

## **The complaint**

Mr H complains that Virgin Money Unit Trust Managers Ltd (“VM”) have not facilitated him transferring his pension fund to a different provider.

When Mr H contacted VM it was about both his and his wife’s pension plans. But I’ve omitted references to any plan held with VM by Mr H’s wife as the complaints she has made about her contact with VM are being dealt with separately.

## **What happened**

The details of this complaint are well known to both parties, so I’ll just provide an overview of relevant key events here.

Mr H had a personal pension plan (PPP) with VM. Mr H phoned VM at the end of October 2021 to discuss his PPP but was unable to get through. He made a complaint to VM.

Mr H emailed VM on 19 November 2021 as he hadn’t received a response to the complaint he made in October 2021. He said he wanted to transfer his pension fund from VM to a different pension provider and asked for transfer paperwork to be sent to him. Mr H again contacted VM on 24 and 30 November 2021 chasing the transfer paperwork.

Mr H then phoned VM on 9 December 2021. He explained that he’d already asked for transfer paperwork by post, but these hadn’t been received. The VM adviser apologised and told him the transfer paperwork would be sent out. VM posted the pension transfer forms to Mr H on the same day. These included a Transfer Out Request form and a Transfer Out Warranty.

Mr H phoned VM on 2 February 2022 but its computer systems weren’t working as maintenance work was being carried out.

Mr H complained to this Service in February 2022. He raised a number of complaint points, and those relevant to the transfer of his PPP to another provider are listed below. Mr H said that:

- VM’s operating systems were down on one occasion when he phoned.
- VM provided conflicting information about whether Mr H should send completed transfer forms to VM or the new provider.
- VM wouldn’t accept email requests to transfer funds as a wet signature was needed.
- VM couldn’t guarantee how long the transfer process would take by post, and the value of the fund wouldn’t be known when a request was made.
- VM didn’t provide cash accounts to hold funds while the transfer took place.
- Mr H said his pension funds devalued considerably while he waited for VM to contact him and he lost out on a transfer incentive from another pension provider.

Other complaint points Mr H brought to this Service in February 2022, about the difficulties he had trying to contact VM to arrange an internal fund switch, have been dealt with separately.

The complaint points, listed above, that Mr H brought to this Service in February 2022 about the external transfer process hadn't previously been raised with VM. This meant VM hadn't been given an opportunity to respond to these points. So Mr H was asked to raise his complaint about the external transfer process with VM before this Service would look into the various complaint points raised.

So Mr H contacted VM in January 2023. He raised several complaint points and posed several questions, which were:

- VM should have allowed pension transfers to be made using the Origo system.
- VM hadn't responded to a question about whether it accepted signed letters giving instructions to transfer funds.
- Mr H said VM should follow his instructions – he didn't want to rely on the postal system – about how his pension funds should be transferred.
- Mr H asked whether VM would withhold funds indefinitely if the transfer paperwork wasn't completed.
- Mr H wanted VM to allow more than one transfer out of his pension fund.
- Mr H asked whether the fund transfer value was calculated on the day instructions were received by VM or a date in the future.
- Mr H thought the plan terms, specifically section 16b, showed his funds should be held in a cash account once he provided transfer instructions.

VM responded to Mr H's complaint in early March 2023. It said:

- It was not registered for electronic transfer services, although this may change in the future.
- In order to transfer his pension Mr H needed to complete a 'Request for Transfer of Benefits' form and the new provider needed to complete a 'Transfer out Warranty' form. VM said these forms had previously been sent to Mr H.
- If the transfer paperwork was not completed funds would be held by VM indefinitely.
- With regard to the calculation of the fund transfer value VM pointed Mr H to the policy term that said *"Once we receive notification from your new pension provider, and both parties have all the information needed, we'll move your pension to them using the unit price on the transfer day."*

Following contact from Mr H, VM provided a second complaint response letter. This said:

- Clause 16b of Mr H's pension terms enabled VM to transfer Mr H's pension to another HMRC registered scheme in certain limited circumstances. It said the clause didn't enable VM to transfer the pension funds themselves. The clause could be relied on in the event that VM intended to cease providing the VM stakeholder pension, or pensions in general.

Mr H was in regular contact with this Service and said:

- Since he raised his complaint, his PPP has suffered a paper loss of around £30,000.
- He wanted to transfer his pension funds using the Origo system as this takes less time.
- The PPP terms indicated the pension funds should have been transferred, and he had a right to choose the method of transfer.

Our Investigator didn't uphold Mr H's complaint. She said VM did not need to complete a transfer based on the signed letter submitted by Mr H, as it had a duty to safeguard its

customers from scams and fraud. She said it was industry wide practice to complete and return certain forms, so that businesses could conduct necessary checks before the transfer was carried out. Our Investigator said VM had made it clear Mr H could have transferred his pension, free of charge, at any time. She also thought VM had explained the transfer process clearly.

Our Investigator said VM can't be compelled to use a particular electronic transfer system, and that Mr H's pension will remain invested until the day of transfer. She also said that term 16b of the plan terms and conditions, which Mr H thought showed that VM should protect the value of his pension while the transfer was ongoing, was not relevant in these circumstances.

Mr H didn't agree with what our Investigator said and so this came to me for a decision.

I issued a provisional decision on 24 August 2023 and said that while I wanted to expand on the reasoning provided by our Investigator, I intended to come to the same conclusion and not uphold Mr H's complaint. I gave both parties the opportunity to respond.

VM responded and said it had nothing further to add at that point.

Mr H responded to my provisional decision and didn't agree with the outcome. He made a number of comments. In summary, these are:

- Mr H provided a copy of PPP terms which were different to those I relied on in my provisional decision.
- Mr H felt that VM's terms show it operates a cash account for consumers' funds.
- Mr H forwarded a letter he'd recently received from VM which said that VM would accept written instructions to transfer a pension to another provider.
- Mr H also raised a number of new complaint points.

I contacted VM and asked why the terms Mr H recently forwarded to this Service were different to the terms I relied on in my provisional decision. VM responded and said the terms that say it will sell units when it is ready to complete the transfer reflect current terms, and were the terms in effect when Mr H indicated his desire to transfer and requested transfer forms in 2021. VM went on to say that the terms provided by Mr H, when he responded to my provisional decision, were much older terms that date from when products were sold under a different Virgin brand and have since been superseded many times.

I also told VM that Mr H said he received a letter from VM, dated 25 August 2023, which he said told him that VM would, in fact, accept written instructions to transfer a pension to another provider.

VM responded and said the letter in question stated that VM does accept written and signed instructions. However it stated this does not mean its position has changed – it still needs all the required information, permissions and declarations submitted in writing.

VM went on to say it provides transfer forms as they are the easiest, most efficient and robust means of seeking to transfer and are far more likely to achieve the customer's transfer than any attempts at making the same via a white paper request.

Having said that, VM said that if a consumer provided all the required information, permissions and declarations it and the other provider needed via a signed, white paper postal request, it would not decline that instruction for the sake of having the same information transposed to a form. It said Mr H's requests had so far fell far short of being

acceptable and of providing the information and declarations it needed to start sharing his personal information with another provider, and of the information the other provider would need to assess the transfer and seek to accept it.

I am now in a position to issue a final decision.

### **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.

Mr H has been in contact with this Service numerous times and has provided a great deal of testimony in relation to his complaint about the difficulties he said he has had trying to transfer his PPP to another provider. I want to assure Mr H that I have read everything submitted by him, even if I don't refer to each and every point made. Instead I'll only address what I see to be relevant in reaching a fair and reasonable outcome here, and this reflects the informal nature of this Service.

Mr H also raised a number of new complaint points against VM when he responded to my provisional decision. However I am not going to extend the scope of this decision and deal with all new issues raised. But this won't disadvantage Mr H, as any new complaint points can be raised with us separately as and when Mr H goes through the usual complaints process with VM and receives a final response from it. Our Investigator will continue to communicate with Mr H about these new matters.

### *The transfer process*

The crux of Mr H's complaint is that he says he wants to transfer his pension funds from VM to another provider and thinks VM should have actioned his transfer request some time ago.

The issue here is that VM has said Mr H needs to complete and submit the relevant transfer paperwork before it will start the process of transferring his funds to another provider. Mr H, however, thinks VM should accept a signed, written instruction from him without the need for him to complete transfer paperwork. Mr H also thinks VM has provided contradictory information about what steps he needs to take to start the transfer process.

I've first of all looked at what Mr H has said in relation to VM not clearly outlining how external transfers are processed in its terms and conditions. Mr H thinks there should be a term specifically outlining how the transfer will happen. However, broadly speaking, terms and conditions usually provide an outline of the contractual agreement between both parties. They often won't contain detailed information about how a business operates on a day to day basis. One of the reasons for this might well be because it allows operational changes to be made without it being necessary to alter the contractual agreement between both parties. So I'm satisfied that VM hasn't acted unfairly by not outlining in its terms the particulars of what steps need to be taken in order for funds to be transferred to another provider. I think it's reasonable for VM to outline the transfer process outside of the plan terms.

Having said that, I would expect VM to let Mr H know what steps he needs to take to transfer his funds, assuming he asked VM for this information. So I've looked at whether the process was clearly explained to Mr H and whether he was provided with the tools needed to transfer his funds to a new provider.

I can see that Mr H first requested the relevant pension transfer paperwork by email several times in November 2021. He then rang and spoke to a VM advisor on 9 December 2021 and requested the paperwork again. The VM adviser said he would arrange for the paperwork to

be sent and I can see that a letter, with the transfer paperwork attached, was sent to Mr H on 9 December 2021.

I know that Mr H has said he didn't get the transfer paperwork until around March 2023. However, the approach this Service takes is that we look at when VM sent the papers, not when, or if, they might have been received. This is because VM aren't responsible for what happens to mail once it is posted – it has no control over whether a letter sent is actually delivered. But, in any event, I note that Mr H told a VM advisor during a call on 5 February 2022 that he had already received the transfer out forms.

So I'm satisfied VM sent the transfer out forms to Mr H in December 2021 and that Mr H told a VM adviser in February 2022 that he had received them. It's not clear exactly when Mr H received the transfer forms but as they were sent on 9 December 2021, I think it's fair to say he most likely received them at some stage in December 2021. So I'm satisfied Mr H was in possession of the necessary transfer paperwork in December 2021.

I do think that VM failed to action several requests for the transfer paperwork that Mr H made by email in November 2021. However, I don't think this caused him any detriment. I say this because although Mr H has repeatedly said he wants to transfer his pension funds, he hasn't actually completed and submitted the transfer paperwork. So the short delay in sending the paperwork to him has not resulted in a delay in having a transfer request processed.

Mr H feels he lost out on an incentive offered by a different provider, if he transferred his funds by a certain date in 2022. But Mr H hasn't yet completed the correct paperwork in order to transfer his pension funds. So I can't fairly say that he lost out on this incentive because of any action, or inaction, on the part of VM.

I've seen a copy of the letter dated 9 December 2021 and the transfer forms that were attached. I'm satisfied that the letter and forms were clearly worded enough that a reasonable consumer, and that's the appropriate test here, would understand the steps they needed to take to start the process of transferring pension funds to another provider.

Mr H told this Service that he was provided with contradictory information during phone calls with VM advisers about whether to send the transfer paperwork to VM or to the new provider. But, having listened to the various calls Mr H made to VM between November 2021 and February 2022, I've not heard that contradictory information was provided. During calls made between November 2021 and February 2022 the same essential message was given to Mr H by VM advisers, which was that Mr H needed to complete transfer forms and also that he needed to contact both VM and the new provider about the transfer. I know that Mr H thought that he was provided with contradictory information during a call with a VM adviser in January 2022, but that conversation was in relation to transferring a different product.

I've already said that I'm satisfied Mr H most likely received the transfer papers in December 2021. So even if he thought he been given contradictory information by VM advisers when he called – and I don't agree that was the case – he was already in possession of the transfer papers and these clearly told him what steps needed to be taken to start the transfer process.

Mr H also told this Service that when he spoke to a VM adviser he was told that VM would accept written, signed instructions to start the transfer process. Mr H said he thinks VM should consider a letter signed by him to be sufficient authorisation to transfer his pension to a new provider. So Mr H doesn't think he should have to complete the transfer paperwork sent to him by VM in December 2021.

This point was raised again by Mr H when he responded to my provisional decision and said he'd received a letter in August 2023 from VM stating that it would, in fact, accept written instructions to begin the process of transferring Mr H's pension to another provider.

When I issued my provisional decision, I said I couldn't see any evidence to suggest Mr H was told that a signed letter is enough to start the transfer process. I can see that he was told during the 5 February 2022 call with a VM adviser that a "wet signature" was needed, but this was in response to Mr H asking why his pension funds couldn't be transferred electronically. He was not told at that point that a signed letter was sufficient authorisation and had been told earlier in the same call that it was necessary to complete the relevant transfer paperwork. So, up to the point Mr H responded to my provisional decision, I couldn't see that Mr H was told that a signed letter was enough to start the transfer process.

The fact that Mr H has provided a very recent letter – dated from August 2023 – from VM stating that it will accept written instructions does not change my finding that Mr H hadn't been told this previously. The issue here is that it's for VM to decide how it accepts transfer instructions. VM will have set up its transfer process so that it can carry out security checks before it begins the process of transferring a pension. This offers protection to both VM and its consumers. And our Service won't interfere with reasonable security measures taken by VM.

So I'm satisfied that it's reasonable for VM to be the party that decides whether a signed letter submitted instead of the transfer forms contains enough information, permissions and declarations for it to be considered a valid request to transfer. VM has said that Mr H's written requests had so far fallen far short of being acceptable and of providing the information and declarations it needed to start sharing his personal information with another provider, and of the information the other provider would need to assess the transfer and seek to accept it. As I said, it's for VM to decide how it accepts transfer instructions and I won't interfere with this.

### *Transferring funds electronically*

Mr H has said that once he decides to transfer his pension funds, he wants the transfer to be carried out as quickly as possible so that the value of the funds don't fluctuate while the transfer is being processed. He wants VM to use a particular electronic transfer system to facilitate this. But VM doesn't use this system and has made this clear to Mr H. Whether VM chooses to use this system or not is a commercial decision VM is entitled to make and which this Service won't interfere with. I can appreciate why Mr H would want any transfer completed quickly – he doesn't want funds to devalue during the transfer process. But it's the case that funds could also increase in value since investments fluctuate. Regardless, VM simply doesn't use this system and as I said, we won't interfere with that commercial decision.

### *Use of cash accounts during the transfer process*

VM told Mr H and this Service that it does not move consumers' funds into cash accounts once an instruction to transfer funds has been received. But Mr H thinks that cash accounts should be utilised by VM at the start of the transfer process, as he feels his money should be protected from any market changes from the point in time that he instructs VM. Mr H told this Service that his PPP has decreased in value quite significantly since he moved it to a Bonds and Gilts fund in November 2021 and January 2022. He thinks this decrease wouldn't have happened if VM had moved his funds to a cash account back in November 2021, when he first told it of his intention to transfer his funds to another provider. So Mr H thinks VM should compensate him for the amount he's lost.

Mr H pointed to a clause in the PPP terms and conditions which he believes indicates that a cash account will be used by VM once a decision is made to transfer pension funds. But I've read the term in question and I'm satisfied it doesn't apply to Mr H's situation.

The term Mr H is referring to summarises the process that VM will follow if it is VM that makes the decision to transfer Mr H's PPP to another provider. It does not outline the process VM will follow if it is Mr H who makes the decision to transfer his PPP.

For clarity, the term Mr H is referring to says:

*"16b Can Virgin Money transfer my pension? We may transfer your pension to another registered pension scheme that is governed by HMRC where we consider that this would mean that you would receive a better pension product or service. If we do this, we'll give you at least 30 days' notice before the transfer is due to take place. The value of your pension would be protected throughout any transfer, and we would seek to ensure that you're not prejudiced by the transfer."*

As I said, I'm satisfied this term does not apply to Mr H's situation. The term that does apply here, should Mr H decide to transfer his pension fund, is:

*"You can transfer your pension savings to another pension provider at any time, and we won't charge for this. Once we receive notification from your new pension provider, and both parties have all the information needed, we'll move your pension to them using the unit price on the transfer day. Once your new provider has told us that you are transferring you can't change your mind."*

I'm satisfied that this term clearly states that the unit price that will be relied on when an external transfer is being processed is the price on the day the funds are actually transferred to the new provider – and not on the day the transfer is requested by Mr H. And this means that VM doesn't place funds in cash accounts once a consumer has initiated the transfer process, as the transfer value is not calculated at that stage.

I've listened to a recording of the call Mr H made to a VM advisor on 5 February 2022. He asked the advisor whether VM used a cash account to hold funds while transfers were being processed. He was told it doesn't – that all funds remain in investment accounts. When he expressed concern that the value of his pension fund could change during the transfer process, the adviser confirmed that this was correct, that all funds are subject to market movements.

So I'm satisfied the plan terms mean VM was correct to tell Mr H on 5 February 2022 that it does not transfer pension funds to a cash account once a consumer initiates the transfer of their funds to a different provider. This means that I don't intend to ask VM to take any further action in relation to Mr H's request that his funds are placed in a cash account at the point in time that he initiates the transfer process.

When Mr H responded to my provisional decision, he provided terms that he said showed that VM would rely on the unit price on the day it received full written instructions to transfer funds. VM has confirmed that these are old terms and have been superseded several times. And I can see that the terms are indeed those listed under a different Virgin brand, which I understand no longer exists. So while I appreciate that Mr H would likely have had no idea he was submitting old terms, they are out of date and the term that can be relied on here is the one I've outlined above.

*Other concerns*

When Mr H rang VM in February 2022, its IT systems were not working. So while he talked in general terms about his PPP, the VM adviser couldn't access his plan. I'm sure this was inconvenient for Mr H, but I think it's fair to say it was a minor inconvenience and I've not seen that it caused Mr H any detriment. So I don't think it warrants an award of compensation.

I can appreciate that Mr H is also concerned about the fact that the value of his pension funds have decreased quite significantly over the past 18 months or so. I make no specific findings on this point, but it's important to note that the value of investments can go down as well as up. Bond and Gilt funds aren't immune to risk, and it's my understanding that global events have affected most investments, with increased inflation and interest causing gilt values to fall significantly.

Mr H is concerned that VM said it would hold onto his funds indefinitely if he did not complete the necessary transfer paperwork. It's not clear just what Mr H is concerned about here – if he doesn't complete the necessary transfer paperwork, in whatever form that contains all the necessary information required by VM, then it reasonably follows that VM can't transfer his funds to a new provider. Broadly speaking, it can't transfer the funds without his authorisation, and his authorisation is given by him correctly completing and submitting the transfer paperwork.

To summarise, I'm satisfied that Mr H was provided with the correct transfer paperwork by VM back in December 2021, and that the transfer paperwork made it clear what steps need to be taken by Mr H to start the transfer process. I understand why Mr H might be reluctant to transfer his funds to a new provider at this stage, given the decrease in the fund value. And I have a great deal of sympathy for the situation he finds himself in. But while I know Mr H will be disappointed with my decision, I am not asking VM to take further action in relation to his complaint.

### **My final decision**

It's my final decision that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 26 January 2024.

Martina Ryan  
**Ombudsman**