

## **The complaint**

Mr A has complained about a transfer of his Clydesdale Bank Plc trading as Virgin Money ("Virgin Money") stakeholder pension to an occupational scheme in 2012. Mr A's occupational scheme was subsequently found to be a vehicle for pension liberation, the process by which pensions are accessed in an unauthorised way (before minimum retirement age, for instance). This can leave victims paying punitive tax charges to HMRC and having to deal with the consequences of having their pension invested in an inappropriate way.

Mr A says Virgin Money failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he considers was required of transferring schemes at the time. Mr A says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Virgin Money had acted as it should have done.

## **What happened**

Mr A says he was cold called and offered a free pension review by an agent of T12 Administration Ltd. He was persuaded to transfer his existing pension with Virgin Money to The Pennines Retirement Benefits Scheme ("the Scheme"), which was an occupational pension scheme. On 26 January 2012 Mr A completed the application to become a member of the Scheme.

On 2 February 2012, T12 Administration Limited ("T12") wrote to Virgin Money requesting it transfer Mr A's policy to the Scheme. T12 was the Scheme's administrator. In its covering letter T12 provided (amongst other things) the Scheme's Pension Scheme Tax Reference ("PSTR") number, copy of the Registration Certificate and details of the bank account the transfer payment was to be paid into.

Mr A's pension was transferred on 10 February 2012. His transfer value was around £26,000. He was 46 years old at the time of the transfer.

Around March 2012, The Pensions Regulator ("TPR") announced that it had appointed independent trustees to the Scheme because of concerns that it had been used as a vehicle for pension liberation. The statement also said scheme funds had been invested inappropriately. Around the same time, the independent trustee wrote to members, and issued a statement on its website, with further information. Further statements from the independent trustee followed. These informed members of the measures that the independent trustee was taking to try to recover the members funds.

In August 2018, Mr A complained to Virgin Money via a claims management company (CMC). Briefly, his argument was that Virgin Money ought to have spotted, and told him about: the fact that the Scheme was not regulated; and concerns about the intended investment strategy in the Scheme. Mr A considered that Virgin Money should have conducted due diligence on the receiving scheme and unregulated adviser.

Virgin Money didn't uphold Mr A's complaint. It said Mr A had a right to transfer and that none of the information it had about the Scheme at the time gave it cause for concern. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Mr A referred his complaint to our service in September 2018. In January 2019 our service contacted Virgin Money to ask if it consented to our service considering Mr A's complaint as it was raised more than six years after the event. And on 16 January 2019 Virgin Money responded and concluded by saying, *"in short, we have no problem with you looking into this and therefore give you our consent to do so."* In February 2019 however, an adjudicator at our service considered that the subject matter of Mr A's complaint would be better dealt with at the Pensions Ombudsman. And his complaint was transferred to the Pensions Ombudsman without the merits of it ever being considered by our service.

In January 2024 Mr A returned to our service to explain that the Pensions Ombudsman would not consider his complaint as it decided it had been referred too late. So he asked us to consider the merits of his case. I sent both parties a provisional decision explaining why I thought Mr A's complaint was one we could consider, but went on to say why I didn't think it should be upheld.

### **What I said in my provisional decision**

I started by considering whether our service is able to consider Mr A's complaint – by considering the rules that give our service jurisdiction. And I gave the following explanation to say why I thought we did have:

*"The crux of Mr A's complaint is still that Virgin Money should have given him information prior to his transfer that would have prevented him completing the transfer and losing the value of his pension. So I am considering the same complaint Mr A made to Virgin Money and then referred to our service in 2018. He is asking for us to re-open his previous complaint to give him an answer on merits that our service didn't provide him previously. For that reason, the relevant date of this complaint is when it was originally made to Virgin Money in August 2018.*

*Virgin Money have suggested that it is too late for us to consider this complaint and referred to the time limits that apply to our jurisdiction. Briefly these are rules that are set out in the Financial Conduct Authority Handbook in the dispute resolution section (DISP). DISP 2.8 is the part of the rule that addresses whether a complaint was referred in time for us to help.*

*Put simply, DISP 2.8 explains that a customer can complain within six years of an event, or (if later) within three years of when they became aware (or ought reasonably to have become aware) of a cause to complain about the respondent business. Whilst Mr A's complaint (in August 2018) was clearly made more than six years after the transfer (March 2012), in this case I don't think I need to consider whether the complaint was made within three years of the point that Mr A ought to have been aware to complain. That's because DISP 2.8.2R also explains that our service can't consider a complaint made outside of the time limits unless certain conditions exist. And one of those conditions, in DISP 2.8.2R(5), allows us to consider a complaint where the respondent has consented to our doing so. Virgin Money gave our service that consent in its email of 16 January 2019. Which meant that we could consider Mr A's complaint regardless of the fact that it may not have been brought within the time limits.*

*I appreciate that it was a long time ago and I agree the circumstances are unusual. But DISP 2.8.2A R says that, where a respondent consents to our considering a complaint, it may not withdraw consent.*

*Our service has never considered the merits of Mr A's complaint even though we had jurisdiction to do so in 2018. It was instead transferred to the Pension Ombudsman who decided that it could not consider Mr A's complaint. Which I don't agree was the same as our service determining that we didn't have jurisdiction. Rather that this was a case of an activity that may also have fallen into the jurisdiction of the Pensions Ombudsman. Now that it has been referred back to us, I think that we still have the original jurisdiction to consider this complaint. So I will now go on to consider that."*

I then went on to consider the merits of Mr A's complaint as follows:

### *The relevant rules and guidance*

*Before I explain my view on the merits of this complaint, it will be useful to set out the environment Virgin Money was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:*

- *The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and indeed they may also have a right to transfer under the terms of the contract). The possibility that this might be exploited for fraudulent purposes was not new even at the time of this transfer. However, the obligation on the ceding scheme was limited to ascertaining the type of scheme the transfer was being paid to and that it was a tax-approved scheme.*
- *On 10 June 2011 the Financial Services Authority (FSA) issued a warning about the dangers of "pension unlocking" which specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010). The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.*
- *At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.*
- *At the time of Mr A's transfer, Virgin Money was regulated by the FSA. As such, it was subject to the Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA rules governing pension transfer requests, but the following have particular relevance:*
  - *Principle 2 – A firm must conduct its business with due skill, care and diligence;*
  - *Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;*
  - *Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and*
  - *COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.*

*For context, it's also worth noting that on 14 February 2013, TPR launched its "Scorpion" campaign. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The Scorpion campaign was endorsed by the FSA (and others). The campaign came after Mr A's transfer, but I highlight it here to illustrate the point that the industry's response to the threat posed by pension liberation was still in its infancy at the time of Mr A's transfer and that it wasn't until after his transfer that scheme administrators had specific anti-liberation guidance to follow.*

#### *What did Virgin Money do and was it enough?*

*With the above in mind, at the time of Mr A's transfer, personal pension providers had to make sure the receiving scheme was validly registered with HMRC. The Pennines RBS was a correctly registered scheme at the time. Virgin Money had been sent the registration certificate and any further checks Virgin Money would have made would simply have confirmed this fact.*

*There was also a need to remain vigilant for obvious signs of pension liberation or other types of fraud. Even though some of the regulators' warnings about the threat of pension liberation and wider scams were directed at consumers, I think it's reasonable to conclude that the sources of intelligence informing those warnings included the industry itself. Personal pension providers were therefore unlikely to be oblivious to these threats. And, even if they were, a well-run provider with the Principles in mind should have been aware of what was happening in the industry. So, in adhering to the FSA's Principles and rules, I think a personal pension provider should have been mindful of announcements the FSA and TPR had made about pension liberation, even those directed to consumers. It means if a ceding scheme came across anything to suggest the request originated from a cold call or internet promotion offering early access to pension funds – which had both been mentioned by regulators as features of liberation up to that point – that would have been a cause for concern.*

*I'm satisfied nothing along these lines would have been apparent to Virgin Money at the time of the transfer. Mr A's transfer papers wouldn't have given an indication that his interest in transferring followed a cold call or internet promotion offering early access to pension funds. And, given the guidance in place at the time, there was no expectation for Virgin Money to contact Mr A to see how his transfer had come about. And I haven't seen anything that Virgin Money would, reasonably, have been aware of about the parties involved in the transfer that would have caused it concern.*

*In coming to this conclusion, I have taken on board the fact that Mr A has pointed out that the Scheme wasn't regulated by the FSA. But the Scheme was an occupational pension scheme, which is a type of pension that is not regulated by the FSA. So I don't think that a lack of FSA regulation was anything out of the ordinary for this type of pension and would not have been a feature that ought to have given Virgin Money cause for concern.*

*It's important to recognise that the more extensive list of warning signs issued in 2013 hadn't yet been published, and it wouldn't therefore be reasonable to use hindsight to expect ceding schemes to act with the benefit of that guidance. This means that I can't fairly expect Virgin Money to have considered the fact that the Scheme was recently registered (which it would have known from the HMRC registration certificate) as being suspicious. And it means I don't expect Virgin Money to have investigated, as a matter of course, the sponsoring employer's trading status, geographical location or connections to unregulated investment companies or the various parties connected to the transfer.*

*I'm also satisfied Virgin Money didn't have to be alarmed at every contact it received from*

*third parties that weren't authorised by the FSA. The FSA didn't regulate occupational pension schemes, so Virgin Money wouldn't have expected to find the parties running those schemes or helping to administer them (which may include liaising with a member about a transfer-in) to be authorised by the FSA. And although Mr A says that T12 Administration was advising him, there isn't anything in the paperwork I've seen to suggest to Virgin Money that it was acting as anything other than a pension scheme administrator – which due to the type of scheme didn't require FSA authorisation.*

### Conclusion

*At the time of Mr A's transfer, Virgin Money would have been expected to know what type of scheme it was transferring to and that it was correctly registered with HMRC. Virgin Money had this information. Beyond that, there was no requirement or expectation for it to have undertaken more specific, detailed, anti-scam due diligence. The FSA's Principles and COBS 2.1.1R meant Virgin Money still had to be alive to the threat of pension liberation, and other types of scam, and act accordingly when that threat was apparent. But I'm satisfied there weren't any warning signs that Virgin Money should, reasonably, have spotted and responded to."*

### **Responses to my provisional decision**

Virgin Money had no further arguments or evidence in response to my provisional decision.

Mr A responded to express his disappointment with the outcome I had reached in my provisional decision. He pointed out that he considered he had made his complaint to our service in time. He still didn't think it was fair that Virgin Money had transferred his pension to a company that was not regulated by the FCA and thought that the Ombudsman Service were supporting Virgin Money unfairly.

### **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 have not been provided any new evidence to consider since reaching my provisional decision. So I have considered all of the evidence in this case again as well as Mr A's arguments made in his response.

I understand Mr A's depth of feeling in this matter and ensure him that his case has been considered impartially. I explained in my provisional decision that, in spite of Virgin Money's view that his complaint had already been considered, I thought that our service was able to investigate his complaint. I explained that was because of consent that had been given by Virgin Money in January 2019, which we retained in our original file. Virgin Money have not argued this point so my decision is that Mr A's complaint is in our jurisdiction and we are able to give him a decision on the complaint's merits.

For efficiency I went on to give my provisional decision on the merits of Mr A's complaint. Which seemed to me the fairest way to help resolve this matter.

In considering the merits of a complaint I have to have regard to the rules, law and industry practice that was relevant at the time of the events complained about. And, as I explained in my provisional decision, Mr A's transfer took place before the introduction of industry guidance that was specifically intended to safeguard against the type of scam that Mr A seems to have become a victim of. I am very sorry to see what happened to Mr A, but it is not fair or reasonable to hold Virgin Money to standards that only came into effect later. I am

not able to use hindsight to judge the process that Virgin Money applied prior to transferring Mr A's pension.

For the same reasons that I gave in my provisional decision I still haven't identified any elements of the transfer request, which Virgin Money received in February 2012, that would have appeared to be suspicious. Virgin Money would have established that Mr A's receiving scheme was a valid pension scheme, because it was. It wasn't regulated by the FSA because the FSA were not the body responsible for regulating those types of pensions. They were (and are) regulated by The Pensions Regulator, and registered for tax purposes with HMRC. Nothing about the new scheme would have raised alarm for Virgin Money.

Furthermore Virgin Money would not have known what the intended investments in the receiving pension were, or why Mr A wanted to transfer. But under the rules and industry practice of the time it did not need to question those things.

For the reasons that I gave in my provisional decision and have again summarised here, Virgin Money did not do anything wrong in the way that it processed Mr A's transfer request.

### **My final decision**

For the above reasons, I am not upholding Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 20 November 2024.

Gary Lane  
**Ombudsman**