DRN-4870121

The complaint

Mrs C is complaining about Clydesdale Bank Plc trading as Virgin Money because she says it lent irresponsibly by providing her a credit card she couldn't afford.

What happened

In November 2017, Mrs C opened a credit card account with Virgin Money. The initial credit limit was £3,800 and this was never increased.

I understand Mrs C recently closed the account when she transferred the balance elsewhere. In response to her complaint, Virgin Money accepted it should have acted on her request sooner and offered £50 compensation for that error.

Our investigator concluded the complaint should be upheld. He felt Virgin Money should have carried out a more thorough affordability assessment and that, if it had done, decided against lending to Mrs C.

Virgin Money didn't accept the investigator's assessment and made the following key points:

- The income Mrs C declared in her application was verified using a credit reference agency (CRA);
- it used a conservative figure in assessing her existing credit repayments;
- Mrs C's debt was low compared to her income and, in the absence of any negative data from the CRA, its checks were proportionate to the credit being offered;
- the bank statements for her nominated account indicate it was well managed and maintained a positive balance; and
- she was never in arrears with payments to her Virgin Money account after it was opened.

The complaint has now been referred to me for review.

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, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. 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 Mrs C, 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 are:

- Did Virgin Money complete reasonable and proportionate checks to establish Mrs C 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 Mrs C 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 Mrs C.

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.

Virgin Money has described the information it gathered to assess whether Mrs C'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 CRA, giving details of her existing credit arrangements and any past issues with credit, including missed payments and defaults; and
- an expenditure assessment using a combination of modelled data for key expenses, along with actual data from the CRA about the cost of her existing credit arrangements.

Virgin Money maintains its affordability assessment was proportionate to the credit being given and demonstrated it was affordable.

In making her application, Mrs C said she was self-employed and that her annual income was £15,000. Virgin Money's credit check recorded she had existing debt of £4,400 and no recent defaults or current arrears. Although the data provided to us by Virgin Money does appear to show Mrs C had missed at least one payment to an existing commitment in the previous six months.

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 Mrs C's credit and I don't agree the affordability assessment based mainly on modelled statistical data, rather than her actual circumstances, was reasonable and proportionate in this case. In particular, I'm conscious that Mrs C's income was low and the credit limit being offered comparatively high. If she'd also missed a payment on another commitment recently, as the data provided indicates, that would only reinforce my view that further checks were required.

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

Mrs C had two accounts, a joint account with her husband, that she says was used for bill payments, and an account in her sole name. I can only assume Virgin Money's recent comments about the nominated account are based on the joint account, which don't show any particular signs of financial difficulty. But the situation with Mrs C's sole account is quite different.

A review of the statements for Mrs C's sole account shows she was consistently overdrawn, with the overdrawn balance very close to the £800 overdraft limit most of the time and exceeding this on at least one occasion. The statements also appear to show she was dependent on payments from family members to keep the balance within the overdraft limit.

If Virgin Money had seen this information, it's my view that it should have concluded Mrs C was showing signs of financial difficulty and that it wasn't responsible to offer her a substantial amount of additional credit.

I understand Virgin Money's comment about Mrs C not falling into arrears with her account after it was opened, but I must assess the lending decision based on information that was available at the time, not what happened subsequently. In any event, I note that while Mrs C may not have missed any payments, it appears her account did go into persistent debt and was blocked to prevent further spending. This certainly wouldn't support any attempt to argue the later conduct of the account demonstrates it was affordable at the outset.

In summary, if Virgin Money had adequately assessed whether the credit repayments were affordable and sustainable, it's my view it shouldn't have lent to Mrs C. It's for this reason that that I'm upholding her complaint.

Putting things right

The principal aim of any award I make must be to return Mrs C 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 Mrs C, 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 now needs to take the following steps:

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

- If the reworking results in a credit balance, this should be paid to Mrs C 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 Mrs C 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 Mrs C for the shortfall.

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

If Virgin Money no longer owns the debt, it should liaise with whoever does to ensure any payments Mrs C has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

I note Virgin Money also offered Mrs C compensation of £50 for the delay in closing the account following her request. I think this is reasonable compensation for any distress and inconvenience caused and, if it hasn't already done so, Virgin Money should pay this amount (in addition to the above) when settling this complaint.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mrs C in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 13 August 2024.

James Biles
Ombudsman