DRN-5032381

Complaint

Mr L has complained about a credit card and subsequent limit increases which Clydesdale Bank Plc (trading as “Virgin Money”) provided to him.

He says that the credit card and limit increases were unaffordable for him and so should never have been provided.

Background

Virgin Money provided initially provided Mr L with a credit card which had a credit limit of £4,800.00 in November 2019. Mr L’s credit limit was then increased to £8,800.00 in June 2020; £12,500.00 in January 2021; £17,500.00 in September 2021 and then finally £22,500.00 in April 2022.

In November 2023, Mr L complained that the credit card was unaffordable so it as well as the credit limits were irresponsibly provided to him.

One of our investigators reviewed what Mr L and Virgin Money had told us. She thought that Virgin Money hadn’t done anything wrong when initially providing the credit card. However, the investigator also thought Virgin Money ought to have realised that it shouldn’t have provided the credit limit increases to Mr L. So she recommended that Mr L’s complaint be partially upheld.

Mr L didn’t disagree with the investigator. However, Virgin Money did not accept the investigator’s conclusions. As Virgin Money didn’t agree with the investigator’s conclusions the case was passed to an ombudsman for review as per the next stage of our process.

As the parties are in agreement over the outcome on the decision to initially provide the card this decision is only looking at whether Virgin Money acted fairly and reasonably towards Mr L when providing him with his credit limit increases.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. I’ve considered all of this when deciding Mr L’s complaint.

Having carefully considered everything, I’m upholding Mr L’s complaint. I’d like to explain the reasons for my conclusion.

Virgin Money needed to make sure that it didn’t lend irresponsibly. In practice, what this means is Virgin Money needed to carry out proportionate checks to be able to understand whether Mr L could afford to repay before advancing any credit.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

I've kept this in mind when considering Mr L's complaint.

Were the checks that Virgin Money carried out before providing Mr L with his credit limit increases reasonable and proportionate?

Virgin Money says that it provided Mr L with his credit limits after it carried out credit searches and it obtained some information on his income and expenditure from him. The information suggested that Mr L had some existing debts. But, in its view, these were well managed and reasonable in comparison to his income.

In Virgin Money's view, the information that it obtained indicated that Mr L would be able to make the monthly repayments that could be due as a result of all of these credit limits.

On the other hand, Mr L says that these credit limit increases were unaffordable for him and that they shouldn't have been provided.

I've considered what the parties have said.

Mr L's credit card was a revolving credit facility. This means that when Virgin Money increased Mr L's credit limit it was required to understand whether Mr L could repay £8,800.00, £12,500.00, £17,500.00 and then £22,500.00 within a reasonable period of time, at the respective times that these credit limits were granted.

In the first instance I find it somewhat strange that Virgin Money appears to have relied on household income in its assessment of Mr L's ability to afford the credit limit increases. Mr L was making a sole application and Virgin Money had no indication of whether the additional £18,000.00 of household income would or could be available to make the repayments to this credit card. And I don't think that it was reasonable to simply assume that Mr L had access to these funds.

Furthermore, I'm also concerned that Mr L's existing indebtedness had increased significantly in the period between the card initially being provided and the first credit limit increase. I do think that Mr L owing almost a third of his income already was something to factor into to an assessment of what he could afford to repay.

The fact that Virgin Money may not have considered this an issue from a credit risk point of view, fails to take into account the fact that it was also required to consider the potential impact having to make these payments would have on Mr L.

Equally, Mr L was already indebted to a third of his income. Providing him with the use of a further £4,000.00 presented the opportunity for Mr L to get even more indebted than this. And this was at a time where many customers' disposable incomes were being stretched due to the pandemic.

As a result of this, I think that Virgin Money needed to find out more about Mr L's actual expenditure before determining whether he was in a position to repay a balance of £8,800.00 within a reasonable period of time. I don't think that it was proportionate to simply rely on any declarations of living expenses that Mr L may have made.

Indeed it looks as though Virgin Money checks continued to be based mainly on Mr L's declaration of income and expenditure even when Mr L made further applications for limit increases, despite him, by that stage, possessing the traits of being a repeat borrower. So Virgin Money's checks appear to have been the same on every occasion and do not appear to have reacted to the unfolding situation.

Bearing all of this in mind, I'm satisfied that the checks Virgin Money carried out before providing any of the credit limit increases weren't reasonable and proportionate.

Would reasonable and proportionate checks have indicated to Virgin Money that Mr L would have been unable to the limit increases granted?

As reasonable and proportionate checks weren't carried out before the credit limit increases were provided, I can't say for sure what they would've shown. So I now need to decide whether it is more likely than not that proportionate checks, at the respective times, would have told Virgin Money that Mr L would have been unable to sustainably repay what he could owe as a result of these limit increases.

As I've previously explained, Virgin Money was required to establish whether Mr L could make his credit card repayments without experiencing significant adverse consequences – not just whether these repayments payments were technically affordable on a strict pounds and pence calculation, or whether it might have been confident that it would get its money back from Mr L.

Our investigator set out, in some detail, why she thought that proportionate checks would have shown these credit limit increases to be unaffordable. In response to our investigator's assessment, Virgin Money asked for copies of the statements that she relied on for this part of her assessment. Despite being provided with copies of this information, Virgin Money hasn't really explained why it thinks that this information shows that the limit increases were affordable.

I'm also concerned by the fact that Virgin Money has chosen to credit search Mr L's wife, in circumstances where I can't see that it has the authority to do this – at least for the purposes of Mr L's complaint. I'm even more alarmed at Virgin Money's argument that Mr L's wife's income should be included as being available to pay Mr L's debts as she only has a loan and mortgage she jointly holds with Mr L. This fails to take into account that this credit card was not a joint commitment and simply wasn't Mr L's wife's responsibility.

In any event, I'm satisfied that the available evidence suggests that it is more likely that not that Mr L did not have the disposable income to sustainably repay what could be owed as a result of these credit limit increases. And I've not seen anything at all to indicate that Mr L's that there was ever an intention, or that it was ever the case, for Mr L's wife income to be available to repay debts that were in Mr L's sole name.

For the sake of completeness, I would add that the reason our investigator provided the statements for another of Mr L's credit cards is because that is how he was making the vast majority of the payments to his living costs. He was making these payments and then immediately repaying the balance because of the interest rate on the card. Nonetheless, as this credit card was how Mr L was making the payments to fuel, food shopping and many of his other day to day living costs, I think it fair and reasonable to count these expenses as part of his committed expenditure.

Taking all of this into account, I'm satisfied that it is more likely than not that Mr L was unable to sustainably make the repayments to any of these credit limit increases. So overall and having considered all of the information provided, I'm satisfied that Virgin Money shouldn't have provided these limit credit limit increases to Mr L.

Mr L ended up paying interest, fees and charges as a result of Virgin Money providing him with credit limit increases it shouldn't have provided him with.

I'm therefore satisfied that Mr L lost out because of what Virgin Money did wrong and that it should put things right.

In reaching my conclusions, I've also considered whether the lending relationship between Virgin Money and Mr L might have been unfair to Mr L under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct Virgin Money to do below results in fair compensation for Mr L given the overall circumstances of his complaint. I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what Virgin Money needs to do to put things right for Mr L

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Mr L's complaint for Virgin Money to put things right by:

- reworking Mr L's account to ensure that from June 2020 onwards interest is only charged on the first £4,800.00 outstanding - to reflect the fact that none of the credit limit increases should have been provided. All late payment and over limit fees should also be removed;

- if an outstanding balance remains on Mr L's account once all adjustments have been made Virgin Money should contact Mr L to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr L's credit file, it should backdate this to when it shouldn't have provided the additional credit in question in the first place;

- if the effect of all adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr L along with 8% simple interest† on the overpayments from the date they were made until the date of settlement. If no outstanding balance remains on Mr L account after all adjustments have been made, then Virgin Money should remove any adverse information it may have recorded from Mr L's credit file.

† HM Revenue & Customs requires Virgin Money to take off tax from this interest. Virgin Money must give Mr L a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr L's complaint. Clydesdale Bank Plc (trading as Virgin Money) should put things right in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 23 December 2024.

Jeshen Narayanan
Ombudsman