DRN-4613967

The complaint

Miss M complains that Clydesdale Bank Plc, trading as Virgin Money ("Virgin"), irresponsibly granted her three credit cards she couldn't afford to repay.

What happened

Miss M entered into an agreement with Virgin to have access to credit via three credit card accounts. The first account was opened in March 2021 with a credit limit of £5,200, the second in November 2021 with a credit limit of £3,000 and the third in April 2022 with a credit limit of £1,000. There were no credit limit increases.

Miss M says Virgin didn't complete adequate affordability checks when it granted her the credit.

Our investigator said that Virgin shouldn't have granted Miss M the second card as by that point it's likely that the account was no longer affordable for her. And because of that, and given that her circumstances hadn't significantly changed, it also shouldn't have gone on to grant her the third card.

As Virgin doesn't agree with our investigator, the complaint has come to me for a 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 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 Miss M 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 the Miss M'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 should fairly and reasonably have done more to establish that any lending was sustainable for Miss M. 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 consumer 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.

It is with these factors in mind that I've looked at what happened when each card was opened.

Card one – March 2021

Before granting the account Virgin says Miss M provided details about her income, being a gross annual income of around £18,000. She also said she was living at home with her parents. Virgin also used information provided by a credit reference agency that showed how Miss M was managing her other existing credit. This showed Miss M owed £7,000 in unsecured debt. Virgin says that there was nothing to suggest she was having difficulty managing her credit, but we haven't seen much detail about that. I've kept in mind that Miss M told Virgin she intended to use £4,000 from her £5,200 credit limit to pay off other credit and so would benefit from a 0% balance transfer offer for a limited period.

We've seen Miss M's bank statements from the time of the account opening. Her net monthly income was broadly consistent with what she said about her annual income and which Virgin had verified. And I agree with our investigator that her typical monthly expenditure looks to have been around £400. There was no mortgage to pay but I've seen that Miss M was paying for food costs towards the household. I also note that Miss M was making heavy use of her overdraft, to the extent that once she'd been paid she was only briefly in credit. I think overdraft use is something that needs to be considered, although it doesn't always follow that regular overdraft use means that new lending will be unaffordable.

Based on what I've seen, I think Virgin could have carried out better checks before granting the credit. I say this given the level of credit she was being granted and her existing level of debt. I think finding out more about Miss M's level of monthly committed expenditure, such as regular monthly outgoings and other credit repayments, would have helped Virgin to gain a better understanding of Miss M's financial circumstances before agreeing to open the account. However, given that just over 75% of the new credit was being used to pay off other credit, I don't think Miss M could be said to be substantially increasing her debt burden at this time.

So I think for this card opening, although better checks would have given a fuller picture of Miss M's finances, I think Virgin's lending decision was fair and the new credit was likely to be affordable for Miss M.

Card two – November 2021

Again, I think it would have been proportionate for Virgin to have verified Miss M's financial circumstances before granting this card. Virgin saw that her total unsecured debt at this point had increased to around £10,000. She was taking on £3,000 of new credit – without seeking a balance transfer, at least initially – and so she was taking her total credit debt up to £13,000. Based on sustainable monthly repayments of 5% per month that would mean Miss M having to find £650 each month for credit repayments. So I think again Virgin needed to do more to ensure the new credit would be affordable for Miss M in a way that she could afford to repay the new credit sustainably.

If Virgin had taken steps to find out more, it's likely it would have seen that the new credit created a possibility that Miss M wouldn't be able to pay it without running the risk that her relatively stable financial situation would deteriorate.

Our investigator saw from Miss M's bank statements in the run up to opening this card that she was earning a much lower income which was now being supplement by state benefits. I've also noted that she was receiving one-off sums from family members and friends. She was now permanently in her overdraft and incurring daily charges as a result. And from what I've seen, her monthly non-credit commitments for essential daily living costs were still at around the same level.

So I am in agreement with our investigator that the second card was likely to have been unaffordable for Miss M and that Virgin ought to have carried out better checks to see if the new credit would be affordable given that she was now further indebted. It ought also to have seen that her employment circumstances had now changed. I think such further checks would also have demonstrated that Miss M's income position had altered significantly and that it was unlikely that she would be able to sustainably repay the new credit.

Card three – April 2022

Virgin has pointed out that Miss M's level of debt had reduced by this point. Miss M now had access to a total of £9,200 in credit from Virgin alone. I've seen that Miss M had now gone back to earning salary that was broadly similar to that which she had at the time of the first card opening. But she remained reliant on monthly state benefits to supplement her income. Meanwhile, Miss M's bank statements still showed heavy use of her overdraft facility and daily charges being added as a result. I also think the fact that she recently arranged a balance transfer on the card, tends to suggest that her financial situation remains stretched as she has over-extended herself with the credit available to her.

So I agree that the overall picture is that Miss M has continued to have to resort to juggling her finances since being granted the second card, incurring interest charges and taking on new credit that otherwise wouldn't be necessary. That means there has therefore been a real risk that Miss M would be unable to sustainably afford the additional borrowing provided by the additional two cards.

Putting things right – what Virgin needs to do

As I don't think Virgin ought to have granted Miss M the two cards that were opened in March and November 2021, I don't think it's fair for it to be able to charge any interest or charges under those two credit agreements. But I think Miss M should pay back the amounts has borrowed. Therefore, Virgin should:

- Rework both the second and third card accounts removing all interest and charges that have been applied.
- If the rework results in a credit balance for either card, this should be refunded to Miss M along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. Virgin should also remove all adverse information regarding both accounts from Miss M's credit file.
- Or, if after the rework there is still an outstanding balance, Virgin should arrange an affordable repayment plan with Miss M for the remaining amount. Once Miss M has

cleared the balance, any adverse information in relation to the two accounts should be removed from her credit file.

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

My final decision

Having set out my reasons above, it follows that I uphold Miss M's complaint in respect of the opening of the second and third credit card accounts.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 27 March 2024.
Michael Goldberg
Ombudsman