DRN-3926445

The complaint

Mr F has complained about delays he says were caused by Virgin Money Unit Trust Managers Ltd ('VMUTM') when it transferred his pension benefits. He has also complained that prior to the transfer, the funds he was invested in were changed.

What happened

I have previously issued a provisional decision regarding this complaint. The following represents excerpts from my provisional decision, outlining the background to this complaint and my provisional findings, and forms part of this final decision:

"*Mr F asked his independent financial adviser ('IFA') to arrange the transfer of his VMUTM benefits held under a stakeholder plan to a self-invested personal pension ('SIPP') which he had arranged with a new provider (which I will call 'provider A'). At the same time, Mr F was also transferring benefits that he had with five other providers to the SIPP.*

Mr F says that by 5 February 2021, his benefits with all providers had been transferred to provider A aside from those with VMUTM.

VMUTM states that on 13 February, it received a request from provider A to transfer Mr F's pension benefits. VMUTM returned the transfer form because it was not signed. On 26 February it received the form back, and VMUTM then sold the units in Mr F's policy for £120,799.28, using the unit prices applicable on 1 March. However, before releasing the funds, VMUTM stated that it had identified a discrepancy with Mr F's signature. This resulted in those funds being held until it had received sufficient proof of Mr F's identity.

On 9 March VMUTM verbally informed Mr F that he would need to provide further identification, and it followed this with a letter on 16 March that requested he send his passport or other identity document showing his signature. On 3 April it received a certified driving licence, and on 9 April it received a certified passport. This led to a transfer cheque for £120,799.30 being issued to provider A on 29 April and received by provider A on 4 May.

During this period, on 2 March VMUTM sent a letter to Mr F that stated it had completed the transfer and issued a cheque to provider A. This was incorrect. On 5 March VMUTM sent a letter to Mr F that stated the transfer value of the units that had been sold was £135,754.15. It has subsequently apologised, stating that this valuation was incorrect.

Mr F complained to VMUTM that it had taken too long to transfer his benefits, causing him a financial loss. He questioned why his signature had not been recognised by VMUTM. He also stated that between receiving a statement in November 2020 and moving his benefits, a change had been made to the funds he was invested in. Mr F said this change had been made without his authority, and that when VMUTM enacted this fund switch, it already knew that he was intending to transfer the benefits to another provider. In his view, the fund switch had caused him a further loss.

In response, VMUTM reiterated the discrepancy it had noted with Mr F's signature on the transfer request when compared to the signature it held from a document which had been

signed on 6 November 2019, purportedly from Mr F. This was a Letter of Authority (LOA) that authorised Mr F's IFA to obtain information regarding his pension benefits. VMUTM stated that the need to request further identity verification had delayed the transfer of benefits, but its view was that it had still carried out the transfer within a reasonable timescale. VMUTM stated that it had sold the units held in the policy on 1 March, rather than left them invested, because it had received an instruction to sell.

In terms of the changes to the investment funds which were made in late 2020, VMUTM provided a transactions statement showing these to have taken place on 5 November 2020. It said these were the result of Mr F's policy being set up on an automatic fund selector basis called 'Glidepath'. It explained that Glidepath moves a policyholder to less risky investments as they approach their selected retirement date. VMUTM said that Mr F had received a mailing about how Glidepath would operate before it came into effect.

Mr F remained dissatisfied with VMUTM's actions and brought a complaint to this service. In response when making its submissions, VMUTM accepted that it had made errors when issuing a letter to Mr F on 2 March 2021 that stated it had issued a cheque to provider A, and when providing an incorrect value on 5 March. It offered £150 compensation for confusion and inconvenience caused.

Our investigator upheld this complaint in part. His view was that it was reasonable for VMUTM to request further identification documentation due to the signature discrepancy. However he considered it should have told Mr F sooner about what it required, and then checked the further documents it received quicker. At the same time, he noted that there had been a delay in Mr F providing these documents. The investigator proposed that a calculation be carried out to determine if VMUTM's delayed actions had caused Mr F a loss. If so, VMUTM should be required to pay compensation for that loss.

The investigator also recommended that VMUTM should pay Mr F £100 compensation to reflect distress caused by avoidable delays it had caused.

With regard to the change in investments VMUTM carried out in November 2020, the investigator was satisfied that when he originally applied for his policy, Mr F had agreed to use the automatic fund selector feature. The investigator concluded that VMUTM had likely written to Mr F to explain that his policy was to be moved to the Glidepath model, and given him the option to opt out of this. As he had not opted out, the investigator's view was that it was reasonable for VMUTM to redirect the investment direction in November 2020, in line with the Glidepath strategy. Although Mr F had completed forms in the same month that confirmed his intention to transfer his benefits, the investigator did not consider this meant that VMUTM should not have carried out the Glidepath investment redirection strategy.

Mr F did not agree with the investigator's findings. He disputed that there could have been a discrepancy between his signature on the transfer request form and the signature showing on the LOA form, highlighting that the other transferring schemes had found no discrepancy. He also questioned why VMUTM had sold his units when it did if it was aware of such a discrepancy. In terms of the November 2020 fund redirection, Mr F said that he had no records of having been contacted by VMUTM about his policy being moved to the Glidepath model. He asked if VMUTM had records to show that it had written to him about this.

The investigator provided Mr F with a copy of the LOA signed on 6 November 2019. In response, Mr F explained that this signature was, in fact, his wife's. Taking into account this clarification from Mr F, the investigator explained that his view remained that VMUTM acted reasonably when requesting further identification, due to the discrepancy between signatures on this form and the transfer request form.

Mr F provided further comments, assisted by his IFA. He stated that he did not fully accept that VMUTM needed further identification from him, and he highlighted the delay in the transfer cheque being issued. Mr F also stated that VMUTM had issued a transfer cheque initially, but then had to reissue it because it had never arrived with provider A. His view remained that the investments he held should not have been redirected in November 2020 because by this time, VMUTM knew that his intention was to transfer.

Mr F's IFA highlighted that despite receiving a LOA form signed by Mrs F in November 2019, VMUTM had released information to the IFA, indicating it was satisfied with the forms submitted. The IFA questioned why VMUTM had not followed up the signature discrepancy in 2019, rather than in 2021 when the transfer request was being processed. He also noted that there was no such signature discrepancy with other forms that VMUTM held.

The IFA explained the disappointment VMUTM's incorrect valuation sent on 5 March 2021 had caused. With regard to any loss caused by delays in the transfer, he provided some performance figures for various investment periods. He also commented that he would expect it to take 5-7 working days for funds to have been invested with provider A, with one of the receiving funds potentially having a longer period before investment due to its trading dates.

In terms of the phased de-risking of investments as retirement approaches that forms part of VMUTM's Glidepath model, the IFA suggested that this might be at odds with the regulatory requirement to pay due regard to the interests of consumers and treat them fairly, when taking into account pension flexibilities introduced in recent years.

With regard to any compensation that might be due to Mr F, taking into account annual allowance limits, his IFA stated that this should be paid as cash rather than into his existing pension plan. In terms of the level of tax that Mr F might pay in retirement, and that would need to be taken into account in any compensation payment, the IFA suggested his marginal rate would likely be 20%, given the size of his pension and his proposed retirement age.

In response to the investigator's findings, VMUTM stated that it accepted the redress proposals recommended, and that it was calculating whether any loss had been incurred by liaising with provider A. With regard to mailing its affected policyholders about moving to the Glidepath model, VMUTM explained that an external mailing house had arranged this. Although some data relating to the mailing had since been deleted, its records indicated the mailing had been successful. It therefore considered the outward mailing to Mr F would have taken place, although it accepted that it could not guarantee the mailing had been delivered.

I asked VMUTM to clarify its interpretation of an element of its policy terms that relates to how transfer values are calculated. I have taken into account VMUTM's further comments, and I explain my thoughts on this matter in my findings below.

What I've provisionally 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.

There are several issues within Mr F's complaint that I need to address. For ease of reading, I have considered these under sub headings.

The investment changes made to Mr F's holdings under the Glidepath strategy

When Mr F applied for his VMUTM policy in 2003, there was a section on the application form that related to the investment funds that would be used. This explained that initially

investments would be made into the pension growth fund. As retirement approached, an automatic fund selector would start moving investments into a pension income protector fund. There was an option to choose not to use the automatic fund selector, but Mr F did not 'opt out' of this feature.

In 2020 VMUTM introduced a new automatic fund selector called Glidepath. It states that it issued a letter to affected policyholders about this change in August 2020, and a reminder letter in October 2020. It has provided copies of these letters, which explained how the de-risking strategy as retirement approaches would be altered under Glidepath. The letters also confirmed how a policyholder could turn off the Glidepath option if they wanted to, and included a form to opt out of it.

Mr F says that he has no record of being contacted by VMUTM about the move to the Glidepath model. Whilst VMUTM is unable to provide an individual record to show that it wrote to Mr F about Glidepath, its records indicate the mailing to affected policyholders was completed successfully. Although I can't be certain that these letters were successfully delivered, on balance I consider it more likely than not that VMUTM did issue correspondence to Mr F about this change.

On 5 November 2020, VMUTM undertook changes to Mr F's investment direction that were in line with the Glidepath model. Mr F has questioned why these changes were carried out when VMUTM had been told that he intended to transfer his benefits by this date. I can see that Mr F signed a VMUTM form on 23 November 2020 that confirmed his intention to transfer his benefits, but this was after the date of the Glidepath investment switch.

In addition, even if Mr F did tell VMUTM that he was planning to transfer before the Glidepath switch on 5 November, it does not seem to me that that should have led VMUTM not to have conducted the switch. An intention to transfer would not necessarily have led to a transfer taking place. In the meantime, the Glidepath strategy was intended to de-risk Mr F's pension assets as he moved towards his retirement date. In my view, there would not have been sufficient reason for VMUTM to have prevented the 5 November fund switches, even if it had been informed Mr F was looking to transfer his benefits.

I have also noted Mr F's IFA's comments questioning whether de-risking of investments as retirement approaches is consistent with the need to pay due regard to the interests of consumers and treat them fairly, taking into account more recently introduced pension flexibilities. On balance, I do not consider VMUTM's strategy to de-risk policyholders as they approach retirement to be in breach of its regulatory duties. In addition, Mr F had the option for his policy not to follow the Glidepath strategy. Overall, my view is that VMUTM took appropriate steps to inform Mr F about his policy being placed on the Glidepath model, and acted fairly when it altered his investment direction in November 2020.

The timescale taken for the transfer, and the signature discrepancy

Mr F considers VMUTM took too long to transfer benefits, and that a central cause of that related to its insistence that it needed further documentation to verify his identity.

I note that Mr F says the transfers from his five other providers to provider A had been completed by 5 February 2021, whilst the VMUTM transfer did not complete for several months after that. I can see that Mr F signed a VMUTM form confirming his request to transfer on 23 November 2020. VMUTM received a letter from provider A requesting that the benefits be transferred on 13 February 2021, but the transfer warranty was not signed. I understand that VMUTM then received completed transfer forms on 26 February 2021.

The units under Mr F's policy were sold on 1 March 2021. I will be returning to the issue of the date that units were sold by VMUTM later in my decision.

In checking the transfer forms it had been sent, VMUTM noticed a discrepancy with signatures it held for Mr F. I understand that it rang Mr F on 9 March to inform him about this, and to ask for further identity documentation. It also issued a letter to him on 16 March. Although I accept VMUTM could have contacted Mr F sooner having received the completed transfer forms, overall my view is that it dealt with this matter in a reasonable timescale.

Mr F has questioned why VMUTM required identifying documents. As I understand it, the discrepancy arose when Mr F's signature on the transfer forms was compared to signatures which had been provided to VMUTM in November 2019, when his new IFA was appointed as servicing agent for his policy. Mr F had signed a form appointing his IFA as servicing agent on 20 November 2019. This signature was consistent with the one showing on the transfer forms. However, another form appointing the IFA had also been sent to VMUTM, signed on 6 November 2019. The 6 November form was headed as being from Mr F, but the signature on it was not the same as that used on 20 November form. Mr F has explained to our investigator that the 6 November form has his wife's signature on it.

It seems therefore that the signature discrepancy was the result of a simple mistake, where Mrs F had been asked to sign a form in error. Mr F's IFA has highlighted that despite this error on the November 2019 forms, VMUTM was willing to release information to him after this date. He has asked why the signature discrepancy was not clarified in 2019, rather than when the transfer request was being dealt with. He also noted that there was only this one signature discrepancy.

I acknowledge the IFA's comments in this regard, and I accept that it would have been preferrable if this matter had been addressed in 2019. However, VMUTM did have a valid, correctly signed authority from Mr F dated 20 November that allowed it to provide policy information to the IFA for his policy. It seems to me that at the point it had received a request to transfer benefits away, it was not unreasonable for VMUTM to make further enquiries about Mr F's identity, when it noted it had on record a signature from 6 November that purported to be Mr F's but looked very different to the other signatures it held for him. My view therefore is that VMUTM acted fairly when requesting the identification documents that it did in March 2021.

A certified copy of Mr F's driving licence was received by VMUTM on 3 April 2021, and a certified copy of his passport was received on 9 April. VMUTM confirmed receipt of the identification documents on 12 April. As these documents were sufficient to prove Mr F's identity, like the investigator I consider that this is the date that VMUTM should have raised the transfer cheque. In my view, having received the identification documents that it was seeking, VMUTM took too long to issue the transfer cheque.

What in fact happened was that VMUTM raised the cheque on 20 April, and it took seven working days for it to be sent on 29 April. It was invested by provider A on 7 May and 10 May (for the fund which the IFA says has more restricted trading dates). That is six and seven working days respectively after the cheque was sent by VMUTM.

If the cheque had been raised on 12 April, with the same seven working days turnaround, the cheque would have been sent on 21 April. I consider it reasonable to conclude it would then have been invested by provider A six working days later for the three receiving funds that did not have restricted trading dates, and seven working days for the receiving fund with restricted trading dates. That means that, had the cheque been issued in a timely fashion by VMUTM, the receiving investments within provider A's SIPP would have been purchased on 29 April (for three funds) and 30 April (for the remaining fund).

Subject to the responses I receive from the parties to my provisional decision, I intend to require VMUTM to carry out a loss assessment based on these dates. That reflects my view that VMUTM acted reasonably when requesting identification documents from Mr F, but ultimately took longer than it should have done to send the transfer cheque to provider A.

For completeness, I note that both Mr F and his IFA have explained that they believe VMUTM issued a transfer cheque initially, and then had to reissue it because it had never arrived with provider A. Although there seems to have been some confusion around this, looking at VMUTM's submissions, my understanding is that the transfer cheque was only issued once, on 29 April 2021. But the main issue that I consider I must address in this regard relates to whether the cheque was issued in a reasonable timescale. My conclusion, as I have explained above, is that it was not.

The sale of units under VMUTM's policy on 1 March 2021

Mr F has highlighted that his units under his VMUTM policy were sold using the prices applicable on 1 March 2021 for £120,799.28. But the transfer cheque issued in late April 2021 was also for this same amount, meaning that his funds had not been invested for a number of weeks.

VMUTM stated that once an instruction to sell has been received, it is required to sell. It has provided the terms and conditions for its stakeholder policies like Mr F's. Section 16 relates to the option to, amongst other things, transfer benefits. Term 16.2 states that once VMUTM has received notification from a new provider about a transfer, "and both parties have all the information needed", it will "move your pension to them using the unit price on the transfer day."

VMUTM had to delay the transfer due to the signature discrepancy. As explained above, my view is that it acted reasonably when delaying the transfer for this reason. However, it seems to me that, in light of VMUTM not being able to process the transfer because it needed to verify Mr F's identity, it did not have all the information that it needed to transfer on 1 March 2021. Consequently, the units in the policy should not have been sold on that date, and should instead have remained invested until VMUTM did have all the information required for the transfer to proceed. If it was the case that VMUTM only realised that it did not have the information needed for the transfer after it had sold the units on 1 March, my view is that it should have reversed the unit transaction when this became clear, and it asked Mr F for further information.

As noted above, I asked VMUTM to clarify its interpretation of its policy terms. It acknowledged that the terms are as I have outlined above. However, it states that its process is to "lock in" the unit prices on receipt of a request to transfer. VMUTM has pointed out that this benefits policyholders if unit prices subsequently fall, whilst additional requirements for the transfer are being obtained. It also commented that it considers it's carried out its process correctly.

I have thought carefully about VMUTM's further comments in this regard. I appreciate that a policyholder might see their transfer value fall whilst obtaining the information required for a transfer to be completed. But equally, by selling units prematurely before all the information needed has been received, a policyholder has no opportunity to benefit from positive investment returns that might occur.

VMUTM did not transfer Mr F's benefits in early March 2021 because it was not satisfied with the signature identification it held for him. That indicates that it was not satisfied that it had appropriate authorisation to transfer the pension benefits at this time. That being the

case, it seems there was a possibility that the transfer would not go ahead. In my view therefore, the sale of the units on 1 March by VMUTM was premature. It left Mr F's funds outside of any investment medium from 1 March, attracting no additional return prior to the transfer cheque being issued in late April.

Based on the policy terms, my current conclusion is that because VMUTM did not have all the information needed to complete the transfer, the policy should have remained invested until the date that the transfer cheque was raised. As explained above, my view is that the cheque should have been raised on 12 April 2021, and I currently therefore consider that Mr F's policy should have remained invested in the relevant units until that date.

VMUTM has confirmed that if the units had remained invested until 12 April 2021, the transfer value would have been £126,641.11.

General level of service provided by VMUTM

VMUTM acknowledges that there were some errors in its communications with Mr F and his IFA. It incorrectly told Mr F in a letter dated 2 March 2021 that it had completed the transfer and issued a cheque to provider A. In a letter on 5 March, it that stated that the transfer value was £135,754.15, but this was also incorrect.

As I have explained above, my view is that VMUTM also took longer than it should have done to send the transfer cheque to provider A.

When making its submissions to this service, VMUTM stated that it was willing to offer £150 compensation for confusion and inconvenience it had caused in the handling of the transfer. In my view, VMUTM did cause unnecessary difficulties to Mr F whilst dealing with the transfer. Taking into account awards made for cases with similar circumstances, I consider it reasonable that VMUTM pay Mr F £150 compensation for the trouble and inconvenience it has caused him."

Responses to my provisional decision

Mr F confirmed that he had no further points to make.

VMUTM acknowledged the conclusions I had outlined. It said it did not agree with them, but did not make further submissions about the merits of the case.

VMUTM also explained that after our investigator proposed that it should carry out a calculation to determine whether its delayed actions had caused Mr F a loss, it attempted to do so by asking provider A for relevant unit prices. However, provider A did not respond to VMUTM's two requests for information in this regard. In light of this, VMUTM asked if this service can assist it obtaining information from provider A for the loss calculation.

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.

In light of the responses to my provisional decision, I do not consider that I have reason to alter the conclusions that I reached in that provisional decision.

With regard to VMUTM's request for assistance to obtain unit prices from provider A so that it can carry out the loss calculation, if Mr F accepts my final decision, I consider it reasonable that VMUTM should contact provider A again to ask for the information required. If provider

A does not supply this, VMUTM should contact our investigator to let him know. The investigator will then contact provider A directly and ask it to forward to VMUTM the information so that the loss calculations can be completed.

Putting things right

My aim in awarding compensation for financial loss is to put Mr F back in the position he's likely to have been in, but for VMUTM's errors when dealing with the transfer of his pension benefits.

VMUTM should take the following actions:-

1. Calculate the number of units Mr F would have purchased in the four receiving investment funds offered by provider A, in the same proportion that he actually chose to invest in 2021, assuming that a transfer cheque for £126,641.11 had been sent to provider A on 21 April.

   It should assume that the units were purchased in provider A's SIPP on 29 April (for three funds) and 30 April (for the fund with the restricted trading dates).

   Within this calculation, VMUTM is able to deduct from the transfer amount the initial adviser charge, at the same rate that was applied to the actual transfer in 2021. It is also able to take into account that 1% of the transfer value following the deduction of the initial adviser charge was left in a cash facility.

2. The number of units calculated at (1) should then be valued at the date of my decision. This represents the *fair value*.

3. The number of units that the VMUTM transfer value actually bought in provider A's SIPP should also be valued at the date of my decision. This represents the *actual value.*

If the *actual value* is greater than the *fair value*, no compensation is payable. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable.

Mr F's IFA has stated that, taking into account annual allowance limits, any compensation due should be paid as cash rather than into the existing pension plan. Had it been possible to pay into the plan, the compensation amount would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr F won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr F's actual or expected marginal rate of tax at his selected retirement age. In light of the comments provided by Mr F's IFA in this regard, I consider it's reasonable to assume that Mr F is likely to be a basic rate taxpayer at retirement, so the reduction would equal 20%. However, if Mr F would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

If VMUTM disputes that this is a reasonable assumption, it must let us know as soon as possible so that the assumption can be clarified and Mr F receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.

VMUTM should provide details of the calculations to Mr F in a clear, simple format.

If the compensation is not paid within 28 days of VMUTM receiving Mr F's acceptance of my decision, interest at 8% per annum on the loss identified will be payable from the final decision date to the date of settlement. Income tax may be payable on this interest, if paid. If VMUTM deducts income tax from the interest, it should tell Mr F how much has been taken off. VMUTM should give Mr F a tax deduction certificate in respect of interest if Mr F asks for one, so he can reclaim the tax on this interest from HM Revenue & Customs, if appropriate.

Separate from the financial loss calculation that I have detailed above, I also require VMUTM to pay Mr F £150 to reflect the difficulties its general level of service relating to the transfer has caused him.

My final decision

My final decision is that I uphold this complaint, and require Virgin Money Unit Trust Managers Ltd to put things right in the way that I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 14 March 2023.
John Swain
Ombudsman