

The complaint

Mrs H complains that Virgin Money Unit Trust Managers Ltd trading as Virgin Money made errors and provided poor service causing her to experience financial loss.

What happened

Mrs H has a stakeholder pension plan with Virgin Money.

The relevant details of this complaint are well known to both parties. The issues Mrs H is concerned about, and which are the subject of this complaint, are set out below.

By way of summary, these matters are:

- she submitted a data subject access request to Virgin Money but she says it hasn't fully complied with that request;
- she doesn't think the annual management charges (AMCs) which have been applied to her pension account are accurate;
- Virgin Money failed to comply with a request she made for it to transfer her pension to another provider and she's lost out on an incentive which was being offered by the new provider;
- Virgin Money refused to allow her to withdraw 25% tax free cash from her pension. She thinks this was unlawful;
- Virgin Money made changes to the terms and conditions for her pension. These changes meant it had switched her pension from the Pension Bond Fund to the Bond Fund in January 2024. She doesn't think it was entitled to do that without her consent. It told her that if she didn't consent she could transfer her pension to another provider but then refused to allow her to do that.
- She thought Virgin Money had made an error in its calculations when it switched her pension from the Pension Bond Fund to the Bond Fund in January 2024 and she'd lost out financially as a result.

Virgin Money investigated her complaint. By way of summary it said:

- It was required to provide her with all the personal information it held about her and it had provided its complete file;
- It confirmed that the AMCs applied to her pension were correct;
- She hadn't followed the process it required her to follow to transfer her pension to another provider;
- The terms and conditions for her pension stated she could only withdraw her pension as a single lump sum. If she wanted to avail of other options she would have to transfer her pension to another provider;
- The terms and conditions stated that Virgin Money could change the terms and conditions. If Mrs H didn't agree to the changes she could transfer her pension to another provider.

Mrs H remained dissatisfied with what Virgin Money said. She referred her complaint to our service. Our investigator looked into her complaint. She said:

- Virgin Money had told Mrs H it had sent her its complete file. Data subject requests were not financially regulated activities and she couldn't comment further. Mrs H could contact the Information Commissioner's Office (ICO) if she remained concerned.
- She thought Virgin Money had correctly informed Mrs H of what the AMCs were and she wasn't persuaded that incorrect charges had been applied.
- Mrs H had made us aware that she'd initiated a partial transfer of her pension in March 2024. That was the first indication we'd had that the correct transfer process was being followed. Our investigator didn't think Virgin Money should be liable for any incentive opportunities missed prior to this date.
- The terms and conditions for this pension made clear that if Mrs H wanted to access her pension she had to do it as a single lump sum cash payment. If she wanted to access her pension any other way she'd have to transfer it to another provider.
- Virgin Money was able to change its terms and conditions. If Mrs H didn't accept the changes, she could transfer her pension to another provider.

So, our investigator didn't think Virgin Money had done anything wrong or that it had acted unfairly or unreasonably.

Mrs H didn't agree with what our investigator said. She also said our investigator hadn't addressed her complaint about the switch from the Pension Bond Fund to the Bond Fund that completed in January 2024. She said she'd been financially disadvantaged because of errors in how the values were calculated

Our investigator asked Virgin Money to provide further information about what happened when the pension was switched to the Bond Fund in January 2024. Virgin Money provided further details which included the number of units, the unit price and the associated value of the pension before and after the switch took place. Our investigator was persuaded, on balance, this showed there'd not been any financial loss. The value after the switch was marginally greater than the value prior to the switch.

Mrs H remain dissatisfied with what our investigator said. So, the complaint has been passed to me to decide.

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.

At the outset I'd just point out that Mrs H has been dissatisfied with the way Virgin Money has dealt with her over recent years. Some of the matters she's raised have been the subject of previous decisions issued by our service. We cannot look into those matters again. But we can look into any new complaint points provided that Virgin Money has first had an opportunity to respond. I've summarised above, under the heading "What happened," the complaint issues I intend to deal with in this decision.

I've also noted that whilst this complaint was being investigated by our service, Mrs H raised additional complaint points including about the time taken to complete her request to transfer part of her pension to another provider and the way Virgin Money calculated the transfer value. She needs to raise those matters with Virgin Money first. So, in this decision, I won't

be considering what happened after she asked Virgin Money (in or about March/April 2024) to transfer part of her pension to another provider.

When considering this complaint I would reassure Mrs H that I've read everything submitted by both her and Virgin Money, even if I don't refer to every point she's made. The role of our service is to determine disputes fairly and impartially. We look at everything that's happened to decide whether a business has acted fairly and reasonably in all the circumstances.

So, I'll now consider each of the issues Mrs H has raised:

She submitted a data subject access request to Virgin Money but she says it hasn't fully complied with that request;

Mrs H submitted a data subject access request to Virgin Money. Under the relevant data protection legislation, subject to certain exemptions and restrictions, Mrs H was entitled to ask for access to, and copies of, her personal data. Virgin Money responded to her data subject access request but Mrs H believed it hadn't fully complied and there was data which hadn't been provided.

Virgin Money told Mrs H it wasn't required to send copies of terms and conditions to her because this wasn't "personal data." Personal data is defined in the legislation as "*any information relating to an identified or identifiable natural person ('data subject')*". Virgin Money said the terms and conditions did not fall within this definition. It said it had sent Mrs H its "complete file."

It's not for our service to determine whether a business has acted unlawfully or not. Ultimately that's a matter for a court to decide. Our role is to decide what is fair and reasonable in all the circumstances. In order to decide that we take into account a number of things including relevant law and what we consider to have been good industry practice at the relevant time.

I can see that after Mrs H said there was information which hadn't been sent in response to her subject access request, Virgin Money asked her to list anything she thought was still outstanding. I think that was fair and reasonable.

Mrs H contacted Virgin Money on 14 September 2023, and listed the items she said hadn't been provided. By way of summary Mrs H's list included the following:

- details of all communications where Virgin Money had advised her about changes that had been made to the terms and conditions of her policy;
and
- email exchanges between our service and Virgin Money.

In response, Virgin Money explained why it thought the terms and conditions were not "personal data" as defined in the legislation.

It said there'd been multiple changes to the terms and conditions since Mrs H first took out her pension. It pointed out that it would have sent details of changes to the terms and conditions at the relevant time – either as a separate mailing to her registered address or with her six monthly statements. I'd just comment that it's not unusual for changes to terms and conditions to be communicated in this way.

When the new terms and conditions took effect Virgin Money said the previous terms and conditions were superseded - which meant they no longer applied. If Mrs H hadn't agreed to the changes she could have transferred her pension to another provider. She hadn't done

that. So, on each occasion, it was the new terms and conditions which applied to Mrs H's account from their effective date.

I've also noted that in response to Mrs H's complaint, Virgin Money did provide further copies of the versions of the terms and conditions which applied at the time it had sent her the first set of pension transfer forms and the version that would have applied at the date when she could have completed these forms. These were the terms and conditions that would've applied at the date when the events she complained about had taken place. So, I think Virgin Money acted fairly and reasonably when it agreed to send these terms and conditions to Mrs H.

In her letter to Virgin Money dated 14 September 2023 Mrs H listed certain email exchanges between our service and Virgin Money which she said hadn't been provided. I'd just point out that in this decision I'm only considering the complaint Mrs H has made about Virgin Money's response to her data subject access request.

In its final response letter dated 26 October 2023, Virgin Money said it was required to provide Mrs H with the personal information it held and it believed it had supplied her with its "complete file." So, after receiving the list of information Mrs H thought hadn't been provided, Virgin Money set out the reasons why it didn't agree there was anything further it was required to provide.

Mrs H has already referred this matter to the ICO. It has powers to look into whether Virgin Money has complied with its legal obligations.

Having considered everything, I'm persuaded, on balance, the service Virgin Money provided in response to Mrs H's data subject access requests has been fair and reasonable. It says it has sent her its complete file. If Mrs H remains dissatisfied or thinks there is more personal data she's entitled to see, the ICO should be able to provide her with further advice and guidance about how she can proceed.

Mrs H doesn't think the annual management charges (AMCs) which have been applied to her pension account are accurate.

Mrs H thinks that she should be able to see the AMCs being deducted from her account as individual entries on her statements. She also doesn't agree that 0.6% was the correct AMC for the Pension Bond Fund.

Virgin Money has provided evidence to show that Mrs H's policy was invested in the Virgin Money Pension Bond Fund. As set out above it was subsequently switched to the Virgin Money Bond Fund in January 2024.

I've looked at how the AMC is calculated and how it is applied. The terms (dated January 2023) in the leaflet "Get clued up" set out further information:

"What are the charges?

For the Virgin Money Pension Bond Fund .. there's an ongoing annual charge of 0.6% of the value of your investments in the underlying unit trusts... This charge is spread evenly over the year and is reflected in the unit price."

So, the terms in January 2023 set out that the AMC for the Pension Bond Fund was 0.6%. I've not seen evidence to show that this changed prior to the switch to the Bond Fund. And, I'm satisfied, on balance, that 0.6% was the correct AMC for the Pension Bond Fund.

I've also looked at the terms set out in the leaflet "Dive into the detail" (September 2023) which explain:

"Our Annual Management Charge

This is for managing your investments. Each fund has its own charge so the amount varies depending on which funds you're invested in. Unlike the Account Charge, you won't see this charge come out of your account each month. Instead it's reflected in the daily unit price of each fund.

*You'll find the charges listed in **Our funds and charges** document...just visit our website."*

I'll comment further below about what Mrs H says about changes to the terms and conditions that occurred during the period and whether any changes which she did not consent to, were valid or should be applicable to her.

Mrs H wanted to see itemised entries on her statements showing the amount of the AMC. However, the terms dated January 2023 and September 2023 explained why that wouldn't be the case. The AMC was reflected in the daily unit price of the fund. That was why no AMC charge was recorded as an individual transaction or charge amount on her statements.

I'd just comment that AMCs, for investment funds generally, are usually taken directly from the underlying investments themselves rather than being deducted as an individual item on the account statement. So, in that regard Virgin Money's terms were in line with market practice.

I've noted that Virgin Money provided details, in its letter dated 14 July 2023, about how an approximate charge calculation could be completed. It said this offered the daily figures calculated per fund, per product, per account for the date range Mrs H had requested. I think that was fair and reasonable. And although it wouldn't have been an exact calculation, it would've allowed Mrs H to satisfy herself that the AMCs taken from her underlying investments were in line with the percentage quoted.

Having thought about everything here, I'm satisfied that the explanations and information Virgin Money has provided about the AMCs is fair and reasonable. I don't expect it to have to do anything more.

Virgin Money failed to comply with a request Mrs H made for it to transfer her pension to another provider and she's lost out on an incentive which was being offered by the new provider

In this decision I'm only looking at Mrs H's complaint in relation to any incentives to transfer her pension to another provider which arose since 2022.

In order to qualify for these incentives Mrs H had to transfer her pension to the other provider. Virgin Money explained to Mrs H what its process was for that to happen and she didn't follow that process. Mrs H has explained she objected to the wording on the form Virgin Money required her to complete and she wasn't happy that by signing the form she'd be agreeing to a fluid pricing mechanism.

However, it is a matter for Virgin Money to decide how it accepts transfer instructions, including the information and declarations it needs to start sharing personal information with another provider and what systems it will use to effect transfer requests. It is not for our service to interfere with these processes or commercial decisions.

Mrs H told us in her email dated 23 March 2024, she had started the process of transferring away some of her pension to the new provider. She says Virgin Money did allow her to use an electronic system called ORIGO (which is an online platform used for pension transfers) to do this and the process has now completed. But I'm not persuaded that prior to this date Mrs H had followed the process Virgin Money required her to follow.

So, having thought about everything, I don't think it's fair or reasonable for Virgin Money to be held responsible, if Mrs H lost out on an incentive from another provider, when she hadn't followed the process Virgin Money required her to follow to transfer her pension.

Virgin Money refused to allow her to withdraw 25% tax free cash from her pension. She thinks this was unlawful;

The terms and conditions stated:

Get Clued Up ((January 2023)

"When and how can I access my pension savings?"

.. With us, you can only take them as a single lump sum payment. If you want to take them any other way, you'll need to transfer your pension to another provider."

Dive into the Detail (September 2023)

"Taking your pension

...With Virgin Money you can only take your Pension as a single lump sum. (Other providers offer different options for taking it, but you'd need to transfer your Pension to use those options)."

Having read the terms and conditions, I don't think Virgin Money did anything wrong when it told Mrs H she'd have to transfer her pension to another provider if she wanted to take 25% of her pension as a tax free cash lump sum but leave the remainder invested. Mrs H disagrees. She says the law allows her to take up to 25% of her pension as a tax free sum and Virgin Money has to agree to do this.

I've thought about what Mrs H has said here but I'm not persuaded Virgin Money is required to allow her to take 25% of her pension as a tax free lump sum whilst leaving the remainder in her pension account with it. Virgin Money told her it will allow her to transfer her pension to another provider which can facilitate this and there would be no exit charge or penalty applied if she wanted to make the transfer. But Virgin Money's terms are such that she can only access all of her pension as a single lump sum payment. It can pay 25% of that amount as a tax free cash sum but the remainder would be subject to tax in the usual way.

Virgin Money told Mrs H, on several occasions, the steps it needed her to follow to transfer her pension to another provider - but she hasn't done that. So, I'm not persuaded, on balance, Virgin Money did anything wrong when in line with the terms and conditions for the account, it explained to Mrs H that if she wanted to access her pension she would have to take it all as a single lump sum or transfer it to another provider.

Virgin Money made changes to the terms and conditions for her pension. These changes meant it had switched her pension from the Pension Bond Fund to the Bond Fund on 5 January 2024. She doesn't think it was entitled to do that without her consent. It told her that if she didn't consent she could transfer her pension to another provider but then refused to allow her to do that.

Virgin Money's terms state that it can make changes to the terms and conditions for the account. And it sets out the reasons it can rely on to do that. The terms state that Virgin

Money will always try to be fair and if Mrs H isn't happy with the changes she is entitled to ask it to transfer her account to another provider. If she doesn't do that then the revised terms and conditions will apply to her account. The reason for that is because the new terms and conditions supersede the previous terms and conditions.

Mrs H says she wasn't happy with the changes Virgin Money was making when it said it would switch her pension to the Bond Fund. It appears these changes were made in January 2024 and she was given notice of them prior to that date. Her argument is that Virgin Money cannot make changes to the terms and conditions without her consent. She says she doesn't consent to the changes and although Virgin Money say she has the right to transfer her pension to another provider, it has failed to do that when she asked it to.

She doesn't agree it's fair that the changes to the terms and conditions should be applied in these circumstances.

As set out above Mrs H is entitled to ask Virgin Money to transfer her pension to another provider if she doesn't agree to changes to her terms and conditions. However, Virgin Money told her she needed to follow the correct process if she wanted to transfer her pension. She does appear to have followed the process earlier this year, to transfer part of her pension to another provider. That request was made after the changes to her terms and conditions came into effect and I've also noted, in any event, it was in respect of part only of her pension – so the rest of her pension wasn't transferred. In these circumstances, I'm satisfied, on balance, Virgin Money didn't do anything wrong when it applied the changes to her pension account.

Mrs H thought Virgin Money had made an error in its calculations when it switched her pension from the Pension Bond Fund to the Bond Fund on 5 January 2024 and she'd lost out financially as a result.

Virgin Money has provided details of the associated value of Mrs H's pension immediately prior to the switch to the Bond Fund. It says Mrs H received marginally more units in the Bond Fund than were due – so no loss was incurred.

I've looked at the information Virgin Money has provided. It sets out the number of units, the unit price and the associated value in the Pension Bond Fund on 5 January 2024 – at the point in time when the transition to the Bond Fund took place. It then sets out the relevant values after the switch to the Bond Fund had completed. The associated value is based on the actual unit price at the point in time when the switch took place. This was calculated using a unit value stated to six decimal places.

Mrs H says this doesn't agree with the information she has. I've noted that in her calculations Mrs H is using slightly different unit values – one of which is rounded to four decimal places. It's also unclear what the point in time was for the values she's quoted.

Having looked at all of the information I'm persuaded, on balance, that the information Virgin Money has provided is accurate and sets out the relevant values at the actual point in time when the switch took place. The difference which Mrs H has described appears to be caused by the different unit prices which she's used in her calculations. Following the switch, the associated value of the units in the Bond Fund was marginally higher than had been the case prior to the switch from the Pension Bond Fund. So, I'm satisfied, on balance, Mrs H did not lose out financially as a result of the switch to the Bond Fund.

Having considered everything here, although I know it will disappoint Mrs H, I'm not persuaded Virgin Money has acted unfairly or unreasonably. I don't require it to have to do anything further to resolve this complaint.

My final decision

For the reasons given above I do not uphold this complaint about Virgin Money Unit Trust Managers Ltd trading as Virgin Money.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 28 October 2024.

Irene Martin
Ombudsman