DRN-3584743

The complaint

Mrs K complains that Suffolk Life Pensions Limited failed to carry out appropriate due diligence on an investment she intended to make before accepting it into her self-invested pension plan ('SIPP').

What happened

In September 2008 Mrs K was advised by an independent financial adviser ('Firm A') to open a SIPP with Suffolk Life and switch two personal pensions into it. A total of £32,829.47 was transferred to the SIPP and Firm A advised Mrs K to invest £22,520 into the Centurion Argent DMS Enhanced SP Fund ('Centurion fund').

The Centurion fund was a traded life policy investment, where the fund invested in the life assurance policies of pensioners within the United States. The fund purchased the policies; it paid the policy premiums and returns were generated by collecting the policy proceeds when the policyholder died.

The remaining funds were invested in various funds by a discretionary fund manager ('DFM').

In addition to the two personal pensions that were transferred to the SIPP, Mrs K had a pension arranged with her employer. She also had a PEP and ISA portfolio managed by the same DFM who was managing the funds in the SIPP that were not invested in the Centurion Fund. Mrs K also owned a second property that provided a rental income.

The financial adviser Mrs K had previously dealt with at Firm A moved to another independent advisory firm ('Firm B') in 2010. But the servicing of Mrs K's SIPP moved with the adviser to Firm B.

In 2011 the Centurion fund started to experience liquidity problems and suspended redemptions from the fund. And in Mrs K's October 2012 annual SIPP statement, it showed her investment in the Centurion fund was valued at £22,332.08, having been valued at £26,402.76 in her October 2011 statement.

Between 2012 and 2015 Mrs K's adviser received further updates from Centurion about the fund. The updates warned investors that the fund had a net asset value of zero and they would most likely not get the full amount they invested returned to them.

In December 2018 Mrs K made a complaint to our Service through a representative. Mrs K's representative complained about the various parties involved, including Firm A and Firm B. It said the advice to invest in the Centurion fund was not suitable for Mrs K, who was an inexperienced investor. And it said Suffolk Life should not have allowed this 'plainly unsuitable' investment to be held in Mrs K's SIPP. Mrs K's representative added that Mrs K had been charged extortionate fees and had no way of closing the SIPP to avoid the continuing fees.

Suffolk Life didn't uphold Mrs K's complaint, saying that it is an execution-only SIPP provider and it accepted an instruction from Firm A, a regulated financial adviser, to open a SIPP and invest Mrs K's funds in Centurion. It said there was no obligation on it to consider the suitability of the advice, that Mrs K understood this and confirmed she'd received advice from Firm A. Suffolk Life added that the investment in Centurion was permitted under its schedule of allowable investments, and the fees were agreed at the outset and accepted by Mrs K. However, given the status of the investment, which was now considered to be illiquid, it would no longer charge annual fees. This meant the plan was effectively closed.

Mrs K asked our Service to consider her complaint but our Investigator didn't uphold it. She thought Suffolk Life had done what could reasonably be expected of it at the time under the regulator's rules, guidance and what was considered to be good industry practice. She noted that Firm A was regulated to provide investment advice and that Suffolk Life had carried out appropriate due diligence on the investment, which was liquid at the time and could readily be exited. She didn't think the issues experienced from 2011 could've reasonably been foreseen at the time of the transaction. So, she didn't think it was unreasonable for Suffolk Life to permit the investment to be held in Mrs K's SIPP.

Mrs K's representative didn't accept this. It said that Mrs K had complained about all of the parties' involvement in the investment but our Service had chosen to focus only on Suffolk Life, even though the adviser involved was still working as a financial adviser (albeit not for Firm A or Firm B). It said Suffolk Life needed to fully understand the risks involved and not just accept the investment at face value. It added that Firm A had recommended a large number of consumers that it referred to Suffolk Life to invest in Centurion. And that this should've caused concern in light of the regulator's guidance. The representative also said that just because the Centurion fund was registered overseas that didn't mean the investment should have been allowed.

The representative also made reference to the court's findings in *Adams v Options SIPP*, which it believed demonstrated Suffolk Life owed Mrs K a duty of care, and as such ought to have questioned the suitability of the advice. It noted this case involved an unregulated introducer but thought the principle could still be applied in the circumstances of Mrs K's complaint given it involved an unregulated investment. Overall, the representative didn't feel that Suffolk Life had done enough to investigate the credibility of the investment.

The Investigator explained that Mrs K needed to make separate complaints about the other parties involved and she was only considering the role Suffolk Life had carried out here. But as she wasn't persuaded to change her opinion on the matter, the complaint was referred to me to make a final decision on the matter.

What I've decided – and why

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The Principles for Businesses, which are set out in the Financial Conduct Authority's ('FCA') handbook, "*are a general statement of the fundamental obligations of firms* *under the regulatory system"* (PRIN 1.1.2G). And I consider that Principles 2, 3 and 6 are relevant to my consideration of this complaint. They say:

> *"Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.*
>
> *Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.*
>
> *Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly.*

I've also considered the High Court decision in *Adams v Options SIPP*, which Mrs K's representative has referenced in support of her complaint. In that case, Mr Adams had made an investment into storage pods through his SIPP. Since that decision the Court of Appeal has handed down its judgment following its consideration of Mr Adams' appeal. I've taken both judgments into account when making this decision.

The FCA (and its predecessor, the FSA) has issued a number of publications which remind SIPP operators of their obligations and set out how they might achieve the outcomes envisaged by the Principles. These are:

- The regulator's 2009 and 2012 Thematic Review reports;
- The regulator's October 2013 Finalised SIPP Operator Guidance; and
- The regulator's July 2014 "Dear CEO" letter.

I have considered these publications in their entirety when reaching my decision on this complaint.

Overall, in determining this complaint I need to consider whether Suffolk Life complied with its regulatory obligations as set out by the Principles to act with due skill, care and diligence, to take reasonable care to organise its business affairs responsibly and effectively, to pay due regards to the interests of its customers (in this case Mrs K), to treat them fairly, and to act honestly, fairly and professionally. And, in doing that, I'm looking to the Principles and the publications listed above to provide an indication of what Suffolk Life could have done to comply with its regulatory obligations and duties.

Mrs K's relationship with Suffolk Life

Suffolk Life says it is an execution only SIPP administrator, which means that it only acts on the instruction of the investor or any third party professional who has authority to make an instruction on their behalf. Suffolk Life says it does not provide advice or recommend investments to its clients and only acted upon the instructions received from Firm A.

Mrs K's financial adviser, Firm A, gave Mrs K advice to transfer her pensions to the SIPP with Suffolk Life. And I accept that Suffolk Life didn't provide any advice here, and so it didn't have an obligation to consider the suitability of the investment for Mrs K. However, Mrs K's representative says that Suffolk Life owed Mrs K a duty of care, as established under *Adams v Options SIPP.* And that this ought to have led to Suffolk Life to question the suitability of the investments for Mrs K. But I don't agree that the findings of the court in *Adams v Options SIPP* can be interpreted in this way. While I think Suffolk Life had a duty to act in Mrs K's best interests, and comply with the Principles, I don't think that meant it should've also carried out its own suitability assessment. Like in the Adams case, Suffolk Life only agreed to provide a non-advisory service to Mrs K and it was not authorised to give advice on the suitability of the investments.

So, I think Suffolk Life was required (in its role as an execution only SIPP provider) to consider whether it was appropriate to accept business from Firm A and to consider whether the investment in the Centurion fund was an appropriate investment to make within its SIPP. And overall, I think Suffolk Life's duty as a SIPP operator was to treat Mrs K fairly and to act in her best interests. And taking account of the regulator's guidance and what I consider to have been good practice at the time, I think it needed to carry out due diligence to at least ensure:

- that Firm A was regulated to provide pensions and investment advice and had a clear disciplinary history;
- that it understood how the investment would operate;
- that the proposed underlying investment for the SIPP was a genuine asset and was not part of a fraud or a scam or pensions liberation;
- that those who held significant positions of control and influence were fit and proper;
- that any third-party due diligence that they used or relied on had been independently produced and verified.

I'm mindful that the September 2009 Thematic Review report gave examples of measures that SIPP operators, such as Suffolk Life, could take, which included:

"Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended…"

Mrs K's representative says that the FCA was implying here that Suffolk Life did in fact have an obligation to consider the suitability of the investment before accepting it. But I don't think that is what this guidance was seeking to convey. I don't think it placed an obligation on the SIPP operator to check the suitability of every investment proposed. Instead, I think it sets out that the regulator expected SIPP operators to seek further information or clarification if it had particular concerns about the investment proposed. And I think that is in relation to the nature of the investment proposed rather than its suitability for the particular investor.

What checks did Suffolk Life carry out on Firm A

In its final response letter, Suffolk Life said:

"With regards to our duty of care towards you as the investor, Suffolk Life only accepts business from introducers and advisers that are authorised, and regulated by the FCA. Before appointing a firm as the adviser on a Suffolk Life plan, we check the FCA register to ensure they are authorised. As the FCA monitors firms and individuals, making sure they meet their standards before being authorised, as well as setting clear expectations of ethical behaviour, this offers us the assurance that the investor will have received independent advice, suitable to their individual financial needs, and that the pension fund benefits from the protection that the framework of financial regulation provides. The FCA also supervises how firms operate, and can stop those that don't meet their standards from carrying out the activities they regulate."

And upon further questioning from the Investigator, it added that Suffolk Life did not have an introducer agreement with Firm A and the only remuneration it received was the pre-agreed sum specified in the SIPP application. It said it didn't pay Firm A any commission or other payments as a result of Firm A recommending its SIPP. While it would've been good practice to have had an introducer agreement in place with Firm A, I don't think the absence of one means Suffolk Life should not have transacted with Firm A.

Suffolk Life confirmed that at the time of the investment, Firm A was regulated and the specific adviser who gave the advice had authorisation to recommend and introduce new SIPPs and investments. It said it was reliant on the FCA informing it of changes to the authorisation status of financial advisers and there were no changes or notices relevant to Firm A between the advice being given and the servicing of the SIPP moving to Firm B. So, I think Suffolk Life did enough in terms of checking Firm A and the adviser's permissions and disciplinary history.

Suffolk Life also disclosed that during the seven years that Firm A was regulated, it introduced 24 clients to Suffolk Life and during this same period it received thousands of new SIPP applications. It also explained that eight of those 24 clients invested in Centurion.

Mrs K's representative said that volume should've been cause for concern, in line with the regulator's guidance. But I don't think that eight was such a significant number that it should've led Suffolk Life to question the motivations of Firm A or the suitability of the investment proposition for Mrs K purely based on the number of customers investing in Centurion.

So, overall, I don't think there were any grounds to be concerned about accepting business from Firm A. So it follows that I think it was reasonable in principle for Suffolk Life to accept the SIPP application. Although, as I will go on to discuss, an important part of Suffolk's Life decision to accept the application from Firm A should also include its consideration of the investment proposition.

What due diligence checks did Suffolk Life carry out on the Centurion investment?

It isn't in dispute that Suffolk Life understood it needed to carry out due diligence on the Centurion investment. So, I've considered the checks Suffolk Life carried out here and whether it met its obligations to Mrs K in line with the Principles I've referred to above and COBS.

Suffolk Life said that upon receipt of an investment instruction, it checked to ensure that the investment met with its schedule of allowable investments. It said the schedule was created based on guidance set by the FCA, the implication being that the investments it allowed to be held in its SIPPs were permitted by the FCA. But Suffolk Life hasn't said what this guidance was. And, as far as I'm aware, the FCA did not have any set criteria for investments that could be held in a SIPP at that time. It left it to SIPP operators to determine what investments could be held in their SIPPS, reminding them in 2009 that they were subject to the Principles and that they should be wary of an anomalous and esoteric investments. So, I haven't placed great weight on what Suffolk Life has said about the schedule being based on FCA guidance.

Nevertheless, I've looked at the schedule and this shows that unregulated open ended investment companies ('OIECs') and other unregulated collective investment schemes ('UCIS') were permitted investments to be held in the SIPP. As the Offering Memorandum confirms, the Centurion fund was a UCIS.

The schedule also set out the following liquidity requirements:

"Investments (with the exception of direct property investments) must be:

(a) redeemable for cash within 90 days; or
(b) freely transferable to another person eligible to invest in that investment."

The Centurion Offering Memorandum explains that the investment was valued on a monthly basis, and the redemption of shares would generally take place on the first day of each calendar month at the request of the shareholder. Therefore, the shares could be sold with notice and were also freely transferable. So on this basis alone, Suffolk Life determined that this type of investment was permitted to be held in the SIPP.

This means that Suffolk Life has essentially said that its due diligence duty in respect of the investment made by Mrs K was limited to ensuring that it could legitimately be held in the SIPP and was not a scam. But that is only partially in line with the regulations and what I think was good industry practice at the time. As the regulator has made plain, SIPP operators have a responsibility for the quality of the SIPP business that they administer. SIPP operators should undertake appropriate enquiries about the nature or quality of an investment proposed before determining whether to accept or decline it into its SIPP. And I think Suffolk Life ought to have known that its due diligence should've gone beyond simply checking that the type of investment was permitted on its own schedule of allowable investments.

I think Suffolk Life ought to have made checks to ensure it understood the nature of the investment proposed so that it could identify anomalous investments, such as unusually small or large investments, or more esoteric investments. Had it done so, I think that it ought to have been clear to Suffolk Life that both UCIS and life settlement funds should have been regarded as esoteric. Although the regulator drew attention to the risks involved in life settlement funds in 2011, I think it's clear those risks were present in 2008 and so they should have been appreciated by Suffolk Life at the time. That doesn't mean that I think Suffolk Life should've foreseen the collapse of this particular fund or the sector as a whole, but it ought to have been clear it was a specialist investment that was unlikely to be suitable for most retail investors. And so, I think it ought to have proceeded with caution, rather than simply accepting the investment on face value.

Mrs K's representative says that Suffolk Life should not have allowed Mrs K to invest in a UCIS, saying that UCIS are high-risk and not suitable for normal retail investors like Mrs K. And it again points to the 2009 Thematic Review which it says should've led to Suffolk Life declining to accept the investment given its esoteric nature.

But while the FCA prohibited the promotion of UCIS to retail investors in January 2014, in 2008 it was permitted for IFAs to recommended UCIS investment to clients who were not sophisticated or high net-worth clients if they thought the investments were suitable for them. So, the fact that it was an esoteric investment that had been recommended to Mrs K, does not mean that Suffolk Life could only reasonably have rejected the application to make that investment. Suffolk Life could've decided to only accept applications from sophisticated investors, and/or high net worth investors, and/or investors who had been advised by an authorised independent financial adviser. And as we know in Mrs K's case, Firm A recommended that she make the investment.

Nevertheless, despite the investment having been recommended by Firm A, I do think there were some features of Mrs K's application that warranted further scrutiny from Suffolk Life. These are that:

- Mrs K invested only around £33,000 in her SIPP which is generally a small investment amount for a SIPP.
- In the SIPP application, Mrs K appointed a DFM to be used to manage the remaining funds in her SIPP. This amounted to only £7,000 being invested with that manager – an unusually small amount to invest with a DFM.
- Mrs K invested around £22,500 in the Centurion Fund. This was a UCIS, and although this type of investment was permitted by Suffolk Life, it was high-risk and subject to restrictions on the type of investors it could be promoted to – generally sophisticated investors and high net-worth investors.
- In addition to being a UCIS, the Centurion Fund was a life settlement fund which was an esoteric type of investment.

So, based on the application, it would've been apparent to Suffolk Life that Mrs K was seeking to invest two thirds of her relatively small pension in a UCIS investing in life settlements. The investment strategy also included a very small investment with a DFM, which was anomalous. Based on these facts alone, this should have caused Suffolk Life some concerns that, to use the words in the 2009 Thematic Review, the application might involve *"possible instances … of consumer detriment such as an unsuitable SIPP".* And under this guidance about the existing requirements to act in accordance with the Principles, I think Suffolk Life could've reasonably been expected to seek clarification in these circumstances.

However if Suffolk Life had checked with Mrs K's authorised financial adviser, Firm A, I think it would have discovered the following facts:

- The DFM selected to manage funds in the SIPP was also managing Mrs K's PEP and ISA portfolio, which meant the small managed part of the SIPP no longer looked so anomalous. It also demonstrated some experience of investments.
- Mrs K also had other pension provisions with her employer, meaning the overall proportion of her pension provision invested in the UCIS was not as large as it seemed if only the SIPP was considered.
- Mrs K also had a second property providing a rental income. Whilst this doesn't necessarily show she was a sophisticated investor, it was part of an overall picture that showed Mrs K's financial position was relatively secure and not an obvious cause for concern.

Given these additional facts, I think any initial concerns Suffolk Life could've had about the Mrs K's SIPP and investment application would've been allayed. Furthermore, and as I've said above, it still remained Firm A's responsibility to assess the suitability of the investment for Mrs K, not Suffolk Life's.

In terms of the specific investment proposed, it doesn't appear that Suffolk Life carried out any checks on the fund manager, Centurion Fund Managers Ltd, or the persons with significant control within it, which I think ought to have formed part of the due diligence checks. The company was registered in the Cayman Islands and so it could've sought information about it through the Cayman Islands General Registry. But had it done so, I'm not persuaded it would have found anything concerning about the company or the people involved.

There's also no evidence that Suffolk Life made any independent enquiries in relation to the Centurion fund – instead it only considered the Offering Memorandum. But this was produced by the fund itself so wasn't independently verified. But, despite this, I don't think in the circumstances of this complaint, it would be fair and reasonable for me to conclude that it treated Mrs K unfairly and facilitated an investment that it otherwise shouldn't have done.

The Centurion fund was a genuine asset, incorporated in 2003 and so by the time Mrs K invested it had been operating for five years and appears to have been delivering returns in line with the 9% targeted return set out in the Offering Memorandum. So, at the time of the investment, the fund was liquid and performing.

In summary, although Mrs K was being advised to invest in a UCIS, which I accept was generally considered to be a higher risk investment, I'm not persuaded that Suffolk Life should've declined to accept the Centurion investment into Mrs K's SIPP. I accept there were some reasons to have some concerns in this case about the investment. But Suffolk Life wasn't Mrs K's adviser, Firm A was. Suffolk Life, as the SIPP operator, was not required to or authorised to advise on suitability of the investment for Mrs K in her personal position. As I've set out above, I think Suffolk Life could have done more to clarify Mrs K's personal circumstances, given the implications of the information contained in the application form. But even if had done so, on balance, I think it would reasonably still have allowed the application and permitted the investment to be held in the SIPP. So, while I understand this will be very disappointing for Mrs K, I'm not upholding her complaint.

My final decision

For the reasons I've given, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 18 August 2023.

Hannah Wise
Ombudsman