

Complaint

Mr E has complained about credit cards which Clydesdale Bank Plc (trading as “Virgin Money”) provided to him. He says he was provided with credit cards that were unaffordable.

Background

Mr E was initially provided with a credit card with a limit of £4,300.00 in January 2020. In August 2020, Mr E was provided with a second Virgin Money credit card and this had a limit of £3,000.00. Credit card 1 remained open when credit card 2 was provided.

One of our investigators reviewed what Mr E and Virgin Money had told us. And he thought that Virgin Money hadn’t treated Mr E unfairly or unreasonably at the time of providing either card and so he didn’t uphold Mr E’s complaint.

Mr E disagreed with the investigator’s assessment and asked for his complaint to be passed to an ombudsman for review.

My provisional decision of 13 September 2024

I issued a provisional decision – on 13 September 2024 - setting out why I was intending to partially uphold Mr E’s complaint.

In summary, I was intending to partially uphold Mr E’s complaint because while I was satisfied that proportionate checks would not have prevented Virgin Money from providing Mr E with credit card 1, I was satisfied that similar checks would have shown it that it was unfair for it to provide credit card 2 to him.

Virgin Money’s response to my provisional decision

Virgin Money initially asked for details of Mr E’s debt management plan (“DMP”). And this stage it confirmed that it was, in any event, in disagreement with my conclusions on credit card 2 saying:

- standard industry practice is to consider outstanding balances not unutilised limits and it was not required to ensure a customer could repay all his unutilised exposure as well as the new card.
- the difference in information, between the first application and the second one, was down to Mr E declaring his household income and disclosing all of his rent. It did not consider these changes dramatic.
- when using household income it considers any debts that person holds but it assesses affordability on an individual basis and this showed Mr E could make the payments due on both an individual and household level.
- it isn’t unusual to hold more than one type of card with it as different cards have different benefits so it didn’t consider this to be significant or warrant further checks.
- it saw no sign of Mr E’s spending sprees until after the card was issued and so didn’t consider this a relevant consideration.

After it was provided with an opportunity to consider the information showing that Mr E was in a DMP, it responded to say that it went back to search Mr E's credit file and reiterated that this was not reported. However, it did not dispute that Mr E was in a DMP and did not say anything at all about Mr E's ability to make payments to either credit card going forward.

Mr E's response to my provisional decision

Mr E responded to query what effect any adverse information would have on him going forward, should Virgin Money agree to write off the balance on credit card 1.

Mr E also asked whether my direction to write off the outstanding balance on credit card 2 meant that he should be refunded the payments he made on the card after Virgin Money chose not to uphold his complaint in November 2023.

My findings

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

Observations on Virgin Money's response to my provisional decision

Before I go any further with my decision, I want to express just how disappointed I am with Virgin Money's response to my provisional decision. Having read the response and particularly some of its comments, I'm left querying whether it even read my provisional decision.

In particular, I am concerned that it failed to engage with the areas where I specifically asked for further comments. For example, I made it clear that Virgin Money, in any response to my provisional decision, should let me know whether it was prepared to write off the balance on credit card 1 as a forbearance measure given Mr E's current means. Virgin Money did not include anything in relation to this in its response and I still don't know what its position is in relation to this balance.

Secondly, I made it clear that I accepted that Mr E's DMP did not show up on the credit searches which Virgin Money carried out. However, for other reasons, the checks it carried out before providing credit card 2 to Mr E weren't proportionate. And if Virgin Money had gone on to carry out further enquires into Mr E's income and expenditure, it would then have discovered the existence of the DMP.

I am therefore surprised that Virgin Money requested a copy of the DMP, in full knowledge of the fact that it contained information on another party which it was not and is still not entitled to hold information on, simply for it to reply that it did not and still does not show on credit searches it has carried out.

It is unclear to me why Virgin Money felt the need to request the DMP information, if all it was going to say was that it wasn't aware of it and didn't take it into account at the time. And this was in circumstances where my provisional decision had already accepted that this was the case. Put simply, it isn't clear to me why Virgin Money requested this information and then it did not even bother to consider what Mr E's circumstances now means in relation to repay the outstanding balance on credit card 1.

I now turn to the rest of the submissions made by both parties and I have considered these as well as the information and evidence I used to reach the findings in my provisional decision. Having carefully considered everything, including the responses to my provisional decision, I'm still upholding Mr E's complaint in part. I'll explain why in a bit more detail.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr E's complaint.

Virgin Money needed to make sure 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 E could afford to repay any credit it provided.

These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer'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 Money should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. 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 customer 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.

I've kept all of this in mind when deciding Mr E's complaint.

The checks Virgin Money carried out

Virgin Money says that it provided Mr E with both credit cards after it carried out credit searches and it obtained some information on his income and expenditure from him. The information suggested that Mr E 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 E would be able to make the monthly repayments due for both credit cards.

On the other hand, Mr E says that these credit cards were unaffordable for him and that they shouldn't have been provided at what was an already difficult time for him.

I've considered what the parties have said.

Were the checks that Virgin Money carried out, on each occasion before lending to Mr E, reasonable and proportionate?

Credit Card 1

What's important to note is that Mr E was provided with a revolving credit facility rather than a loan. And this means that Virgin Money was initially required to understand whether a credit limit of £4,300.00 could be repaid within a reasonable period of time, rather than all in one go.

A credit limit of £4,300.00 clearly wasn't low. Nonetheless, it's fair to say that such a limit didn't require huge monthly payments in order to clear the full amount that could be owed within a reasonable period of time. I say this particularly as a reasonable period of time, in these circumstances, is likely to equate to the term for an equivalent loan amount.

I've also seen what Virgin Money obtained from Mr E about his income and what Virgin Money has provided as the output of the credit search it carried out. Virgin Money says that Mr E declared a salary of £35,000.00 a year. I understand that Mr E's declaration was checked against information from credit reference agencies on the funds going into his main bank account each month.

Furthermore, the credit search showed that Mr E didn't have any significant adverse information – such as defaulted accounts or County Court Judgments – recorded against him either. I'm also mindful that Mr E declared that he had rent of around £520 a month.

Taking all of this into account, it's fair to say that Virgin Money obtained a reasonable amount of information from and about Mr E before deciding to lend in this instance. And it's fair to say that this information pointed to the likely payments Mr E would have to make were affordable.

Given all of this is and this was the first time that Virgin Money was lending to Mr E, I'm satisfied that it wasn't unreasonable for Virgin Money to have agreed to provide Mr E with a credit card that had a credit limit of £4,300.00 in January 2020. And I'm therefore not intending to uphold Mr E's complaint about this credit card.

Credit Card 2

Virgin Money provided Mr E with a second credit card, which had a limit of £3,000.00, in August 2020. This was only some eight months after credit card 1 had been provided in January 2020. What's important to note is that while Virgin Money says that Mr E hadn't used credit card 1 at this stage, it was nonetheless providing him with a second revolving credit facility which he was able to use in addition to (and at the same time) as the first one it granted to him. So this means that Virgin Money was now required to understand whether Mr E could repay £7,300.00 within a reasonable period of time.

In its response to my provisional decision, Virgin Money has said that standard industry practice is to consider outstanding balances not unutilised limits. And it was not required to ensure a customer could repay all his unutilised exposure as well as the new credit card. I'm afraid that Virgin Money's argument appears to indicate a fundamental misunderstanding of its obligations here.

As it was creating the circumstances where Mr E could owe it £7,200.00 on Virgin Money credit cards, it was required to understand whether Mr E could repay it this amount in a reasonable period of time. The fact that he might not have already owed £4,300.00 on credit card 1 doesn't alter or change this.

Indeed, if I were to take Virgin Money's argument to its logical conclusion, this would mean that if it chose to make this additional £3000.00 available to Mr E via a limit increase on credit card 1, it would only need to be satisfied that Mr E could repay £3,000.00 and not the amount that could be owed as a result of the initial credit limit.

Clearly this isn't the case and as Mr E could have ended up owing Virgin Money £7,300.00 as a result of this application that's the amount it ought to have checked that Mr E could afford to repay within a reasonable period of time.

Virgin Money appears to have relied on completing the same or similar checks to those it carried out for credit card 1, when it agreed to provide credit card 2. Mr E says Virgin Money's checks ought to have gone further, bearing in mind that this was a second application for credit within such a short period.

I'm inclined to agree with Mr E. I know that Virgin Money says it isn't unusual for one of its customers to hold more than one type of card with it, as different cards have different benefits so it didn't consider this. Nonetheless, even if this was the case, this was still a second application for credit in a short space of time. So this was in the repeat lending sphere.

Virgin Money's final response states that Mr E declared that his monthly rent payment had nearly doubled to £1,000.00 and his annual income had purportedly increased to £47,000.00. While Virgin Money refers to these declarations being slightly different from those made at the time of the application for credit card 1, I don't agree that a doubling of his rent and a monthly income increase of £1,000.00 were slight differences.

Furthermore, Mr E has referred to his age at the time - 77 - which Virgin Money would have been aware of. Like Mr E, I agree that his age of 77 was not a reason in itself to outright reject his application. Nonetheless, I do think that significant variance between the information obtained and what was declared in January 2020, ought to have led Virgin Money to have verified whether he did have such a dramatic increase in his income.

Since my provisional decision, Virgin Money has said that the difference in information between the application for credit card 1 and the application for credit card 2, was down to Mr E declaring his household income and disclosing all of his rent. And it confirmed that it did not consider these changes dramatic. Virgin Money did tell us that a financial associate present (whom I assume was Mr E's wife) had an annual income of £12,000.00.

I did accept that it was possible that this could have accounted for the difference in my provisional decision. Although I've still not seen anything to indicate that this was asked at the time. Furthermore and notwithstanding Virgin Money's response to my provisional decision, I still don't see how it was fair and reasonable to take these extra funds into account without any indication that these funds were available to Mr E in order to make payments to this card and more importantly, that Mr E's financial associate didn't have their own expenditure which would have used up these funds.

Virgin Money says that when using household income it considers any debts that person holds. It's not clear if this is an argument that it considered Mr E's wife's debts at the time. But if it is, I find this surprising given that I've not been provided with any indication that it had Mr E's wife's consent to carrying out any sort of credit checks on her.

Furthermore, if it is saying that it didn't use this information on Mr E's wife's income and assessed matters solely on Mr E's income, it's unclear to me why it even asked for household income in the first place. And nothing that it has said during the course of this complaint has persuaded me that it was fair and reasonable to use household income in this application.

Bearing in mind that Virgin Money appears to have simply accepted Mr E's information at face value without verifying any of it or seeking clarification on the concerns I've set out, I

remain satisfied that the checks it carried out before providing credit card 2 were not reasonable and proportionate.

Would reasonable and proportionate checks have indicated to Virgin Money that Mr E would have been unable to repay credit card 2?

As reasonable and proportionate checks weren't carried out before credit card 2 was provided, I can't say for sure what they would more likely than not have shown. So I now need to decide whether it is more likely than not that proportionate checks would have shown Virgin Money that Mr E would have been unable to sustainably repay credit card 2.

To be clear and as a result of Virgin Money's arguments in response to my provisional decision, this section on my decision is no longer concerned with what Virgin Money actually knew and it is more concerned with whether the required monthly payments were as a matter of fact affordable for Mr E.

As I've explained, Virgin Money was required to establish whether Mr E could make his credit card repayments to credit card 2, in addition to any payments to credit card 1, without experiencing significant adverse consequences – not just whether these repayments payments were technically affordable on a strict pounds and pence calculation.

I've carefully considered the information Mr E provided. Having done so, it's clear that Mr E was struggling to manage his existing credit commitments and he was already in a debt management plan. To reiterate, I know that Virgin Money has repeated that it wasn't aware of this from the checks that it carried out. Nonetheless, given it has seen evidence of this it must now accept that this was actually the case.

Even then the vast majority of the funds Mr E received, were going towards repaying other creditors, whose debts were presumably weren't included in the approximate £48,000.00 worth of debt which wasn't included in the debt management plan. So I'm satisfied that the information Mr E has provided about his circumstances shows that the payments to credit card 2 were simply unaffordable for Mr E.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr E would not have been able to make the repayments to credit card 2 without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Virgin Money to the fact that it should not have provided Mr E with credit card 2.

As Mr E has been provided with credit that he could not repay and he's been charged interest and fees on this, I'm satisfied that he has lost out because I think that Virgin Money didn't act fairly and reasonably towards him. I'm therefore satisfied that Virgin Money should put things right.

Fair compensation – what I currently think that Virgin Money needs to do to put things right for Mr E

I think that it might help for me to start this section of my provisional decision by explaining that where we decide a business did something wrong, as a general starting point we'd look to the business putting the consumer, as close as practically possible, to the position they would be in if that wrong hadn't taken place.

In an ideal world, this would mean us expecting a business to put a consumer in the position they'd now be in if what has been complained about hadn't happened. However, in cases

concerning irresponsible lending that's simply not possible as the funds that shouldn't have been advanced were lent. As the lent funds will have been used and spent it's effectively too late to wind things back.

In these circumstances, we have to look at some other way of asking a business to put things right in a fair and reasonable manner and bearing in mind what is practically possible. Where a business provided a credit card that would have resulted in unaffordable payments for a borrower, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any interest and charges on that credit.

This would see the customer repay the funds that they borrowed and had the use of, but we'd normally expect the lender to refund (or remove) any interest and charges that were added. And if those interest and charges were paid also add 8% simple interest per year. This usually balances the fact that lender shouldn't have lent to the consumer against them having benefitted from the decision – in terms of having funds they wouldn't have had and having spent funds which, in many cases, they may well have known they were unlikely to be able to repay.

That said, we do look at each case individually and on its own particular merits. While we do have a general approach to how we might tell a lender to put things right where it provided a credit card that it shouldn't have (such as here), we can and will sometimes tell it to do something different. So I could tell Virgin Money to do something more if a strong reason to depart from our general approach exists and it would be fair and reasonable to do something else in the circumstances of that individual case.

Having given careful thought to the matter before me and the circumstances of this particular case, I'm satisfied that such reasons, to depart from our typical approach to putting things right in an irresponsible lending case, exist in this complaint.

Firstly, for the reasons I have in some detail already explained, Virgin Money ought to have realised that there were significant deficiencies in the information it received from Mr E at the time of his application for credit card 2. I also understand that Virgin Money has been provided with information indicating that Mr E was suffering from ill health, at this time and this may well have affected him during the process.

I appreciate that Virgin Money did not know about this at the time of the application. And that this is something that it has reiterated in response to my provisional decision. But again I think that the inconsistency in the information provided at the time of the applications ought to have prompted Virgin Money to do more. I'm also mindful that further checks, which should have been carried out here, would have highlighted Mr E's vulnerability and that he would feel the impact of any irresponsible lending more keenly.

Indeed, Mr E's circumstances here, his health, which he has provided Virgin Money with evidence of, means that he would meet the regulator's definition of a vulnerable customer who is more susceptible to harm. And, in these circumstances, Virgin Money is required to do even more to demonstrate that it is meeting its overarching Principle 6 obligation to pay due regards of its customer and treat them fairly.

In reaching my conclusion, I've considered the argument that has been made in relation to the position on credit card 1 at the time. However, I'm afraid that I simply don't agree that Mr E not having a balance on card 1, means that there were no issues to be concerned about in the way that Virgin Money has argued.

On the contrary, while I accept that Virgin Money wasn't providing Mr E with any advice, nonetheless it ought to have considered what might prompt a 77 year old applicant to apply

for a further £3,000.00 when they already had £4,300.00 available to them. I've seen what Virgin Money has said about some of its customers wanting the benefits from its different cards, but I can't see that Virgin Money took any steps at all to find out if this was the case with Mr E here.

As I've already explained, I've also seen paperwork which shows that Mr E was in a debt management plan at the time he was provided with both his credit cards. Once again and for the avoidance of doubt, I'll reiterate my acceptance of the fact that this may not have showed up in the credit searches which Virgin Money carried out, but I've already explained why further checks should have been carried out by the time of card application 2 and that this would have been picked up.

In any event, in this section of my provisional decision, I'm now considering what it would be fair and reasonable for Virgin Money to do to put things right and I have to consider Mr E's actual position, not just what Virgin Money knew. And the fact of the matter is that the information I've been provided with shows that Mr E is in a debt management plan and this is currently scheduled to end in 2044 at which point Mr E will be over 100 years old. Virgin Money has now seen this information and given its lack of any argument on this in its final response, it must accept that this is the position.

I'm also mindful that as well as suffering ill health, Mr E's wife also suffers from ill health and she is also on a fixed income in the same way that he is. So I think that it will clearly be difficult for Mr E to manage in these times bearing in mind his commitments, obligations and responsibilities as well as his current financial position.

And it's difficult to see how Mr E will be able to make payments to credit card 2 going forward or repay the outstanding capital in any sort of reasonable period, in these circumstances, without him (and potentially his wife) experiencing severe financial difficulty. I'm also mindful that Mr E paying rent is indicative of him not owning a property, which Virgin Money may be able to recover its funds from at some stage either.

Bearing in mind the circumstances in which Virgin Money lent, Mr E's current obligations, responsibilities and financial position as well as the amount of distress and inconvenience Virgin Money unfairly providing credit card 2 to Mr E, in the circumstances it did is likely to have caused, I don't think that simply removing the interest fees and charges from the balance on credit card 2 goes far enough.

The circumstances of this case and in particular the financial hardship as well as the impact which is likely to be caused by requiring Mr E to pay funds he doesn't have and is unlikely to get, in circumstances where he is already forecast to be in a debt management plan for the next 20 years, lead me to think that the fair and reasonable thing for Virgin Money to do here, is write off the outstanding balance on credit card 2.

For the sake of completeness, I would also reiterate that bearing in mind the circumstances I've set out in relation to Mr E's current position and his ability to make payments going forward, I would also strongly urge Virgin Money to consider similar action in relation to credit card 1, even though I'm not upholding this complaint.

As I said towards the beginning of this decision, it very disappointing that Virgin Money chose not to provide a response to this. I can only encourage Mr E to get in contact with Virgin Money to discuss what forbearance Virgin Money might be able to offer in relation to credit card 1. And it may be the case that Mr E might be able to refer a complaint to us – subject to any jurisdiction considerations – should he remain dissatisfied at any forbearance offered.

I want to say that I do appreciate that my method of putting things right here departs substantially from our typical approach. And I want to be clear in saying that I haven't taken such a decision lightly. However, I'm satisfied that the facts and circumstances of this particular case, which I've set out above, mean that it would be fair and reasonable to do so here.

As my proposed method of putting things right will result in Mr E having repaid substantially less than the amount he was lent, I'm satisfied that this also encompasses fair compensation for any distress and inconvenience Virgin Money's actions in relation to providing credit card 2, in the circumstances that it did, caused him.

So while I've carefully thought about matters and I may have told Virgin Money to pay a not insubstantial amount of compensation for the distress and inconvenience its actions caused Mr E were it not for my proposed direction to write off the outstanding balance on credit card 2, I'm not intending making an additional award for distress and inconvenience.

Mr E has queried whether my direction in relation to credit card 2 means that he should be refunded all of the payments he's made to the card since Virgin Money chose not to uphold his complaint. I've thought about what Mr E has said but I'm mindful that my direction in relation to credit card 2 differs from our typical approach.

So Mr E is likely to have had to make some payments even if Virgin Money had upheld his complaint about credit card 2. And I don't think that Virgin Money needs to refund anything that Mr E has already paid towards credit card 2.

I turn now to Mr E's credit file. We'd typically expect a lender to remove any adverse information in relation to credit, from the borrower's credit file, where a complaint is upheld for irresponsible lending and a balance does not remain – i.e. the position I'm directing Virgin Money to place Mr E in in this case.

However, I don't think that removing all adverse information in relation to credit card 2 would be the fair and reasonable thing to do here given what I'm asking Virgin Money to do in terms of the balance. To explain, Mr E has referred to his health difficulties – particularly his difficulty in recalling events and the impact that this had on his application for his credit cards. I've accepted this is the case and this has played a large part in the direction that I am making to Virgin Money.

In these circumstances, it seems to me that removing adverse information from Mr E's credit file, increasing the chances of him being able to borrow further would be counterproductive and arguably not in his best interests, or those of any potential lender. So I think it's fair and reasonable for Virgin Money to reflect what I'm asking it to do in relation to the outstanding balance on credit card 2 and record it wrote off a balance on this account on Mr E's credit file.

Finally, in reaching my conclusions, I've also considered whether the lending relationship between Virgin Money and Mr E might have been unfair to Mr E under s140A of the Consumer Credit Act 1974.

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

Overall and having carefully considered everything, I'm satisfied that it would be fair and reasonable, in all the circumstances of Mr E's complaint, for Virgin Money to put things right in the following way:

- write off the outstanding balance on credit card 2 and leave Mr E with nothing further to pay;
- bearing in mind what I've set out about Mr E's circumstances, consider whether a similar course of action (to that of which I've directed on credit card 2) should be taken in relation to credit card 1. If Virgin Money doesn't consider it appropriate to take such action, it should take steps to set up an affordable payment plan with Mr E – ensuring that it meets its obligations to exercise forbearance and due consideration as well as taking account of Mr E's vulnerability. Should Mr E remain unhappy - at Virgin Money's exercising of forbearance - he may be able to refer any concerns to us subject to meeting the relevant jurisdiction considerations.

My final decision

For the reasons I've explained above and in my provisional decision of 13 September 2024, I'm partially upholding Mr E's complaint. Clydesdale Bank Plc (trading as "Virgin Money") should put things right in the way that I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 11 November 2024.

Jeshen Narayanan
Ombudsman