

## **The complaint**

Mr and Mrs W complain about how they have been treated by Clydesdale Bank Plc trading as Virgin Money since the end of the term of their interest only mortgage.

## **What happened**

Mr and Mrs W have an interest only mortgage with Virgin Money, taken out in 2006. The term ended in October 2021, at which time the outstanding balance was around £1.2million. Virgin Money initially agreed a three month term extension. However, Mr and Mrs W weren't able to repay the capital balance. After discussion with Mr W, Virgin Money agreed to allow a further twelve months to repay, with the plan being that the property would be sold.

By 2023, the property wasn't on the market and the mortgage remained outstanding. Mr and Mrs W haven't made regular payments to the mortgage since 2022 – in some months they paid around £1,000 but in other months made no payment at all. The monthly mortgage payment has increased, due to changes in interest rates, to over £6,000 per month by the time this complaint was first brought to us in March 2024. At that time, as a result, the mortgage balance was now around £1.3million – it will have risen further since then.

During 2023 and into 2024, there were many conversations, and exchanges of emails, between Mr W and Virgin Money staff. Virgin Money wasn't happy with the progress Mr and Mrs W were making towards repayment and threatened to take legal action. Mr W made a series of complaints about how things were being handled – including that he had been given contradictory and misleading information, that Virgin Money hadn't engaged with proposals he had made, that it had instructed solicitors who had sent him misleading letters, that it hadn't communicated with him in a clear and straightforward way, and that it hadn't handled his complaints appropriately. Mrs W wasn't directly involved in these discussions.

Mr W brought his complaint to us. Our investigator didn't think Virgin Money had acted unreasonably in expecting the mortgage to be repaid, or in the way it had handled things. But she did think that there had been delays and miscommunication in the way it had handled his various complaints. She said it should pay Mr W £200 compensation. Virgin Money accepted that but Mr W didn't.

Separately, Mrs W complained to Virgin Money and then to us that it had excluded her from the discussions around the end of the mortgage term. Both Mr W and Mrs W say that this complaint should be dealt with separately from Mr W's. But, for reasons I'll explain, I didn't agree. Because of that, and because matters had moved on since the investigator's initial view, I issued a provisional decision to allow all parties a further chance for comment before I make a final decision.

## **My provisional decision**

I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

*“Should Mrs W’s complaint be dealt with separately?”*

Mr W and Mrs W have both said that it should. When Mrs W complained to Virgin Money, it treated it separately. But I’m not bound by that. It’s for the Financial Ombudsman Service to decide how to deal with complaints brought to us.

Both Mr W’s and Mrs W’s complaints arise out of the same set of circumstances. They both concern the end of the term of their mortgage, and the actions Virgin Money has taken – or failed to take – since then. Both complaints are essentially two sides of the same coin; Mr W is unhappy with the outcome of his discussions with Virgin Money, and Mrs W is unhappy that she wasn’t party to those discussions.

The statutory purpose of the Financial Ombudsman Service is to resolve complaints quickly and with minimum formality. I also need to bear in mind that it’s now several years since the term of the mortgage came to an end, and the mortgage balance now exceeds the most recent asking price when the property was put up for sale. In other words, it’s likely the property is in negative equity – and the longer things continue, the worse that will get, especially if interest payments aren’t made in the meantime. If I were to treat Mrs W’s complaint as a new complaint and refer it for a new investigation, dealing only with Mr W’s complaint in this decision, that would mean that the overall situation with their mortgage would take longer to be resolved. I don’t think it’s in anyone’s interests for this complaint to take longer than necessary.

I’m satisfied that the complaint Mrs W has now made is essentially part of the complaint Mr W has made – that Virgin Money has not treated them fairly since the end of the term. I’m satisfied that I can fairly deal with that complaint now, and I’m satisfied that it wouldn’t be in anyone’s best interests – or in line with my statutory obligations – to treat Mrs W’s complaint as separate and open a new case for it to be investigated separately. I’ll therefore deal with all aspects of the case in this decision.

*Has Virgin Money acted fairly since the end of the term?*

There have been a large number of interactions between Mr W and Virgin Money, both by phone and email as well as letters. I’ve summarised things very briefly, but I have considered everything that has been said and the whole history in detail.

The starting point in thinking about what’s fair and reasonable in all the circumstances is that it’s reasonable for Virgin Money to expect Mr and Mrs W to repay their mortgage at the end of the term, as they agreed to do when they took it out.

But if that’s not possible, I would expect Virgin Money to show reasonable forbearance – working with Mr and Mrs W to understand their circumstances, giving fair consideration to any proposals they might make towards repaying the mortgage, and treating repossession as a last resort.

Virgin Money agreed an additional year following the initial three month extension, taking Mr and Mrs W to January 2023, for the property to be sold and the mortgage repaid. However, nothing happened during that period and Mr and Mrs W stopped making payments.

By April 2023, the property was still not on the market. Virgin Money spoke to Mr W to find out what was happening. He said that the estate agent had advised that some work needed to be done first to present the property in the best light for marketing. He said he needed a few more weeks to do that, and couldn’t afford both to pay the

monthly payments and to invest in the work needing to be done to the property. Virgin Money asked Mr W to complete an income and expenditure form to see what would be affordable.

Mr W didn't complete the form. He said he had trouble accessing it via the online link Virgin Money sent him. In May, Virgin Money sent him a paper copy to complete, and said he should call back to discuss the figures by 2 June. It made clear that Mr and Mrs W should pay what they could, that Virgin Money would accept any payment and that they could make a payment at any time. Mr W said that he was still working on the property and needed around another month. Virgin Money said it had instructed solicitors because the property was still not on the market – Mr W was unhappy with the content of the solicitors' letter, because he didn't agree that he hadn't been providing Virgin Money with information it had asked for. Mr W later emailed to say that he had only just received the form and asked for more time to complete it.

On 30 June 2023 Mr W spoke to Virgin Money again. It said it had spoken to the estate agent Mr and Mrs W had engaged, who had said that the property was not yet being fully marketed and they were waiting for instructions from Mr and Mrs W on how to proceed. Virgin Money said it was concerned about the delay and lack of progress, not least because the balance was increasing – even though Mr and Mrs W had recently made a couple of payments of £1,000, it was still going up by £5,000 per month. It was concerned that the property market was slowing down and there was a risk of ending up in negative equity. Mr W said he would instruct the agents to get the property on the market – Virgin Money said it would take legal action unless it could see that it was on the market within two weeks.

The property was put on the market with an asking price of £1.75million but attracted little interest in the following months. Virgin Money was concerned that the sale price wasn't realistic. It said the estate agent had recommended reducing the sale price but Mr W hadn't agreed. Mr W said that it was up to him to decide what the asking price was, and Virgin Money hadn't told him he had to follow the estate agent's advice to avoid further action.

Virgin Money asked for updates several times via phone and email. Mr W said he wanted to communicate in writing. But when Virgin Money asked him via email for updates about the property sale, Mr W didn't directly answer, but made complaints about other emails not being responded to and having to deal with different members of staff.

I understand his frustration about that. But Mr W was dealing with one team at Virgin Money. It's not possible for a single staff member to deal with him as that doesn't allow for flexibility around working hours, annual leave and so on, as well as the other accounts that are being managed. I don't think Virgin Money's approach to managing Mr and Mrs W's account was unfair or unreasonable. I'm also satisfied that Virgin Money asked reasonable questions at reasonable intervals to obtain an update on progress.

It appears that Mr W was unwilling to engage with Virgin Money's requests. He raised a series of complaints around this time instead. There were some emails that went unanswered – both Mr W and Virgin Money had issues with emails being caught in spam filters, and both didn't always respond to emails immediately. But overall Virgin Money's approach and requests were reasonable.

By early February 2024, Mr W said that he had reduced the asking price of the property from £1.75million to offers over £1.25million – Virgin Money was concerned

that this was now less than the mortgage balance. Mr W said he was unhappy that Virgin Money had rejected proposals he had made for repayment but hadn't explained why, and said that it was legally obliged to give him reasons in writing within ten days.

I don't think there is any such legal or regulatory requirement. Virgin Money should give fair consideration to any proposals, but there's no obligation to respond in writing or within a particular timescale. In any case, I've not seen that Mr W did make any detailed proposals. He put some handwritten figures at the bottom of the income and expenditure form he sent to Virgin Money around this time. He said he would follow up with more detailed proposals, but I haven't seen evidence that he did.

The income and expenditure form Mr W sent Virgin Money in January 2024 showed monthly household income of £9,925 and outgoings of around £2,600 before factoring in this mortgage. It also showed that Mr and Mrs W own two other properties besides this one, have around £1.7million in savings investments and other assets, and own cars worth £400,000. Based on that, it's difficult to see why no monthly mortgage payments were being made. It also seems that Mr and Mrs W had sufficient assets to repay the mortgage without selling this property, but that wasn't something that had been considered.

Having considered the income and expenditure form, and the lack of progress in selling the property, Virgin Money said it wouldn't allow further time to sell the property. The property should remain on the market, and Mr and Mrs W should proceed with a sale if possible. But Virgin Money would no longer hold off taking legal action and would be issuing proceedings with a view to repossessing the property if a sale didn't complete before a court hearing. However, because Mr W then complained legal action has not yet actually been issued pending the resolution of this complaint.

I haven't been able to listen to recordings of every call Mr W has had with Virgin Money. It has provided us with copies of those it has been able to locate, but not all of them are available. That's unfortunate. But I have listened to those which are available, and considered all the emails and notes of other calls. I'm not persuaded that it's likely that any member of staff would have told Mr W that he didn't need to make payments to his mortgage, and I've heard several calls in which it told him that he did – and that not making payments was making his situation much worse. It may be that Virgin Money told him that it wouldn't agree a formal payment arrangement to avoid repossession – but that does not stop Mr W paying what he can when he can. It expressly told him more than once that he should pay what he could when he could and it would not reject any payment, even if an agreed arrangement wasn't in place.

Overall, I don't think Virgin Money has acted unfairly. It's now over three years since the mortgage term ended, and over two years since the one year extension came to an end. According to the income and expenditure form, Mr and Mrs W have other assets they could have used to repay the mortgage, and could have afforded to make monthly payments. But neither of those things have happened. As the property wasn't put on the market until late 2023 – and then at a price which didn't attract any interest – while no payments were being made, the balance increased and the property now seems to be in negative equity. The longer things continue, the worse that will get. I agree that this isn't sustainable or in Mr and Mrs W's best interests, and it was reasonable for Virgin Money to conclude that reasonable forbearance had been exhausted and the last resort of repossession had been reached.

I'm not persuaded that Virgin Money acted unreasonably in how it handled things

either. I think it was clear with Mr W what it needed and what its expectations were. I don't think the evidence shows that it misled Mr W or gave him conflicting information – its communication wasn't always perfect, and it didn't respond to every email. But it appears Mr W was more focussed on his perception of its shortcomings than in bringing his mortgage to an end.

Mr W has made a series of complaints, and complaints about complaints, to Virgin Money. It didn't always respond to his complaints clearly, or within the correct timescales. I appreciate this was frustrating for Mr W, and following our investigator's involvement Virgin Money has now offered £200 compensation for that which I think is fair. But I'm not persuaded anything Virgin Money did, or failed to do, prejudiced Mr and Mrs W's ability to repay their mortgage.

I've also thought about Mrs W's complaint that Virgin Money didn't discuss matters with her, and effectively excluded her from the discussions it had with Mr W. But I don't think Virgin Money acted unreasonably here either. This is a joint mortgage, and both Mr and Mrs W are jointly and severally liable for it. I'm not aware that Mr and Mrs W have separated, or are in dispute, and there's no evidence that even if they are that they made Virgin Money aware of that. So there was no reason for Virgin Money to insist on engaging with Mrs W separately, or in addition, to Mr W.

All Virgin Money's correspondence was sent to the property address, and addressed to both Mr and Mrs W. So to that extent it did communicate with Mrs W and keep her updated. It's true that the phone calls were with Mr W, and the emails were sent to him. But it was reasonable for Virgin Money to conclude that he was speaking for both of them. In his emails, he frequently referred to "we" "us" and "our", as if he was speaking on behalf of both himself and Mrs W.

It's not uncommon for one party to a joint mortgage to take the lead in engaging with the lender ahead of the other, with the other's agreement, and there was no reason for Virgin Money to believe that wasn't the case here. If that wasn't in fact the case, and Mr W was acting in a way that Mrs W didn't agree with, or if he wasn't keeping her informed about his discussions with Virgin Money, that's a matter between them and not something I can hold Virgin Money responsible for. The fact is that the mortgage is now almost four years overdue for repayment and in significant arrears. Virgin Money has shown reasonable forbearance in allowing Mr and Mrs W time to find a way to repay it and has engaged appropriately with them while doing so.

Now that this case is over, I think it's very likely Virgin Money will immediately resume legal action. I hope that Mr and Mrs W have used the time the complaint has been ongoing to progress plans for repayment. If so, to avoid legal proceedings they will need to let Virgin Money know as soon as possible how they intend to repay. I hope legal action won't be necessary. But difficult as this situation may be for Mr and Mrs W, given the increasing balance and the worsening equity position it's likely to get worse the longer things drag on. I don't think it would be in their best interests – or fair to Virgin Money – to delay matters further by separating off Mrs W's complaint from the earlier one brought by Mr W, or to further delay bringing the mortgage to an end."

### **The responses to my provisional decision**

Virgin Money accepted my provisional decision. Mr and Mrs W said they didn't accept it. They said:

- I had mis-stated the statutory purpose of the Financial Ombudsman Service – it is not

“to resolve cases quickly and with minimum formality”, it is to determine complaints based on what is fair and reasonable in all the circumstances. This means I have made a material error in my approach to the complaint.

- I said that Mr and Mrs W failed to provide income and expenditure forms. This is not correct. Mr W provided them on 30 November 2023, and receipt was acknowledged by Virgin Money. I relied on the assets stated in a later income and expenditure form, without recognising they were illiquid in nature. If there is any worsening financial position, that is because of Virgin Money’s actions not Mr and Mrs W’s.
- It is not correct to say that there is no rule requiring proposals to be responded to in writing within ten days – this is set out in MCOB 13.3.2A R, and in the pre-action protocol. By dismissing Mr W’s proposal of 16 January 2024 immediately without justification, Virgin Money failed to comply with those requirements.
- I appeared to have ignored evidence, including Mr and Mrs W’s log of phone calls and bundle of documents. Those documents show that the conclusions I reached aren’t consistent with the evidence.
- I had merged Mr W’s complaint and Mrs W’s complaint without their consent, prejudicing Mrs W’s rights.
- I had incorrectly stated the start and end dates of the mortgage.
- Virgin Money has a history of regulatory breaches and findings, including providing false information. But I have preferred what it said over what Mr and Mrs W said despite the evidence.
- A Virgin Money staff member told Mr W that he could not make interest payments, did not need to submit income and expenditure information, and would not be given time to sell. These statements contradicted those of other staff members – showing that Virgin Money was inconsistent internally and in what it told Mr and Mrs W.
- Virgin Money disregarded the advice of Mr and Mrs W’s estate agent on the sale price, leading it to conclude the property was in negative equity, which I then accepted without challenge despite it having no evidential basis.
- Virgin Money delayed responding to, and failed to respond to, subject access requests. This has impacted the quality of evidence available to support their complaint. It has withheld evidence including of relevant call recordings.
- Virgin Money persistently wrote only to Mr W, excluding Mrs W – causing harm and confusion.
- Mr and Mrs W also had concerns about how their complaint had been handled while it was with the Financial Ombudsman Service.
- Compensation of between £500 and £1,500 is more appropriate, and Virgin Money should be required to show further forbearance.

### **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 Mr and Mrs W were unhappy with my provisional decision, but I'm afraid I haven't changed my mind. Before I explain why, I'll deal with more general matters they've raised.

The statutory purpose of the Financial Ombudsman Service is to run "a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person" (section 225 of the Financial Services and Markets Act 2000). When resolving disputes, we determine complaints "by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case" (section 228). So I don't agree that I have misunderstood my role or purpose. As an independent person appointed as an ombudsman, I seek to resolve complaints quickly and with minimum formality, deciding each one according to what is, in my opinion, fair and reasonable in all the circumstances. I'm satisfied that is what I have done.

I also made clear in my provisional decision that I considered all the available evidence and arguments, and I've made that clear again in this final decision. I might not have referred individually to every document or piece of evidence where I didn't consider it necessary to do so, but I set out my findings on what that evidence showed. It's not necessary – not least in the interests of brevity and clarity – for me to list every piece of evidence I took into account. But for the avoidance of doubt, I took – and take – full account of all the material Mr and Mrs W have provided as well as the evidence from Virgin Money. I might not reach the same conclusions as Mr and Mrs W, or attach the same weight or interpretation to individual pieces of evidence (or the absence of individual pieces of evidence), but that does not mean that I have not considered everything. I have.

I'm also not persuaded that Virgin Money has deliberately withheld evidence or sought to mislead. Not all call recordings are available; that's unfortunate, but sometimes happens. However, the evidence I do have gives a clear picture of what has happened and the discussions between Virgin Money and Mr W.

I've also taken into account the relevant rules, including the ones Mr and Mrs W have referred me to. MCOB 13.3.2A R only required, at the relevant time, that Virgin Money allow a reasonable time for a payment shortfall to be repaid, having regard to the need where feasible to establish a practical payment plan. It does not require written reasons to be given for refusing a proposal.

Paragraph 5.6 of the mortgage possession pre-action protocol does say "The lender must respond promptly to any proposal for payment made by the borrower. If the lender does not agree to such a proposal it should give reasons in writing to the borrower within 10 business days of the proposal." However, this is not a legal requirement or regulatory rule. It's a matter of court procedure.

On 17 January 2024 Virgin Money said it would not be allowing further time to sell and would proceed with legal action. I've taken into account the requirements of the pre-action protocol (though regulating compliance with court procedure is a matter for the courts, not me) but I don't think this was unreasonable. It followed income and expenditure information that showed Mr and Mrs W had substantial income and assets, but had made minimal interest payments for almost two years and not repaid the capital. And it followed a prolonged period of discussions about repaying the capital which hadn't concluded successfully. While the reasons in the email might have been more detailed, that doesn't in my view mean that Virgin Money was barred from moving forward – though Mr and Mrs W can raise this with the court should proceedings be issued.

Mr and Mrs W point out that their assets are illiquid. But that doesn't change the fact that they're required to repay their mortgage. They were aware of when the term ended, and have had more than three years since it did end – so they have had time to make appropriate arrangements to liquidise assets if required.

In my provisional decision I summarised the discussions between the end of the term and this complaint. I haven't changed my mind about the findings I made. I'm not persuaded that Mrs W was excluded from discussions. All statements and significant letters were jointly addressed. It's true that calls and emails were with Mr W – but Virgin Money had no reason to believe that he wasn't speaking for both of them. It's not unusual for one joint borrower to take the lead in engaging with the lender. I also note that while Mr and Mrs W have said Virgin Money ought to have engaged with Mrs W directly, they haven't said that Mr W wasn't speaking for both of them at the time.

As I've explained, I didn't itemise every single call, email or piece of evidence, but I'm satisfied I accurately summarised events and set out my findings on the evidence. Virgin Money did show considerable forbearance, and allowed Mr and Mrs W substantial time to find a way to repay their mortgage after the end of the term. Mr W did provide income and expenditure information in November 2023 and again in January 2024, but that was several months after first being asked for it.

In any case, the information showed substantial income and assets, so it's difficult to understand why Mr and Mrs W weren't making interest payments or other arrangements to repay the mortgage. I don't think it's likely that any Virgin Money staff member would tell Mr and Mrs W not to make any payments, or that payments wouldn't be accepted. In fact I think Virgin Money was clear on several occasions that the monthly interest payments should continue – but, because the capital was also due, monthly payments alone wouldn't be enough for it not to take further recovery action. Even if Mr and Mrs W were told not to make payments in late 2023 or early 2024 – and I don't think they were – that wouldn't explain why they haven't made regular payments since 2022.

I don't have up to date evidence of the value of the property. It may or may not now be in negative equity. But the evidence does show that Mr and Mrs W's valuation isn't likely to be accurate – it didn't sell, or attract significant viewings, at that price and there are emails from the estate agent to Virgin Money setting out that Mr and Mrs W had been advised to reduce the asking price in the absence of interest in the property but had declined to do so. In any case, even if the property is not in negative equity the equity is being eroded by the mounting arrears and additional interest. It's not in anyone's interests for that situation to continue. For all the reasons I've given, in this and in my provisional decision, I don't think it's unreasonable that Virgin Money intends to take recovery action if the mortgage remains unpaid.

### **My final decision**

My final decision is that Clydesdale Bank Plc trading as Virgin Money has made a fair and reasonable offer to settle this complaint and should pay Mr and Mrs W £200.

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 11 July 2025.

Simon Pugh  
**Ombudsman**