

complaint

Mr W is unhappy with the service provided by Suffolk Life Pensions Limited after it took over as the trustee when his former SIPP provider went into administration.

Mr W is also unhappy that Suffolk Life refused his instruction for a particular investment and he says that it withdrew funds from his fixed term deposit account without his permission.

background

Mr W held a SIPP with a provider (from herein referred to as Firm E) and all the investments within the SIPP were held with an investment management firm (from herein referred to as Firm ID). Firm E was placed in special administration by the Financial Conduct Authority and in July 2016 Suffolk Life acquired Firm E and all of its customer's plans.

After a review, Suffolk Life determined that Firm E's systems and administration functions weren't sufficient for it to fulfil its responsibilities as the operator and trustee of the scheme. So Suffolk Life made the decision to wind up all Firm E's schemes and dissolve the business. Suffolk Life wrote to all affected customers in November 2016 to advise them of its decision. It explained that it was transferring all affected customers from Firm E to a MasterSIPP with Suffolk Life.

This letter also set out the options that were available to customers; one of those being for them to transfer to an alternative SIPP provider, without incurring any transfer out costs. Suffolk Life also made its customers, including Mr W, aware that the original SIPPs would be transferred to the MasterSIPP first – even if they decided to transfer to an alternative provider.

By January 2017 Mr W had become frustrated that his Suffolk Life MasterSIPP hadn't been established. So he made the decision to transfer to an alternative provider, from herein referred to as Firm C.

Firm C submitted the transfer request in May 2017 but Suffolk Life didn't action the request. It says this was because it couldn't reconcile Mr W's pension fund, meaning it was unable to meet its regulatory requirements.

In June 2017 Firm ID started transferring the funds in-specie to Firm C without Suffolk Life's consent. Suffolk Life explained to Mr W that this contravened pension legislation, even if it was done with Mr W's permission. But it said that it would allow the transfer to complete without reconciling the SIPP. However, it said that it would absolve itself from any liability from that point forward. The transfer completed in July 2017.

Mr W complained to Suffolk Life a number of times between March 2017 and August 2017. In summary he said:

- Suffolk Life had withdrawn funds from his Fixed Term Deposit Account (FTDA) without his permission.

- He was unhappy he'd been unable to place a fixed term investment with a bank of his choice.
- Suffolk Life was unable to give him a split of his fund to detail what was in drawdown. This was required because he was considering taking further tax free cash but ultimately this wasn't possible.
- He was unhappy with the transfer of his SIPP from Firm E to the MasterSIPP and then the onward transfer to Firm C. He believed Suffolk Life had delayed the transfer and had failed to comply with his wishes in a timely manner. As a result he'd been unable to invest funds as he wished and had been unable to withdraw funds.
- Suffolk Life should compensate him for the loss of interest on his SIPP
- Suffolk Life should compensate him for the time he'd spent dealing with this issue and for the fees he's spent on a solicitor.

Suffolk Life responded to Mr W's complaints. In summary it said that:

- The FTDA funds were returned because the investment hadn't rolled over.
- Although the bank that Mr W wanted to place a fixed term investment with was covered by the Financial Services Compensation Scheme, it didn't have an investment grade credit rating and was therefore not an allowable investment.
- It was due to the in-specie transfer that the on-line portal was showing incorrect information. And although Mr W was unable to place further funds in drawdown or take any tax free cash, he was able to withdraw income from funds already in drawdown.
- In terms of the transfer of the SIPP, Suffolk Life had demonstrated that it had acted correctly and had exhausted all avenues in attempts to work with Firm ID.
- Suffolk Life pays interest on the funds held in the SIPP bank account as set out in the fee schedule and terms and conditions. This set at 0.4% below the Bank of England base rate. But because the base rate is currently 0.4%, no interest is payable. The transfer application form that Mr W signed in December 2016 confirmed that he understood these terms and conditions.
- The situation caused by Firm ID, forced Suffolk Life to take action, which it did for all investors that were impacted by the issue. This wasn't as a result of Mr W involving a solicitor. So it wouldn't be refunding the fees he'd incurred.

Mr W remained unhappy with Suffolk Life so he referred his complaint to our service where it was considered by one of our investigators.

The investigator acknowledged that the situation had caused Mr W significant frustration but she didn't think Suffolk Life had done anything wrong. This was because in terms of the issues experienced with Firm ID, she felt there was little more Suffolk Life could've done to expedite the transfer. She was satisfied that Suffolk Life had been attempting to engage with Firm ID since November 2016 and when these attempts weren't successful, Suffolk Life escalated the matter to the FCA. And she felt that Suffolk Life had kept Mr W updated throughout the process.

Although the investigator acknowledged that Mr W had been prevented from drawing tax free funds from his SIPP during this time, she didn't consider this to be Suffolk Life's fault. She also acknowledged what Mr W had said about Suffolk Life only allowing the transfer to continue after he'd involved his solicitor. However, she didn't think it had done

anything wrong here as she felt it would've been within its rights to request the transfer be reversed by Firm ID.

The investigator didn't agree that Suffolk Life had withdrawn funds from Mr W's FTDA without his permission. And she thought that Suffolk Life was entitled to set its own criteria for investments that it accepts. So she didn't think it had done anything wrong by not allowing Mr W to invest in a fund that didn't meet its schedule of allowable investments.

Mr W didn't agree with the conclusions the investigator reached. He said that:

- Suffolk Life should've taken on the staff to deal with the transfers from Firm E before taking on the business.
- He doesn't consider there were any complexities in his case and he'd offered to give Suffolk Life full details of his bank deposits. He'd also offered his online codes so Suffolk Life could sign in to his account to check his Firm ID account.
- In terms of Suffolk Life's dealings with the FCA, he'd like to know more about these before believing what Suffolk Life has said.
- He feels Suffolk Life was using the threat of tax implications to stop him from transferring and it was no coincidence that the transfer only happened after his solicitor became involved.
- The fact that the bank he wished to open a fixed term investment account with wasn't investment grade is of no relevance. Why was a deposit of £80,000 that was guaranteed by authorities not accepted?
- The normal practice is for the customer to decide if the money from a FTDA remains in the holding account or is returned to the SIPP bank account. Suffolk Life shouldn't have acted without contacting him.

The complaint has now been passed to me to decide.

my findings

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

Delay in the reconciliation and transfer of Mr W's SIPP

After Suffolk Life acquired Firm E, it took the decision to wind up the various pension schemes Firm E held. It did this because it didn't deem Firm E's administrative functions to be sufficient. This meant that it became necessary to arrange for the transfer of around 4,500 customers' plans from Firm E to Suffolk Life and this involved numerous different investment providers.

I appreciate that Mr W advised Suffolk Life in January 2017 that he was considering transferring to another provider. But it's my understanding that Firm E could only complete direct transfers up to early December 2016. After this, all schemes had to be transferred to Suffolk Life first. And if this wasn't done, it wouldn't have been possible for Suffolk Life to reconcile the pension fund.

As both Suffolk Life and the investigator have explained, failing to reconcile the pension fund could've left Mr W open to various risks. For example, he might not have received the correct transfer value or he may have lost any special tax protection he might have had. For these reasons, I don't think it was unreasonable that Suffolk Life thought it necessary to transfer and re-register the assets to the Suffolk Life MasterSIPP. This would then have enabled it to complete a detailed file review to ensure that the pension fund was correctly reflected in its records.

And although Suffolk Life did experience delays in transferring over some of the data for other customer accounts, I've not seen anything to suggest that Mr W's transfer was delayed as a result of Suffolk Life not having sufficient staff to deal with this matter. I'm satisfied that the delay was due to the issues between Firm ID and Suffolk Life.

I've thought carefully about what Suffolk Life has said as to the cause of this delay. Essentially, it's said that Firm ID refused to acknowledge Suffolk Life as the new SIPP provider. And Firm ID refused to accept Suffolk Life's terms, so instead, in an effort to progress matters, Suffolk Life agreed to Firm ID's terms.

Firm ID isn't party to this complaint so I've not been able to consider its own thoughts as to what exactly caused the delay and where any blame might lie for matters not progressing as quickly as I'm sure all parties might have hoped. Instead I've considered the information I have on file and I can see from Suffolk Life's contact notes, that it was in regular contact with Firm ID, attempting to resolve the issues. And although I'm not aware of the exact nature of its involvement, I am aware from sources other than Suffolk Life that the FCA was aware of these issues. I know Mr W would like to see evidence of the FCA's involvement but information regarding its investigations into issues of this nature isn't something that would usually be in the public domain.

In June 2017, Firm ID started to transfer Mr W's investments to Firm C. Although it seems it was doing this at Mr W's request, it was initially without Suffolk Life's permission. I'm conscious that subsequent correspondence between Suffolk Life and Mr W suggests that it would allow the transfer to continue but that it would absolve itself from any errors in the reconciliation of the pension fund. And it wouldn't accept responsibility for any unauthorised tax charges Mr W may receive as a result of Suffolk Life being unable to carry out any regulatory checks. I don't think this was unreasonable as it hadn't been able to carry out the required checks on the assets held by Firm ID. If Mr W was unhappy with this, he didn't have to proceed with the transfer at that time.

Mr W thinks Suffolk Life only allowed matters to move forward, once he involved his solicitor. But I've not seen enough to support this assertion so I'm not asking Suffolk Life to cover his solicitor's fees. I say this because I'm aware that Mr W wasn't the only investor - impacted by the ongoing issues with Firm ID - that was given the option to transfer at that time. Suffolk Life didn't have to allow the transfer to go ahead until the issues between it and Firm ID had been resolved. But it seems it made a business decision to allow transfers to proceed, if the investor wished for this to happen and understood that Suffolk Life was absolving itself from any losses that may be incurred.

Although I can appreciate Mr W's frustration with the situation, I can see that Suffolk Life kept Mr W updated with what was happening. And as I've said, I've not seen enough to suggest that Suffolk Life's business decision was made due to the involvement of Mr W's solicitor.

Withdrawal of funds from FTDA

Suffolk Life has explained that its usual process when a FTDA is set up, is to write to the investor to highlight the terms of the FTDA, including any details of the need for the investor to provide a new instructions prior to the maturity date. In this case, as the FTDA was initially set up while the SIPP was held with Firm E, Suffolk Life can't confirm if that happened on this occasion. So when the investment matured, as Suffolk Life hadn't received a new instruction, it requested the funds be returned.

Mr W believes this was done without his permission. But it's my understanding that as there was no automatic roll over on the FTDA, the money was being held in a holding account with the FTDA provider. So, without a new instruction from Mr W, it doesn't seem unreasonable for Suffolk to request these funds be returned to await further investment instruction. And I don't think it needed Mr W's permission to do this. I'm also conscious that after Mr W was advised that the funds had been returned, he didn't provide a further investment instruction. So it's difficult for me to say that he would have done anything differently, had Suffolk Life consulted him prior to requesting the funds be returned.

Allowable investments

Mr W is unhappy that Suffolk Life wouldn't allow him to place a fixed term investment with his chosen bank. Suffolk Life says this is because it didn't meet its criteria for allowable investments as the bank had been removed from its list of fixed term investment accounts in 2014, when its acceptance criteria changed.

The FCA sets its own requirements for what investments should be allowed in a SIPP wrapper. But pension providers are also expected to have their own criteria and it is the responsibility of a SIPP provider to decide what they will accept. The criteria are set out in the Schedule of Allowable Investments. And having considered this further, I can see that for a fixed term investment to be allowable, the provider is required to have an acceptable credit rating. Suffolk Life has since confirmed that an acceptable credit rating would be investment grade, which would be AAA to BAA3.

Mr W's application for the fixed term investment account was assessed in March 2017, at which time the bank concerned didn't have a credit rating and therefore didn't meet the criteria as an allowable investment. So, although I appreciate that Mr W may have been acceptant of certain risks, it doesn't seem unreasonable to me that Suffolk Life refused the application as it's required to apply its investment criteria consistently.

Inability to withdraw tax free cash

Suffolk Life has explained that until it was able to reconcile Mr W's SIPP, he wasn't able to take any further tax free cash. This was because it was unable to confirm what was available from the funds that weren't currently in drawdown. I appreciate that Mr W provided valuation details and he offered to share his account passwords so Suffolk Life could access his fund information online. But I don't think this would've been an appropriate way for it to obtain the information it needed. It was still required to complete the reconciliation process and how much tax free cash an investor is entitled to take isn't

just dependent on a fund's value. It is also dependent on how much of the life time allowance has been used by the investor.

I completely appreciate that this was not an ideal situation as Mr W was wishing to draw further funds. But, the reason Suffolk Life was unable to reconcile the SIPP is due to the delay in the issues between it and Firm ID being resolved. As I've explained above, I'm satisfied that Suffolk Life was doing what it could to move this matter forward so I don't think it would be fair to hold it responsible for Mr W being unable to withdraw funds as he wished. So I'm not asking Suffolk Life to pay any interest to reflect the fact that Mr W was unable to withdraw funds during this period.

Incorrect information showing online

Mr W has complained that incorrect information was showing online when he checked his account. He thinks this is because Suffolk Life uses a single pooled client bank account for all their customers, rather than individual accounts for each customer. He therefore believes it's unlikely Suffolk Life performs adequate reconciliations for its clients.

However, Suffolk Life has explained that the valuations were incorrect during the transfer process because whilst an in-specie transfer in on-going the valuation will change as assets are transferred. And this is often done on a piecemeal basis. It's also said that it uses the SIPP bank account within its accounting records to notionally transfer the cash equivalent value of funds in and then out, as notional purchases, to reflect that the assets and/or cash that are held by the investment manager. This means that it's possible for the SIPP bank account to be shown as overdrawn whilst this process is underway.

This doesn't seem an unreasonable explanation and I've not seen anything to support the incorrect valuations being a result of Suffolk Life using a single pooled account for its clients. This way of operating isn't unique to Suffolk Life and I don't think it demonstrates that it was unable to reconcile client accounts accurately; it's a reflection of what happens when an in-specie transfer takes place. I can appreciate Mr W's frustration at being unable to view the correct valuation online during this period. But I'm conscious that he could've contacted the support team if he had any concerns. Whilst not as easily accessible as viewing information on-line, it did give him an alternative way to check his account.

I do appreciate that Mr W feels strongly about this matter. But the information I've seen suggests that Suffolk Life was doing what it could to move matters forward. So overall, I don't think it can be held responsible for the delays Mr W experienced. As such, I'm not upholding the complaint.

my final decision

For the reasons set out above, I'm not upholding the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 January 2019.

Lorna Goulding
ombudsman