Financial Ombudsman Service

complaint

Ms K is unhappy with how Suffolk Life Pensions Limited implemented a Pension Sharing Order (PSO) during 2016 and 2017. She considers that for much of the time Suffolk Life lacked the capability to deal with the PSO resulting in numerous mistakes on its part and, therefore, frustration, delays and costs to Ms K.

background

In 2016, Ms K and her former husband (who I will refer to as Mr A) agreed a financial settlement in relation to their divorce. Part of this settlement involved the Self Invested Personal Pensions (SIPPs) that Ms K and Mr A held with Suffolk Life. A Financial Order was issued by a court but there were problems in implementing it, so a further Financial Order and PSO were issued in early 2017.

The SIPPs held a number of assets including a commercial property which was registered under a single title but had been split into two units, both of which had been leased out. Ms K's SIPP and Mr A's SIPP both had an interest, albeit of different percentages, in the property. The financial agreement between Ms K and Mr A was to equalise the value of their SIPPs, meaning (amongst other things) an adjustment to their respective shares of the commercial property. The property was to be re-registered with the Land Registry as two distinct properties, with Ms K's SIPP owning one of the properties and Mr A's SIPP the other.

Implementing the PSO wasn't a smooth process and it wasn't until 2017 that it was completed. Ms K complained to Suffolk Life on a number of occasions about the time it was taking, its interpretation of pension rules and the overall service it was providing. Suffolk Life provided its formal response to these complaints in July 2016, October 2016 and May 2017. In its October 2016 response (and on a number of occasions thereafter), it told Ms K that it would review the fees it was charging once the PSO had been concluded.

In November 2017, Suffolk Life sent Ms K a letter explaining the outcome of its fee review. It argued in this letter (and subsequently) that the PSO was far from standard as it essentially involved the selling and repurchasing of a property, the subsequent reorganisation of leases, insurance, mortgages and the like, and the backdating of transactions to the effective date of the PSO. It said all the legal, accounting, valuation and administrative work that this entailed was complicated and time consuming. It also said it had to satisfy itself at various points that HMRC and pension rules were being followed. So it thought the PSO was unusually difficult to execute. Nevertheless, it agreed it could have done better, especially in relation to delays it caused in mid-2016. As a result, it said it wouldn't charge for all the work it had done.

As part of its fee review, Suffolk Life reduced the hourly fee for a number of its employees working on the PSO. This reduced the aggregate fee for this work from £17,760 to £10,320. Suffolk Life also reduced its flat fees from £4,200 to £3,000. Given these discounts, Suffolk Life's total fee would have been reduced from £21,960 to £13,320. However, it decided to only charge £10,000 in total. So the total discount was £11,960 (£21,960 down to £10,000), or just over 50%.

Suffolk Life's fee review was outlined in a letter to Ms K dated 23 November 2017. In the meantime, around June 2017, Ms K had hired an accountant to speed up the implementation of the PSO. She asked Suffolk Life whether it would pay for this work but she didn't get a clear answer. After receiving Suffolk Life's fee review letter, Ms K said Suffolk Life should also be responsible for the cost of the accountant because, in her view, it wouldn't have been able to complete the PSO without this support. The cost of the accountant's work was £4,600, or £5,520 including VAT.

Suffolk Life refused to meet the additional cost of the accountant. It said its terms and conditions were clear – any third-party professional costs incurred are to be settled by the SIPP. It said the work of the accountant wasn't necessary to get the PSO completed. And it referred back to the £11,960 reduction in fees that it had already applied. It thought that it had done enough, in total, to address Ms K's concerns.

Ms K referred the matter to us. Our adjudicator didn't uphold the complaint. He said Suffolk Life could have done better overall, but he thought the reduction in fees was substantial enough to reflect this, especially given the complexities of the PSO. On the issue of the accountant's fee, he thought Suffolk Life could have said at the time that it wouldn't pay for this work, especially as Ms K had asked about this on several occasions. But he concluded Suffolk Life shouldn't be responsible for this cost because its terms and conditions were clear that the SIPP pays for the cost of external advisers.

Ms K agreed with Suffolk Life's reduction in fees. But she still thought it should pay the fee for her accountant. The matter was therefore referred to me for a decision.

I set out my initial conclusions in a provisional decision, a copy of which is attached and forms part of this final decision. As Ms K accepted the reduction in Suffolk Life's fees, I limited my findings to the issue of the accountant's fee and whether Suffolk Life should be responsible for this. I thought the terms of Ms K's SIPP were clear – fees for third party professionals, such as those for her accountant, are to be borne by the SIPP. I said I could look beyond the SIPP's terms and conditions providing I had compelling reasons why it would be fair and reasonable to do so. But I didn't think I had those reasons in Ms K's case. My provisional decision was to not uphold Ms K's complaint.

I invited both parties to provide further comments. Suffolk Life didn't have anything further to add. Ms K made a number of comments, which I address below.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. For the avoidance of doubt, this means I've read, and considered, all the comments made by Ms K following my provisional decision.

I'm satisfied Suffolk Life's terms and conditions clearly state that fees for third party professionals should be charged to the SIPP. So my starting point here, as it was in my provisional decision, is that Suffolk Life hasn't done anything wrong in charging the accountant's fee to Ms K's SIPP.

I can look beyond a product's terms and conditions if it is fair and reasonable to do so. But doing so here would mean I would be implicitly endorsing the view that Suffolk Life should pay an amount that it had no control over, for a service that it had never agreed to, delivered by a provider it had no say in choosing. I would need particularly compelling evidence and arguments for taking such an approach.

Ms K's argument is that she had no choice but to hire her accountant because Suffolk Life couldn't complete the PSO (or complete it in a reasonable time) without her accountant's help. In my provisional decision, I concluded the accountant would have been of benefit to both parties – he was an additional expert resource after all. But I didn't think the evidence was strong enough to say Ms K had no choice but to hire her accountant. Having reviewed the evidence on file, including all of Ms K's comments in response to my provisional decision, my view is unchanged.

I recognise Ms K has provided further detail to explain why she thinks Suffolk Life lacked the capability to implement the PSO by itself. I won't repeat in detail what Ms K has said because some of her comments relate to the specific individuals involved and this decision will be published. Suffice to say, Ms K thinks the responsibility for the PSO was given to two staff members who were essentially administrators lacking the necessary skills (accountancy skills in particular) to get the job done. She goes on to say that Suffolk Life did have suitably qualified staff, but they weren't deployed until far too late in the process. In Ms K's words, Suffolk Life didn't think the PSO "merited their input" and Suffolk Life "had the skill set; they just didn't want to give it to us". She says this more expert resource wasn't used until Ms K's accountant got involved.

I have considered what Ms K has said carefully. However, I don't think her comments on the two "administrators" can be said to be objective and persuasive evidence of Suffolk Life's lack of capability. Besides, I think her comments about Suffolk Life choosing not to use more qualified staff moves the argument on from one of capability – because it seems Suffolk Life did have the necessary capability – to one of bad faith. That is, Suffolk Life deliberately didn't use the capability it had at its disposal.

It seems unlikely to me that Suffolk Life acted in this way. It had already spent a considerable number of man-hours on the PSO, many of which it most likely knew it wouldn't be charging for as it had long since agreed to review its charges for the PSO. It also says it wasn't logging all the man-hours it was devoting to the PSO. So I don't think there was a financial incentive in dragging things out. And I can only assume Suffolk Life didn't want to add to the number of complaints it had already received from Ms K about the PSO. So I'm satisfied Suffolk Life, like Ms K, would have wanted to get the PSO completed as soon as it could. With that in mind, I don't think Suffolk Life was wilfully depriving Ms K of some necessary expertise in the way she has argued.

Ms K has also referred me to an email, dated 23 June 2017, between Suffolk Life and her accountant. She points to Suffolk Life's comment that it would be "useful" to work with the accountant – evidence, in Ms K's view, that Suffolk Life couldn't progress the PSO without his help. And she says the email shows Suffolk Life wanted to progress things quickly because of an impending VAT deadline which, if missed, would cause further complications. Ms K says being up against "another VAT quarter", having negotiated one already, is evidence of Suffolk Life's tardiness.

With regards to the first point, I don't think there's any doubt that the accountant did help the process. I've said as much previously. But that's not the same as saying Suffolk Life should have to pay for use of that accountant. For the reasons given earlier, and in my provisional decision, I don't think that would be the right conclusion in this case. As regards to the second point, I'm not persuaded the email, in isolation, shows why Suffolk Life should pay for Ms K's accountant – which is the pertinent issue. The email shows Suffolk Life had been progressing the PSO. It shows Suffolk Life was working with Ms K's accountant. And it shows a sense of urgency on Suffolk Life's part because of an impending VAT deadline. What it doesn't show is why Suffolk Life's actions were such that Ms K had little option but to get the accountant involved.

Finally, it’s worth reiterating that Suffolk Life could have handled the PSO better. I said as much in my provisional decision. And Suffolk Life has said so too – it reduced its fees by more than half (£11,960) in recognition of this. But a distinction needs to be drawn between some of Suffolk Life’s handling of the PSO and the much narrower issue under review here – the payment of Ms K’s accountant. And on that issue, the SIPP’s terms and conditions are clear. Ms K’s SIPP’s should pay for third party professionals like her accountant. I haven’t seen sufficiently persuasive evidence to show why putting aside these terms and conditions would be fair and reasonable in this case.

It follows that I don’t uphold Ms K’s complaint.

my final decision

For the reasons given above, my final decision is to not uphold Ms K’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms K to accept or reject my decision before 7 August 2020.

Christian Wood
ombudsman

COPY OF PROVISIONAL DECISION

complaint

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background

In 2016, Ms K and her former husband (who I will refer to as Mr A) agreed a financial settlement in relation to their divorce. Part of this settlement involved the Self Invested Personal Pensions (SIPPs) that Ms K and Mr A held with Suffolk Life. A Financial Order was issued by a court but there were problems in implementing it, so a further Financial Order and PSO were issued in early 2017.

The SIPPs held a number of assets including a commercial property which was registered under a single title but had been split into two units, both of which had been leased out. Ms K's SIPP and Mr A's SIPP both had an interest, albeit of different percentages, in the property. The financial agreement between Ms K and Mr A was to equalise the value of their SIPPs, meaning (amongst other things) an adjustment to their respective shares of the commercial property. The property was to be re-registered with the Land Registry as two distinct properties, with Ms K's SIPP owning one of the properties and Mr A's SIPP the other.

Suffolk Life doesn't have a set fee for the implementation of a PSO. It charges an hourly rate for the work that has to be done depending on the particular skills and experience of the staff member involved in doing that work. In this case, its tariff ranged from £40 per hour for members of staff working on less technical matters to £80 per hour for more senior, technical, staff. There were also additional flat fees for certain activities – for example, £600 (plus VAT) for the sale and re-registration of a property. Charges are taken from the SIPPs, meaning in this case the costs being shared between Ms K's SIPP and Mr A's SIPP.

Implementing the PSO wasn't a smooth process and it wasn't until 2017 that it was completed. Ms K complained to Suffolk Life on a number of occasions about the time it was taking, its interpretation of pension rules and the overall service it was providing. Suffolk Life provided its formal response to these complaints in July 2016, October 2016 and May 2017. In its October 2016 response (and on a number of occasions thereafter), it told Ms K that it would review the fees it was charging once the PSO had been concluded.

In November 2017, Suffolk Life sent Ms K a letter explaining the outcome of its fee review. It argued in this letter (and subsequently) that the PSO was far from standard as it essentially involved the selling and repurchasing of a property, the subsequent reorganisation of leases, insurance, mortgages and the like, and the backdating of transactions to the effective date of the PSO. It said all the legal, accounting, valuation and administrative work that this entailed was complicated and time consuming. It also said it had to satisfy itself at various points that HMRC and pension rules were being followed. So it thought the PSO was unusually difficult to execute. Nevertheless, Suffolk Life agreed it could have done better, especially in relation to delays it caused in mid-2016. As a result, it said it wouldn't charge for all the work it had done.

Based on its tariff at the time, the combined cost to Ms K's SIPP and Mr A's SIPP for Suffolk Life's work would have been £21,960. This was split between the accumulated cost per-hour of four members of staff (which came to £17,760) and the flat fees (which came to £4,200). Suffolk Life has also said some work was done but not logged, so it says the true cost was actually higher than these figures show.

As part of its fee review, Suffolk Life proposed to reduce the fee for those charging £80 per hour to £40 per hour, so that everyone – regardless of role – was effectively charging £40 per hour. This reduced its fee for this work from £17,760 to £10,320. It also agreed to discount some of its flat fees meaning the cost for this work reduced from £4,200 to £3,000. Based on these discounts, the total fee would have been reduced to £13,320. However, Suffolk Life decided to only charge £10,000 in total. So the total discount was £11,960 (£21,960 minus £10,000), or just over 50%.

Suffolk Life's fee review was outlined in a letter to Ms K dated 23 November 2017. In the meantime, around June 2017, Ms K had hired an accountant to speed up the implementation of the PSO. She asked Suffolk Life whether it would pay for this work but she didn't get a clear answer. After receiving Suffolk Life's fee review letter, Ms K said Suffolk Life should also be responsible for the cost of the accountant because, in her view, Suffolk Life wouldn't have been able to complete the PSO without this support. The cost of the accountant's work was £4,600, or £5,520 including VAT. (It should be noted that the accountant had worked on the PSO previously but the cost of this previous work isn't part of Ms K's complaint.)

Suffolk Life responded on 15 December 2017. It refused to meet the additional cost of the accountant. It said the terms and conditions of its SIPP were clear – any third-party professional costs incurred are to be settled by the SIPP. It said the work of the accountant wasn't necessary to get the PSO completed. And it referred back to the £11,960 reduction in fees that it had already applied. It thought that it had done enough, in total, to address Ms K's concerns.

Ms K referred the matter to us. Our adjudicator didn't uphold her complaint. He recognised that Suffolk Life could have done better overall, but he thought the reduction in fees was substantial enough to reflect this, especially given the complexities of implementing the PSO. On the issue of the accountant's fee, he thought Suffolk Life could have explicitly said at the time that it wouldn't pay for this work, especially as Ms K had asked about this on a number of occasions. But he concluded that Suffolk Life shouldn't be responsible for this cost because the SIPP's terms and conditions were clear on the issue – fees for external advisers are to come from the SIPP. As a result, our adjudicator didn't think there was anything further for Suffolk Life to do.

Ms K has agreed with Suffolk Life's reduction in fees. But she maintains Suffolk Life should still be responsible for the accountant's fee. The matter is therefore with me for a decision.

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.

As Ms K has accepted the reduction in Suffolk Life's fees, the issue I need to decide upon is the accountant's fee and whether Suffolk Life should be responsible for this.

The terms and conditions of the SIPP state the following:

18.4 We will also be entitled to charge the following costs to your SIPP:

a. *all expenses incurred by us (including claims, losses and liabilities) in acquiring, holding, disposing of, transferring or valuing any investment or other asset of your SIPP;*
b. *all fees, commissions, charges, disbursements (for example, stamp duty land tax and land registry fees) and other costs charged by any investment manager, nominee, banker, custodian, third party professional, mortgagee or anyone else providing related services or any agent (including any financial adviser) appointed in relation to your SIPP or any part of your SIPP*

I consider this to be clear. According to the terms and conditions of the SIPP, fees for third party professionals, such as Ms K's accountant, should be charged to the SIPP.

So my starting point here is that Suffolk Life hasn't done anything wrong in refusing to pay the accountant's fee. To come to a different conclusion, I would essentially have to ignore the terms and conditions both parties agreed upon and signed up to. I *can* do this. My remit is to look at what is fair and reasonable, so I can look beyond a product's 'small print' or contractual obligations. But doing so isn't something I can take lightly.

I'm also mindful that in looking beyond the SIPP's terms and conditions I would, implicitly, be endorsing the view that Suffolk Life should pay an amount that it had no control over, for a service that it had never agreed to, delivered by a provider it had no say in choosing. This may be the fair and reasonable outcome. But I would need particularly compelling evidence and arguments for taking such an approach.

One of the arguments put forward by Ms K for why this would be a reasonable approach to take is that the lack of capability at Suffolk Life meant the PSO wouldn't have been completed without the accountant's input. In the circumstances, the argument goes, Suffolk Life left Ms K with little choice but to appoint the accountant.

However, I don't think there's enough compelling evidence to say the PSO could only have been completed with the accountant's input. The evidence points to the *usefulness* of the accountant. And he may well have accelerated the process. But the input of a professional adviser was always likely to have been beneficial. That's not the test here. The test is whether the accountant's involvement was *essential* to complete the transaction or *essential* to prevent the transaction drifting to the point where serious repercussions would have followed. I'm not seen enough to persuade me that's the case here.

Even if the accountant was necessary, I would then need to assess whether this was down to unreasonable capability gaps at Suffolk Life or whether the complexity of the PSO was such that Suffolk Life couldn't really be expected to have completed it without outside help. The former would suggest it wouldn't necessarily be fair for Suffolk Life to rely on its terms and conditions; the latter would suggest Suffolk Life was, unfairly, put in an awkward position by the requirements of the PSO. As it is, I don't need to make a finding on this because I don't think the accountant was essential in getting the PSO completed in the first place. But it does show the challenge Ms K is facing here because even if I thought the accountant was essential in completing the PSO, it still wouldn't necessarily mean I'd uphold her complaint.

I've taken into consideration the fact that Suffolk Life never explicitly said it wouldn't pay for the cost of the accountant when Ms K asked about this on a number of occasions in June 2017. Suffolk Life was non-committal at this point. All it did was repeat its message that it would review its fees when the PSO was completed. But this review only reported back to Ms K in November 2017, by which time the accountant had long since completed his work. So it could be argued that Suffolk Life gave tacit approval to Ms K's use of the accountant.

However, Suffolk Life never said it would pay the fee, or gave any indication that this was something it was likely to do. The terms and conditions referred to above shows what Suffolk Life's default position was – the SIPP bears the cost of third-party advisers. Previous experience of how the SIPP worked would have confirmed as much to Ms K. And the fact that Ms K was asking about the fee suggests she knew she couldn't rely on Suffolk Life to pay it. So I don't think Ms K could, reasonably, have thought she had been given the 'green light' to use the accountant and charge his fee back to Suffolk Life.

This doesn't absolve Suffolk Life from criticism. It should have been clearer with Ms K on this issue when she raised it. Its thinking at the time was to review everything once the PSO had been completed. So it didn't want to commit to an answer at that point. But in taking this approach, and investigating Ms K's concerns in the round, it didn't give an answer to Ms K on the issue of the accountant's fee until it was far too late. So it could have done better here. At the very least it could have issued a holding message to reiterate its terms and conditions state external adviser fees are settled by the SIPP. It could always have changed its mind at a later date, but at least it would have indicated what would likely have happened.

As it is, I don't think Suffolk Life's actions caused Ms K to lose out. I say this because even if Suffolk Life had given Ms K an indication of what its default position was on the issue of fees for third party professionals, I still think it likely Ms K would have gone ahead and hired the accountant. As I said above, I don't think Ms K could, reasonably, have relied on Suffolk Life absorbing this cost – but she hired the accountant nevertheless.

In sum, I would need compelling evidence and arguments to effectively allow a consumer to invoice a business for a cost that it never agreed to meet, especially if that cost has previously been agreed to be met by the consumer when signing up to the product's terms and conditions. The evidence and arguments I've seen here aren't sufficiently compelling. It follows that I don't intend to uphold Ms K's complaint.

For the avoidance of doubt, this doesn't mean I think Suffolk Life has been faultless in executing the PSO. It clearly has made mistakes, has admitted as much and reduced its fees accordingly. All it means is that I'm not persuaded that Suffolk Life should pay the £5,520 fee for Ms K's accountant.

Finally, my understanding is that Ms K's SIPP has been charged for its share of Suffolk Life's fees and for its share of the accountant's fee. Therefore, if my final decision remains along the same lines as my provisional decision, there is no further action for Suffolk Life to take. However, it should be noted that this is Ms K's complaint. It isn't a joint complaint from Ms K and Mr A (even though Mr A has consented to us looking into Ms K's complaint). It means it's possible Mr A will bring a complaint along similar lines with regards to his own SIPP or even take alternative legal action.

my provisional decision

My provisional decision, subject to any more evidence or arguments I receive from either party, is to not uphold this complaint.