DRN-4088039

The complaint

Mr L complains about what he considers to be irresponsible lending to him by Virgin Media Mobile Finance Limited ("Virgin Mobile").

What happened

Over a period of around three and a half years Mr L took out eight Virgin Mobile phone contracts. The contracts mostly ran over a three-year term, with monthly payments ranging from £25 to £45. Mr L explains that he was heavily indebted during this period and had a gambling addiction. As I understand it, Mr L undertook similar action with another mobile provider. His purpose in taking out the phone contracts was to ease his financial situation by selling the phones and using the proceeds elsewhere.

Mr L eventually found himself in an unsustainable financial position. He complained to Virgin Mobile saying that the lender had failed to undertake suitable financial assessment. He said that if it had done so, he would have been prevented from taking out the contracts, which were contributing towards his unsustainable level of debt. He sought the cancellation of the contracts, their removal from his credit file, and compensation.

Virgin Mobile didn't accept Mr L's complaint. It says it undertook credit checks before approving the finance agreements. It says Mr L repaid four of the contracts but that the remaining accounts were significantly in arrears. The accounts were with its Recoveries team and a debt repayment plan was in place.

Our investigator didn't think Virgin Mobile had acted inappropriately in approving the first four contracts. He considered the credit checks alone were unlikely to be sufficient. But from reviewing Mr L's bank statements and overall financial position at the relevant times, the investigator found that the payments were, on the face of it, affordable based on Mr L's disposable income.

In respect of the other four contracts, our investigator again found that the limited checks Virgin Mobile carried out were unlikely to be enough to demonstrate his ability to meet the payments sustainably. Noting changes in Mr L's financial position by that time, our investigator felt that Mr L's disposable income would be unlikely to cover the payments due under the contracts.

However, the investigator also noted Mr L had gone on to sell the phones supplied under the contract and had used the money he received in return. In addition, no interest was payable under the contracts. The investigator didn't think in such circumstances it was appropriate to expect Virgin Mobile to write off any outstanding balances or compensate Mr L.

Mr L didn't accept the investigator's conclusions and asked for this review. He said that his credit report showed that he was using credit to repay other debt and that he was only sustaining his outgoings by drawing cash on credit. He maintains that, had Virgin Mobile undertaken suitable checks, the credit would never have been given to him. Mr L said that there appeared to be no consequences to Virgin Mobile's actions and if the later loans hadn't been approved, he wouldn't have been able to sell them to fund his gambling addiction.

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.

The contracts for the mobile phones are fixed-sum loan agreements, governed by – among other things – the Consumer Credit Act 1974 ("CCA") and regulations set out by the Financial Conduct Authority ("FCA") in the CONC section of its Handbook. The FCA handbook can be found on its website.

Under CONC provisions, before agreeing to lend to Mr L on each occasion Virgin Mobile needed to make a reasonable creditworthiness assessment. That assessment has to be proportionate and based on sufficient information, taking into account matters such as the type and amount of credit, the payment frequency and amounts payable. It should also take into account any information of which it's aware that might indicate a customer is experiencing financial difficulty or is particularly vulnerable.

Virgin Mobile has been able to provide only very limited information in relation to the creditworthiness assessments it undertook in relation to Mr L. There's nothing to suggest either in Virgin Mobile's records or in Mr L's own submissions that it was aware at the time of his applications of any financial difficulties Mr L was experiencing, or that he might have been in any way vulnerable. However, it is apparent that Virgin Mobile didn't do much in the way of assessing Mr L's ability to make the required payments under the agreements.

An assessment based only on how Mr L has handled previous credit and his current overall level of debt is unlikely to be based on sufficient information. It doesn't, for example, take into consideration his level of expenditure. That's not to say I would expect a proportionate assessment would require Virgin Mobile to examine in detail Mr L's bank statements. The monthly payment on the phone contracts alone doesn't justify this.

But by the time of the fifth loan onwards, Virgin Mobile ought reasonably to have been considering Mr L's combined commitments. Like our investigator, I think that should have prompted a more in-depth review of Mr L's financial position. And such a review would more likely than not have established the limited level of disposable income Mr L had to sustain payments.

As such, I accept the contention that if Virgin Mobile had undertaken a reasonable creditworthiness assessment, it wouldn't have approved the lending for the agreements Mr L took out in 2020. I don't believe, however, that this means what Mr L is seeking represents a fair resolution to that failing. I have to consider all of the relevant circumstances in determining what's fair and reasonable.

That includes the fact that Mr L has had value for the contracts he took out. He sold the phones – which under the agreements he's obliged to return unless the loans are repaid in full. He's made use of the cash he received by doing so. If I were to propose that Virgin Mobile simply write off the outstanding sums, that would put Mr L in a better position than he would have been in if Virgin Media hadn't agreed the loans. In the circumstances at play here, I don't consider that would be the right thing to do.

It's not my role to make an award against a firm as a fine or penalty for wrongdoing. And I don't agree with Mr L when he says there are no consequences to Virgin Mobile's failure to undertake an appropriate assessment. The consequence to Virgin Mobile is that instead of recovering the money it lent to Mr L over a three-year period, it's going to take him much longer to repay. Virgin Mobile doesn't benefit from that timescale; the loans attract no interest. But having considered things as a whole, I'm not minded to interfere with the current position under which I understand Mr L is making token affordable payments.

My final decision

My final decision is that I don't require Virgin Media Mobile Finance Limited to take any further action to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 18 July 2023.

Niall Taylor
Ombudsman