DRN-4856240

The complaint

Mrs R is complaining about Clydesdale Bank Plc trading as Virgin Money because she says it lent irresponsibly by providing credit she couldn't afford.

What happened

In January 2022, following her application, Virgin Money provided Mrs R with a credit card with a credit limit of £11,400. This limit was never increased. Mrs R immediately transferred balances from other cards worth almost £10,000.

The account defaulted and was closed in April 2023 with an outstanding balance of around £11,500.

Our investigator concluded the complaint should be upheld. He felt Virgin Money should have carried out a more detailed affordability assessment and concluded further credit was unaffordable.

Virgin Money didn't accept the investigator's assessment and made the following key points:

- The card limit was proportionate to Mrs R's annual income of £100,000 and combined household income of £142,000. The investigator only referred to Mrs R's sole income in making his assessment, whereas using the household income results in a much higher disposable income.

- Mrs R's debt to income ratio was 44% and it saw no signs she was under financial strain. The bank statements she's provided show she was paying in excess of the minimum payments to her existing credit cards.

- Bank statements show Mrs R did make use of her overdraft but this included a significant amount of discretionary spending and doesn't indicate she was under financial strain.

- If it had reviewed Mrs R's bank statements, it wouldn't have seen Mrs R's increased mortgage payment starting in January 2022. But if she increased her mortgage at this time, the lender must have been satisfied the increased commitment was affordable. If Virgin Money is guilty of irresponsible lending, so is the mortgage lender.

- The cash withdrawal from a credit card shown on the bank statements appears to have been a short-term measure while Mrs R was waiting for the proceeds of her property sale.

- Also, Mrs R's bank statements show she cleared a loan in December 2021, leaving her with a higher disposable income.

- Mrs R transferred balances from other cards to Virgin Money and benefitted from a reduced payment during the introductory interest-free period. Also, the minimum payment on her new card was only 1% of the balance.

The complaint has now been referred to me for review.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before lending to Mrs R, Virgin Money was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:

- Did Virgin Money complete reasonable and proportionate checks to establish Mrs R would be able to repay the credit in a sustainable way?
- If so, was the decision to lend fair and reasonable?
- If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

The rules, regulations and good industry practice in place at the time the credit was approved required Virgin Money to carry out a proportionate and borrower-focused assessment of whether Mrs R could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant Virgin Money had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of her making payments, it had to consider the impact of the repayments on Mrs R.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

Virgin Money has described the information it gathered to assess whether Mrs R's credit was affordable before it was approved. This included the information in her application, including her income and housing costs, information obtained from a credit reference agency (CRA) about her existing credit arrangements and any past issues with credit, and the performance of other products she held.

Virgin Money maintains its affordability assessment was proportionate to the credit being given and demonstrated it was affordable.

In making her application, Mrs R declared her annual income was £100,000. Virgin Money's credit check showed she had existing debt of £45,000, around half of which was non-revolving credit. In making its affordability calculation, Virgin Money used a net monthly figure of £5,557 for Mrs R's income and this is broadly compatible with what's shown on the bank statements she's provided. After taking account of her known expenditure to existing credit obtained from the CRA and an estimate of her key expenses, Virgin Money calculated Mrs R had a monthly disposable income of £2,032.

In reaching this figure, Virgin Money used a figure of £1,029 for housing costs as this was the cost of her mortgage as reported by the CRA. But in her application, Mrs R declared her share of the housing costs to be £3,000. She's subsequently explained that she and her husband moved home in December 2021 and significantly increased the size of their mortgage. She's provided evidence showing a significant increase in mortgage borrowing at this time and the bank statements provided show a mortgage payment of £4,591 in January 2022.

After carefully reviewing the information Virgin Money obtained, I think there were factors that should have prompted it to carry out further checks before approving Mrs R's credit. In particular, I think it should have clarified why she'd stated the cost of her mortgage to be much higher than its check with the CRA revealed. I don't think it was appropriate to assume a much lower figure than Mrs R had stated without making further enquiries.

If Virgin Money had contacted Mrs R about this, I've no reason to think she wouldn't have provided more information about her impending change of circumstances. Further, based on the payment of £4,591, I'm satisfied the figure she quoted of £3,000 was a reasonable estimate of her share of this commitment. The difference between Mrs R's share of her housing costs going forward and the incorrect amount Virgin Money assumed in its calculation would have effectively wiped out the disposable income it calculated she had available.

If Virgin Money had made efforts to establish Mrs R's actual mortgage commitments in light of the discrepancy in her application, as I believe it should have, I think it's clear that it would have concluded she didn't have sufficient disposable income to afford further credit. There were other potential signs of financial difficulty, including Mrs R's use of her overdraft facility, that would have been visible if Virgin Money had asked for sight of her bank statements. But, in light of what I've said above, I don't think it needed to request bank statements to conclude it shouldn't be offering credit to Mrs R or that these issues are crucial to the outcome of her complaint.

In response to some of the additional points raised by Virgin Money:

- I think it's appropriate to consider this complaint based on Mrs R's income alone. The card was in her sole name the rules in CONC state that where a lender takes another person's income into account in assessing affordability, it should also take account of that person's expenditure. I've seen nothing to indicate Virgin Money considered Mr R's credit or other commitments in its affordability calculation.

- I'm not considering the actions of Mrs R's mortgage lender as part of this complaint.

- I appreciate Mrs R transferred the balances of other accounts to her new card account. But the limit offered was greater than the total of the balances transferred, so Virgin Money's actions still increased the amount of credit available to her. And while the new account did offer an interest-free period this was for a limited time only.

- I wouldn't consider the credit being offered was sustainable if Mrs R could only afford to make the minimum payment. This wouldn't allow her to repay the debt in a reasonable period of time, particularly after the interest-free period ended.

In summary, if Virgin Money had adequately assessed whether the credit repayments were affordable and sustainable, it's my view it shouldn't have lent to Mrs R. It's for this reason that that I'm upholding her complaint.

Putting things right

The principal aim of any award I make must be to return Mrs R to the position she'd now be in but for the errors or inappropriate actions of Virgin Money. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think Virgin Money should have lent to Mrs R, I don't think it's fair for her to pay interest or charges on the amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, Virgin Money now needs to take the following steps:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since the account was opened.

- If the reworking results in a credit balance, this should be paid to Mrs R with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

  HM Revenue & Customs (HMRC) requires Virgin Money to deduct tax from any interest. It must provide Mrs R with a certificate showing how much tax has been deducted if she asks for one. If Virgin Money intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance, Virgin Money should arrange an affordable payment plan with Mrs R for the shortfall.

- Remove any adverse information recorded on Mrs R's credit file relating to this credit, once any outstanding balance has been repaid.

If Virgin Money no longer owns the debt, it should liaise with whoever does to ensure any payments Mrs R has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mrs R in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

For the reasons I've explained, I'm upholding Mrs R's complaint. Subject to her acceptance, Clydesdale Bank Plc trading as Virgin Money should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs R to accept or reject my decision before 23 July 2024.

James Biles
Ombudsman