

## **The complaint**

Mr S says Clydesdale Bank Plc, trading as Virgin Money, irresponsibly lent to him.

## **What happened**

Mr S opened a credit card account with Virgin Money in June 2021. He was given a credit limit of £3,100. This was not increased at any stage. The account defaulted in August 2023.

Mr S says he should never have been allowed to open an account with such a large credit limit based on his credit history.

Virgin Money says it completed proportionate checks that showed the credit was affordable.

Our investigator upheld Mr S's complaint. He said Virgin Money checks were not proportionate and better checks would have shown the credit would most likely not be sustainably affordable for Mr S.

Virgin Money disagreed with this assessment and asked for an ombudsman's review. It said, in summary:

- Its lending decision was sound given the information available at the time and Mr S's application would still be approved through its current strategies as the debt-to-income profile is within its risk appetite given the other characteristics of the application.
- Most of its applications are automatically approved and without the requirement to view a customer's bank statements. Indeed, on another case the ombudsman said that proportionate checks would not have extended into obtaining bank statements.
- The account was running well until Mr S experienced financial difficulties more than two years after June 2021.
- It is interesting we suggest Mr S could not afford to make payments towards the newly awarded Virgin Money card, yet his payment history reflects he consistently made payments more than the required minimum for the first year the account was active and on one occasion he paid off £1,500 using his debit card.

## **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.

I've had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as Virgin Money, need to follow. Virgin Money will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement, Virgin Money needed to check that Mr S could afford to repay the credit out of his usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit, for example the amount offered, and to Mr S's particular circumstances, and Virgin Money had to pay proper regard to the outcome of the assessment with regard to affordability risk. It needed to consider not just the likelihood of getting its money back, but also the impact on Mr S of making his repayments. Ultimately, Virgin Money needed to treat Mr S fairly and take full account of his interests when making its lending decision.

With this in mind, to reach my decision I have considered did Virgin Money complete reasonable and proportionate checks to satisfy itself that Mr S would be able to repay the credit offered within a reasonable period of time? If it didn't do this, what would reasonable and proportionate checks have shown? Did Virgin Money make a fair lending decision? And did it treat Mr S unfairly in some other way?

Virgin Money provided the information it relied on to make its decision. This included the income and housing costs Mr S declared on his application form, an estimate of his living expenses based on national statistics, and the results of the credit check it completed. Based on this information combined Virgin Money concluded Mr S had monthly disposable income of £240 and so could afford this card with a £3,100 limit.

But I am not satisfied these checks were proportionate given the limit that was offered relative to Mr S's net monthly income of £1,641. I think a fuller financial review was needed – both the income and fixed outgoings Virgin Money used in its affordability assessment needed to be verified so Virgin Money had the assurances it needed that its lending would not be financially harmful to Mr S.

In cases like this we look at bank statements from the three months prior to application. I am not saying Virgin Money had to do exactly this. But it is a reliable way for me to understand what proportionate checks would most likely have shown. And I think Virgin Money, as a responsible lender, would have made a different lending decision had it completed better checks. I say this as the statements show Mr S's finances were under pressure. His income was lower than Virgin Money understood at around £1,460 and his non-discretionary outgoings (housing, living and credit costs) were around £1,670. So he had no disposable income available and could not afford to take on more credit. He was already persistently reliant on an overdraft facility and I note returned direct debits. So in these circumstances and had it completed proportionate checks, I think the lender would have concluded that its credit card would most likely not be sustainably affordable for Mr S.

Virgin Money argues that Mr S's payment history reflects he consistently made payments of more than the required minimum for the first year, and on one occasion he repaid £1,500 via his debit card, so it was affordable. But we know he did this by borrowing from elsewhere (either via his overdraft or taking out new credit) supporting my conclusion that better checks would have shown he would most likely not be able to sustainably repay the credit. I appreciate its checks are automated but that does not change its obligation to make sure it has the assurances it needs before lending that a debt will not cause financial harm to an applicant. It says the application was 'within appetite', and still would be, but this defence places a concerning emphasis on whether Virgin Money would get its money back, versus considering the likely impact of making the repayments on Mr S. And finally, Virgin Money reference a case where we had found it would not have been proportionate to request bank statements. But as it knows we consider each case on its individual merits – and to be clear, the finding here is not that bank statements had to be requested, rather that a verified review of income and outgoings was needed before lending.

It follows I find Virgin Money should not have lent to Mr S.

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 below results in fair compensation for Mr S 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.

### **Putting things right**

As I don't think Virgin Money ought 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 I think Mr S should pay back the capital amount he has had the use of.

Therefore, Virgin Money should:

- 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 Mr S along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement. Virgin Money should also remove all adverse information regarding this account from Mr S's credit file.
- Or, if after the rework there is still an outstanding balance, Virgin Money should arrange an affordable repayment plan with Mr S for the remaining amount. Once Mr S has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

If Virgin Money has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with it to ensure the redress set out above is carried out promptly.

\*HM Revenue & Customs requires Virgin Money to deduct tax from any award of interest. It must give Mr S 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 the tax.

### **My final decision**

I am upholding Mr S's complaint. Clydesdale Bank Plc, trading as Virgin Money, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 September 2024.

Rebecca Connelley  
**Ombudsman**