

Complaint

Mrs C has complained that Clydesdale Bank Plc (trading as “Virgin Money”) irresponsibly provided a credit card as well as a subsequent credit limit increase to her.

She says that Virgin Money provided her with this card and then increased her credit limit despite her only making minimum payments. She’s also said that this credit card also led her having to borrow further to make her repayments.

Virgin Money says that the card was administered by a different financial institution until 2015. I’ve not referred to the other financial institution by its name in this final decision. This is because this final decision will be published and the other institution is not the respondent firm in this complaint. For simplicity, I will refer to Virgin Money throughout this decision.

Background

Virgin Money initially provided Mrs C with a credit card, which had a limit of £5,500.00, in August 2009. In August 2014, the credit limit was subsequently increased to £10,500.00.

In February 2024, Mrs C complained saying that the credit card and the limit increase Virgin Money provided were unaffordable and caused her continued financial difficulty as making the repayments to this credit card also led her borrowing further.

Virgin Money did not uphold Mrs C’s complaint. It didn’t think that anything had been done wrong when Mrs C was provided with her credit card or her limit was increased. Mrs C was dissatisfied at Virgin Money’s response and referred her complaint to our service. When it provided its file on Mrs C’s complaint, Virgin Money let us know that it believed Mrs C had complained too late.

One of our investigators reviewed what Mrs C and Virgin Money had told us. She reached the conclusion that she hadn’t seen enough to be persuaded that Virgin Money failed to act fairly and reasonably either when initially providing Mrs C with her credit card or when providing the credit limit increase. So the investigator didn’t recommend that Mrs C’s complaint be upheld.

Mrs C disagreed with the investigator’s conclusions and asked for an ombudsman to look at her complaint.

My findings

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

It may help for me to explain that in determining what is fair and reasonable in all the circumstances of the case, I have to reach my decision on the balance of probabilities. When considering events that are historic and the evidence is incomplete, as it is here, I have to consider what is more likely than not to have happened in light of the evidence that is available.

It is only fair and reasonable for me to uphold a complaint where there is sufficient evidence to demonstrate that not only did things go wrong, but the customer complaining clearly lost out as a result of this.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Virgin Money has argued that Mrs C's complaint was made too late because she complained more than six years after the decisions to provide the credit card and the credit limit increase, as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the lending relationship between Mrs C and Virgin Money was unfair to Mrs C as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mrs C's complaint. Given the reasons for this, I'm satisfied that whether Mrs C's complaint about the specific lending decisions was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mrs C's complaint should be considered more broadly than just those lending decisions. I consider this to be the case as Mrs C has not only complained about the respective decisions to lend but has also alleged that this caused her continued financial difficulty as making the repayments to this credit card also led her borrowing further.

I'm therefore satisfied that Mrs C's complaint can therefore reasonably be interpreted as a complaint that the lending relationship between herself and Virgin Money was unfair to her. I acknowledge Virgin Money may still believe that I'm unable to look at Mrs C's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mrs C's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mrs C's complaint can be reasonably interpreted as being about that her lending relationship with Virgin Money was unfair to her, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Virgin Money) and the debtor (Mrs C), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these

are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mrs C's complaint, I therefore need to think about whether Virgin Money's decision to lend to Mrs C and increase her credit limits, or its later actions resulted in the lending relationship between Mrs C and Virgin Money being unfair to Mrs C, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Mrs C's relationship with Virgin Money is therefore likely to be unfair if it didn't carry out reasonable enquiries into Mrs C's ability to repay in circumstances where it doing so would have revealed the credit card or limit increase to be irresponsible or unaffordable. And if this was the case, Virgin Money didn't then remove the unfairness this created somehow.

Our typical approach to considering complaints about irresponsible and unaffordable lending

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 Mrs C's complaint.

Bearing in mind Mrs C's response to our investigator's assessment, I think that it would be helpful for me to set out that we consider what a firm did to check whether any repayments to credit were affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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 that information – 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, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion. Indeed, the requirements have not and still do not mandate a list of checks that a lender should use. Any rules, guidance and good industry practice in place over the years has simply set out the types of things that a lender could do when considering whether to lend to a prospective borrower.

It is a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was fair to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments that a prospective borrower might have to make were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances were we were able to recreate what reasonable checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

Application to Mrs C's complaint – Did Virgin Money act fairly and reasonably when providing a credit card to Mrs C in August 2009 and/or when offering to increase her credit limit in August 2014?

What's important to note is that Mrs C was provided with a revolving credit facility rather than a loan. This means that to start with Virgin Money was required to understand whether Mrs C could repay £5,550.00 and then £10,000.00 within a reasonable period of time. I think that it will have required relatively chunky monthly payments in order to clear the full amount that could be owed on this credit card, within a reasonable period of time.

Although the size of the limit, after the increase, would suggest any assumptions regarding a reasonable period of time would probably be based on a standard term had an equivalent amount been borrowed on an unsecured personal loan. So perhaps around five years.

Virgin Money hasn't been able to provide any details on what may have been found out about Mrs C as a result of any checks that may have been carried out prior to the card being provided, or the credit limit being increased. Given the initial application took place more than fifteen years ago and the limit increase took place a decade ago, I don't think that this lack of information is unreasonable. Therefore, I've not drawn any adverse conclusions as a result of Virgin Money not being able to provide such information at this stage.

Furthermore, I've not seen anything to suggest that Mrs C had any significant adverse information such as defaulted accounts or CCJs recorded against her at the time she applied for the card, or when the limit increase was given. Nonetheless, even though Mrs C didn't have any significant adverse information at the respective times, as Mrs C was being provided with limits of £5,500.00 and £10,500.00, I would have expected Virgin Money to have had some understanding of her income and expenditure before it agreed to provide this credit.

Virgin Money has not only been unable to evidence having done this, it has not even sought to argue that it did or provide some sort of information of what any decision to lend to Mrs C is likely to have been based on. So I'm not in a position to say that the checks it carried out before it provided this credit card to Mrs C were reasonable¹, or the checks when it agreed to increase Mrs C's credit were reasonable and proportionate.

Mrs C may believe that as Virgin Money cannot evidence having done what it ought to have done this should be the end of the matter and her complaint should be upheld. However, while I can understand why Mrs C may believe this, it is not sufficient for me to uphold Mrs C's complaint simply because I'm of the view that Virgin Money should have done more.

I need to consider whether carrying out such checks would have made a difference to its decision. And it is only fair and reasonable for me to uphold the complaint should I be satisfied that Virgin Money doing more would have resulted in it taking a different course of action – in this case, declining Mrs C's application for the credit card and/or refusing to increase the credit limit.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit or significantly increasing the amount available to a customer, I'd usually go on to recreate reasonable checks in order to get an indication of what such checks would more likely than not have shown.

Mrs C has provided us with some information in respect of tax returns within a few years of the lending decisions in question and some information on her mortgage payments around this time. However, the information I've been provided with is insufficient for me to determine

¹ The decision to provide the card was taken prior to the then regulator of consumer credit, the Office of Fair Trading, published its Irresponsible Lending Guidance in March 2010. This is the first publication that sets out expectations and obligations in relation to checks needing to be proportionate.

Mrs C's income, or her committed expenditure, at the times the lending decisions were made, which is what I think that Virgin Money needed to find out about before accepting Mrs C's credit card application or agreeing to increase her credit limit.

Therefore, this information does not show me that when Mrs C's committed expenditure was deducted from her income she did not have the funds to make the payments she could have been required to make. And I've simply not been provided with sufficient evidence to reasonably conclude that this credit card or the subsequent limit increase was as a matter of fact unaffordable for Mrs C.

I appreciate that Mrs C may feel that it is unreasonable and unfair to expect her to provide information which she doesn't have and cannot reasonably be expected to have. But I also have to take into account that Virgin Money isn't required to have retained all of this information either and it was Mrs C that chose to make her complaint in February 2024.

As this is the case, I have to decide the complaint on what I have before me. It is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any credit provided was unaffordable. And I'm afraid that I've not been provided with sufficient evidence which corroborates what Mrs C has said about not being able to make the increased monthly payments required should she owe the full amount of the new credit limits.

I appreciate that Mrs C has argued that it was, in itself, irresponsible to provide her with a credit limit of £10,500.00. However, I note that this credit card had a number of 0% interest rate offers for balance transfers. And Mrs C had the option of transferring some of her existing credit card debt, to a much lower interest rate, on to this account. Indeed, I think that Mrs C might well have been applying for this card and accepted the limit increase, in order to transfer existing balances on to this account at 0% interest.

Mrs C's submissions suggest that she did transfer balances onto this card. I'm therefore satisfied that Mrs C was always likely to pay less interest than she would have done had the balance stayed where it was and she was therefore able to make larger inroads into her balance.

I've also noted that Mrs C has referred to only making the minimum payment on a different credit card with the then administrator of this card. However, the limited information I've seen from the time, shows that Mrs C did regularly make payments that were above the minimum amount, prior to the limit increase on this credit card.

Furthermore, while I've noted that Mrs C has said that the outcome on this complaint is inconsistent with the outcome she received on the complaint about that credit card, I don't agree with this. I say this because the investigator reached a similar outcome – for broadly similar reasons – on the limit increases provided around the time this card and the limit increase was provided.

Mrs C's complaint was only partially upheld. The investigator's assessment was that when the limit was increased to an amount significantly above the limit on this card a number of years after the events I'm looking at, Mrs C had provide clear evidence of her income and expenditure at that time. This information showed that the final credit limit increase was unaffordable.

As I've explained, I've simply not been provided with corroborating evidence such that I could reasonably make a similar finding on this is the case. So while I'm not required to replicate the outcomes reached on other cases, nonetheless I don't consider that my answer here is incompatible or inconsistent with the one Mrs C has referred to receiving on her other

case, notwithstanding the overall outcomes not being exactly the same.

While I've noted Mrs C's concerns at the amount her limit was increased to and her existing usage of credit, this doesn't persuade me that this complaint should be upheld. I don't think that this is a case where I can reasonably say that the amount of the limit increase itself, or Mrs C's account usage ought reasonably to have shown Virgin Money that Mrs C's indebtedness was rapidly increasing in an uncontrollable way, or that the pattern of lending here ought reasonably to have led Virgin Money to conclude that the facility had become demonstrably unsustainable for Mrs C either.

Having carefully considered everything and while I appreciate that this will disappoint Mrs C, I've not been persuaded that reasonable checks would have clearly shown Virgin Money that it shouldn't have accepted Mrs C's application for a credit card or offered her the credit limit increase. Furthermore, I've not been persuaded that Mrs C's pattern of borrowing meant that Virgin Money offered the credit limit increase in circumstances where it ought reasonably to have realised it may have been unsustainable or otherwise harmful for her either.

So overall and based on the available evidence, I don't find that the relationship between Mrs C and Virgin Money was unfair to Mrs C. I've not been persuaded that Virgin Money created unfairness in its relationship with Mrs C by irresponsibly lending to her whether when initially agreeing to provide her with a credit card, or offering the credit limit increase. Based on what I've seen, I don't find Virgin Money treated Mrs C unfairly in any other way either.

As this is the case, while I can understand Mrs C's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mrs C. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 23 July 2025.

Jeshen Narayanan
Ombudsman