

complaint

Mr W and Ms H have complained about issues that arose when refurbishment works were undertaken to the commercial property held in their SIPP's (self invested personal pensions) with Suffolk Life Pensions Limited.

background

I've considered this complaint before. I issued a provisional decision on 23 July 2021. I've recapped what I said about what had happened, the issues and my provisional findings.

'Mr W's and Ms H's SIPP's hold their respective shares (45% for Mr W and 55% for Ms H) in a commercial property (which is subject to a mortgage) from which their business used to operate. When the business came to an end the property was let to a third party company on a full repairing lease. The tenant was responsible for the rent, business rates, utilities and repairs. The lease expired in December 2016. The tenant vacated the property in January 2017 without undertaking dilapidations work as required by the lease. Dilapidations of £39,150 were later agreed. Suffolk Life received that payment on 5 April 2017.

Mr W and Ms H wanted to carry out repairs and refurbishments as quickly as possible so the property could be re let. While the property was empty, as well as continuing to have to meet the mortgage payments, Mr W and Ms H had to pay business rates, insurance premiums and utility bills. Those outgoings, plus the contractors' fees for carrying out the works to the property and any legal or other fees, are charged proportionately to the SIPP's via a property account. Mr W and Ms H don't have day to day access to that account. They receive annual statements and they can make telephone or email enquiries. Suffolk Life also keeps Mr W and Ms H informed as to whether there are sufficient funds to meet payments due.

While the property was empty, repairs and refurbishments were undertaken. Problems arose about the contracting process. Mr W and Ms H say they weren't properly informed as to Suffolk Life's requirements. There was also an overpayment of the mortgage, an error about a VAT reclaim (which resulted in the balance held in the property account being overstated) and a data protection breach.

Suffolk Life issued a final response on 30 August 2017, having treated what Ms H said during a telephone call on 10 August 2017 as a complaint. Mr W and Ms H wrote on 24 September 2017 setting out their complaints in detail. There was then further correspondence.

Suffolk Life accepted that, in some respects, its service had fallen below the level Mr W and Ms H were entitled to expect. Suffolk Life offered to waive its fees (estimated to be at least £500) for dealing with the building works and the change of tenant. And it offered £100 each to Mr W and Ms H for the data breach. Mr W and Ms H didn't think that was adequate and referred their complaint to us on 27 February 2018.

One of our adjudicators looked into what had happened. He upheld the complaint. He said there'd been a lack of timely and accurate information from Suffolk Life as to its requirements. That, and cost considerations, had led to Mr W and Ms H not following the process correctly which had caused late payments to and disputes with contractors. There'd also been a serious accounting error which had led Mr W and Ms H to believe there was more money available than was actually the case. That had caused overspending and additional contributions were then required. And there was a serious data breach which had

caused severe embarrassment. It was also possible that the re letting of the property and the resumption of rental income had been delayed.

The adjudicator didn't think Suffolk Life's offers reflected the seriousness of the failings or the degree of distress caused, particularly in respect of the data breach. He suggested an award of £2,000 (to include the £500 fees forgone and the £200 already offered).

Suffolk Life didn't accept that. It maintained the compensation it had offered was fair and reasonable. It said it had made two errors: first, in relation to a tax claim which meant funds had to be returned to HMRC; secondly there was a minor data breach – a contractor was copied into a cash flow analysis email outlining the shortfall in funds. Suffolk Life said all the other issues and difficulties arose because Mr W and Ms H engaged contractors externally, without funding in place and not taking into account Suffolk Life's need to comply with regulations.

Mr W and Ms H didn't accept the adjudicator's view either. As the adjudicator didn't think there was any prospect of the matter being settled, he said he'd be referring the matter to an ombudsman.

More recently we've asked Suffolk Life for some further information, including transaction histories for the SIPP, copies of correspondence exchanged and call recordings. We also asked Mr W and Ms H, amongst other things, to say what they'd have done differently but for the accounting error and if they'd have been aware that the account balance was lower. I've included the further points they made below where I've set out the four areas of complaint and, in summary, what the parties say about what happened. I've added a section about how Mr W and Ms H say they've been impacted overall.

contracting issues

Mr W and Ms H say:

- Suffolk Life didn't advise them as to its requirements about instructing contractors to undertake refurbishment work. That caused disputes with the contractors and led to delays when, and as Suffolk Life knew, time was of the essence to refurbish and re let the property.*
- Ms H advised Suffolk Life in a telephone call on 28 April 2017 that she and Mr W would be project managing the work themselves. Ms H asked about Suffolk Life's procedural requirements. She was told all Suffolk Life needed were two quotes, a copy of the contractor's Professional Indemnity Insurance (PII) certificate and Construction Industry Scheme (CIS) number if applicable. She wasn't told that independent contractors had to sign a contract with Suffolk Life prior to the commencement of works. Suffolk Life didn't provide details of the overall contracting process or a copy of its developing property fact sheet. Suffolk Life had pointed to the amended terms and conditions sent to Mr W and Ms H on 10 February 2017. But Suffolk Life failed to advise as to its requirements when details were specifically requested on 28 April 2017.*
- In emails sent on 14 May 2017, 26 May 2017 and 31 May 2017, Ms H provided breakdowns of the repair costs plus supporting PII and CIS documentation and requested confirmation that Suffolk Life was satisfied with the documentation so that work could commence on the dates given. Suffolk Life didn't reply until 6 June 2017. Suffolk Life said it couldn't contract with any of the contractors as it held insufficient funds. By then re roofing had already started (on 17 May 2017) as had electrical*

works (on 6 June 2017).

- *After telephone discussions it was agreed that the work could proceed and on the basis that funds would be credited. And most of the contractors agreed, albeit somewhat reluctantly, to sign retrospective contracts. But the electrician wasn't willing to do that. Ms H hadn't told him he'd need to sign a contract as Suffolk Life hadn't told her that. He took legal advice and sought payment direct from Ms H. He instructed solicitors who wrote to Ms H on 6 November 2017 seeking recovery of a debt of £2,284.91 for work undertaken. The matter was ultimately settled. But Ms H was concerned as to the impact on her reputation, both with local tradesmen (and not just the electrician) and local solicitors.*

Suffolk Life says:

- *Contracts were required to protect the SIPP's by ensuring that fixed costings were agreed prior to works commencing and to make the contractors responsible for the quality of the works, materials used and dealing with any health and safety or construction notifications to ensure the project was compliant.*
- *Mr W and Ms H should've been aware of the requirements to have contracts in place. The SIPP terms and conditions and the property guide are supplied when the SIPP is established or a property acquired into the SIPP. Mr W and Ms H signed the SIPP application form to confirm they'd been provided with copy documents and had read and understood them.*
- *It is also Suffolk Life's responsibility to keep Mr W and Ms H informed of any changes. Suffolk Life sent a copy of its amended terms and conditions on 10 February 2017 which set out more clearly the parties' responsibilities in property investments. The section on developing property included the requirement, where building works are undertaken, for contracts to be entered into. And the need for sufficient funding to be in place. Here the cost of the works exceeded the dilapidations sum received from the previous tenant. Suffolk Life couldn't contract for the work until funding was in place.*
- *Suffolk Life did outline the need for multiple quotes, confirmation of PII and CIS requirements during the telephone call on 28 April 2017. Contractual requirements weren't mentioned. And, although Ms H was told that full details of Suffolk Life's requirements would be sent, the developing property factsheet wasn't forwarded. But Suffolk Life's email of 6 June 2017 (which included the VAT credit which was later reclaimed) confirmed the funding position of SIPP and that Suffolk Life was unable to contract for any works until sufficient funds were available.*
- *Suffolk Life apologised that it hadn't responded to Ms H's emails sent in May 2017 until 6 June 2017. But a slow response shouldn't have been taken as authority to proceed. Ms H's emails sought authority to proceed which demonstrated that she and Mr W understood that Suffolk Life's approval, prior to any works commencing, was required. The first opportunity Suffolk Life had to review Mr W's and Ms H's emails was 1 June 2017. It wasn't possible to get contracts drawn up, agreed and signed before works commenced.*
- *Suffolk Life had agreed to complete the administration in respect of the building works without passing a charge (usually in the region of £500 but could be more) on to Mr W and Ms H.*

overpayment of mortgage

Mr W and Ms H say:

- The mortgage was overpaid in June 2017. Suffolk Life told them there were insufficient funds to meet the August 2017 payment and demanded further monies.
- Mr W and Ms H checked the property account, identified the error and told Suffolk Life. It notified the bank that the August payment had already been made and a further payment was suspended. Suffolk Life sought to minimise the error by saying it was due to computer changeover problems and no apology was given. And the error was only rectified as a result of Mr W and Ms H's intervention.
- A statement of the property account on 10 August 2017 (with entries up to 8 August 2017) showed that the overpayment error hadn't been rectified even though Suffolk Life had been put on notice of the issue by the bank two months previously.

Suffolk Life says:

- There was an error which meant two payments were made at the beginning of June 2017. Suffolk Life was contacted by the bank about the overpayment and agreement reached to skip the loan payment for July 2017. Unfortunately, and despite a (internal) request to amend the payment, the July 2017 payment was still made. Suffolk Life can't say why that was. But the August 2017 payment was then missed to bring the account up to date.
- It isn't the case that the loan overpayment and VAT reclaim error were both on 2 June 2017 and both due to computer problems. VAT reclaims and loan repayments are processed by different teams and were both actioned manually. The mistakes were down to (separate) human errors.

accounting error (resulting in VAT being incorrectly reclaimed from HMRC)

Mr W and Ms H say:

- On 28 April 2017 Suffolk Life told Ms H that £37,216.33 was available for refurbishment of the property. Mr W and Ms H calculated they could afford to have all the repairs done and the roof replaced. They'd be able to meet four months loan repayments, assuming the property was re let in September 2017. After paying the professional fees, which only fell due when a tenant was found, they calculated they'd have a credit balance of about £4,300.
- On 6 June 2017 Suffolk Life advised that the funds available for refurbishment were £40,673.28. The figure was inflated as it included VAT which had been reclaimed but which had to be paid back to HMRC. Mr W and Ms H relied on the higher, incorrect, figure in calculating funds available for repairs and other outgoings. It appeared they'd have a credit balance of about £11,100.
- Suffolk Life didn't notify them there'd been an error. It's unclear when the error was discovered, although the overclaim was repaid to HMRC on 2 August 2017. Suffolk Life sent an email on 7 August 2017 saying there were insufficient funds in the property account to discharge a contractor's invoice. Mr W and Ms H didn't understand why and asked for a print out of the property account which they received on 10 August 2017. They queried the payments from and to HMRC. Suffolk Life advised by telephone on 12 August 2017 that it was a VAT accounting error. Suffolk Life also said, if monies weren't credited, the property would have to be sold.
- From various telephone calls during the week 14 to 18 August 2017 Mr W and Ms H found out that Suffolk Life had taken legal advice. It seems that advice initially given by solicitors was then revised and resulted in the VAT being repaid.
- The figures are confusing. The VAT credit was £9,101.14. But sum repaid was

£8,066.36. And an email from Suffolk Life sent on 23 August 2017 refers to £7,833.33 being reclaimed. The actual sum was unclear.

Suffolk Life says:

- An accounting error was made on the property account in respect of VAT reclaimed in error. Suffolk Life accepts it should've notified Mr W and Ms H of the error as soon as it was discovered.*
- It didn't agree that incorrect information as to the funds available influenced Mr W's and Ms H's decisions as to the level of works. The VAT reclaim wasn't received until 2 June 2017 and the incorrect (higher) figure for funds available wasn't confirmed until 6 June 2017. In an email of 14 May 2017 Mr W and Ms H had confirmed their intention to replace all three roofs as the difference between the costs of replacing and repairing was so little.*
- Quotes for electrical work, decorating and re carpeting were received prior to 31 May 2017 and before the VAT reclaim was incorrectly allocated. Quotes totalled about £45,000 and exceeded, not just the dilapidation costs, but also the funds available in the account.*
- The majority of the contractors had been appointed prior to the misallocation of funds. The roofing work was due to be completed by 14 June 2017. If funds hadn't been incorrectly allocated Suffolk Life's email of 6 June 2017 would've reflected a much higher contribution required to meet the costs of repairs that Mr W and Ms H already authorised.*
- That email confirmed that where the property was vacant and building works were being undertaken, Suffolk Life required sufficient funds to meet six months loan repayments. At Mr W's and Ms H's request that was reduced to three months with the proviso that if, after three months, a tenant wasn't in place, additional funds would be required to meet ongoing liabilities. Contributions were made in July 2017 but no further funds were received, despite Mr W and Ms H being aware there were minimal surplus funds available to meet building works costs.*
- The invoices received reflected an increase in costs which further impacted on the lack of available funds.*
- When a lack of funds was identified Suffolk Life didn't look into that further before contacting Mr W and Ms H. The developing property team were unaware that the VAT reclaim had been incorrectly processed and then reversed – that had been actioned by the accounts team. Suffolk Life accepted that there'd been a lack of communication between the two teams. Feedback had been given.*

data breach

Mr W and Ms H say:

- An email sent to Ms H on 23 August 2017, which contained highly confidential and sensitive financial information, was copied to a contractor. He acknowledged the email early on 24 August 2017 and queried why it had been sent to him. Ms H emailed Suffolk Life that day alerting it to the data breach and asking how it had arisen. Suffolk Life responded an hour or so later and apologised for sending the email to the contractor. Suffolk Life also telephoned Mr W to apologise. During the call Mr W was also told there was an overspend and, unless rectified, the property would be sold.*
- The contractor has been asked to delete the email but there's no guarantee he's done so. In any event he can't 'unknow' the information. Mr W and Ms H don't know how or if he's used the information and have no control over how he may use it in the*

future, intentionally or otherwise. There's been a total loss of control of the data.

- *There's a real risk of reputational damage as all the tradesmen are local and the contractor knows all of them, including those who were unpaid at the time of the breach. The future impact of the breach isn't known but could affect their ability to let the property at a commercial rent. The breach is particularly damaging for Ms H. She's done voluntary work alongside the contractor for many years for the same organisation and has many mutual acquaintances*
- *Mr W and Ms H sought details of the policies Suffolk Life have in place about data protection, including procedures to notify breaches, containment and evaluation of loss caused.*

Suffolk Life has apologised for the data breach. It says:

- *It was a genuine error. The individual concerned was fully aware of his error. Feedback has been given. Companywide communications have been issued to raise awareness. All staff are completing data protection training. The responsibility to safeguard data is taken very seriously. Robust data protection frameworks are in place but unfortunately breaches can occur when manual processes are undertaken. Immediate steps were taken to rectify the situation in line with standards set by the ICO (Information Commissioners Office) with whom concerns can be raised.*
- *An apology has been given and compensation of £100 each was sent to Mr W and Ms H for the inconvenience and embarrassment Suffolk Life accepts was caused. It doesn't know why the cheque for Ms H wasn't enclosed with the relevant letter as both cheques were requested and issued at same time. But, as the cheque wasn't cashed, it had been cancelled and a replacement issued and posted.*
- *The disclosure didn't cause a dispute with the contractor. He was paid in full following Mr W's and Ms H's email of 10 July 2017 (despite some work remaining outstanding). There was no reason for him not to complete the work as he'd already been paid in full and so he wouldn't be concerned he might not get paid.*
- *Suffolk Life isn't required to provide information about its data protection processes and procedures or minutes of internal meetings.*

how Mr W and Ms H say they've been impacted overall

- *During the course of an expensive refurbishment process, Suffolk Life made a catalogue of admitted errors (including communication failures; incorrect accounting; and a data protection breach) which affected their financial decision making. When the accounting error was identified they had to divert funds into the SIPP's which caused them personal financial hardship.*
- *The re roofing work started on 18 May 2017 but was suspended on 24 May 2017 due to planning requirements. Work restarted on 8 June 2017 and was completed on 27 June 2017. On 6 June 2017, when work was suspended, Suffolk Life gave Ms H an inflated figure for funds held in the property account. Mr W and Ms H relied on that and thought they had sufficient funds to replace all three roof areas.*
- *At the time they weren't committed to re roofing all three areas. If they'd known they had less money they'd have re roofed one area only. The invoice for all three roofs was £22,248 including VAT. The estimate to re roof only one area was £10,560 including VAT, a difference of £11,688. By the time they were told of the error, the work had been completed.*
- *If they'd have been given correct information about the contracting process, they'd have appointed professional contractors who'd tendered initially and confirmed the works would've taken three months, so starting in April 2017 and finishing at the end*

of June 2017. They'd then have been able to complete a lease with either of two tenants with whom terms had been agreed. The delay meant they lost those tenants and the property remained unlet until April 2018.

- That was a loss of rental income of £20,625. And they had to meet the rates which were £8,104. They had to fund the shortfall by making unplanned contributions. Ms H paid in over £28,750 over this period (£18,665 more than she anticipated when planning the refurbishment in March/April 2017). The increased contributions exceeded tax relievable amounts. Mr W didn't suffer any tax penalties but he had to fund the shortfall with a similar level of contributions, either borrowed incurring interest or losing interest.
- Compensation needs to reflect the damage caused. They've spent much time dealing with the complaint - about 100 hours for Ms H and about 50 hours for Mr W. They are both working and with family commitments their time is limited. The cost of their time charged professionally is between £150 and £275 an hour. They suggest £20,000 as a starting point for compensation.
- The data protection breach continues to be felt particularly by Ms H. The information disclosed has been discussed locally much to her embarrassment. Many of the contractors are known to her personally and she can't use them again, especially as she was threatened with court proceedings by one of them.

my provisional findings

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

I'm conscious that the parties have been waiting some time. The complaint isn't straightforward and involves a number of issues. A lot of information has been provided. I think it would be helpful to set out my thoughts so far and give both parties a further chance to comment. My views might change, depending on further comments made.

Before I deal with the four complaint areas as set out above, I've seen that Mr W and Ms H were unhappy that Suffolk Life issued a final response in advance of their letter of 24 September 2017 setting out their complaints in detail. And that Mr W and Ms H sought, unsuccessfully, to persuade Suffolk Life that the six month period for referral of their complaint to this service hadn't begun to run.

I can understand Mr W's and Ms H's position. But, even if there is ongoing correspondence, that won't mean that an earlier issued final response won't stand, provided it's clear that the six month deadline originally given still applies. It's largely a matter for the business concerned when it considers it appropriate to issue a final response.

I also note there was some, albeit fairly minor, confusion on Suffolk Life's part about the six month period. Suffolk Life said, in its letter dated 25 October 2017, that the six months had started to run from Suffolk Life's letter of 17 August 2017. That was wrong and the 17 August 2017 letter didn't contain referral rights. But Suffolk Life corrected that and clarified, in its letter dated 8 December 2017, that the six months ran from 30 August 2017. The complaint was referred to us at the end of February 2018 and within that six month period. Any confusion didn't cause any detriment to Mr W and Ms H and their complaint was referred to us in time.

I've considered Mr W's and Ms H's complaints under the same headings as previously.

contracting issues

Suffolk Life wasn't required to give advice. But Mr W and Ms H weren't seeking advice as such, more information as to Suffolk Life's requirements when carrying out works to the property held in their SIPPs.

I've looked first at the documents Mr W and Ms H got when they set up their SIPPs. The SIPPs were established because they were buying the commercial property from which their business operated and which would be leased back to their business. So, from the outset, the provisions about investing in property were relevant.

The SIPP terms and conditions contain a lengthy section about investments in property, including specific provisions about developing property. They say, amongst other things, that building works may only be undertaken with Suffolk Life's prior written agreement. And that, before agreeing, Suffolk Life will require quotes from at least two independent contractors. Ring fenced funding (including any lending) must also be in place before contracts are signed by Suffolk Life. Any contractor must also be a CIS member, work to a fixed price and agree to use Suffolk Life's standard documentation.

I think Mr W and Ms H would also have received Suffolk Life's property guide which included more details about property renovations, although the provisions about developing the property may not have been at the forefront of Mr W's and Ms H's minds when they first set up the SIPPs. It was only some years later, when the property had been let to a third party whose tenancy had terminated, that renovating the property was on the agenda.

But Mr W and Ms H were sent (in February 2017) an updated property guide. It included a post purchase section. It deals (see section 16) with developments and renovations. It refers, amongst other things, to the need for Suffolk Life to agree any works. The requirements include obtaining separate quotations from at least two different contractors; the work being completed in most cases by a single independent contractor who will be instructed by Suffolk Life (after a construction phase plan has been provided); a contract between Suffolk Life and the contractor (using Suffolk Life's precedent documentation) with the contractor being a CIS member. And funding for the works and all associated costs, including VAT, must be held in the SIPP before any contracts can be signed and works formally instigated.

I can see why Suffolk Life might argue that Mr W and Ms H ought to have been aware of its requirements – it seems they received up to date information at a time when it was relevant, given their plans to refurbish the property.

But there's no dispute that Ms H did specifically ask Suffolk Life, during a telephone call on 28 April 2017, what its requirements were. I agree with Mr W and Ms H that the telephone conversation was key and a trigger for Suffolk Life to make sure that its requirements were made clear to Mr W and Ms H who, and as Suffolk Life knew, were keen to get on with the works so that the property could be re let and generate an income. As a matter of good customer service, and regardless of what information Mr W and Ms H may have been given when they set up their SIPPs or more recently, Suffolk Life should have made sure that full details of Suffolk Life's requirements and the process that would apply were given.

Suffolk Life accepts that it missed opportunities to remind Mr W and Ms H of its process and requirements. During the call on 28 April 2017 the need for contracts wasn't mentioned and Suffolk Life failed to supply after the call, and as promised during the call, full details,

including a copy of its developing property factsheet. It seems that all Ms H was told was that Suffolk Life needed two quotes and CIS and PII certificates.

Suffolk Life has explained why contracts are required – to protect the SIPP. I don't think there's any argument about that. The issue is Suffolk Life's failure to point that out during the telephone call on 28 April 2017. Or follow that call up with full information, including the developing property factsheet.

I think there was another issue too. It was made clear that Suffolk Life did need to approve the work (and it seems from her emails sent in May 2017 that Ms H understood that). But Suffolk Life accepts that it was slow to reply to those emails. I agree with Suffolk Life that, strictly speaking, that shouldn't have been taken as approval. But Suffolk Life did know that Mr W and Ms H wanted to commence the works as quickly as possible so that the property could be re let. I don't know why Suffolk Life was unable to reply until 6 June 2017. I think, especially as Suffolk Life knew the situation was urgent, an earlier reply should've been sent or a telephone call made.

Although I can see why Suffolk Life says Mr W and Ms H shouldn't have gone ahead without formal approval, I can understand why Mr W and Ms H may have viewed things differently. They were unaware of the need for contracts to be in place and I think it was understandable if they thought, given that they'd complied with Suffolk Life's requirements as to quotations and PII and CIS, that approval would be more or less a formality. I don't doubt, if Ms H had been told that Suffolk Life needed to enter into contracts with each of the contractors, that she'd have accepted that and the work would only have gone ahead if those contracts had been in place. But, as things stood, I can see why Mr W and Ms H perhaps thought there wasn't a problem in going ahead.

Suffolk Life has also pointed to the fact that ring fenced funding should've been in place to cover all the project costs. And it says that funding issues were a root cause of the difficulties. But I think, to some extent, that's linked to the contracts issue. Ordinarily Suffolk Life wouldn't have signed a contract(s) for the work without full funding being in place. Because Ms H wasn't told about the need for contracts, the contractors had already started work and so the funding situation wasn't straightforward and involved Mr W and Ms H having to make further contributions.

That said, I think Mr W and Ms H should've kept a close eye on the costs and any extra work agreed. They knew that the costs exceeded the dilapidations sum paid by the previous tenant. There was always likely to be a shortfall which they'd have to meet by making further contributions. I don't see that they can say those extra and to some extent unplanned contributions amounted to a financial loss. They represented the costs of the works undertaken and so were payable in any event. I presume Mr W and Ms H got value for the work that was undertaken.

Mr W and Mr H have suggested that, had they known about the contracting requirements, they'd have appointed professional contractors. And that would have meant the work would've finished at the end of June 2017 and they'd have been able to have new tenants in place from then. But Mr W and Ms H have also said they decided to project manage the work themselves as there was a very substantial costs saving in using independent contractors. Given the costs saving I'm not convinced they'd have done things differently and used a single contractor.

And, even if they had used a single contractor, I don't see there's any guarantee that the works would've been completed any quicker. It isn't uncommon (and some might say usual) for building works to overrun, even with a professional project manager in place. And, although I note what Mr W and Ms H say about losing two prospective tenants, I think it's very difficult to establish causation and be fairly sure that, if things had been done differently, the works would've been finished earlier or, even if that was the case, that either of the two proposed tenancies would definitely have gone ahead. So I can't say that Mr W and Ms H have suffered financial loss in terms of lost rent and having to meet the rates themselves until the property was re let which wasn't until 2018.

It seems that Suffolk Life's preference would have been for a single, main contractor to have been used too – the property guide refers to the work generally being undertaken by a single independent contractor, as does the developing property factsheet. That means that, generally, Suffolk Life would enter into a contract, as landlord, with a single contractor. Dealing with multiple contractors made things more complicated for Suffolk Life. I think that could've been reflected in increased property management fees which, as the factsheet sets out, are on a time cost basis. But Suffolk Life has waived its fees anyway.

In the main, the contracting issues were resolved by retrospective contracts being signed. But the electrician wasn't happy to sign a contract after the event. I can to some extent understand why he took that stance. I think, in the end, Suffolk Life did pay him and the issue was resolved. But serious problems did arise – Ms H received a demand for payment from solicitors instructed by the electrician. I think that would have been very upsetting and worrying for her as well as having possible personal and professional ramifications for her.

overpayment of mortgage

It seems that there were several issues here: first, an overpayment was made; secondly, the initial attempt to put that right by missing a payment didn't work and so the overpayment wasn't corrected until the following month. And Mr W and Ms H weren't told about the error when it first happened. There's also some suggestion they were told it was due to computer problems when that wasn't the case.

Ideally, I think Suffolk Life should be able to explain exactly what went wrong and why steps taken initially to correct the error weren't successful. But I don't see much point in pressing for explanations which it seems Suffolk Life can't now provide and when the overpayment was, in the end, corrected.

Suffolk Life has also accepted that it should have contacted Mr W and Ms H about the error as soon as it came to light. Instead, because things hadn't been sorted out by August 2017, it seems they were asked for funds to meet the mortgage payment and which weren't in fact required given the uncorrected overpayment. Mr W and Ms H also had to work out for themselves what had happened by checking the property account.

While there's no financial loss, Mr W and Ms H have suffered inconvenience. I can in particular understand their annoyance that the error wasn't brought to their attention when it happened. And why that has meant a further loss of confidence in Suffolk Life.

accounting error (resulting in VAT being incorrectly reclaimed from HMRC)

Suffolk Life gave Mr W and Ms H an incorrect and inflated figure for the funds held in the property account. In recognition of its admitted error Suffolk Life has agreed to waive its

usual time costed fee for dealing with the transaction. I think that's probably fair enough, at least in terms of compensating Mr W and Ms H for any inconvenience they've suffered as a result of this aspect of the matter.

Mr W and Ms H have said they can't see any fees being applied and then refunded. But I think the explanation might be, as Suffolk Life agreed to waive its fees, that it simply hasn't applied those fees to the SIPP accounts and so there's no debit and corresponding credit entries. I'd ask Suffolk Life, in response to this provisional decision, to confirm the position.

I further note what's been said about the VAT reclaim figures being confusing. Again I'd ask Suffolk Life to clarify the position. I'm referring here to what Mr W and Ms H say about the VAT credit being £9,101.14, the sum repaid £8,066.36 and a figure of £7,833.33 having also been mentioned.

Mr W and Ms H have mentioned further fees of £2,722 which they say Suffolk Life said they needed to pay. But I can't immediately see what any other fees might have been charged and which are relevant to this complaint. If Mr W and Ms H have queries about any other fees (including agents charges deducted) that Suffolk Life has charged they should query those items with Suffolk Life direct.

Suffolk Life accepts that Mr W and Ms H weren't told when the VAT reclaim error was deducted. Or how it had arisen and that there'd been legal involvement. As I've said above and in connection with the overpayment, Suffolk Life should have been transparent and informed Mr W and Ms H as soon as Suffolk Life knew there was a problem.

I note that two different teams were involved – one dealing with the VAT reclaim and the other the building works. But, and as Suffolk Life accepts, communication could have been better. It seems that Mr W and Ms H had to work out for themselves what had happened by looking at the entries on the property account. I think the team dealing with the building works and whether there was sufficient funding in place could and should have looked into things more before contacting Mr W and Ms H and simply saying they needed to make further contributions. Again I think Suffolk Life's failure to deal with things properly caused inconvenience to Mr W and Ms H.

Mr W and Ms H also say that it's caused them financial loss in that they've spent more money than they would've done if they hadn't been given an inflated figure. I understand that's on the roof – they went ahead and replaced all three areas of the roof instead of just repairing one area with the difference in price being some £11,688. Work had started on 28 May 2017. That was before Ms H was given an inflated figure for the property account. Ms H says she and Mr W weren't committed to having the more extensive work done. But I'd have thought the scope of the work and the cost would've been agreed before work commenced. And the extra contributions Mr W and Ms H had to make to cover the project costs weren't limited to the £11,688 differential.

And, that aside, I note Ms H's email to Suffolk Life on 4 July 2017 which read as follows:

'Re-roofing – There are 3 roofs on the property & extension. [Company name] tendered to repair the high roof only. The cost of the scaffolding and repairs (highlighted yellow in the tender) is £13,351 + vat. We were however advised that it was highly likely that the roof needed replacing in its entire and were given verbal quotation of £40 – 60,000 for re-roofing. [Name of contractor] whom has provided alternative quotes has advised that the high roof must be replaced and cannot be repaired. The cost of this including scaffolding is £8,800

+vat – Estimate 1. He has advised that the long roof plus the lean to needs replacing as well. He has quoted for repairing £3,400 +vat – Estimate 2 and replacing these 2 roofs at £5,860 + vat estimate 3 £790 + vat estimate 4. Given that we have had extensive problems with water ingress from all 3 roofs into the property and the small differential between repairing and replacing we have decided to replace all 3 roofs at a total cost of £15,450 + vat. We feel that this will be the best long term solution for the secure future of the property.'

From that it seems the decision to undertake the more extensive work was driven by the advice that all three roof areas needed to be replaced. Given that extensive problems had been experienced with all three roof areas and there was only a small differential between the costs of repairing and replacing, Mr W and Ms H had concluded that replacing all three roofs would be the best long term solution. I think they'd have reached the same decision in any event. And I don't see they've lost out. They've spent more than they might have done. But they've presumably got value for the extra work that was carried out and which will mean that future repairs won't be required.

data breach

I accept this was a genuine, one off, error on the part of one individual. Copying someone in on an email or replying to the wrong email chain is something that can be easily done. I don't think it indicates systemic failings on the part of Suffolk Life or shows that it doesn't take its responsibilities to protect personal data seriously.

But I do think that, to some extent, Suffolk Life has tried to downplay the seriousness of the breach. I don't agree the breach can properly be described as minor. The information that was, albeit inadvertently, disclosed was sensitive and, in my view, potentially damaging.

The email was lengthy and detailed. It set out the available funds and the amounts due to the various contractors and others, including the loan payments. It went on to say that further funding would be required the following month to ensure the loan payment could be made and that the surveyor and solicitors who'd acted could be paid. And a further three months float would be needed shortly. The sums involved were large. A very substantial funding shortfall (£20,505.32) was mentioned. Extra funds (£16,900 plus tax reclaimed) had been paid in by Mr W and Ms H but that had only addressed a proportion of the shortfall, particularly as they'd instructed further works and so the overall project costs had risen, creating an overspend of £16,742.16.

I think the inference was that Mr W and Ms H had embarked on a project which they couldn't afford. And they'd then, and without Suffolk Life's knowledge or consent, instructed further works so that the costs of the project had risen, creating a very significant overspend, which meant that substantial further funding being required, not just to cover the costs of the project but to meet essential outgoings such as the loan repayments. I think that suggests a degree of irresponsibility or at least carelessness and/or a lack of planning. I can see it would've been very embarrassing for Mr W and Ms H. And even if the disclosure went no further than the contractor concerned.

Once data has been disclosed there are limited steps which can be taken to mitigate any damage. Suffolk Life did what it could – it acted promptly to contact the contractor and ask that email was destroyed and that the information contained wasn't disclosed. And it has apologised.

I take Mr W and Ms H's point that once someone is in possession of information then that can't be undone. But the contractor concerned seems to have acted responsibly by drawing the disclosure to Suffolk Life's attention promptly. I think that tends to suggest he'd have abided by the request to delete the email and not use the information that it contained.

Mr W and Ms H suggest that the content of the email was discussed with other contractors. I accept that's possible but there's no real way of knowing if that was the case. The other contractors could be contacted and asked for their recollection of events but I don't see that would be helpful. It would draw unnecessary and unwanted attention to something that may or may not have happened some four years ago.

I don't think Mr W and Ms H can point to anything specific which suggests that the breach went further than the contractor concerned and that they've suffered financial loss or further distress and inconvenience as a result. And, given that some four years has elapsed since the breach, I'd have thought any future and further repercussions were unlikely.

I've approached compensation on the basis that the breach was limited to the contractor concerned although I've borne in mind that, at the time, Mr W and Ms H wouldn't have known if the breach had been contained and they'd have been understandably worried that the implications and damage might be more far reaching.

summary

I've found, and as Suffolk Life itself has acknowledged, that Suffolk Life made several errors. From what I've seen and for the reasons I've explained, I don't think Mr W and Ms H suffered any financial loss. In particular, and as I've said above, I don't agree that the claims for lost rental income and business rates are justified. Or that Mr W and Ms H would've spent less but for the error in including the VAT reclaim amount in the property account balance. So I can't agree that Mr W and Ms H's starting figure for compensation of £20,000 is justified.

But they have suffered distress and inconvenience or trouble and upset. Although I think that was substantial, I'm conscious that the level of awards we make might be lower than Mr W and Ms H might expect. On our website we say we award compensation for distress, inconvenience, pain and suffering and damage to reputation. We give some examples of awards for distress and inconvenience which might be moderate (less than £500); substantial (£500 to £2000); severe (£2,000 to £5,000); or extreme (£5,000 or more).

In this case I'd say that overall the distress and inconvenience (including damage to reputation but on the basis that was limited to the contractor concerned in respect of the data breach) was in the substantial category for both Mr W and Ms H.

And I think Ms H has been impacted more than Mr W. I say that taking into account what happened about the electrician and which impacted more on Ms H given that she was the recipient of the solicitor's letter and that she knew the electrician personally. It also seems that she knew the other contractors personally whereas Mr W didn't and so the data breach would have caused more distress to her than for Mr W.

I think the sum the adjudicator suggested for Mr W - £1,000 - was about right. But because Ms H was more personally impacted, I think a higher amount is appropriate. I'd suggest £2,000. That's also consistent with what Mr W and Ms H say about the respective time each

of them has spent dealing with the matter. It seems that Ms H has borne the brunt of the work involved.

Suffolk Life should pay those sums to Mr W and Ms H respectively, less the £100 each which Suffolk Life offered to Mr W and Ms H and assuming the cheques for those amounts were cashed. If not then the full amounts of £1,000 and £2,000 should be paid.

And Suffolk Life should, as it has already offered, waive all its fees for dealing with the building works and the change of tenant. As set out above I'd ask Suffolk Life to confirm how that refund/non charge has been accounted for.

responses to my provisional decision

Ms H confirmed that she and Mr W had received my provisional decision. She said she didn't have any more to add. The outcome wasn't as she wanted but she was prepared to accept my provisional decision as it meant she (and Mr W) would get some compensation for what had happened. She added that she'd never cashed the cheque for £100 and she suspected that was the same for Mr W. Suffolk Life said it was disappointed with the proposed outcome and compensation award. But, to bring the matter to a close, it too accepted my provisional decision.

my findings

I've considered again all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. But, and in the absence of any new arguments or information, my views remain as set out in my provisional decision. That means I'm upholding the complaint for the reasons I've given.

my final decision

I uphold the complaint. Suffolk Life Pensions Limited should give £1,000 to Mr W and £2,000 to Ms H less any sums already paid. Suffolk Life Pensions Limited should also waive its fees for dealing with the building works and change of tenant and confirm to Mr W and Ms H how the refund/non charge has been accounted for.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Ms H to accept or reject my decision before 10 October 2021.

Lesley Stead
ombudsman