

The complaint

Ms T complains that she is in financial difficulties and Clydesdale Bank Plc trading as Virgin Money (Virgin Money) haven't given her the help they should.

Ms T is represented by Mr F but for ease of reading I will only refer to Ms T in my decision.

What happened

Ms T took out a Fixed Sum Loan with Virgin Money in January 2018 for a period of 60 months. The loan was for £10,105.74 – which comprised £7,000 for home improvement and £3,105.74 for consolidation of another loan. The loan was to be repaid at £274.10 each month. The total amount to repay (including interest and fees) was £16,445.96.

Ms T said she couldn't meet the contractual payments and said Virgin Money kept "*harassing*" her to make a payment. She said she asked for help from the Citizens Advice Bureau and told Virgin Money to go through their representative, but Virgin Money said they didn't have the authority to do this. Ms T said she'd put forward an amount to settle the loan, but this was rejected by Virgin Money as they said the loan was still within its term. She said Virgin Money had also confused her by referencing the wrong account details in their communications with her. She complained to Virgin Money.

Virgin Money said they'd put several holds onto Ms T's account and had given time for her and her representative to offer a new payment proposal. But Ms T hadn't responded or provided an understanding of her income and expenditure so the hold had been lifted so that they could look for repayment of her loan.

Ms T wasn't happy with their response and referred her complaint to us.

Our investigator said Virgin Money had tried to help Ms T and didn't think they'd acted unfairly or unreasonably in contacting her to ask about her repayments for the loan. He understood the use of a generic sort code on Virgin Money's letters had been confusing and feedback has been given to them. He recommended Ms T engage with Virgin Money to look to arrange a payment plan.

Ms T didn't agree she said the calls from Virgin Money were excessive. And they weren't liaising with her representative. She said she no longer had the money she'd offered to settle the loan and wasn't in any position to make any repayment. She asked for an ombudsman to decide.

I issued a provisional decision in August 2022 that said:

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'm currently minded to uphold this complaint. I'll explain why.

First of all, I've looked at what I consider is the real nature of Ms T's complaint. And as we have an inquisitorial remit, I've considered whether or not it was irresponsible for Virgin Money to have lent Ms T the money in the first place. I can see she fell into financial difficulties soon after taking this loan out. So, I think it's fair to consider what Ms T's financial situation was at the point the loan was taken out.

In considering what is fair and reasonable I've taken into account relevant law and regulations and what I consider to have been good industry practice at the time.

Taking this into account, I think the overarching questions I need to consider in deciding what's fair and reasonable in the circumstance of this complaint are:

- 1. Did Virgin Money complete reasonable and proportionate checks to satisfy themselves that Ms T would be able to repay the credit in a sustainable way?*
 - a. if so, did Virgin Money make a fair lending decision?*
 - b. if not, would reasonable and proportionate checks have shown that Ms T could sustainably repay the borrowing?*
- 2. Did Virgin Money act unfairly or unreasonably in some other way?*

If I determine that Virgin Money didn't act fairly and reasonably in its dealings with Ms T and that she has lost out as a result, I will go on to consider what is fair compensation.

The regulations in place when Virgin Money lent to Ms T required them to carry out a reasonable assessment of whether Ms T could afford to repay the loan in a sustainable manner. This is sometimes referred to as an "affordability assessment" or an "affordability check".

The affordability check should have been "borrower-focused" – so Virgin Money had to think about whether repaying the loan sustainably would cause financial difficulties or adverse consequences for Ms T. In other words, it wasn't enough for Virgin Money to only think about the likelihood that they would get their money back without considering the impact of the loan repayments on Ms T herself.

The checks Virgin Money carried out also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will depend on several factors including, but not limited to, the circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they're seeking. Even for the same customer, a proportionate check will more likely than not look different for different loan applications.

But there are factors which could influence how detailed a proportionate check should be for a given loan application. For example:

- the lower a customer's income (as it could be harder to make any loan repayments from a lower income);*
- the higher the amount to be repaid (as it could be harder to meet a higher repayment from a given income);*
- the longer the term of the loan (as the total cost of the loan is likely to be greater and the customer is required to make payments for an extended period).*

There may also be other factors which could affect how detailed a proportionate check should be when it comes to a loan application – including, but not limited to, any indications

of borrower vulnerability and any foreseeable changes in the consumer's future circumstances. I've considered whether Virgin Money in lending to Ms T had been thorough in the checks they made. And whether they've taken all these factors into account in deciding to lend to her.

I can see Virgin Money asked Ms T for details of her income and some of her outgoings, they also completed a credit search. There were no defaults, missed or late payments on the credit report. But from what I've seen the assessment only considered Ms T's income which is shown as £1,002 per month and her rent payment which Virgin Money had as £108 per month. No other details were included in the assessment. With this information it looked on paper that Ms T had sufficient disposable income to sustain the monthly repayment of £274.10. But no account has been made of any other outgoings such as utilities, food and day to day living. And £108 per month for rent is well below the national average. I can also see Virgin Money's assessment showed Ms T's employment status as "Economically inactive" with her occupation as "Disabled". So, as Ms T was on a low income and borrowing a high amount over a long period of time I would have expected further checks to have been made to determine Ms T's financial situation.

So, I think based on the information Virgin Money had – and given the size and term of the loan they should reasonably have done more to get a clearer picture of Ms T's financial situation before deciding whether to lend. I don't think the checks it carried out were reasonable and proportionate in Ms T's case.

As I don't think Virgin Money carried out proportionate checks, I've gone on to consider what would have happened had they carried out further checks. I can't be sure what further checks would have been done or what they would have shown, so we've asked Ms T for more information about her circumstances.

From what I can see Ms T said her income was £1,002 and the amount she paid towards her rent was £108 per month, but she was receiving housing benefit as part of her benefit income. This meant her actual monthly rent was around £500. So, taking this and the loan repayment into account she would have had around £228 per month for food, utilities and day to day living costs.

I haven't seen evidence of Ms T's actual outgoings at the time but her representative has provided her income and expenditure for around August 2021 – this shows monthly outgoings that include utilities £80, phone £52, water £17, TV licence £13 and food £338. In total (excluding other day to day living costs) around £500. And overall Ms T's income and expenditure shows she's left with around £50 in disposable income. Ms T still lives at the same address so I think her utilities, food and day to day living costs for around the time of the loan in 2018 would have exceeded £228. So, I don't think Ms T would have had any disposable income left to her at that time. I think this is supported by how quickly she fell into arrears and financial difficulty. Virgin Money has shown that in April 2021 Ms T had only paid two of the 60 contracted monthly repayments. So, I don't think the loan was sustainable and it was irresponsible of Virgin Money to lend to her.

Where a business has done something wrong, our service usually aims to put the consumer back in the position they would have been in had the incident not occurred. But, in cases where a business has lent irresponsibly, this isn't entirely possible – as the lending provided cannot be undone.

In this case, I understand Ms T is struggling financially but she does have a regular income and she has had the benefit of the principle amount from the loan. I think it's fair that Ms T should repay the money she borrowed and had the use of. But I think Virgin Money should refund all the interest and charges Ms T has paid on her loan.

While I think it's fair that Ms T's credit file is an accurate reflection of her financial history, I don't think it's fair that she should be disadvantaged by Virgin Money's decision to lend to her irresponsibly. So, I think Virgin Money should remove any negative information recorded on Ms T's credit file associated with this loan.

It's clear from Ms T's testimony that the situation has caused her distress and inconvenience at a time when she's been suffering ill health. And that the requests for payment when she'd made clear she didn't have any disposable income has added to the stress she's under. As I don't think Virgin Money should have lent to Ms T I think they should also compensate her for the distress and inconvenience this has caused by paying her £150.

Responses to my provisional decision

Ms T hasn't asked for any further representations for consideration. Virgin Money accepted the provisional decision in essence but commented:

- the affordability assessment would have considered other expenditure not solely Ms T's rent.;
- when applying for the loan Ms T gave her monthly rent as £108. If her actual monthly rental commitment had been included, she would most likely have failed their affordability checks; and
- expressed concern about Ms T's credit file accurately reflecting her financial circumstances.

I've considered Virgin Money's comments. When reaching my decision, I considered the business file supplied by them. This included the loan application, loan agreement and affordability report. In the application form Ms T did say her monthly rent was £108 per month, but as I said in my provisional decision, with the information they had I would have expected Virgin Money to have made further checks to establish Ms T's financial position. If they had, as they have accepted, I think it would have been determined that the loan was unaffordable for Ms T.

Virgin Money has expressed concern about Ms T's credit file being an accurate reflection of her financial circumstances. In making my decision I've asked for the adverse information about the loan only to be removed from Ms T's credit file, not the loan itself as she will still need to repay any of the principle amount that is still outstanding.

My final decision

I uphold this complaint. And ask Clydesdale Bank Plc trading as Virgin Money to:

- refund all interest and charges that Ms T has paid up to date on the loan;
- treat any payments that Ms T's made as a reduction of the principle amount, for any capital balance that remains outstanding, Virgin Money should attempt to arrange an affordable and suitable payment plan with Ms T;
- remove any adverse information on Ms T's credit file in relation to this loan; and
- pay Ms T £150 for the distress and inconvenience this has caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 26 October 2022.

Anne Scarr

Ombudsman