

The complaint

Mr L complained that Virgin Money Unit Trust Managers Ltd ('VM') hadn't agreed to him cashing in his Stakeholder pension early, in spite of him being ill and unable to work.

What happened

The background to this complaint is well known to both parties. So, I'll only provide an overview of key events here.

Mr L had a stakeholder pension account with VM for some years. He said he last contributed to the plan around ten years ago. The value of the plan was just over £50.

Mr L has a number of physical and mental health conditions. Mr L began receiving universal credit disability payments in May 2019, as the Department for Work and Pensions (DWP) decided he had limited capability for work and work-related activity. This meant he would no longer be asked to search or prepare for work.

Mr L contacted VM at the end of June 2021 and asked to close his account and have the funds released to him earlier than planned. He told VM he was unhappy that the account had switched to a different plan, which he hadn't authorised. VM told Mr L it couldn't close the account, so Mr L complained.

VM responded on 6 July 2021 and said when changes were being made to the plan, consumers were given the chance to opt out. For those who didn't opt out, the change was made to the new investment model. It said Mr L was given 3 months written notice of the changes in August 2020, and a reminder was sent in September 2020. When no communication was received from Mr L, the change was completed in November 2020.

VM also said that in order to progress Mr L's request for early release of the funds due to ill health, Mr L would need to provide a letter from his GP detailing the following:

- Confirmation of the condition(s) which leaves him unable to work.
- Confirmation from his GP that Mr L had to cease working and would be unable to return to that occupation due to his ongoing health conditions.

Mr L contacted VM in September 2021 and was advised to send all medical evidence to support his request to close the account.

Mr L complained to our Service in September 2021. He said he sought advice and was told he could close the account early, so before the age of 55, if he could prove ill health and that he had no future job prospects. Mr L said he was in receipt of disability benefit and could provide evidence of his significant health problems. Mr L said he had been ill from a very young age and had only ever worked intermittently, in part time roles. He said dealing with this matter has had a significant impact on his mental health.

Mr L also complained to us about the service provided by VM. He said he wasn't asked to provide any medical information in support of his request to have the account closed. Mr L complained that VM had made changes to the pension plan three times since he bought it,

that he's on a low income and no longer pays into the account. He said he was allowed to close a similar account in the recent past.

Mr L then wrote to VM in October 2021 to say he still hadn't received a response in relation to his complaint about releasing the funds early. VM told Mr L it had contacted its pension team and asked that they acknowledge and respond to Mr L. VM also let Mr L know it had responded to his complaint in July 2021, although it seemed he hadn't received the letter.

When our Investigator contacted VM, it said Mr L didn't meet the criteria for early closure of the account on the grounds of ill-health, as he didn't have an occupation to cease. It said early payment of benefits happens to allow consumers to cope financially if they lose income from their *current* occupation. But Mr L doesn't have a current occupation. VM said if it was to release the funds without the correct evidence in place, it could be responsible for an unauthorised payment charge, which would represent 55% of the client's fund value. The client could also be fined up to 25% of their fund value directly.

Our Investigator didn't uphold Mr L's complaint. He said VM relied on the requirements outlined by HMRC's pension tax manual to make decisions about whether early payments on ill-health grounds could be made. He said he couldn't see that VM made an error here. In order to reach its decision, it had reviewed the medical evidence, consulted the pension schemes trustees and consulted the HMRC pension tax manual. And, ultimately, the decision is made at VM's discretion. Our Investigator said Mr L could consider getting advice about his options, which might include switching his pension to another provider.

Looking at the customer service provided, our Investigator said there were a few instances where Mr L chased progress with VM and there was little communication with him after the matter was referred to its head office. He also thought VM hadn't explained to Mr L why it had declined his request. Our Investigator said Mr L's mental health conditions meant this had a greater impact on him, and asked VM to pay Mr L £150 compensation for the distress and inconvenience caused.

Our Investigator also looked at the changes made to Mr L's pension plan. He said VM had the right to make changes to how the pension is run, as long as it's compliant with relevant regulations. And enough notice was given to allow consumers to move their pensions elsewhere if they were unhappy. So he didn't think VM had made an error here.

VM agreed to pay the £150 compensation suggested by our Investigator.

Mr L disagreed with the outcome our Investigator reached, and said it was unfair to individuals who are so unwell that they can't work. He said he had no way of getting a job and so he could never hope to meet the criteria. Mr L said that he had a different pension plan with VM in 2019, which was closed without any fuss or need for medical evidence. But Mr L agreed with the amount of compensation suggested by our Investigator for the distress and inconvenience VM caused.

As Mr L disagreed, this came to me for a decision.

I contacted VM and said I'd seen the HMRC guidance quoted and relied on by VM, and the relevant pension tax manual, which says:

"Members may get authorised pension payments before normal minimum pension age if the ill-health condition is met. This is generally referred to as ill-health retirement. The ill-health condition is met if:

- *the scheme administrator has received evidence that the member is, and will continue to be, medically incapable (either physically or mentally) of continuing their current occupation as a result of injury, sickness, disease or disability, and*
- *the member ceases to carry on that occupation.*

The evidence must be provided by a registered medical practitioner. That is a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise under that Act. This medical evidence must be kept for at least six years following the end of the tax year on which the ill-health pension started, or the lump sum payment was made.

The ill-health condition is the minimum requirement set by the tax legislation. In practice, scheme rules may have stricter ill-health criteria. For example, they may state that the member must be incapable of carrying out any occupation, rather than the current occupation that they are in.”

I agreed with what VM said in relation to Mr L not currently working and so having no occupation to cease. But I said my understanding of the HMRC guidance was that a pension provider doesn't have to rely strictly on the criteria about how a member must be incapable of carrying on their *current occupation*. I thought this was simply the *minimum* criteria it should consider. So pension providers could, if they chose, make the criteria more strict by applying *any occupation* rather than *current occupation*. And this is what Mr L is essentially asking for – for it to be taken into consideration that he is incapable, and has been for some time, of carrying out any occupation. I asked VM to consider whether greater flexibility could be applied in Mr L's case.

VM responded and said Mr L didn't meet the necessary definition because he has never had an occupation to cease and it needs to be the case that he had an occupation to cease. It said if Mr L had a previous occupation some time ago, and the letter from his GP confirmed he had to cease working in that role due to ill-health, and couldn't work in that role again, it would have authorised the payment.

Mr L then provided this Service with more information about his work history, and this was forwarded to VM to consider.

VM responded and said HMRC criteria stated the information needed to be on headed paper, from a medical professional. It needed a GP letter confirming Mr L's most recent employment, that he had to leave due to ill health, and confirmation that he was not able to work again in that role. VM said once this was provided, it would reconsider Mr L's request.

Mr L said he wasn't going to provide another GP letter as he didn't think it was necessary, given the quantity of information provided so far. In particular, he said the most recent GP letter provided detailed his various health conditions and said he was unable to work. Mr L said another GP letter would cost him £30 and, given that he's on a low income, he can't afford unnecessary expenses.

I issued a provisional decision on 14 April 2022. I said I didn't intend to uphold Mr L's complaint. I said I didn't think the information Mr L provided so far was enough to evidence whether or not he fit the HMRC criteria being relied on by VM. I said that if Mr L provided a GP's letter with all the necessary information in line with the HMRC guidance in the future, then this could be sent to VM for it to consider. I gave both parties the opportunity to respond.

After receiving the provisional decision, Mr L obtained further information from his GP. This was considered by VM, and it has now agreed that Mr L can close his pension account on the grounds of ill health.

Mr L asked VM to refund him the cost of obtaining letters from his GP, but it declined his request. So I then considered this. I contacted both parties and said I didn't think VM needed to refund the GP fees. I gave both parties the opportunity to respond. Mr L responded but didn't provide further comments for me to consider. VM didn't respond.

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.

Having done so I am partially upholding this complaint.

The main complaint point here was VM declining to close Mr L's pension account early on the grounds of ill-health. But this matter has now been dealt with to the satisfaction of both parties. Mr L has provided a letter from his GP that VM considers meets the HMRC criteria and it's agreed to close the account. So given that the pension account will now be closed by VM and the funds paid to Mr L, there's no need for me to address this point further.

Mr L asked VM to cover the cost of the letters he obtained from his GP. But VM didn't agree to do this. I've considered everything and I'm satisfied VM don't need to refund the cost of the letters. Broadly speaking, I might only ask a business like VM to cover this type of cost if I thought its actions meant costs had been incurred unnecessarily. But that's not the case here. HMRC outline the criteria that needs to be met in order to access the pension funds early, and this includes obtaining a letter from a GP that needs to contain very specific medical and employment related information. So if any consumer wants to access the funds early, then they have to bear the cost of that. I see no reason why VM should be liable for these costs.

Mr L also complained about the customer service provided by VM. I agree that there were times when VM could have communicated more effectively with Mr L, in particular in relation to VM not letting Mr L know it had declined his request, and Mr L hearing this for the first time when our Investigator issued his findings. I think the compensation of £150 suggested by our Investigator, for the distress and inconvenience VM caused Mr L, is fair.

Mr L was also unhappy that changes had been made to his pension plan without him authorising the changes. But VM is allowed to make changes, in line with relevant regulations, to how it manages pension funds. I can see that when Mr L was contacted in 2020 about the changes, he was told that they would go ahead unless he opted out. From what I can see, Mr L didn't contact VM to opt out. So I don't think VM made any errors here in relation to how it communicated with Mr L about changes.

Putting things right

For the reasons outlined above, VM should pay Mr L £150 compensation for distress and inconvenience caused.

My final decision

I require Virgin Money Unit Trust Managers Ltd to pay Mr L £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 20 June 2022.

Martina Ryan
Ombudsman