DRN-4346601

The complaint

Mr C has complained that Clydesdale Bank Plc, trading as Virgin Money, ("Clydesdale") irresponsibly lent to him.

What happened

Mr C opened a credit card account with Clydesdale in November 2020 with a credit limit of £4,400. His credit limit was increased in August 2021 to £8,800.

In May 2023, Mr C complained to Clydesdale about its decision to lend to him. He said the credit limit was too high and that if Clydesdale had completed checks on him it would have realised that he couldn't afford the credit.

While Clydesdale didn't think it had lent irresponsibly to Mr C it did offer to pause for a short while the interest it was charging Mr C as a gesture of good will.

Mr C didn't think this was enough, so he referred his case to this service.

When our investigator reviewed Mr C's complaint, they thought that it should be upheld. They thought that Clydesdale ought to have completed more thorough checks of Mr C's circumstances before it lent to him. And they thought if Clydesdale had done so, it would have realised Mr C couldn't afford the additional borrowing. Our investigator recommended Clydesdale pay back to Mr C the interest and charges he had incurred.

Clydesdale didn't agree. It said there was no evidence Mr C was in financial difficulty and that it conducted adequate checks.

As Clydesdale didn't agree with that view the case has been passed to me to make a 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 Mr C's complaint.

Having done so, I have come to the same conclusion as our investigator. I will explain my decision.

Clydesdale needed to take reasonable steps to ensure that it didn't lend irresponsibly. Those reasonable steps should include necessary and proportionate checks to establish that Mr C could afford the lending. Clydesdale has made robust submissions about what those reasonable steps should have been.

The checks Clydesdale need to do aren't prescriptive but could take into account a number of different things, such as how much was being lent, how much Mr C was borrowing elsewhere, the repayment amounts and Mr C's income and expenditure. There may even come a point where the lending history and pattern of lending itself clearly demonstrates that that the lending was unsustainable.

Mr C declared and annual income of £30,000. He also declared that his total household income was £54,000. Clydesdale says that although it used the household income for its calculations of affordability, it calculated that Mr C could manage the repayments on his own. Clydesdale used credit bureau data and general data about expenditure to establish Mr C's day-to-day expenses. This included information about his existing credit commitments. It noted that Mr C had no defaults, arrears or County Court Judgments on his credit file.

Those checks showed that Mr C owed over £18,300 to other creditors, the repayments on which took up a significant proportion – 45% - of his own monthly income.

While Clydesdale says that it was entitled to take into account the household income when assessing Mr C's ability to repay the new borrowing it didn't have any understanding of the other person's financial circumstances. CONC5.2a.12 says that a firm can use income from savings or assets jointly held with another person, income received jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement. I haven't seen that Clydesdale was in a position to understand whether this was the case. Mr C explains that his partner was unaware of his borrowing, or of his gambling which he explains was the cause of much of his financial difficulties. And from the information provided by Mr C I can see that the only financial connection between Mr C and his partner was the use of a joint bank account into which each deposited amounts to cover some of the household bills (but not all) and rent payments. So, I don't think it was reasonable of Clydesdale to assume that his partner's income was available to help repay Mr C's borrowing.

This is a moot point, though, as Clydesdale submits that Mr C could meet the repayments on the lending based on his own income of £30,000 a year gross. It calculated he had a net disposable income of around £420 a month. However, on the basis of the information Clydesdale had about Mr C's external borrowing, I think it ought to have conducted further checks on Mr C's income and essential expenditure to better understand whether Mr C could afford the credit card.

There is no prescriptive list of checks a business should do, so I don't know with certainty what any further checks Clydesdale chose to do would have shown. In the absence of any other evidence, I think it's reasonable to consider evidence Mr C has provided of his financial circumstances at the time, including bank statements from his sole accounts and his joint account as well as his credit report.

From these, I understand that Mr C would have needed to use over 45% of his net income each month to meet his credit repayments on a sustainable basis. This takes into account that Mr C would be benefitting from a period of 0% interest when he transferred some of his other debts to his new credit card. When also taking into account that Mr C could have continued to use his existing credit cards (because the opening of the new credit card was not conditional on him closing those lines of credit) and the 'spare' credit available on his Clydesdale credit card following the transfers, Mr C would have needed to commit significantly more than 50% of his income each month to makes sustainable repayments.

Having reviewed all Mr C's bank statements I calculate that once essential household expenditure and credit repayments were taken into account, Mr C would have been left with a disposable income of around £150 a month. He had two dependent children. I don't think £150 a month was enough to safely allow Mr C to sustainably meet his credit commitments and to manage other expenses that can reasonably be anticipated in such circumstances. I think if Clydesdale had conducted appropriate and proportionate checks it would have considered the new lending to be unaffordable for Mr C.

Mr C's credit limit was substantially increased about nine months later. I think it's reasonable to consider that the very large increase warranted further checks, too. I haven't been provided with evidence of the checks Clydesdale completed at that time. I have seen some evidence from Mr C's credit file at the time. It doesn't appear that his circumstances had changed significantly for the better by this time and, in fact, he had taken additional lending, too.

So, on balance, I don't think Clydesdale conducted appropriate and proportionate checks when it came to the credit increase, either.

I think Mr C lost out as a result of what Clydesdale did wrong when it allowed him to open the account and when it increased his credit limit.

Putting things right

As I don't think Clydesdale out to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But Mr C has had the benefit of all the money he spent on the account I think he should pay that back. Therefore, Clydesdale should:

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

*HM Revenue & Customs requires Clydesdale to deduct tax from any award of interest. It must give Mr C 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 tax.

My final decision

I uphold Mr C's complaint and direct Clydesdale Bank plc, trading as Virgin Money, to pay compensation as outlined above.
Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 November 2023.

Sally Allbeury
Ombudsman