DRN-4305725

The complaint

Mrs S has complained that Clydesdale Bank PLC, trading as Virgin Money ("Clydesdale"), irresponsibly lent to her.

What happened

Mrs S opened a credit card account with Clydesdale in November 2020 with an initial credit limit of £4,300. Her credit limit was never increased.

Mrs S says that Clydesdale acted irresponsibly by providing her with the credit card. She says if Clydesdale had done adequate checks on her situation it would have seen that she wouldn't be able to repay his balance in a reasonable length of time. She said that she was over-indebted elsewhere and had a low income.

Clydesdale said it didn't lend irresponsibly to Mrs S and that it did all the necessary checks before it lent to Mrs S.

Our investigator thought that Mrs S's complaint should be upheld. Following our investigator's view Clydesdale initially agreed to refund the interest and charges on Mrs S's account but it disagreed about amending her credit file if by refunding the interest and charges Mrs S's balance would be cleared in full.

Our investigator explained to Clydesdale the rationale behind the correction. Clydesdale still didn't agree – and then it retracted its offer to repay the interest and charges and asked for an ombudsman's final decision. So the complaint was passed to me to decide.

When I reviewed the complaint, I didn't think it should be upheld. I asked both parties for comments on my provisional decision. Clydesdale didn't respond. Mrs S provided further information about her circumstances at the time, including new evidence, which I have now considered.

Having taken this new information into account I decided that Mrs S's complaint should be upheld. Again, I wrote to both parties to explain this and seek their further comments. Mrs S agreed with my new decision; Clydesdale didn't respond. For this reason I see no reason to change my 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.

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 and I've taken that into account when I have considered Mrs S's complaint.

Having done so, I have decided Mrs S's complaint should be upheld. I will explain why.

Clydesdale 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 Mrs S could afford to repay what she 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 Mrs S's income and expenditure.

Certain factors might point to the fact that Clydesdale should fairly and reasonably have done more to establish that any lending was sustainable for Mrs S. These factors include things like understanding Mrs S's income, the total amount Mrs S borrowed, and the length of time Mrs S had been indebted.

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

What all of this means is that a less detailed affordability assessment, without the need for verification, is far more likely to be fair, reasonable and proportionate where the amount to be repaid is relatively small, the consumer's financial situation is stable, and they will be indebted for a relatively short period.

Clydesdale provided a copy of what it saw when it completed checks on Mrs S's application. Mrs S declared a gross annual income of £10,000 and a household income of £45,000. She also stated that she didn't pay any contributions to rent or a mortgage. Clydesdale's own searches revealed that Mrs S was jointly responsible for a mortgage payment of £1,035 a month and that she had outstanding unsecured borrowing of £9,111. It noted that her repayments on other revolving credit (that is, credit card and shopping accounts) was around £7 a month. Her repayments on non-revolving credit were around £136 a month.

It seems that Clydesdale relied on the household income to make its lending decision, rather than just Mrs S's income. Clydesdale has not suggested otherwise since my two provisional decisions. On this basis, Clydesdale considered that a limit of £4,300 represented only 10% of Mrs S's household income and was therefore likely to be affordable for her. It described the credit limit as 'modest'. If Mrs S had repaid 3% of her outstanding balance each month (if she borrowed to her credit card limit) she would have needed to pay £129.

However, while Mrs S appears to have had a joint mortgage I don't think it was reasonable for Clydesdale to take the household income into account. Clydesdale didn't have any understanding of the financial circumstances of Mrs S's joint mortgage holder or of the household costs and who was responsible for them. Mrs S's credit file does not show a joint bank account. So, I think it needed to rely on Mrs S's income alone when it assessed whether she could afford the repayments.

There are two reasons I think Clydesdale ought not to have relied solely on the information from its credit checks. First, Mrs S declared that she had no mortgage costs and yet Clydesdale's checks showed that she had a joint mortgage, so there was doubt about the answers Mrs S had provided in her application. Second, Mrs S's outstanding borrowing in her own name was close to a year's salary. The addition of a further £4,300 credit facility to this was significant. On this basis, I think Clydesdale ought to have verified Mrs S's income and expenditure.

Mrs S explained that she was responsible for paying for food, her phone and repaying a loan to her mother at around £400 to £500 a month. I haven't seen evidence of how much that loan had originally been for or how long Mrs S was expecting to continue repaying it. Mrs S has now explained that there is currently £56,000 outstanding. Mrs S's net pay each month was around £833 and she was repaying other borrowing at around £143 a month. If Mrs S used all her new credit and repaid it at 3% a month this would have been an additional cost of £129 a month. On this basis our investigator concluded Mrs S would have had little or no disposable income each month.

I asked for Mrs S to provide her bank statements so I could understand what Clydesdale ought to have seen if it completed the checks I consider would have been reasonable and proportionate. These showed that Mrs S's monthly income was correct, but that she was paying her mother back at only £300 a month. She made payments of about £150 for food over the same period – so about £50 a month. She paid an average of £20 a month towards a shopping account. I couldn't identify any other essential expenditure and it seemed payments towards her other non-revolving credit were not made from this account and nor did she have any mortgage expenses. This means that Mrs S's committed expenditure was in the region of £370 a month, or £510 if I take into account all her payments towards existing credit (including the payments for her non-revolving credit which were not made from this account), excluding her joint mortgage which it appears her husband paid. This means that I thought the additional payment of up to £129 a month would have been affordable for Mrs S, leaving her with a disposable income each month of nearly £200.

When I made my first provisional decision I concluded that Clydesdale didn't do reasonable and proportionate checks when it lent to Mrs S but I didn't think if it had done so that it would have made a difference to its decision to lend to Mrs S. This meant that I didn't intend to uphold Mrs S's complaint.

However, following my first provisional decision Mrs S provided more information. She submitted her full bank statements. Previously she had only submitted parts of her bank statements which contained what she thought held the relevant information. The additional pages (which, now looking at the numbering of each page, I am satisfied contains all the information about her income and expenditure) now includes evidence of all of her regular expenses, such as utilities, insurances, groceries, childcare and TV licence – the items that were missing from the information she originally supplied.

The new statements show she was consistently overdrawn in this account, almost never being in credit. They showed transfers to and from another account and I queried this in case that account belonged to someone else or contained evidence of further income. Mrs S provided those statements too. They were for a savings account and contained only transactions to and from her additional account. Mrs S explained she used this to try to ensure she kept some money for bills to one side. The balance was consistently low. Although Mrs S tried to ringfence money for bills, when looking at her accounts holistically I can see that there was little to no disposable income each month. Essential expenditure I have identified came to at least £860 a month. Her income was about £910 a month taking into account her salary and child benefit payments, leaving disposable income of around £50 a month.

I have already explained that if Mrs S had used the full credit available to her on the credit card and paid it back in a sustainable manner, her repayments would have been about £129 a month.

So, on the complete information now available to me I am satisfied that if Clydesdale had conducted necessary and proportionate checks it would have understood that Mrs S wasn't able to afford the credit it provided. I now think that Clydesdale acted unfairly, and Mrs S has lost out as a result.

Putting things right

As I don't think Clydesdale ought to have opened the account, I don't think it is fair for it to be able to charge any interest or charges under the credit agreement. But I think Mrs S should pay back the amount she has borrowed. Therefore, if my decision becomes final, I will direct Clydesdale to:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied.
- If the rework results in a credit balance, this should be refunded to Mrs S along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. Clydesdale should also remove all adverse information regarding this account from Mrs S's credit file.
- Or, if after the rework there is still an outstanding balance, Clydesdale should arrange an affordable repayment plan with Mrs S for the remaining amount. Once Mrs S has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

*HM Revenue and Customs requires Clydesdale to deduct tax from any award of interest. It must give Mrs S a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce the outstanding balance, it must do so after deducting tax.

My final decision

I uphold Mrs S's complaint and direct Clydesdale Bank Plc to pay compensation as I have described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 19 September 2023.

Sally Allbeury
Ombudsman