

The complaint

Mr M says Clydesdale Bank Plc trading as Virgin Money ("Virgin Money") irresponsibly lent to him. He has requested that the interest and late payment charges he paid be refunded.

What happened

This complaint is about a credit card taken out on 1 October 2020 with an initial credit limit of £5,400.

Mr M says he's unhappy that Virgin Money provided credit on the account which he couldn't afford.

The complaint was assessed by our investigator and the complaint was upheld. Virgin Money disagreed with the investigator's assessment, so, the complaint was passed to me to decide.

I issued my provisional decision in respect of this complaint on 8 November 2022, a section of which is included below, and forms part of, this decision. In my provisional decision I set out the reasons why I had reached the same outcome as our adjudicator but for slightly different reasons, and why I was minded to award a slightly different redress. I set out an extract below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website.

Virgin Money needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr M could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Virgin Money should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the lower a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount 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 greater the frequency of borrowing, and the longer the period of time during which a customer has been indebted (reflecting the risk that prolonged indebtedness may signal that the borrowing had become, or was becoming, unsustainable).*

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

In this case, Virgin was making a large credit limit available to Mr M. And it knew that Mr M already had a significant amount of unsecured borrowing at the time. It also knew that this borrowing was across numerous different accounts, many of which Mr M had taken out in the previous twelve months. Virgin Money also knew from its checks that Mr M was regularly overdrawn in his current account. All of that suggested that Mr M might have been reliant on recently acquired unsecured credit which, allied to his overdraft balance, should have suggested he might be struggling.

So, I think that a proportionate check should have seen Virgin Money confirm that Mr M had the income sufficient to afford the new credit. Virgin Money told us that Mr M told them he earned £45,000 a year with another £20,000 a year of other household income. But Virgin Money has provided no evidence to support its testimony on this point.

Had Virgin Money sought evidence to confirm Mr M's income, they would have seen that Mr M was not earning the amount they say he was. Mr M's take home pay was in the region of £1,600 per month. Had Mr M's income been shown to be less than Virgin Money had thought, for whatever reason they had thought what they thought, and in the knowledge of the significant existing borrowings Mr M already had, a proportionate check should have, in my opinion, seen Virgin Money confirm Mr M's expenditure, So they could be sure he could afford more credit.

But Virgin Money chose instead to rely on an assumed calculation of Mr M's expenditure. In doing so, they missed that Mr M's financial situation was not straightforward. He was responsible for paying towards the running of two homes. Had Virgin Money performed proportionate checks, they would have seen that Mr M's actual expenditure was far in excess of their assumed calculated expenditure. Had Virgin Money performed proportionate checks, they would have seen that Mr M was already over-committed financially.

So, had it conducted proportionate checks, I think the situation that Virgin Money would have seen, should have suggested to Virgin Money that it was likely that Mr M would have been unable to make payments on the increased borrowing, if used, whilst at the same time having to meet his daily living expenses and other credit commitments, most likely. I have noted that on application Mr M declared he intended to use £3,000 of any new credit on balance transfers. But I've also had thought for the fact that Virgin Money chose to provide a credit limit of £5,400 and knowingly chose to increase Mr M's access to credit above the amount he wanted for balance transfers.

So, I think that proportionate checks would likely have shown Virgin Money that Mr M was in financial difficulty already in his management of his other debts and day-to-day living expenses. I also think there was a significant risk that further increases to his credit could have led to his indebtedness increasing unsustainably, such that he had no funds available to meet his debts and regular outgoings.

It follows that I think that Mr M lost out because Virgin Money provided him with further credit. In my view, Virgin Money's actions unfairly prolonged Mr M's indebtedness by allowing him to use credit he couldn't afford over an extended period of time and the

interest being added would only have the effect of putting him into further debt. It follows that Virgin Money should put things right.

Putting things right – what Virgin Money needs to do

As I don't think Virgin Money ought to have provided Mr M with the credit card, in this complaint, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Mr M should pay back the amounts he has borrowed. Therefore, Virgin Money should:

- *Rework the credit removing all interest and charges that have been applied, so that Mr M only needs to pay back the capital he borrowed.*
- *If Mr M has paid back more than the capital he borrowed, any overpayments should be refunded to him along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. Virgin Money should also remove all adverse information regarding this credit from Mr M's credit file.*
- *Or, if after the rework there is still an outstanding balance, Virgin Money should arrange an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the balance, any adverse information in relation to the credit should be removed from his credit file.*

**HM Revenue & Customs requires Virgin Money to deduct tax from any award of interest. It must give Mr M a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.*

My redress differs slightly from the investigator's suggested redress, in the third bullet point above. I believe that our standard approach to redress applies in this case, such that adverse information about the credit should be removed once Mr M has cleared any remaining balance.

My provisional decision

For the reasons set out, I'm currently minded to fully uphold Mr M's complaint, such that Clydesdale Bank Plc trading as Virgin Money, should put things right in the way set out above."

I asked the parties to the complaint to let me have any further representations that they wished me to consider by 22 November 2022. Sadly, both the emails that accompanied the decision referred to a response date of 22 December 2022. This was corrected in correspondence dated 10 November 2022.

Mr M has acknowledged receiving the provisional decision. Virgin Money has not acknowledged receiving the decision or made any further submissions or asked for an extension to do so. I think that Virgin Money has had sufficient time to make a final submission had it wished to do so. So, I am proceeding to my final decision.

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.

Virgin Money will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

Mr M is largely happy with the provisional decision. However, he wishes that I would change the standard redress I suggested should be awarded. Mr M would like the adverse credit markings that pertain to his debt management plan to be removed *before* he repays the full amount he owes to Virgin Money. That is not our standard approach. And I think it would be unreasonable for me to reach this finding in relation to the balances owed and how they are recorded on Mr M's credit file going forward. I think it would be unreasonable to have incorrect markings in Mr M's credit file and arguably not in Mr M's best interests, or those of any potential lender.

Beyond the above, given that there's no new information for me to consider following my provisional decision, I have no reason to depart from those findings. And as I've already set out my full reasons for upholding Mr M's complaint in part, I have nothing further to add.

Putting things right

Clydesdale Bank Plc trading as Virgin Money should put things right in the way set out in my provisional decision and repeated above.

My final decision

For the reasons set out, I'm upholding Mr M's complaint. Clydesdale Bank Plc trading as Virgin Money should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 December 2022.

Douglas Sayers
Ombudsman