both companies had now ceased operating.

The representative asked for an explanation as to why the arrears were allowed to mount up with no consequences except to the SIPP and why Mr D, as the ultimate owner of the SIPP, hadn't been kept informed.

Suffolk Life responded on 24 February 2023, providing a timeline of the process undertaken in connection with both properties.

On 27 March 2023, an insolvency practitioner wrote to all creditors of the tenant, saying that, in view of the company's financial position, the board of directors resolved on 27 March 2023 to take all necessary steps to place the company into "creditors' voluntary liquidation" and that it had been instructed to act on behalf of the directors to assist with putting the company into liquidation.

The following day, Suffolk Life confirmed this to Mr D.

Suffolk Life issued its complaint response letter on 3 April 2023. The response agreed that the business should have referred to legal options sooner than it did, however it didn't accept responsibility for arrears associated with either tenanted property.

Suffolk Life credited Mr D's SIPP account with the property annual fee of £509 in respect of the timescales for chasing rent in 2022 and also offered a further £300 for the stress this situation had caused.

Dissatisfied with the response, however, Mr D referred the matter to this service in June 2023.

Having considered the complaint, our investigator didn't think that it should be upheld. He said the following in summary:

- Mr D had been aware that there had been issues with the tenant paying rent from as early as 2018.
- Suffolk Life's policy of chasing and its threats of legal action had resulted in the account being brought up to date previously. However, it was also clear that, as soon as the account was brought up to date, it then slipped into arrears again.
- It was therefore clear to all parties that the tenant had a poor history of paying amounts due on time.
- Suffolk Life had acknowledged its failures in providing updates to Mr D and in chasing the tenant for the arrears. As a result, it was fair to say that Mr D wouldn't reasonably have had cause for concern until after 26 October 2022, at which point Suffolk Life informed Mr D that there were arrears of over £30,000.
- Mr D should have been kept better informed as to the arrears and the action which Suffolk Life was taking, and had this happened, it was likely that he would have asked it to threaten legal action sooner.
- But the investigator didn't think that he could conclude that this would have resulted in payment from the tenant. The tenant had explained that it had been a difficult time due to the pandemic. If the tenant didn't have the funds, then they wouldn't have been able to pay, irrespective of any earlier chasing or the threat of legal action.
- The cause of Mr D's loss was the failure of the tenant to pay the rent rather than Suffolk Life's service failure. The terms and conditions of the SIPP set out that

Suffolk Life wouldn't be doing credit checks on the tenant and it wouldn't be liable for losses arising from non-payment of rent.

- The investigator had also considered whether earlier legal proceedings could have resulted in Mr D seeking forfeiture of the lease. He thought this would have been possible, with the costs involved attributable to the SIPP, but given that both Mr D and Suffolk Life had confirmed that a new tenant hadn't been found yet, the available evidence didn't support the position that a new tenant would have been found with earlier legal proceedings.
- Mr D had also said that he incurred considerable costs once the tenant had declared insolvency due to needing to clear the premises and seeking agents for a replacement tenant. But even if action had been taken earlier, these costs would in any case have needed to be met by the SIPP.
- Suffolk Life had credited the SIPP with the property annual fee (£509) and it had also offered £300 for the trouble and upset caused by its service failures. The investigator thought that this was a fair resolution and in line with what this service might typically award in similar circumstances.

Mr D disagreed, however, saying the following in summary:

- Suffolk Life failed to carry out its duty of care to him, which it had set out in its own literature.
- It had purported to be an expert in holding commercial property within SIPPs, for which it charged an appropriate fee. But this hadn't turned out to be the case.
- Suffolk Life's administration was a shambles. There was no single person in managerial control of his account, and it wasn't surprising that rent collection and notifying SIPP holders could be lost in its poor administration.
- The tenant did have a poor history of paying rent, and had offered unacceptable excuses which the management team at Suffolk Life had seemed to accept.
- When he was made aware of the approximate £18,000 accrued arrears in 2020/21, he demanded that a formal solicitor's letter be issued with a threat of legal action for cancellation of the lease. This resulted in payment of the arrears, and so a clean slate.
- But rent arrears began to accrue almost immediately afterwards. It wasn't unreasonable to expect that Suffolk Life, with its awareness of the previous rent arrears, would not have allowed matters to drift again.
- Suffolk Life didn't even advise him of the situation, which its brochure had assured him it would. It had admitted its failures, and Mr D therefore queried as to why it wasn't being held accountable.
- The investigator had said that, even if Mr D had been advised that rent wasn't being paid and legal proceedings had been instigated nine months earlier, it wouldn't have resulted in the tenant paying the rent arrears, as they didn't have the funds. But if he'd been made aware of the situation, he would have done Suffolk Life's job for it –

he would have personally visited the tenant to establish the situation and brought matters to a head.

- The lease would then have been taken back nine months sooner. At this time, the market was buoyant, and the letting agent was receiving a good number of enquiries. His commercial property next door was let within a short space of time after the previous tenant in that property had gone into liquidation, and at the same time as the tenant in this property had ceased paying rent.
- Therefore, Suffolk Life's inaction had cost his SIPP a great deal of money.

As agreement couldn't be reached on the matter, it was referred for review by an ombudsman.

Mr D has since raised further matters relating to the administration of the property held within his SIPP, which Suffolk Life declined to consider as part of this complaint.

Mr D also confirmed on 27 February 2024 that the property which is the subject of this complaint was re-let, but which had cost £10,000 to tidy after the departure of the previous tenant. This cost would normally have been covered by the outgoing tenant as part of their full repairing responsibility.

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.

And having done so, I've reached broadly the same conclusions as the investigator and for similar reasons.

Suffolk Life has conceded that there were failures in its administration of Mr D's plan, for which I agree that it should be held accountable. But as with the investigator, in order to hold it responsible for losses to the SIPP, I'd need to establish a causal link between those failures and the loss of rental income which Mr D has asserted. And although I know this will disappoint Mr D, as with investigator, I don't think this has been clearly shown to be the case.

Mr D has said that, had he been alerted to the rent arrears sooner, he would have visited the tenant to establish the situation and brought matter to a head. But the same situation remained – Mr D may well have brought matters to a head, but if the tenant was unable to pay the rent, I don't think a personal visit from Mr D would have changed this.

Mr D has also said that the commercial property market was more buoyant in July 2022, nine months earlier than the lease was cancelled on 23 April 2023, and that the property next door had been successfully re-let. But having sought clarification from Mr D on this point, he's confirmed that the property next door was re-let in May 2023, so at around the same time as the lease for the property in question here became available.

So I don't think, on balance, that I can fairly and reasonably conclude that the letting of the property next door was an indicator of the buoyancy of the market nine months earlier in July 2022, had the lease for this property been terminated nine months sooner.

Mr D also said in an email to the investigator on 27 February 2024 that he had "just let" the property in question here, after spending £10,000 on tidying it up. The costs associated with preparing the property for a new tenant would likely always have been incurred, but it is the

matter of the delay in getting to the point of the termination of the lease which is in question here.

And in thinking about that, if the property was marketed again at the end of April 2023, but wasn't re-let until the beginning of 2024 (although I've also noted in Mr D's most recent reply that occupation doesn't begin until 25 June 2024), again I don't think I can fairly and reasonably conclude that it would have been let, and rent received, any sooner, had the lease been terminated before it was. Further, I think the fact that the property next door was let within a short space of time might indicate that the property in question here may not have been as readily tenanted for whatever reason.

But even if a different interpretation of this was possible, and I accept that it may be, although Mr D has said that the market was buoyant in July 2022, he has himself also commented that the reason that he agreed to a delayed tenancy in January 2024 was due to the "state of the market following Covid and the general downturn". But my understanding that is that, in commercial property terms, that downturn began somewhat sooner than April 2023, and that, although there was upturn in the first half of 2022, things deteriorated from the third quarter onwards.

If I'm to factor in the cleaning and decorating which would have likely needed to take place to attract a new tenant even if the lease was terminated nine months earlier, this makes it likely that, even with earlier legal action, it wouldn't have been marketable until August 2022 at the earliest. And as I've said above, my understanding is that commercial property fortunes in terms of occupancy and rents began to wane from the end of the second quarter of 2022.

The crucial question which I'm attempting to answer here is whether, had the tenancy been terminated earlier than it had been, Mr D would more likely than not have been able to successfully rent the property out again sooner than he did. It's clearly impossible to know for certain whether this would have been possible, but on balance, I don't think I can fairly and reasonably conclude that this would have been the case, nor at what point, if indeed sooner, the property might have been re-let. For example, if there wasn't the existence of a tenant who was ready to move in in April 2023 (or soon after) and begin paying rent (as has been demonstrated by the lack of occupancy until June 2024), then I think it would be difficult to fairly and reasonably conclude that things would have been any different nine months previously.

And so, overall, whilst I know this may come as a disappointment to Mr D, I don't think that the required causal link between Suffolk Life's delays and losses to the SIPP has been demonstrated here. Whilst I acknowledge the principle of what Mr D has said, I don't think it's sufficiently clear that the property could have been re-let sooner than it has been.

And so I don't think an award beyond the refund of the annual property fee and the £300 payment in respect of the distress and inconvenience caused would be warranted here. Specifically in terms of the latter, I think Mr D will have been caused not inconsiderable stress when he found out the extent of the arrears, and thinking about awards which this service might make in similar situations, I think the sum offered by Suffolk Life is probably appropriate.

My final decision

My final decision is that the offer made by Suffolk Life Pensions Limited, trading as Curtis Banks Pensions, is fair in the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 18 July 2024.

Philip Miller
Ombudsman