DRN-4736647

The complaint

Miss W is complaining about Clydesdale Bank Plc trading as Virgin Money because she says it lent to her irresponsibly when giving her two credit cards she couldn't afford.

Miss W has also complained to us about the decision to provide her with an overdraft facility but that's being dealt with as a separate complaint.

What happened

In July 2021, Miss W was given a Virgin Money credit card with a limit of £4,000. In November of the same year, she was given another card with a limit of £5,000. In the end both accounts were defaulted and terminated in December 2023 and January 2024 with a combined outstanding debt of almost £9,000.

After the complaint was referred to me, I issued my provisional decision setting out why I believed it should be upheld. My findings are attached in full at the end of this decision.

Miss W accepted my provisional decision. Virgin Money didn't and made the following key points:

- The lending decisions were sound given the information available at the time and the applications would still be approved under its current strategies.
- The debt-to-income profile was within appetite, given the other factors relating to the applications, including a low indebtedness score indicating Miss W was managing debt levels well.
- The accounts were running well until mid-2023, with last purchases on the cards being made in May 2023. At no point did Miss W tell Virgin Money she was struggling with her payments until it received a financial proposal from her debt adviser in June 2023.
- In response to my comment about it not seeking any assurances the accounts being paid down using balance transfers would be closed, this wasn't something Virgin Money could demand.

The balances transferred were free of interest for a period and this actually improved Miss W's position because her repayments were reduced as a result. It highlighted two other cases where we concluded the consumer was in a better position because of balance transfers completed when the account was opened.

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.

Having done so, my findings haven't changed from those I set out previously. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

I've considered Miss W's case on its own merits and I'm not commenting on Virgin Money's overall lending strategies. But in this case, given the amount of credit being offered was high and given what it knew about the extent of Miss W's existing debt, it remains my view that on both occasions Virgin Money should have carried out further checks to consider whether the new credit being offered was affordable and sustainable. And, if further checks had been completed, I still believe the information Virgin Money would likely have discovered should have meant it decided not to lend.

On the subject of the balance transfers, I appreciate these were part of an interest-free offer. While this likely reduced Miss W's payments initially, it was only for a limited period and the fact remains that the amount of credit available to her significantly increased as a result of Virgin Money's decisions. Also, I wasn't suggesting Virgin Money could insist Miss W close any existing accounts. My point was rather that without knowing the accounts would be closed, its actions increased the credit available by £9,000 – a considerable amount in the circumstances that I believe warranted more detailed affordability checks.

Putting things right

The principal aim of any award I make must be to return Miss W to the position she'd now be in but for the errors or inappropriate actions of Virgin Money. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think Virgin Money should have lent to Miss W, I don't think it's fair for her to pay interest or charges on the amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, Virgin Money should now take the following steps for each of the two credit cards given to Miss W:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since it was opened.

- If the reworking results in a credit balance, this should be paid to Miss W with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

  HM Revenue & Customs (HMRC) requires Virgin Money to deduct tax from any interest. It must provide Miss W with a certificate showing how much tax has been deducted if she asks for one. If Virgin Money intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance, Virgin Money should arrange an affordable payment plan with Miss W for the shortfall.

- Remove any adverse information recorded on Miss W's credit file relating to this credit, once any outstanding balance has been repaid.

I’m satisfied this represents a fair and reasonable settlement to this complaint.

My final decision

For the reasons I’ve explained, I’m upholding Miss W’s complaint. Subject to her acceptance, Clydesdale Bank Plc trading as Virgin Money should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss W to accept or reject my decision before 14 May 2024.

Extract from provisional decision

What I’ve provisionally 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.

Having done so, I’ve reached different conclusions to the investigator. If I haven’t commented on any specific point, it’s because I don’t believe it’s affected what I think is the right outcome. In considering this complaint I’ve had regard to the relevant law and regulations; any regulator’s rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before lending to Miss W, Virgin Money was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider in respect of each lending decision are:

- *Did Virgin Money complete reasonable and proportionate checks to establish that Miss W would be able to repay the credit in a sustainable way?*
- *If so, was the decision to lend fair and reasonable?*
- *If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?*

The rules, regulations and good industry practice in place at the time the credit was approved required Virgin Money to carry out a proportionate and borrower-focused assessment of whether Miss W could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant Virgin Money had to satisfy itself that making payments to the credit wouldn’t cause undue difficulty or adverse consequences. In other words, it wasn’t enough to simply think about the likelihood of her making payments, it had to consider the impact of the repayments on Miss W.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

In general, I think a reasonable and proportionate assessment should be more thorough:

- *the lower the customer's income, reflecting that it could be more difficult to make repayments from a lower level of income;*
- *the higher the amount due to be repaid, reflecting that it could be more difficult to meet a higher repayment from a particular level of income;*
- *the longer the term of the credit, reflecting the fact that the total cost is likely to be greater and the customer is required to make payments for an extended period; and*
- *the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.*

There may also be other factors that could influence how detailed a proportionate check Should have been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.

Virgin Money has described the information it gathered to assess whether Miss W's credit was affordable before it was approved. This included:

- *information contained in her application, including residential status, employment status and her income, which was separately verified;*
- *information obtained from a credit reference agency (CRA), giving details of her existing credit arrangements and any past issues with credit, including missed payments and defaults; and*
- *an automated affordability assessment to ensure she'd have sufficient disposable income after taking on additional credit.*

Virgin Money maintains its affordability assessments were proportionate to the credit being given and showed this was affordable for Miss W.

After carefully reviewing the information Virgin Money obtained, I think there were factors that should have prompted it to carry out further checks before approving either of Miss W's card applications and I don't agree the affordability assessments were reasonable and proportionate in this case.

When considering the first application, I think Virgin Money should have identified from the credit check that Miss W was already heavily indebted, with unsecured debt of more than £29,000 compared to the £32,000 income she declared. I'm also conscious the credit limit offered was substantial and I don't think it was appropriate to lend such a large amount without more detailed checks to ascertain whether this was affordable. In saying this, I'm mindful Miss W used around £1,800 of that limit to transfer the balance from another card. But the original card limit was much higher than this and I can't see that Virgin Money sought any assurances the account being paid down would be closed, meaning £4,000 additional credit was still being made available.

By the time of the second card, offered barely three months after the first, Miss W's overall debt had increased to £33,000 without any meaningful change to her declared income. So it follows that I think Virgin Money should have carried out further checks to establish affordability on this occasion also before offering further credit of £5,000.

In my view, the information available to Virgin Money suggested Miss W was already heavily indebted and that further checks were required to complete a proportionate affordability assessment.

I can't know exactly what further checks Virgin Money might have carried out at the time, but I think a consideration of Miss W's actual income and expenditure would have been *reasonable. So we've obtained copies of her bank statements for the three months prior to the lending to establish what information could reasonably have been discovered.*

A review of the statements shows for May, June and July 2021 shows Miss W was consistently overdrawn (by up to £2,500) for most of this period and paying daily overdraft interest, with her account only returning to a positive balance for a few days each month. I think this indicates she was living beyond her means and, if Virgin Money had seen this information, I think it should have concluded it wasn't a reasonable decision to advance her a further £4,000 worth of credit in July 2021.

Further, there's nothing to indicate Miss W's situation had improved by November 2021 and the information Virgin Money did see showed her debt had increased significantly over the previous three months. So it follows that I also believe the decision to offer a second card with an even higher limit of £5,000 was also unreasonable.

In summary, if Virgin Money had adequately assessed whether the credit card repayments were affordable and sustainable, it's my view it shouldn't have lent to Miss W. It's for this reason that that I'm currently proposing to uphold this complaint in full.

James Biles
Ombudsman