

complaint

Mr and Mrs T complain that they were given unsuitable investment advice by Virgin Money plc.

They are being assisted by their independent financial adviser (IFA), Mr D.

background

In my provisional decision of 2 December 2019, a copy of which is attached and forms part of this, my final decision, I said I wasn't minded to uphold this complaint.

In summary I said:

- On the face of the evidence, and on balance, I was unable to safely say that the bonds weren't taken out on a "direct basis". In other words, on balance I didn't think they were sold with financial advice.
- It was likely Mr and Mrs T bought the policies in response to seeing a Virgin representative. I noted that Mr and Mrs T had gone into branch to deal with an inheritance payment that'd been paid into an account held in Mrs T and another's name. They wanted to add Mr T to the account.
- Mr and Mrs T said they were asked what they were doing with the additional money and they said they wanted to secure it for old age, and asked if they should see a financial adviser.
- They accepted that they were told no, and it was only necessary to see an adviser if they were taking a risk with their money.
- It seemed thereafter a follow up appointment was then set up to see a representative – rather than a financial adviser – who subsequently helped set up the bonds.
- I was aware that Mr D said they'd have to have walked into branch and asked specifically for the bonds (and not ask for advice) for it to be considered a non-advised sale. His scenario would certainly qualify as a non-advised sale. But I wasn't convinced that every scenario was as clear cut.
- In this instance, in conclusion, on balance I was satisfied these were non-advised sales, and sufficient policy documentation was provided that made reasonably clear the nature of the bonds.

Virgin responded and had no further points to add.

Mr D also responded but didn't agree with the provisional decision. He said he feels enough time had been wasted and it's clear the complaint isn't getting anywhere.

my findings

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

Having done so, and considering the responses from the parties, my conclusion regarding the non-uphold, remains as set out previously, and for the same reasons.

Despite what Mr D says, I don't consider that any new points have been raised, other than those key points already made and considered by me in my provisional decision. I've considered all the points that I consider relevant to my decision.

my final decision

For the reasons set out above, and in my provisional decision, I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 10 January 2020.

Dara Islam
ombudsman

COPY OF MY PROVISIONAL DECISION

complaint

Mr and Mrs T complain that they were given unsuitable investment advice by Virgin Money plc.

They are being assisted by their independent financial adviser (IFA), Mr D.

background

In September 2013, Mr and Mrs T invested £15,760 into a number of Legal and General Growth Deposit Bonds (bonds) with Virgin.

They had around £40,000 from an inheritance payment held in a deposit account.

In October 2019, the bonds matured, and Mr and Mrs T received a return of around 6.5%.

Virgin hasn't upheld the complaint. In summary, it says:

- It's unable to agree that it has acted incorrectly during their applications for the Legal and General Growth bonds.
- The products were sold on a non-advised basis which means Mr and Mrs T would've had to make an informed decision on whether the products were suitable based on the information they would've been supplied in store.
- It confirmed that the representative responsible for arranging the bonds, is fully aware of the terms and conditions of the products in question and how important it would've been to cover the full product specification before opening the accounts.

One of our investigators considered the complaint but didn't think it should be upheld - despite having initially thought the investment was unsuitable. In summary, he said:

- This wasn't a '*genuine execution-only transaction*' sale. Therefore, it was Virgin's responsibility to ensure that the recommendation was suitable for Mr and Mrs T.
- Mr and Mrs T were looking for a low risk or no risk investment and therefore a Cash ISA would've been suitable.
- Mr and Mrs T wanted to secure their money for old age. Mrs T in hindsight feels it would've been better in a cash ISA.
- Information received from Virgin confirms that Mr T did an ISA wrap on part of the bond.
- The key features document (KFD) confirmed that Mr and Mrs T could either close their bond, or take at least £500 at any time. But if they chose to close the bond they could get back less than they invested. And how much they get back depends on the value of the bond at the time, subject to calculations by the bond provider.
- The KFD also set out the factors that might affect the claim and the date by which the provider will determine the value – depending on whether Mr and Mrs T decided on a withdrawal or closure.
- Taking the above into account, the investment met their needs. Mr and Mrs T wanted something accessible, preferably ISA wrapped, and this is what they got.
- Whilst the investment carried a risk against inflation, it was guaranteed to return at least their capital. And they were left with a reasonable amount in cash reserves.

Mr D disagreed with the investigator's conclusions. In summary he said:

- Virgin has written to the investigator with additional information – the investigator has said this is the equivalent of an instant access account, but it's not. If Mr and Mrs T decided to take early withdrawal, they'd have been affected by several issues including cancellation of units within the plan and the FTSE 100 Index.

- It's not right that there was no risk to capital as the bank could've theoretically gone bust.
- The investigator said the account wasn't '*genuinely execution-only*' – therefore it's advised – and Mr and Mrs T have been tied into three identical contracts for six years, which shouldn't have been arranged in the first place.
- By way of compensation, Mr and Mrs T should receive compensation in line with funds tied up for such a period.
- The investigator's decision is sending a clear message that this sort of behaviour is acceptable from Virgin and other financial institutions like it.

As no agreement has been reached the matter has been passed to me for review.

my provisional findings

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

Having done so, subject to any further submissions provisionally I'm not minded to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr D says, I'm not persuaded that Virgin has done anything wrong in the circumstances.

On the face of the evidence, and on balance, I'm unable to safely say that the bonds weren't taken out on a "direct basis". In other words, I don't think they were sold with financial advice.

It's likely Mr and Mrs T bought the policies in response to seeing a Virgin representative. I note that Mr and Mrs T had gone into branch to deal with an inheritance payment that'd been paid into an account held in Mrs T and another's name. They wanted to add Mr T to the account.

Mr and Mrs T say they were asked what they were doing with the additional money and they said they wanted to secure it for old age, and asked if they should see a financial adviser.

They accept they were told no, and it was only necessary to see an adviser if they were taking a risk with their money. It seems thereafter a follow up appointment was then set up to see a representative – rather than a financial adviser – who subsequently helped set up the bonds.

I'm aware Mr D says they'd have to have walked into branch and asked specifically for the bonds (and not ask for advice) for it to be considered a non-advised sale. His scenario would certainly qualify as a non-advised sale. But I'm not sure that every scenario is as clear cut.

I don't have any more information from that initial meeting at branch, but based on what I've seen it would appear Virgin decided as they didn't want to take a risk they didn't need to see a 'financial adviser' – like a sifting process – a bit like non-advised life plans that are only geared towards people over a certain age. Thereafter it seems it was a matter for them, after seeing the representative, whether they wanted to invest or not.

I'm aware that mis-selling can take place based on the nature of advertising and the representations contained within. But in this instance I'm satisfied the documentation supplied to Mr and Mrs T, before they accepted the bonds were clear, fair and not misleading.

I note the KFD confirmed that Mr and Mrs T could either close their bond, or take at least £500 at any time. But if they chose to close the bond they could get back less than they invested. And how much they get back would depend on the value of the bond at the time, subject to calculations by the bond provider.

The KFD also set out the factors that might affect the claim and the date by which the provider will determine the value – depending on whether Mr and Mrs T decided on a withdrawal or closure.

The onus was on Mr and Mrs T to make sure the bonds were suitable for their circumstances. I note they would've been given cancellation rights, in case they changed their mind.

I note they're disappointed with the potential maturity values. But if they didn't read the documentation provided I don't think Virgin can be held responsible for that.

I appreciate that Mr and Mrs T complain that the plan tied their money up for six years with no guarantee of any return except their capital. And they say the risk of the bonds weren't explained to them, and they found out later that their funds were deposited with a third party company that wasn't mentioned. All of this lends support to the conclusion that they weren't advised and that's why the branch representative wouldn't have been under any obligation to advise them on these points.

I note the investigator says that in order for this product to have been deemed suitable for Mr and Mrs T he'd expect consideration to have been given to the income tax implications, alternative products, and assessment of the risks of inflation and so on. But as this was a non-advised sale the onus was on them.

This is probably also why Virgin didn't complete a fact find because it wasn't under an obligation to establish Mr and Mrs T's personal and financial circumstances.

I note that Virgin is unable to provide an execution-only declaration. It's possible that it was completed and have been misplaced. I've no reason to think they might have been deliberately hidden. Or because they weren't seeing a 'financial adviser' one wasn't necessary.

But even the lack of a fact find or the existence of a declaration, wouldn't prevent me from finding that advice was given if that's what I had thought. But on balance I'm unable to say this was an advised sale.

I appreciate that Mr and Mrs T might not have heard of the bonds before. But providing product specification – which is what I think, is likely to have happened – in my opinion doesn't amount to 'advice'.

I also note Mr and Mrs T have suggested that they were looking for ISAs and in hindsight feel they would've probably been better in a Cash ISA or something more accessible as they were approaching retirement. And whether or not Mr and Mrs T had sufficient experience is immaterial as the decision to invest – without financial advice – was theirs.

I appreciate Mr and Mrs T say that they were told the stocks and shares ISAs were middle of the road and were 'most suitable' for them. Despite what they, I've seen no evidence that supports what they say.

Whilst I appreciate Mr and Mrs T's frustration I'm unable to ask Virgin to do anything because I don't think it has done anything wrong.

In conclusion, on balance I'm satisfied these were non-advised sales, and sufficient policy documentation was provided that made reasonably clear the nature of the bonds.

my provisional decision

For the reasons set out above, subject to any further submission, provisionally I'm not minded to uphold this complaint.

**Dara Islam
ombudsman**