DRN-4327605

Financial Ombudsman Service

The complaint

Mr M complains that Virgin Money Unit Trust Managers Ltd provided misleading and inaccurate descriptions of the risk associated with its Pension Bond and Gilt Fund. He says he's suffered financial loss as a result of reliance on the descriptions provided.

What happened

Mr M has a Virgin Money Stakeholder Pension Plan. He commenced the plan in 2003 after receiving direct marketing literature from Virgin Money. He says he chose to invest his pension in Virgin Money's Pension Bond and Gilt Fund (the Fund). He chose this Fund because the marketing literature described it as low risk. He also says the literature indicated that the Fund would safeguard his pension.

Mr M says his pension lost over £22,000 in 2021/2022. He says that as a result of this he realised the Fund was infact very high risk and totally insecure – contrary to everything Virgin Money had told him. He complained to Virgin Money and asked it to switch his pension into its Pension Growth Fund. It switched his pension in the way he'd requested but he says it didn't respond to his complaint.

Virgin Money investigated Mr M's complaint. It sent him a response. He says he's only recently received a copy of this response. Virgin Money said the return on bonds and gilts was dependent on demand for this type of investment at the time the bonds and gilts were purchased and also dependent on interest rates in the economy generally. Since 1995 it said rates of interest had been at an historic low. Virgin Money said it had made clear in its literature that the value of the Fund could go down as well as up. It said it hadn't acted incorrectly. Mr M didn't agree. He referred his complaint to our service.

Our investigator looked into his complaint. He said bonds and gilts were historically, and still were, regarded as low risk. That didn't mean they could not decrease in value. However he said most funds invested in these assets had fallen in value due to increased interest rates and inflation. Demand for gilts and bonds had gone down as a result of these economic conditions.

Our investigator also referred to Barclays US aggregate Bond Index which he said showed that 2022 was the worst performing year, since records began, for bonds and gilts. Despite that there had only been five negative years for this type of asset since 1976. He also didn't think Virgin Money had misrepresented the level of risk. It had told Mr M that the value of the Fund could go down as well as up.

Mr M pointed out that Virgin Money changed the Fund name and restructured it in December 2022. He thought this was because of the Fund's performance. However, our investigator said he couldn't be certain that that was the reason for the changes Virgin Money had made.

Mr M didn't agree with what our investigator said. He thought the plain and ordinary meaning of the language used by Virgin Money in its literature meant that it represented the Bond and Gilt Fund as "low risk" which offered "safeguards." He said the performance of the Fund showed that the language used amounted to misrepresentation. He also referred to the

Financial Conduct Authority's (FCA's) Principle Six which required firms to provide clear, fair and not misleading information to consumers.

Our investigator considered what Mr M had said but he didn't change his view. So the complaint has been passed to me to decide.

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 M commenced his stakeholder pension with Virgin Money in 2003. I've looked at his application form and he indicated that he wanted to invest in Virgin Money's Pension Growth Fund. The application form stated that, unless he informed Virgin Money to the contrary, his funds would be moved into its Pension Income Protection Fund (subsequently changed to the Pension Bond and Gilt Fund (the Fund)) as he approached retirement age. This was known as the Auto Fund Selector (AFS)

I've looked at statements provided by Virgin Money. These show that by April 2018 all of the money in Mr M's pension had been moved into the Fund. Mr M continued to contribute to the Fund after that date. He made contributions in 2019, 2020 and 2021. From what Mr M has said, it appears that he was content to make further contributions into the Fund because he believed it was "low risk" and he was approaching retirement.

The crux of Mr M's complaint is that Virgin Money misrepresented the level of risk associated with the Fund. He's referred to the language it used in its literature to describe the level of risk. He says the value of the Fund dropped significantly over a relatively short period. So, for example in October 2021 his pension was valued at just over £88,000. This dropped to just under £70,000 by October 2022.

I've thought about the issues Mr M has raised:

<u>The language Virgin Money used to describe the Fund.</u>

Mr M has provided us with some of the literature he was sent.

Virgin Money's "Get Clued Up" document (dated 2017) stated:

> *Virgin Money Pension Bond and Gilt Fund - invests 100% in the Virgin Income Trust. The aim is to use fixed investments like gilts and bonds to <u>safeguard</u> the retirement income you have saved for, as you near retirement*.

Virgin Money's "Your Pension Options" (leaflet dated 2018) included the following statement about the Auto Fund Selector – which applied to Mr M's pension.

> *Our Auto Fund Selector (AFS) gradually moves your savings from the Pension Growth Fund to the <u>lower risk</u> Pension Bond and Gilt Fund in the ten years before your retirement date.*
> *…. Moving your savings to a <u>lower-risk Fund</u> is designed to <u>protect you from the ups and downs of the stock market</u> in the run up to retirement. But it's also likely to limit the investment returns you get back.*
> *So, <u>whether to stick with AFS or select your own Funds really depends on your attitude to risk</u> - are you happy trying to <u>protect the savings</u> you have or do you want to keep trying to grow them?*

(my underlining, within the two extracts set out above, added to highlight the particular language Mr M refers to)

It appears that Mr M switched off AFS and opted for member select. Virgin Money did not provide him with advice about his fund selection. It provided him with information about the various funds that were available to him. Under the member select option he was responsible for selecting the fund(s) he wanted to invest in.

It's not clear when Mr M switched off AFS - however, from reviewing the statements provided I can see that in the period since April 2018, all of his pension monies were invested in the Fund. That fund choice is also consistent with what he's told us. He wanted to invest in this Fund because he believed it was "lower risk."

I've then considered the remainder of the contents of the leaflets provided to Mr M – including the Key Features and the Terms. Under the heading Risks the following wording appeared:

> *"The value of your pension savings can go down as well as up and there are no guarantees you'll get back the full amount you pay in. The value of your pension savings will depend on how much you save, the charges you pay and the rate your investment grows over the years."*

After describing the funds which were available (which included the description of the Fund set out above) the following wording appeared:

> *"As your pension funds invest 100% into their underlying unit trusts, the returns on your investments in the pension funds will be almost identical to those of the underlying unit trusts.*
> *You'll find more on each of our pension funds and the underlying unit trusts – including past performance, unit prices, Key Investor Information documents and report & accounts – at virginmoney.com.."*

I've looked at the past performance graphs that were available on the webpage referred to. When doing so, I've borne in mind that Virgin Money's literature stated that past performance was not a reliable indicator of future results.

The past performance graphs show that in the period since 2012 the Fund had generally increased in value. For example in 2014 it increased by 11.4% and in 2016 it increased by 7.8%. However there were years when it decreased in value. In 2013 for example it decreased by 4.7% and in 2015 it decreased by 0.8%. So, I think that the graphs did show, based on past performance, that the Fund could go down as well as up in value.

Having said that, in the period between September 2021 and September 2022 the Fund fell by 22%. This was a very significant and unprecedented fall in value. I'll comment further below about why Virgin Money says that happened. Mr M switched his pension savings to an alternative fund with Virgin Money in September 2022.

The information on the webpage that I've referred to also charts the performance of the Fund against a Benchmark which was selected by Virgin Money. It's fair to say that although the Fund generally didn't achieve the Benchmark performance, it did broadly follow the direction of the Benchmark (in terms of the increases and decreases over the period). The information provided reiterated that past performance was not a reliable indicator of future performance.

The documentation available to Mr M also stated that the returns he could expect would be almost identical to the underlying unit trusts. The Fund Fact Sheet explained that the Fund invested in UK gilts and corporate bonds which it said “typically” meant lower potential returns and lower risk than shares. It explained that these were fixed investments.

When thinking about this complaint I’ve had regard to all of the information that was available to Mr M.

It is the case that all investments come with a level of risk and don’t always perform as expected. Having considered all of the information which was made available to Mr M, I’m satisfied on balance that although he was told the Fund was “lower risk,” Virgin Money didn’t tell him that meant there was no risk associated with investing in this Fund. He was told the value of the investment could go down as well as up and there were no guarantees he’d get back the full amount he’d paid in. So, I think he ought reasonably to have been aware that there were still risks associated with the Fund he’d selected. And even though it was described as a “lower risk” fund there was still the potential for the Fund value to go down and also the potential that Mr M might get back less than he’d paid in.

The information available to Mr M also explained that the returns he could expect would be almost identical to the underlying unit trusts.

In the period after 2021, interest rates in the UK rose sharply. Interest rates had been relatively static and low since around 2008. However between the start of December 2021 and end of December 2022 Bank of England Base rate increased from 0.1% to 3.5%. Virgin Money has explained to Mr M that the increase in interest rates, as well as other market factors such as increases in inflation, contributed to the decrease in the value of bonds and gilts - which were the underlying investments in the Fund. I think the explanation it’s provided here is fair and reasonable.

Mr M has referred to the dictionary definition of “low risk” which means “unlikely to result in harm” and “safeguard” which means “providing protection”. He says that the significant fall in the value of his pension shows that these descriptions were inaccurate and misleading. However, as mentioned above the documentation also described the fact that there were still risks – the risk that the value of the Fund could fall as well as rise and the risk that Mr M might get back less than what he’d invested. The documentation also stated that the returns he could expect would be almost identical to the underlying unit trusts. I think it’s fair and reasonable to consider the meaning of the words Mr M has highlighted within the context of all the other information that was available to him.

I understand why Mr M was disappointed at the fall in the value of the Fund. But, although there were significant falls in the value of the Fund as a result of what happened in financial markets in 2021/2022, I don’t think it’s fair and reasonable to say that meant the Fund was, as Mr M says, “very high risk.” In reaching that view I’ve also considered the performance of the Fund over the period since 2013 (that’s the period I’ve reviewed past performance statistics for) and I’ve been able to compare it to the Benchmark.

In the period between September 2021 and September 2022 the Benchmark fell by 21.8%. As mentioned above, during the same period the Fund fell in value by 22%. So although the fall in Fund value during this period was significant it does broadly align with how the Benchmark performed.

Virgin Money’s documentation stated that fixed investments such as bonds and gilts were typically lower risk than shares. The documentation also stated that the performance of the Fund would be almost identical to the underlying unit trusts. And, on balance, I’m persuaded that this was an accurate description.

Having considered all of the information provided to Mr M about the Fund, I'm not persuaded, on balance, for the reasons set out above, that Virgin Money provided him with inaccurate or misleading information.

<u>Changes to the Fund in December 2022</u>
Mr M says that Virgin Money restructured and rebadged the Fund in December 2022. He says this gives weight to his argument that it now knows its materials and definitions were flawed. I've thought about what Mr M has said here.

I can see that in December 2022 the Fund changed its investment approach and benchmark. I've looked at the reasons it has given for that change. It said the changes were designed to broaden the range of investments so that potential returns could be improved. It said the changes would keep the nature and risk level of the Fund the same as before but it would introduce flexibility to spread the Fund across a wider range of bonds (to include corporates with a credit rating of "BBB" rather than just "AAA" and "A" as was previously the case).

I think the reasons given by Virgin Money for the changes in December 2022 are reasonable. And I'm not persuaded, on balance that these changes were made because previous materials and definitions used to describe the risk associated with the Fund were flawed. The Fund Fact Sheet still made clear there was no guarantee the changes would result in better returns and the nature and level of the risk remained the same.

Having considered everything here, I'm not persuaded, on balance that Virgin Money provided misleading or inaccurate information about the nature of the risk associated with the Fund or that it has otherwise acted unfairly or unreasonably.

My final decision

For the reasons given above I do not uphold this complaint about Virgin Money Unit Trust Managers Ltd.

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

Irene Martin
Ombudsman