

The complaint

Mr G has complained, with the help of a professional third party, about a transfer of his personal pension, previously held with Virgin Money Unit Trust Managers Ltd ('Virgin'), to a small self-administered scheme ("SSAS") in May 2014. Mr G's SSAS was subsequently used to invest in the purchase of an overseas property with The Resort Group ('TRG'). The investment now appears to have little value and Mr G says he has lost out financially as a result.

Mr G says Virgin 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 says was required of transferring schemes at the time. Mr G says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Virgin had acted as it should have done.

What happened

Mr G says he was cold called and offered a pension review. He agreed and someone subsequently visited his home – Mr G is unsure which business this person worked for. Mr G, who was approaching age 42 at the time, says that they recommended he transfer his Virgin pension and invest in TRG. Mr G recalls being told he'd receive returns of 6 – 8% per year which would result in his pension doubling in value. He says the person he spoke to claimed to have invested in TRG themselves and Mr G felt somewhat pressured to proceed.

Virgin says it initially received a letter of authority ('LOA') in February 2014, completed by Mr G, allowing a business called Wise Review Limited ('WRL') to obtain information about his pension. WRL was not authorised or regulated by the Financial Conduct Authority ('FCA'). It says it then received a further LOA in April 2014 to enable it provide information to two businesses - First Review Pension Services ('FRPS'), which again is not registered with the FCA, and 'Moneywise'.

Virgin has been unable to provide a copy of the LOA but I understand from other complaints I've seen that 'Moneywise' is likely to be Moneywise Financial Advisors Ltd which was regulated by the FCA. Copies of identification documents were however certified by FRPS on 25 February 2014 suggesting it had become involved while WRL was still dealing with the matter.

In February 2014, a company was incorporated with Mr G as director. I'll refer to this company as B Ltd.

On 12 April 2014 Virgin wrote to FRPS, providing information about Mr G's pension. A SSAS was then set up and registered with HMRC on 25 April 2014. B Ltd was the SSAS's principal employer and Cantwell Grove Limited ('CGL') was recorded as the administrator. CGL was also not subject to regulation by the FCA.

On 8 May 2014 CGL wrote to Virgin enclosing documents to allow Mr G's pensions to be transferred to the SSAS. The letter said CGL was aware of concerns around 'pension

liberation', it supported the efforts of the pension industry and that its business model, as a pensions administrator, had been vetted by HMRC. It also said CGL supported the 'Scorpion' campaign of The Pension Regulator ('TPR') and that the 'Scorpion' information leaflet, which warned about the risks of pension liberation, had been shared with Mr G.

CGL enclosed completed application forms, copies of the scheme trust deed and rules, the HMRC registration confirmation and a scheme details Q&A document which gave answers to some general questions, including which investments were under consideration.

The Q&A document said that the investments under consideration were a commercial property investment provided by TRG and a discretionary fund management service. The document said that appropriate advice, about whether the investments were satisfactory for the aims of the scheme, was being taken by the trustees of the SSAS from Central Markets Investment Management Limited ('CMIM'). The letter said CMIM was registered with and regulated by the FCA.

I note at this point that there is no evidence that CMIM in fact did provide any advice to Mr G. The trustee advice was provided by another firm which I'll mention further below.

Also enclosed was a letter signed by Mr G. This letter said he was aware there had been a rise in cases of pension liberation fraud and he was aware of the issues relating to this. The letter said Mr G wanted to confirm he was requesting a transfer to take advantage of investment opportunities, none of which were connected with pension liberation. And it stated he was not seeking to access his pension before age 55, the trust deed of the SSAS would not permit this and he had not been offered a cash or other incentive to transfer.

Virgin wrote to CGL on 13 May 2014 confirming it had processed the transfer and enclosing a cheque for £1,543.18 representing the value of Mr G's pension benefits. I understand this amount was credited to the SSAS on 27 May 2014.

On 1 September 2014, Broadwood Assets Ltd ('BAL'), wrote to Mr G. The letter explained that it was providing him with advice, in his capacity as trustee of the SSAS, on the potential suitability of the TRG investment "*both as a specific example of an overseas commercial property investment, and more generally as an investment to be held within a SSAS*". It said it had not advised on the establishment of the SSAS, was not providing advice that would be deemed regulated - as BAL was not regulated or authorised by the FCA - and wasn't advising on whether the TRG investment was "*suitable for the particular needs and objectives of the members of beneficiaries of the SSAS*".

Additional funds were transferred from another pension that Mr G held with a different provider in September 2014, and I understand an investment in TRG was then completed.

Account statements indicate that the investment was providing credits to the pension intermittently until March 2019. But these credits appear to have stopped from that point.

In 2020, Mr G complained to Virgin. Briefly, he said Virgin ought to have spotted, and told him about, a number of warning signs in relation to the transfer. These included but were not limited to: the involvement of unregulated introducers and advisers, Mr G not receiving regulated advice but being told by unregulated parties he would receive better returns and pressured to proceed, Mr G having been cold called, CGL not being regulated, the intended investment being non-standard and the SSAS being newly registered. And he said if Virgin had properly informed him of these warning signs, he wouldn't have transferred.

The complaint was then referred to the Financial Ombudsman Service. I issued a provisional decision in June 2024 explaining that I didn't intend to uphold Mr G's complaint.

Below are extracts from my provisional findings, explaining why.

The relevant rules and guidance

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority ('FSA'). As such Virgin was subject to the FSA/FCA 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/FCA rules governing pension transfer requests, but the following have particular relevance here:

- *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.*

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 they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had formal guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

The Scorpion guidance was launched by TPR. It was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service ('TPAS'), TPR, the Serious Fraud Office ('SFO'), and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials. The guidance comprised the following:

- *An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.*
- *A longer leaflet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.*
- *An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying*

the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's statutory rights.

That said, the launch of the Scorpion guidance was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

What did personal pension providers need to do?

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

- 1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.*
- 2. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the liberation threat they were facing. Sending it to customers asking to transfer their*

pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

- 3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process didn't involve the sending of transfer packs.*
- 4. The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.*
- 5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.*

The circumstances surrounding the transfer and Mr G's recollections

Mr G says he agreed to a review of his pension following a cold call and a face-to-face meeting then took place.

Virgin has said it received two LOA's. The first allowing it to release information to WRL and the second to provide information to FRPS and Moneywise. As I've mentioned WRL and FRPS were not regulated or authorised by the FCA. It appears that Moneywise were regulated by the FCA. But beyond the apparent mention of this business on the LOA I haven't seen anything that suggests it had any actual involvement or contact with Mr G.

The Q&A document that CGL sent to Virgin referred to CMIM, an FCA regulated adviser, potentially being involved. But the document mentioning CMIM indicates that its involvement, if there was any, was only to give advice to the trustees of the SSAS about whether the proposed investment was appropriate to its aims, not to advise Mr G as a consumer about the transfer. And it appears that CMIM wasn't even involved in that capacity. The advice to Mr G, in his capacity as trustee, about the investment in the SSAS actually ended up being given by BAL, an unregulated business.

Taking all of his into account, on balance I think the cold call and subsequent face to face meeting were likely carried out by one of the two unregulated businesses that were mentioned. And given that the identity documents that are on file were certified by FRPS, and the signatory that witnessed these also signed as a witness to the SSAS trust deed, I think it's likely that it was FRPS that held the face-to-face meeting with Mr G.

Mr G says the person he met with told him if he transferred his pension, and invested in an overseas property development with TRG, he'd receive returns of 6-8% per year which would double the value of his pension. No risks were discussed and the person he met with gave no indication that they weren't FCA authorised. He says they also said that he didn't need to be concerned with the administration required to set up B Ltd or the SSAS. Mr G says he was an inexperienced investor but felt pressured to go ahead and was drawn to the returns discussed. Mr G wasn't offered a cash or other incentive to transfer nor was accessing his benefits before age 55 something that was promoted to him. Mr G also says he doesn't recall receiving any correspondence from Virgin, including it sending him a copy of the Scorpion leaflet or warning him about risks.

Mr G's recollections appear to be plausible and in line with other evidence about the transfer that is available. For instance, I haven't seen anything to suggest that he was offered or received a payment or other incentive to transfer or that he's received funds from the pension. I also can't see any evidence of Virgin contacting him during the transfer process. And as a result, I think the reason Mr G transferred appears to have been the higher returns that he was told he'd receive.

Mr G signed a letter as part of the application, saying that he was aware of the risks of pension liberation, had carefully considered the request to transfer and decided he wanted to proceed for the investment opportunities this provided. The letter also stated he was aware of the risks of pension liberation and confirmed that he wasn't planning to access his pension before age 55 and asked Virgin to complete the transfer promptly.

This letter appears to have been pre-prepared for Mr G to complete. But it is only a page long and expresses that Mr G is aware of what pension liberation is and that he wasn't planning to access his pension early.

What did Virgin do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information. But I can't see any evidence that Virgin sent Mr G the Scorpion insert or the information it contained in another format. I do note Virgin has said that it has deleted the bulk of its records so hasn't been able to confirm everything that took place. But in the lack of evidence to the contrary I can't reasonably say it did send Mr G the Scorpion leaflet.

Mr G thinks he may have received the Scorpion leaflet from the other pension provider that he later also transferred funds from to his SSAS. And CGL said when it wrote to Virgin that it had shared the Scorpion leaflet with Mr G. But given it was an unregulated business that stood to gain from the transfer, I don't think I can be sure that it did send this to Mr G. Or that he saw the leaflet provided by the other pension provider before he transferred from Virgin.

However, Mr G signed the letter explaining why he wanted to go ahead with the transfer, part of which declared that he understood the risks of liberation and was not seeking to release pension funds before age 55. Therefore, in this case, even though Virgin should have sent the Scorpion insert, I don't think that it would have made a material difference if it had. This is because the evidence suggests that Mr G was, more likely than not, already aware of the very risks that the Scorpion insert was intended to warn him of.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-

tale signs of pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk of pension liberation. I would just note though that the action pack for businesses published by the TPR at the time of the transfer here gave warning signs and a checklist of things to look out for in the context of “looking out for pension liberation fraud” (the heading under which this information was listed). And the transfer here took place before the guidance was given a broader scope to cover scams more generally.

It isn't clear what, if any, further due diligence Virgin undertook here. But I think that the information that Virgin had received from CGL would have reasonably reassured it that Mr G was not at risk of a pension liberation scam.

Virgin had documentary evidence that suggested Mr G was aware of pension liberation fraud and was not about to become a victim of it in the form of the letter that he signed. It is true that letter was pre-prepared. But I don't think Virgin would, reasonably, have considered the nature of the paperwork indicated a scam was in progress. And I see no persuasive reason why it shouldn't have taken Mr G's signed declarations at face value.

So, I think it was fair and reasonable for Virgin to accept the information and consider the threat of pension liberation – which was the focus of the Scorpion guidance at that time – to have been discounted. And I think it was reasonable for Virgin, in the specific circumstances of this transaction to proceed with the transfer.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Virgin didn't provide any further comments for me to consider.

Mr G's representatives said that he disagreed with my provisional findings. In summary, they said they felt my decision was not consistent with industry knowledge at the time, citing the published findings of another pension provider in respect of a different consumers transfer which the representative argues had similar circumstances to Mr G's. They also said my findings weren't consistent with TPR's guidance or a decision by the Financial Ombudsman Service on another complaint.

The representative disagreed with me that the July 2014 update broadened the types of situations pension providers were asked to look out for. Rather they said that Virgin and other businesses should have been looking out for warning signs of a wide range of scams from when the guidance was first published, not just signs of early release pension liberation scams. They also said that they didn't agree fully with my summary of what pension providers should have done, as they said Virgin should also, as a matter of course, have checked Mr G's employment status.

The representative said there were a large number of warning signs of a potential scam that Virgin should've picked up on and investigated further. But said I hadn't commented on these in my provisional decision and had reached the conclusion that Mr G was not at risk of a scam, which they disagreed with. They also didn't agree it was reasonable for Virgin to have accepted the letter Mr G signed to say he wasn't liberating his pension as they said getting customers to sign these letters was part of the 'scam'. And the representative said I had not responded to points it had made in its response to the Investigator's opinion.

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 G's representatives have said that I have not commented on or answered specific arguments it made in response to the Investigator's opinion. The role of our service is to review and decide individual disputes on a fair and reasonable basis. And because of the informal nature of our service, I've summarised what has happened. If I don't comment on or refer to everything I've been sent or that has been said this isn't meant as a discourtesy or because I haven't thought about it. Rather it is because my decision will address what I consider to be the key issues in deciding what is fair and reasonable.

Mr G's representative has argued that Virgin should have checked Mr G's employment status so as to ensure he had a right to transfer. The outcome of those checks would, in the view of Mr G's representative, have caused Virgin concerns because of a lack of employment link to the SSAS's sponsoring employer. I've outlined the obligations businesses had in my provisional decision. I won't repeat them here other than to say they didn't include an obligation for ceding schemes to check, as a matter of course, whether the transferring member was earning. And Virgin had no reason to think Mr G wasn't earning either. Indeed, it would have been surprising if it had thought this – his representative has told us he was employed at the time. So, I see no reason why Virgin would, or should, have probed this issue any further.

And, as I explained in my provisional decision, Virgin had received a letter signed by Mr G saying he was aware of the risks of pension liberation, had carefully considered his request to transfer and was not doing so for any reasons of pension liberation. So, not only do I think Virgin had no reason to probe Mr G's employment status, I also remain of the opinion that it was reasonable of Virgin to conclude that the risk of pension liberation, the thing TPR warned businesses about, was low.

Mr G's representatives have said that I've interpreted TPR's guidance about what ceding schemes should be on the lookout for at the time incorrectly and too narrowly. And they don't accept this was broadened by the July 2014 update but rather that Virgin should always have been on the lookout for more than just early access to pensions.

When the Scorpion guidance was initially published in February 2013 the campaign referred to pension liberation fraud. And TPR talked about this being a transfer to a fund that allowed members to gain access to pension funds not by way of a regular payment at retirement which could be considered an unauthorised payment. That doesn't mean unauthorised payments were just confined to a scenario where someone was offered a loan or cash incentive to transfer before age 55. But these scenarios were the focus of the literature at the time, whereas the messaging in 2014 changed.

For example, the front page of the 2013 Scorpion insert has the following message: *"Companies are singling out savers like you and claiming that they can help you cash in your pension early. If you agree to this you could face a tax bill of more than half your pension savings."* So, it singled out early access to a pension, and cash incentives and enticements to do this as the area of concern. Whereas the front page of the 2014 Scorpion insert says the following: *"A lifetime's savings lost in a moment...Pension Scams. Don't get stung."*

The 2013 Scorpion insert goes on to say: *"Pension loans or cash incentives are being used alongside misleading information to entice savers as the number of pension scams increases. This activity is known as 'pension liberation fraud' and it's on the increase in the UK. In rare cases – such as terminal illness – it is possible to access funds before age 55"*

from your current pension scheme. But for the majority, promises of early cash will be bogus and are likely to result in serious tax consequences.” Again, the emphasis is on the promise of ‘early cash’ and ‘early access’ to pension benefits before the pension scheme age and the associated tax consequences that could follow. The 2014 Scorpion insert also warns about taking cash from a pension before the age of 55 but without a mention or emphasis on tax consequences. And it also warns about the dangers of “*one-off investment opportunities*” and the potential to lose an entire pension pot.

The 2013 Scorpion action pack for businesses was titled ‘Pension Liberation Fraud’ whereas the 2014 action pack is titled ‘Pension Scams’. And the case studies in the 2013 action pack are solely about people wanting to use their pension in order to access cash before age 55, the repercussions of which were tax charges and the loss of some pension monies to high administration fees. The warning signs that were highlighted followed suit: “accessing a pension before age 55”, “legal loopholes”, “cash bonus”, “targeting poor credit histories”, “loans to members”. Once again therefore the focus, and what TPR was emphasising that pension liberation was, was around enticements promising access to pensions before age 55. In contrast, the 2014 action pack included a case study about someone transferring in order to benefit from a “unique investment opportunity” which subsequently failed causing the consumer to lose his entire pension.

This shows that at the time of Mr G’s transfer, transferring schemes were being directed to the threat posed by people wanting to take cash from their pensions in an unauthorised manner which was seen as being most likely when someone was under the age of 55. The potential for people to lose money, and suffer tax charges, from suspect investments was commented upon but only in so far as it was seen as being part and parcel of someone taking an unauthorised payment from their pension, rather than being something to look for in isolation. That particular concern came more into focus later on.

So, I’m satisfied that it was reasonable for Virgin to have relied on the emphasis and focus of the February 2013 guidance, applicable at the time of Mr G’s transfer, when considering his request and deciding whether further due diligence was required. And again, Virgin had to take a proportionate approach and balance any caution and due diligence with the fact that consumers were entitled to request a transfer. And I don’t think delaying all transfer requests, such as Mr G’s, in order to carry out extensive due diligence in every case would’ve been proportionate. Rather I think it was fair that Virgin made a judgement call based on the information available to it. And as I’ve explained, I think it was reasonable, based on the evidence given to it, for Virgin to consider the risk of this transfer to be low.

That isn’t to say that the risk did not exist or that there weren’t other warning signs that Virgin could’ve become aware of if it had asked further questions. But for the reasons given previously I think, having had sight of the letter Mr G signed, it was reasonable for Virgin, in the context of taking a proportionate response, to decide here that it didn’t have good reason to delay the transfer and ask additional questions.

Mr G’s representatives have said that it was unreasonable for Virgin to have relied the signed letter that was sent in on Mr G’s behalf. They said it was a common part of the ‘scam’ for consumers to be led to sign a similar letter, without being taken through it. And they said that the letter was pre-printed, so they didn’t think this was a genuine indication of Mr G’s thinking. But I think a reasonable person in Mr G’s position, having been contacted out of the blue by a company that they were not familiar with and advised to transfer his pension savings, would, even with very little financial or investment experience, take the time to familiarise themselves with the documents they’d signed and agreed to. More than that though I also think it was fair of Virgin to assume Mr G had done so. And I don’t think Virgin would, reasonably, have considered the nature of the paperwork indicated a scam was in progress. So, I still don’t think there was a persuasive reason why Virgin shouldn’t have

taken Mr G's signed declarations at face value.

Mr G's representative has pointed to what it believes to be an inconsistent approach between Virgin's handling of Mr G's transfer and how a different business handled another consumer's transfer, some of the details of which entered into the public domain following judgements by the Pensions Ombudsman and the High Court. Mr G's representative points out that the other business unearthed a number of warning signs in that other transfer which prompted it to block it. The representative says that the circumstances of the two transfers are very similar so they believe Virgin should have done the same here. The argument is that the approach taken by the other business in the other transfer was the correct one, that it is illogical for Virgin or our Service to endorse a different approach and that Virgin has therefore treated Mr G unfairly.

I've reached my decision based on the specific circumstances in Mr G's individual complaint. These are different to those in complaints and transfer requests made by other consumers and involving other businesses. I'd expect a transferring scheme to assess each transfer request on its own individual facts. So that may well result in different outcomes based on what looks to be similar circumstances. That doesn't necessarily mean Virgin has acted unfairly or has fallen short of what it should have done. And, given the specific facts of Mr G's transfer, I'm satisfied – for the reasons given previously – that Virgin didn't need to undertake the detailed due diligence Mr G's representative have suggested, as it could reasonably consider the threat of the thing it had been told to look out for, pension liberation, was low.

Finally, I note that Mr G's representatives have pointed to FCA warnings that it thinks Virgin should also have been alive to, including warnings about SSASs being used to house unusual investments and people being offered 'free' pension reviews. The warnings Mr G's representatives have pointed me towards came too late for Virgin to have reasonably taken them into consideration here. And whilst I recognise the broader point, which is that the nature of pension scams was evolving and businesses needed to be aware of that, I don't think Virgin fell short given the information it had and the guidance in place at the time.

Summary

I understand that Mr G has lost out financially by investing in high-risk investments which were unlikely suitable for him. But the guidance that TPR had put in place at the time when Mr G's transfer request was made was focussed on the risk of consumers falling victim to a pension liberation scam. And for the reasons I've explained above, I think there was enough information for Virgin to reasonably discount the risk of that in the transfer request it received. So, while I know this is likely to come as a disappointment to Mr G, I don't think it would be fair or reasonable in these circumstances to suggest that Virgin ought to have delayed the transfer process to conduct further checks simply to further safeguard against an outcome type that it should have already reasonably discounted.

My final decision

For the reasons I've explained, I don't uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 August 2024.

Ben Stoker
Ombudsman