

The complaint

Mr and Mrs W complain that they were treated unfairly by Clydesdale Bank Plc (trading as Virgin Money) during their application to port their mortgage product. They feel Virgin Money has discriminated against them and that it's breached several laws and rules.

What happened

Mr and Mrs W took out a mortgage with Virgin Money in 2019, following advice from a third-party broker.

Mr and Mrs W contacted Virgin Money directly in 2021, as they were looking to relocate and wanted to port (transfer) their existing mortgage product. Following a discussion between Mr and Mrs W and one of Virgin Money's advisers, it assessed their application and issued an offer on 23 July 2021. Unfortunately, however, the purchase for the property Mr and Mrs W were looking to buy fell through.

Mr and Mrs W found a different property they wanted to purchase and port their mortgage product to. They discussed this in a further appointment with a Virgin Money adviser, after which a copy of the illustration and application form were sent to Mr and Mrs W on 31 August 2021. Following receipt of this information, Mr and Mrs W raised concerns with Virgin Money. They felt Mrs W was being discriminated against as the application form didn't include a section for her declared income.

Mr and Mrs W called Virgin Money on 8 September 2021, and they were told the valuation report for the property had been received and would be assessed the next day. However, when they called again on 10 September 2021, they were told the previous information they'd been given was incorrect. And the valuation report wouldn't be assessed until the following week.

Virgin Money issued a mortgage offer for the new property purchase on 13 September 2021. On the same day, Mr and Mrs W raised a complaint and made a Data Subject Access Request (DSAR). I understand the mortgage completed on 27 September 2021.

Mr and Mrs W complained to Virgin Money as they had several concerns about how they'd been treated during their porting applications. They said Virgin Money had caused delays with their application and their later data subject access request (DSAR) – which they also felt was incomplete when it was later responded to. Mr and Mrs W raised other concerns that Virgin Money had discriminated against them, in relation to Mrs W's disability and her sex.

Virgin Money responded to Mr and Mrs W's concerns in its letters dated 28 October 2021, 23 November 2021, and 21 February 2022. It upheld some parts of Mr and Mrs W's complaint, including that incorrect information was given about timescales, longer call waiting times, incorrect information within the application form, a poorly handled phone call and delays with the processing of Mr and Mrs W's DSAR. But Virgin Money didn't agree that it was discriminating against customers who receive disability benefits, or discriminating on the grounds of Mrs W's sex. It had also been unable to locate recordings of the calls Mr and Mrs W were referring too. However, for the aspects of the complaint it was upholding, it offered to pay Mr and Mrs W £450 to recognise the distress and inconvenience caused.

As Mr and Mrs W didn't agree, they referred their complaint to the Financial Ombudsman Service. Our investigator reviewed the complaint and found that while there were things Virgin Money could have done better, its offer of £450 was a fair way to put things right.

Mr and Mrs W didn't agree with the investigator. They said not all evidence had been considered by Virgin Money or by the investigator – including three telephone call recordings in particular. They also said that two pieces of information were missed from the DSAR response Virgin Money had provided. And they didn't think their concerns about discrimination had been fairly considered.

Mr and Mrs W asked for the complaint to be reviewed by an ombudsman, so it's been passed to me to decide.

My provisional decision

I didn't think Virgin Money's offer went far enough, so I issued a provisional decision. I proposed that Virgin Money should compensate Mr and Mrs W for the impact its errors and/or unreasonable actions had on them. I said:

“Virgin Money's handling of Mr and Mrs W's DSAR

Mr and Mrs W have raised several concerns about Virgin Money's handling of their DSAR, relating to delays, the format of the information and the DSAR being incomplete. And I note that in Mrs W's email to Virgin Money dated 5 July 2022, she said that she'd be referring her concerns about it breaching the General Data Protection Regulation (GDPR) rules to the Information Commissioner's Office (ICO). However, our service has different powers to the ICO – we can make awards for compensation and have the power to make directions and the ICO doesn't. So, I don't consider that Mr and Mrs W also referring their concerns to the ICO means that I shouldn't decide on this aspect of their complaint.

It's not in dispute that Virgin Money delayed the processing of Mr and Mrs W's DSAR, and it's evident from the available correspondence that this caused avoidable upset to Mr and Mrs W, as they had to chase a response to their request several times. This shouldn't have been necessary and, as I will explain further in this decision, I consider the delay caused here did not help the wider situation – including how Virgin Money's actions were making Mr and Mrs W feel.

I've also considered Mr and Mrs W's other concerns about Virgin Money processing their DSAR. The ICO's website says: “Personal data only includes information relating to natural persons who:

- can be identified or who are identifiable, directly from the information in question; or
- who can be indirectly identified from that information in combination with other information.”

The ICO goes on to provide guidance on whether an individual can be identified directly or indirectly (together with other available information) from the information a firm has. It explains that “information must relate to the identifiable individual to be personal data”. And that, “this means that it does more than simply identifying them – it must concern the individual in some way”.

Mr and Mrs W are concerned that they haven't been provided a copy of the property valuation, or any data showing where the hypothetical maximum loan amount of £230,428 originated from.

Having carefully considered the available evidence, I note the property valuation was a “desktop valuation”. This type of valuation is obtained solely for the lender and provides information about the property, such as its value, so it can determine whether the property is suitable for lending purposes. It isn't obtained for the benefit

of the borrower (or potential borrower), and it isn't intended to be shared with the borrower (or potential borrower) either. I've not seen anything to suggest that the desktop valuation contained personal data about Mr and Mrs W – when considering UK GDPR. If it didn't then I don't consider this is information Virgin Money failed to provide as part of Mr and Mrs W's DSAR. But Virgin Money should confirm this when it responds to this provisional decision, as if it did contain their personal data, Virgin Money should have sent it in response to the DSAR.

In terms of the maximum loan amount of £230,428 Virgin Money referred to in its final response letter dated 28 October 2021, this figure was provided following the complaint handler's communication with an underwriter when investigating Mr and Mrs W's complaint. In an email dated 26 October 2021, the underwriter said "...we agreed the balance swap £278,711. We agreed this by exception as affordability only passed for £230,428."

As this email chain includes Mr and Mrs W's loan/offer reference number, I consider it likely does contain "personal data" that relates to Mr and Mrs W. I say this because I think Mr and Mrs W would be indirectly identifiable from their loan reference number and the information relates to a hypothetical maximum lending amount, based on factors such as their income. It follows that I think it should have provided a copy of this email to Mr and Mrs W.

It's not known at this stage if Virgin Money provided this email to Mr and Mrs W, but if it didn't it should provide it because it contains their personal data. So, I'm provisionally minded to direct Virgin Money to provide a copy of this email chain to Mr and Mrs W.

Mr and Mrs W have also raised concerns about the format in which Virgin Money provided information to them following their DSAR – most of the information was provided as a paper copy and while phone calls were provided electronically, this was by CD and they were jumbled with incomprehensible file names.

I note that Mr and Mrs W made a DSAR by email on 13 September 2021 and so, considering the ICO's guidance, I would expect Virgin Money to have responded by email. This is the format Mr and Mrs W were using, indicating it's how they wished to communicate, and I can't see they asked for information to be provided to them in an alternative format. It also seems that Mr and Mrs W ran into some inconvenience in trying to access the CD Virgin Money provided.

In terms of Mr and Mrs W's concerns about the information being jumbled up, I note the ICO's guidance says firms "...should provide the information in an accessible, concise and intelligible format."

My interpretation is that the information provided by Virgin Money following Mr and Mrs W's DSAR request needed to be clear enough to be understood. I consider that provision of call recordings without anything to identify the date and time they were recorded wouldn't be clear enough for a consumer to understand. And I can see that this caused Mr and Mrs W inconvenience, firstly in trying to understand which call took place when, and secondly in raising a further complaint to obtain that information.

For the reasons I've explained above, I provisionally consider that Virgin Money acted unfairly in relation to some aspects of processing Mr and Mrs W's DSAR. I should make it clear that the Financial Ombudsman Service cannot punish or fine a business – it isn't the regulator. But I will keep in mind the distress and inconvenience this matter has caused to Mr and Mrs W, when deciding how Virgin Money should put things right.

Mr and Mrs W's concerns about discrimination

At the heart of Mr and Mrs W's complaint is that they feel they've been discriminated against – because of Mrs W's disability and her sex. They've referred to several events that have made them feel this way, including telephone conversations and written correspondence. And, they have set out how Virgin Money's actions have made them feel including, but not limited to, feeling victimised and disempowered. Mr and Mrs W feel that Virgin Money has acted unlawfully, breaching the Equality Act 2010 and the financial regulator's rules.

Virgin Money doesn't agree that it's discriminated against Mr and Mrs W or, generally, customers who receive disability benefits. However, during its complaint investigation, it did note that it could have provided a better service to Mr and Mrs W. It also noted that it had agreed to Mr and Mrs W's porting application, so they were able to relocate as they'd needed to do.

It's not the role of the Financial Ombudsman Service to say whether a business has acted unlawfully or not – that's a matter for the courts. Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things into account including relevant law, the financial regulator's rules, and what we consider to have been good industry practice at the time. So, although it's for the Courts to say whether or not Virgin Money has breached the Equality Act 2010, I'm required to take the Equality Act 2010 into account, if it's relevant, amongst other things when deciding what's fair and reasonable in the circumstances of the complaint. I think the Equality Act is potentially relevant law to this complaint because Mrs W says Virgin Money has discriminated against her on the grounds of sex, which is a protected characteristic. And I'm satisfied the protected characteristic of disability is relevant here too because Mrs W feels Virgin Money is discriminating against people who receive disability benefits.

Mr and Mrs W have said that Virgin Money has discriminated against them in the way it's considered Mrs W's disability benefit income, when considering their mortgage application. They've also raised concerns about not having equality of access to mortgage services. And they feel Virgin Money discriminated against Mrs W on the grounds of her sex, when requesting feedback only from Mr W, following their mortgage application.

I'll start by setting out that Mr and Mrs W were making a "like for like" porting application. That is, they wanted to borrow the same amount, on the same terms, but port (transfer) their existing mortgage product to a different property. In circumstances like this, under the regulator's rules, lenders can forgo the need for an affordability assessment where no material change is being made to the mortgage contract. No material change was being made to the contract here, so I question why Virgin Money went into detail about Mr and Mrs W's income in the first place. I'm not persuaded they needed to, particularly when considering its underwriter's comments indicating its standard was for it to allow a customer to move home with the same current balance, even if affordability isn't met.

During the period Mr and Mrs W were corresponding with Virgin Money about their complaint, they also asked Virgin Money to process a DSAR. That DSAR included many call recordings of conversations between Mr and Mrs W and Virgin Money. Mr and Mrs W have, helpfully, provided a copy of three call recordings they feel are most relevant to their complaint. I'd like to thank them for the time they spent in collating this information and providing it to our service.

I note that Virgin Money had said, when considering Mr and Mrs W's complaint, that these call recordings couldn't be located, despite locating and sending them to Mr and Mrs W as part of the DSAR and Mr and Mrs W, in response, providing the file names so that Virgin Money could locate the individual calls. Virgin Money did offer

to reconsider the matter if Mr and Mrs W provided further evidence of the calls taking place, but it seems unlikely to me that it listened to the calls, bearing in mind their contents. It's clear throughout Mr and Mrs W's correspondence that they felt this evidence is key to their complaint. So, I can understand why they didn't feel listened to, despite their efforts to help Virgin Money locate the calls.

Moving on to the content of the calls, I have listened to the three call recordings provided. And I think the following extracts are of particular importance to this complaint:

- 13 July 2021: During this call between Mr and Mrs W and Virgin Money's adviser, they were discussing why Mr and Mrs W would be eligible to borrow less now – as a new customer – than they had previously been able to borrow. When discussing Mrs W's income, the adviser said "One of the things that's been done has been putting through yours as benefits and it usually ignores benefits. So let me just quickly tweak that. Thank you for pointing that out to me."
- 27 August 2021: Mrs W noted that her income is £13,883.07 and queried whether this was the same as the figure the adviser had. The adviser confirmed it was.
- 21 October 2021: During this call, Mrs W discussed her DSAR with one of Virgin Money's agents. Mrs W explained to the agent how she'd been treated, and the agent showed empathy for what'd happened. He also talked about his own disability and when Mrs W said that she felt Virgin Money's actions were "unlawful" he responded by saying "I would agree with you". As I've set out above, I cannot say whether a business has acted unlawfully or not, but I have kept what this agent said in mind when reaching my decision.

I've thought carefully about the comments made by the adviser during the call on 13 July 2021, and I don't think they were intended to be malicious or to cause distress to Mr and Mrs W. But I feel this comment – suggesting benefit income is usually ignored, particularly without further explanation on what this really meant has led Mr and Mrs W to consider that they're being discriminated against.

I've also seen that when Mr and Mrs W changed their porting application due to changing property details, Virgin Money sent a copy of the application form to Mr and Mrs W which didn't include any information about Mrs W's income, only Mr W's income. I appreciate that as this was a "like-for-like" porting application that Mr and Mrs W didn't need to meet the same, stricter, affordability requirements that a new borrower would need to. But Mrs W had provided details of her income during the application process, and I find it reasonable that information should therefore be included in the application record – or at the very least an explanation given of why it wasn't, especially as (as I say below) Virgin Money did in fact take her income into account. I'm persuaded Virgin Money's failure to do that led to Mrs W feeling that her own circumstances had been unfairly disregarded when Mr W's hadn't. That left Mr and Mrs W having to amend the information, as they were concerned it was incorrect – knowing the importance of giving accurate information in a mortgage application. And I am satisfied this is something that could – and indeed, *should* – have been avoided if Virgin Money had acted fairly. For example, it could have explained that it didn't need affordability information at all on a like-for-like porting application and left out Mr W's too. Or if it required affordability information it could have included both.

There is also the conversation between Mrs W and one of Virgin Money's agents on 1 September 2021. I haven't been provided with a copy of this call recording. However, Virgin Money, by its own admission, has accepted that this call should have been handled better. Some of the key issues it identified in its own investigation

include the agent causing confusion about how Mr and Mrs W's income was being considered, particularly as he hadn't been party to the underwriting of the application. And so, he wouldn't know how Mr and Mrs W's income had been assessed. Virgin Money also noted that the agent talked over Mrs W during this phone call. Put simply, I consider that the agent shouldn't have made any comment about how Mr and Mrs W's income had been considered if he wasn't able to answer their questions and should, instead, have arranged for the relevant team or person at Virgin Money to provide the correct answer.

I have considered Virgin Money's lending policy and I can see that it accepts income received from benefits, including Disability Living Allowance (DLA) and Employment and Support Allowance (ESA), which I understand Mrs W was in receipt of at the time of their application. I can also see, having considered the underwriting notes, that they took Mrs W's income into account when agreeing to Mr and Mrs W's porting application. However, I do note that, despite Mrs W raising it with Virgin Money, the income it considered for her was around £38 lower than she'd declared. I can appreciate how Virgin Money would calculate a yearly income, where it's paid to a consumer weekly (weekly income x 52). But, here, Mrs W raised concerns that this was incorrect, and I'm not satisfied Virgin Money fully engaged with this. But it has said it'd use the same calculation method for any customer that is paid weekly, so I'm not persuaded it calculated Mrs W's income this way because it's derived from disability benefits. I think the discrepancy arises because Virgin Money multiplied weekly income by 52, but there are slightly more than 52 weeks in a year (365 days is 52 weeks and one day). However, this didn't impact on the success of their application and multiplying by 52 is a reasonable approximation.

When considering these points, alongside Virgin Money's lending policy – and keeping in mind that it didn't refuse to lend to Mr and Mrs W – I'm not persuaded Virgin Money's actions have been discriminatory. I note that Mr and Mrs W's porting application was ultimately successful. But I consider it has acted unfairly and unreasonably, because even though Mr and Mrs W were able to port their mortgage product, they experienced the process in doing so, upsetting. And, although I haven't seen anything that shows me it was Virgin's intention, I'm persuaded its actions, when considered as a whole, have caused Mr and Mrs W upset, distress, and inconvenience that should have been avoided.

It's evident throughout Mr and Mrs W's correspondence that they feel very strongly about what's happened and wanted to be listened to. And, unfortunately, I'm not persuaded Virgin Money has given full and proper consideration to Mr and Mrs W's concerns, particularly around what was discussed in telephone calls. Not least because – despite sending copies of them to Mr and Mrs W – it couldn't locate them when considering their complaint. I'm satisfied Virgin Money has had several opportunities to re-assure Mr and Mrs W about what'd happened. And its failure to do so has added further to their feeling of being treated unfairly.

Mr and Mrs W have also raised concerns about Virgin Money discriminating against Mrs W's sex. She had been the lead applicant during their porting application and the person who had most of the discussions with Virgin Money. However, when Virgin Money requested feedback, it sent that request to Mr W.

Virgin Money has said that it will always send feedback requests to the first applicant recorded on their system. And, when Mr and Mrs W had initially applied for this mortgage through a broker, Mr W had been input as the first applicant. They've said therefore they sent the feedback request to Mr W. They've also said that Mrs W had indicated contact should be made with Mr W's mobile phone, rather than hers, due to poor reception.

I've thought carefully about this aspect of Mr and Mrs W's concerns, and I'm not persuaded Virgin Money's actions were unfair. I don't think it's unreasonable for a business to contact one named party about feedback on an application, or for it to ask for the first applicants' information first when going through an application. That said, I can see why this might raise further concerns for Mr and Mrs W in this individual case – where they hadn't been sufficiently reassured about other ongoing issues. So, I've kept this in mind, when thinking about the overall impact on Mr and Mrs W and what Virgin Money should do to put things right.

Maximum lending

Mr and Mrs W have raised concerns about being given different figures by Virgin Money's adviser's and complaint handler, in terms of what they would be able to borrow as a new borrower.

The figures they've been given were in the region of £206,000, £211,000 and, in Virgin Money's initial complaint response letter, £230,428. They've also said that when speaking initially to their broker, before deciding to approach Virgin Money direct, their broker used Virgin Money's affordability calculator and suggested they'd be able to borrow over £290,000.

It's not clear why Mr and Mrs W have been given several different hypothetical maximum lending amounts. And, as Mr and Mrs W had indicated to Virgin Money, they just wanted to move their mortgage as it was. I'm unsure why it was necessary for Virgin Money to quote these figures. It wasn't relevant as this was a like-for-like porting application and Virgin Money has said itself that it'd usually agree to lend the same amount, at the same terms in such situations. Mr and Mrs W weren't applying for further borrowing, so it didn't matter how much further borrowing might theoretically be available to them.

I note Mr and Mrs W are concerned about where the figure of £230,428 was derived from, as they can't find any evidence of Virgin Money telling them about this prior to its response to their complaint. Having considered this, I'm persuaded that this figure was provided to the complaint handler during their investigation of the complaint. And, that this figure wasn't provided to Mr and Mrs W prior to their complaint being made. As above, I think this has caused further unnecessary confusion. But I hope it helps to clear up this matter for Mr and Mrs W.

In terms of the figure provided by Mr and Mrs W's broker, this would have been based on the information the broker had input at the time. I've not seen clear evidence of what that included but, in any case, even if I had, the purpose of such tools is to provide a quote for lending that might be possible. It will be subject to an application being submitted and a full assessment of things like, but not limited to, income and expenditure. A quote from the affordability calculator tool does not provide a formal binding mortgage offer.

Overall, I don't think Virgin Money has acted unfairly by agreeing to Mr and Mrs W's application to port their existing mortgage product for the same amount as they owed on their existing mortgage. But I consider it caused unnecessary confusion and concern by quoting various possible maximum lending figures that weren't relevant to what they wanted to do.

Delays

Mr and Mrs W have raised concerns about delays caused by Virgin Money during their porting applications.

I've considered the time it took Virgin Money to process Mr and Mrs W's applications, from the point their application was made, through to an offer being made. And, overall, I don't think Virgin Money caused any significant delays.

That said, it's clear from what both Virgin Money and Mr and Mrs W have said, that Virgin Money's call waiting times were longer than desired at the time. And, as an example, I can see Mrs W was given incorrect information about when their property valuation would be considered, only to phone back a couple of days later where she spent a long time on hold to find out the information she'd been given was incorrect. I'm satisfied Virgin Money's error caused a loss of expectation and unnecessary inconvenience to Mr and Mrs W.

Putting things right

Virgin Money has offered to pay £450 to Mr and Mrs W, to recognise the distress and inconvenience caused by the issues it had previously accepted it'd fallen short on. And so, it does not include the additional matters I'm minded to uphold as well. I do not find this fairly recognises the impact Virgin Money's errors and/or unreasonable actions have had on Mr and Mrs W. They have explained how they've been made to feel disempowered, victimised and that they've been led to worry they've been discriminated against. They've also spent many hours trying to resolve this issue and have said that this has impacted Mrs W's health. I've set out above several reasons why I consider Virgin Money could have done better, in all the circumstances, to help reassure Mr and Mrs W and to ensure it'd acted fairly and reasonably. I do not think Virgin Money adequately considered the impact of what's happened here and how it's led Mr and Mrs W to feel – or the detrimental effect that has had.

I'm provisionally minded to direct Virgin Money to pay Mr and Mrs W a total of £750 in recognition of the distress and inconvenience caused by the issues I've mentioned. This is inclusive of the £450 Virgin Money has previously offered to pay to Mr and Mrs W.

I appreciate Mr and Mrs W would like Virgin Money to take actions to prevent such situations from happening in the future. But, while I'd expect Virgin Money to take on board the feedback I've provided in my decision, as the Financial Ombudsman Service isn't the regulator, I can't tell it to change its working practices."

I invited Mr and Mrs W and Virgin Money to let me have any further comments or evidence they wanted me to consider before I make my final decision.

Mr and Mrs W provided some additional evidence – and re-iterated previously provided evidence – in support of their concerns. Mr and Mrs W also said, in summary, that:

- Another different maximum lending figure of £281,605 was given to Mr and Mrs W as part of a decision in principle provided by Virgin Money – also forming part of their concerns about Virgin Money's communications. And they've referred again to the maximum lending figure of £230,428 which wasn't mentioned by Virgin Money prior to their complaint.
- The valuation report contained their personal data, so it should have been provided to them in response to their Subject Access Request. They also argue that the valuation report should have been provided to them and their solicitor routinely as part of the mortgage process, based on communications they'd received from Virgin Money itself. The valuation was never sent to their solicitor.
- They don't agree with my findings that "I don't think Virgin Money caused any significant delays", because of my reference to the regulator's rules, that "a lender can forgo the need for an affordability assessment..." They spent several hours on the phone with Virgin Money, completed multiple application forms, and have sent numerous items of documentary evidence. They say none of this aligns with what Virgin Money's website says about the porting process, which says it's "really easy". At the same time, they were facing

difficult circumstances and could have done without the additional stress caused by Virgin Money's actions.

- They specifically asked Virgin Money to provide data to them electronically in their Subject Access Request email – so their preference was specific not indicated.
- They have re-iterated and expanded on their concerns that Virgin Money has discriminated against them and that it has breached the Equality Act 2010 for several reasons.
- They feel a payment of at least £1,000 would be more appropriate, to settle this complaint.

Virgin Money re-iterated some of its previous points and provided its response as to whether an affordability assessment was required for Mr and Mrs W's application. It provided a copy of the call recording from 1 September 2021 and some further comments about that. It also said, in summary, that:

- It doesn't send internal documents as part of a DSAR and said the customer information held on a valuation report is limited to customer names, the address being valued and the application number. It's said that all this information is provided within the application form and so providing it again as part of the DSAR would be duplication.
- It's said the same applies to the email dated 26 October 2021 and that where an internal document holds information about a customer which hasn't previously been provided, it provides those details as part of the DSAR by copying and pasting them into a separate document. It's said it doesn't share internal documents in their entirety with a customer, only the personal details shown on the document if applicable.
- It accepts that as Mr and Mrs W requested a DSAR by email that it could have sent the information by the same method – and it's sorry this didn't happen.
- It doesn't dispute that being provided with different loan amounts could have and did cause confusion. It said these amounts can change for a number of reasons. But it said it's very sorry for the added concern this has caused and doesn't expect customers to know its internal processes.

Finally, Virgin Money has said it's very sorry for Mr and Mrs W's overall experience.

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'm sorry to hear about the difficult circumstances Mr and Mrs W have recently experienced relating to the health of a relative. I'd also like to thank them for providing, as part of their response to my provisional decision, sensitive information about Mrs W's health – which I've taken into account.

Mr and Mrs W's concerns about discrimination

Many of the points Mr and Mrs W – and Virgin Money – have made in response to my provisional decision are matters I have already considered and so, I won't repeat my findings on each point individually. But a key part of Mr and Mrs W's concerns focuses on whether or not Virgin Money has acted unlawfully, in relation to the Equality Act 2010. Although I'm not going to depart from my provisional decision in relation to this, I have provided some further commentary below, in response to Mr and Mrs W's most recent correspondence.

Mr and Mrs W have said that they've been discriminated against by Virgin Money and have provided a large amount of information surrounding this, some of which is of a sensitive nature. So far as this aspect of Mr and Mrs W's complaint is concerned, the relevant law here is the Equality Act 2010. Mr and Mrs W are alleging that because of certain protected characteristics Mrs W holds (such as disability and sex) Virgin Money didn't take into account her disability benefit income. Mr and Mrs W allege that in doing so Virgin Money was discriminating against Mrs W.

Although Mr and Mrs W have specifically complained of discrimination contrary to the Equality Act 2010, it's important to note that it's not the role of the Financial Ombudsman Service to decide whether Virgin Money has acted unlawfully or not – that's a matter for the Courts.

Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things into account including relevant law and what we consider to have been good industry practice at the time. So, although it's for the Courts to say whether or not Virgin Money has breached the Equality Act 2010, we're required to take the Equality Act 2010 into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of the complaint. That includes thinking about what a Court would likely decide if Mr and Mrs W were to make a claim under the Equality Act 2010. I have set out below the relevant provisions which Mr and Mrs W have mentioned as part of this complaint:

Direct discrimination

This means treating one person less favourably than another person because of a protected characteristic. Here, Mr and Mrs W submit that Virgin Money has discriminated against Mrs W because of her disability and sex.

Indirect discrimination

This can happen when an organisation applies a provision, criterion or practice to all customers, but the effect of doing so is that it puts those who have a protected characteristic at a disadvantage compared to other customers, and that Mrs W actually was put at a disadvantage – and that doing so is not a proportionate means of achieving a legitimate aim.

Discrimination arising from disability

This is a form of discrimination relevant to the protected characteristic of disability only, and arises where an organisation treats a customer less favourably because of a matter arising from a disability.

My conclusions on what's fair and reasonable – taking into account the Equality Act

Mr and Mrs W say that Virgin Money's policy was to not take into account disability benefit income – despite it being, in their view, as reliable as another person's employed income – and that this was detrimental to Mrs W.

Mr and Mrs W have said that Virgin Money has applied a policy to not take benefit income into account to all applicants in receipt of benefits. And that this policy has been applied to her too, despite her protected characteristics – and despite her benefit income being indefinite. However, as I said in my provisional decision, I've seen Virgin Money's lending policy and I'm satisfied it accepted income received from the type of benefits Mrs W was in receipt of at the time of her application. I'm also satisfied that it accepted this income as part of their application and – had this not been a porting application, but one where affordability was a requirement – it would have included this income in the affordability assessment. I'm therefore satisfied that Virgin Money didn't refuse to accept Mrs W's benefit income. And in any case Mr and Mrs W were able to port their mortgage as they wanted. Because of this, and the other reasons set out within my provisional decision, I'm not persuaded a provision, criterion or practice has disadvantaged Mrs W personally because of a protected

characteristic she holds – because I’m not persuaded this was Virgin Money’s practice, or that even if it was it was applied to Mrs W or resulted in any disadvantage to her.

For these reasons, I therefore consider it likely that a Court would not find that Mrs W has been indirectly discriminated against. And for the same reasons, I don’t think she has been treated less favourably because of something arising from her disability.

I know Mr and Mrs W feel very strongly about what’s happened. And, as set out in my provisional decision, there are times where Virgin Money could have handled things better. But having thought about this matter carefully, while I appreciate Mr and Mrs W may be disappointed, I can see no reason to depart from my provisional decision.

Maximum lending

I note the evidence shows Virgin Money gave another hypothetical maximum lending amount of £281,605 to Mr and Mrs W. This amount isn’t noted in my provisional decision; however, I took into account that several hypothetical figures had been provided when I was minded to say Virgin Money had caused unnecessary confusion and concern. I accept that another figure being provided to Mr and Mrs W provides further background to what’s happened and that it supports what I’ve said in my provisional decision. But I don’t consider it adds weight to Mr and Mrs W’s complaint to the extent that I should alter what I had intended to direct Virgin Money to do to put things right.

Virgin Money’s handling of Mr and Mrs W’s DSAR

During a mortgage application, lenders will often instruct a valuation for mortgage purposes, whether it be a desktop valuation or a visit to the subject property. In my experience, the valuation report is not usually provided to the borrower (or potential borrower) as these reports are intended purely to indicate to the lender whether the property is suitable for lending purposes. It is not a report intended for consumer use.

Mr and Mrs W have said that Virgin Money provides valuations routinely as part of the mortgage process. And they’ve provided copies of several pieces of evidence to support that the valuation would be sent to their solicitor. But a valuation being provided to a solicitor is not the same as saying a valuation will be provided to a borrower (or potential borrower). The valuation is provided to the solicitor for the mortgage process to progress and, in Mr and Mrs W’s case, I can see that all the solicitor required was the valuation figure – which Virgin Money provided.

In any case, I’m satisfied any personal information contained within the valuation was provided, or already available, to Mr and Mrs W. The application form they completed contained the property address and their names, for example. Information such as their application reference and the value of the property (whether that’s considered “personal data” or not) was also provided within their mortgage offer. So, I’m persuaded Virgin Money has provided the personal data contained within the valuation to Mr and Mrs W.

In relation to the email dated 26 October 2021, there is no dispute this email contained some of Mr and Mrs W’s personal data. Virgin Money has said that it doesn’t send internal documents in their entirety and would instead copy and paste the personal information into a separate document and provide it to its customer. It’s also said that any personal data the email contained would have been included in other information provided to Mr and Mrs W following their DSAR. However, it’s still unclear whether Virgin Money has in fact sent all personal data contained within this email to Mr and Mrs W. Whether it has, or not, because it’s unclear, I consider it should send a copy of this information to Mr and Mrs W.

I understand Mr and Mrs W’s point about specifically requesting their DSAR to be provided in an electronic format. But this doesn’t change my decision. Ultimately, whether their requirements were indicated or specific, I’m satisfied Virgin Money acted unfairly in relation to some aspects of processing Mr and Mrs W’s DSAR. It is the impact of that which I must consider when deciding what Virgin Money should do to put things right. And I’m not

persuaded that whether Mr and Mrs W specifically asked for electronic information or whether it was implied by their request makes a difference to that.

Delays

I think Mr and Mrs W may have misunderstood the meaning of my findings on whether there were delays in their application. My comment “And, overall, I don’t think Virgin Money caused any significant delays” wasn’t intended to be taken in isolation. Rather, the full paragraph shows that I considered the time between Mr and Mrs W’s application being made through to an offer being issued by Virgin Money. When considering average timescales for a mortgage application (which in my experience are often between four and 12 weeks), I don’t consider that Virgin Money caused a significant delay which meant the application fell outside of those timescales.

I’d like to re-assure Mr and Mrs W that I have also considered the number and length of the calls they had with Virgin Money, amount of correspondence, and the overall level of service it provided to them, when reaching my decision.

My final decision

My final decision is that I uphold this complaint. Clydesdale Bank Plc trading as Virgin Money must:

- provide all personal data included within the email dated 26 October 2021 to Mr and Mrs W; and
- pay Mr and Mrs W £750 compensation.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W and Mrs W to accept or reject my decision before 30 May 2024.

Maria Drury
Ombudsman