

The complaint

Mr T is complaining about Clydesdale Bank Plc trading as Virgin Money because he says it lent irresponsibly when providing him with a credit card. He says it knew he had issues with gambling and shouldn't have agreed to lend him more money.

What happened

On 25 November 2023, Mr T was accepted for a credit card account with Virgin Money. The account opened with a credit limit of £7,400 and this hasn't changed. This was Mr T's third credit card with Virgin Money but he isn't complaining about the other two.

After the card was issued, Mr T made the following money transfers:

- 27 November 2023 - £2,000;
- 6 December 2023 - £2,000;
- 12 December 2023 - £600; and
- 11 January 2024 - £2,100.

These payments incurred transfer fees totalling £268. The statements provided show no other transactions were made using the card and Mr T has been making the minimum monthly repayment only. Consequently, the balance of what he owes hasn't reduced significantly.

Mr T says the above amounts were transferred to his current account and he's provided screenshots to demonstrate this. He also says the money was used for gambling and has provided screenshots from his account showing he spent a total of £8,469 on gambling between 27 November 2023 and 25 April 2024.

In response to Mr T's complaint, Virgin Money said:

"I am aware you did call us on 8 June 2020, and make us aware of a vulnerability you had, and a note was added to both your accounts. At this time, we did stop any further interest or fees being applied to the account. When you applied for the third account you never advised on the application there was a vulnerability, and the application will only refer if you had advised us of your situation. I agree our system should work better and I have highlighted this issue for customers.

"I have highlighted this to the relevant team, and they are now looking at a process that will refer further application, if the customer has already made us aware of a vulnerability. I agree we have let you down and have refunded the fees you have been charged for the money transfers of £268, the rest of the balance will need to be paid as you have used the funds. You will see these refunds on the account when the statement is produced."

Account statements show the money transfer fees of £268 have been refunded and that no interest has been applied.

After the complaint was referred to me, I issued my provisional decision setting out why I thought it should be upheld and that Virgin Money should take further steps to put things right. My reasons were as follows:

Before lending to Mr T, 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 Mr T 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 Mr T 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 him making payments, it had to consider the impact of the repayments on Mr T.

Prior to approving Mr T for further credit, Virgin Money collected information about his circumstances from the information contained in his application, including his employment status and income, and obtained from a credit reference agency, covering his current credit commitments and any past issues. Based on this information, Virgin Money says Mr T fell within its lending criteria and his application was approved.

While Virgin Money may have felt these checks showed repayments on the credit would be affordable, I don't think enough consideration was given to the impact of the credit on Mr T and whether it would have adverse consequences.

Virgin Money has confirmed Mr T notified it that he had issues with gambling in June 2020. At this time, it added a note to its system that read:

"Customer calling to discuss with us his current circumstances. Explicit consent has been gained to note this – customer has a gambling addiction. He has 2 accounts with us which he has maxed out. Along with other creditors, totalling around £28,000. He said due to this he isn't now in a position to pay this back by making contractual payments and needs to come to some sort of agreement with his creditors. As he doesn't want to have to go bankrupt. I have passed to SST based on the gambling addiction info he disclosed.

"CH [I believe this is shorthand for cardholder, in this case Mr T] explained that he has a gambling addiction for a few years and has ended up with lots of debt. CH mentioned he was in trouble with the policy a few years ago. And also mentioned he felt suicidal. CH did not seem to want to discuss this further. CH is on medication for his mental health. He was on them for a long period of time when it should have been short term. CH explained he has panic attacks at night. When he is not on medication he can become very emotional and even aggressive. His probation officer is there to support him and he has told his wife

about this. CH explained he is getting support from them. He is not receiving professional help – seeing how much he has hurt his loved ones and has been a wake up call. CH is looking to get on top of things now.”

As mentioned in the system note, Mr T was then referred to Virgin Money’s Specialist Support Team and it stayed in contact with him. For example, after contact in June 2022, the following note was added to the system:

“CH updated us on personal circumstances in that things have got better for him. CH still takes medication which helps him. (Prev notes state stops him from being aggressive and emotional). CH has taken out some private pensions to help clear some debts and increased his monthly income a little to aid with those debts including the 2nd [Virgin Money account] which has been paid off. CH did state that he still gambles though, and was hesitant when I questioned if at manageable levels. Stated in taking out some pensions ‘1k’ may have been used for gambling, which his wife doesn’t know about. States is hard to stop (bit like smoking). CH is aware of support services. CH did ask if we are going to change level of support, however based on this conversation I am happy to keep it in place at this time. Informed CH reviews will be more recent ongoing and we will reassess at next chat.”

From this, I think it’s clear Virgin Money was aware Mr T was a vulnerable customer with a long-standing gambling problem and I’ve seen nothing to indicate there was any reason to believe his issues were behind him by the time he was approved for a third card in November 2023.

In considering this complaint, I’ve also referred to the regulator’s Consumer Duty, outlined in the Principles for Businesses (PRIN) in the Financial Conduct Authority Handbook. The duty was introduced in July 2023 with an overarching requirement that “a firm must act to deliver good outcomes for retail customers”. In particular, PRIN 2A.2.14 states:

A firm must enable and support retail customers to pursue their financial objectives.

And PRIN 2A.2.8 states:

A firm must avoid causing foreseeable harm to retail customers.

Taking everything into account, I don’t think Virgin Money had sufficient consideration for the impact its decision to lend could have on Mr T or the potential adverse consequences. Given his history of vulnerability, I think it was reasonably foreseeable that the card might be used to fund gambling and he’s provided evidence to show this is exactly what happened. And, in addition to putting him further into debt at a time when he was trying to improve his position with his creditors, it may also have exacerbated the mental health problems he’d already disclosed. On that basis, I think Virgin Money failed to meet the Consumer Duty requirements to support Mr T in meeting his financial objectives and to avoid causing him foreseeable harm.

In conclusion, I believe it was irresponsible to knowingly offer further credit to Mr T and its response to his complaint indicates Virgin Money accepts this. It’s for this reason that I’m proposing to uphold his complaint.

Both parties accepted my provisional decision. Virgin Money also noted Mr T has another credit card account with an outstanding balance and asked whether it could use the payments to be refunded under this complaint (approximately £447) to reduce the balance on that account.

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.

As neither party has made any further submissions in response to my provisional decision, my findings haven't changed from those I set out previously.

With regard to Virgin Money's comments about using the compensation payable to reduce the balance on his other account, Mr T may agree this would help him repay some of his outstanding debt more quickly but that's something it would need to agree with him separately. The complaint I'm dealing with is about one account and I don't think it's appropriate for me to say the compensation should be directed to repay a different account without Mr T's consent.

Putting things right

I'm pleased to see Virgin Money has already taken steps to ensure Mr T will owe nothing over and above the amount he transferred to his current account. But I don't think that goes far enough in this particular case. Virgin Money was aware Mr T was a vulnerable customer, and ought to have known he should never have been given this credit. I am conscious he had use of the money he borrowed, but I don't think this benefitted him in any way. He doesn't appear to have acquired any assets of value and the money was instead gambled away.

In the circumstances, and in addition to what it's already done, Virgin Money should now take the following additional steps:

- return all payments made by Mr T with simple interest at 8% per year from the date each payment was made to the date of settlement;
- write off the debt remaining on the account and close it so Mr T has no further access. He's already told our investigator he's happy for the account to be closed in this way; and
- remove any adverse information recorded on Mr T's credit file relating to this account.

I think this would effectively return Mr T to the financial position he would be in if the card had never been issued in the first place.

I also believe the circumstances described would have caused Mr T some distress and inconvenience. The amount to award a consumer for their distress and inconvenience can be difficult to assess as the same circumstances can affect different consumers in different ways. But given Mr T's vulnerability and the extent of the problems outlined in his contact with Virgin Money, I think the impact was substantial and that additional compensation of £500 should be paid.

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 Mr T in the circumstances of his 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 Mr T's complaint. Subject to his acceptance, Clydesdale Bank Plc trading as Virgin Money should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 5 September 2024.

James Biles
Ombudsman