

The complaint

Ms G complains Clydesdale Bank Plc trading as Virgin Money (Virgin Money) irresponsibly lent to her.

What happened

Ms G opened an account with Virgin Money on 19 June 2014 with a credit limit of £4,300. The limit has never been increased. The limit was reduced to £3,000 on 15 January 2020.

Ms G complained to Virgin Money about the irresponsible lending in June 2024. Virgin Money responded and didn't uphold it. It said it used a combination of factors when reviewing the application. This included details provided by Ms G and information held by Credit Reference Agencies (CRA) about the performance of other products held. This was then reviewed alongside its lending criteria at the time and the account was opened and based upon its assessment, an appropriate and affordable credit limit was assigned.

Our Investigator felt the complaint was one we could consider. So, she looked into the merits. However, she didn't think it was one which should be upheld.

Ms G didn't agree with our Investigator's view. She explained she genuinely believed the affordability issues were entirely her own fault, which is why she didn't raise concerns earlier. She explained she reached out to Virgin Money on a few occasions when she was really struggling financially, and her only thought was to ask for help. She still believed that it was solely her responsibility. She explained she still believes Virgin Money shouldn't have lent to her in the first place and she only considered this last year when she made the complaint.

In respect of Virgin Money's lending decision, Ms G said she didn't agree the checks were proportionate or the credit check showed no cause for concern. In summary she said:

- Given the amount of credit being offered and the amount of unsecured debt she already had, as a minimum she thinks Virgin Money ought to have done more to verify her actual net income and outgoings.
- She had a student overdraft which she had been unable to pay off (£1,250), three credit cards, an unsecured loan and hire purchase agreement. She said she was paying the minimum payments to the credit cards and utilizing all the credit available, this inferred that she was not able to sustainably pay off her debts in a reasonable time.
- Her average monthly salary was £1,250 which should have been verified. In the month she applied her net income was £1,232 and her existing credit commitments were already £1,261. So, after taking into account non-discretionary living costs she could not afford this card.
- Her husband has a complaint which was referred to an Ombudsman and was in a very similar situation which was upheld.
- She explained she had calculated her debt to income as above 100%, had been unable to pay off her student overdraft and had missed payments within the last

twelve months. She said she was concerned about why our Investigator had not picked this up in the investigation.

- She provided evidence of a missed payment which occurred just before her application and one in November 2013.

Therefore, the complaint has been passed to me to decide.

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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Virgin Money thinks this complaint was referred to us too late. Our Investigator explained why she didn't think we could look at a complaint about the lending decision that happened more than six years before the complaint was made. But she also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140 of the Consumer Credit Act 1974 (Section 140), and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our Investigator and think this complaint is one I can consider. I think this complaint can reasonably be considered as being about an unfair relationship as Ms G has said the lending was unaffordable and she struggled to make repayments. This may have made the relationship unfair. I acknowledge Virgin Money doesn't agree we can look at the complaint about the account and Ms G disagrees with our Investigator's comments about when she became aware of her cause for complaint, but as I don't intend to make any award to Ms G, I won't comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Ms G's complaint can be reasonably interpreted as being about the fairness of her relationship with Virgin Money, relevant law in this case includes Section 140A-C.

As explained by our Investigator, Section 140A says that a court may make an order under Section 140B if it determines that the relationship between the creditor (Virgin Money) and the debtor (Ms G), 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.

But the case law also says that the court may not make an award for an unfair relationship where the claimant had knowledge of the facts relevant to their claim, but substantially delayed making it. So I've taken this into account when deciding a fair and reasonable outcome for this complaint.

The case law doesn't provide a fixed period that would constitute a substantial delay, but in the case of *Smith v Royal Bank of Scotland Plc* [2023] UKSC 34, the Supreme Court approved the District Judge's comment that a court would be slow to remedy unfairness in a

situation where the claimant delayed more than six years after knowing the facts. S.140B 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 what Ms G has complained about I need to consider whether Virgin Money's decision to lend to her, or its later actions, created unfairness in the relationship between her and Virgin Money such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Ms G's relationship with Virgin Money is therefore likely to be unfair if it didn't carry out reasonable and proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

I think there are key questions I need to consider in order to decide what's fair and reasonable:

1. Did Virgin Money carry out reasonable and proportionate checks to satisfy itself that Ms G was in a position to sustainably repay the credit?
 - If so, did it make a fair lending decision?
 - If not, what would reasonable and proportionate checks have shown at the time?
2. Did Virgin Money act unfairly or unreasonably towards Ms G in some other way?

Virgin Money had to carry out reasonable and proportionate checks to satisfy itself that Ms G would be able to repay the credit sustainably. It's not about Virgin Money assessing the likelihood of being repaid, but it had to consider the impacts of the repayment on her.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments and the overall circumstances of the borrower.

Did Virgin Money carry out reasonable and proportionate checks to satisfy itself Ms G was in a position to sustainably repay the credit?

Virgin Money says it uses a combination of factors when reviewing applications. The decision to approve the application was made using the details provided by Ms G and a CRA about the performance of other products held. It said the process was auto approved but Virgin Money aren't able to provide any other details of the check given the time which has passed. I have seen confirmation the check was carried out. Virgin Money has confirmed the approval process took into account how Ms G managed her credit commitments at the time, information from her application and its own lending criteria. It is generally my experience that this process was likely to have assessed overall affordability of the product. And I can see Ms G's mortgage contribution was noted.

Ms G declared a gross annual income of £28,500. It could expect her to receive around £1,821 net monthly income. Virgin Money obtained details about her employment including how long she had been employed. Ms G declared annual household income of £53,500. I've seen the system notes which corroborate what was declared at the time. I'm also mindful the application went through the automatic approval process. Overall, I don't think there was anything which ought to have prompted Virgin Money to question what had been declared here.

I appreciate Ms G has said she had a couple of missed payments and was over indebted at the time. I've considered the repayments towards credit which I can see on her joint bank statements. She has said she paid over 100% of her income towards the lending the month prior to the agreement. I can see she handled her finances jointly with her husband and they were paying a significant amount of their joint income towards credit commitments in the months leading up to the lending decision. She's questioned why her overdraft usage wasn't a cause for concern and has provided a copy of her credit file, although some of the information covering the lending period is relatively brief.

However, over ten years has now passed since the account was first opened, and Virgin Money have confirmed they can't provide any more details about what was considered at the time. This isn't unusual as it's reasonable it hasn't retained information from this long ago. But I've seen the system notes which confirms data was obtained from a CRA and that the application was approved. So, I'm satisfied Virgin Money's checks were likely to have considered how she was managing her credit and as the application was approved, I think it's unlikely it saw anything which brought into question the sustainability and affordability of the agreement.

Weighing up the evidence I have and being mindful of the time which has passed, I'm satisfied it seems the checks carried out were reasonable and proportionate in the circumstances of this complaint. I've taken into consideration the amount of credit being offered here and what a sustainable monthly repayment was likely to have been. Also, I've thought about the auto approval process and what Virgin Money were likely to have understood about the affordability of the lending. Overall, I'm not persuaded from the information Virgin Money gathered that it ought to have carried out further checks to ensure the lending was affordable.

Did Virgin Money make a fair lending decision?

Having considered the information I have about the checks and what information Virgin Money had about Ms G's income, I'm unable to conclude it was unreasonable for it to agree to lend to Ms G.

I'm also mindful this card had a promotional offer which meant balance transfers made 60 days from account opening benefitted from an interest free period (this lasted 29 months from account opening). Virgin Money would still need to carry out reasonable affordability checks to ensure the lending was affordable for Ms G – and I'm satisfied it's likely it did this. However, I am mindful consumers often benefit from these interest free periods as it gives them the opportunity to reduce overall credit balances and pay off debt more quickly.

I note Ms G has expressed concern about her indebtedness at the time. This card would have enabled her to transfer some of the credit from her accounts which might be charging her a higher amount of interest, to this card where she would pay no interest during the promotional period. Virgin Money have confirmed Ms G carried out a balance transfer on 7 July 2014 for around £3,966. I note card such as these give consumers the opportunity to reduce credit balances more quickly. So, it's difficult for me to say Virgin Money acted unreasonably by lending to her.

I also appreciate Ms G's partner has had a decision upholding his complaint from our service. However, I must consider the individual facts of each case and there are differences. Some key differences include the timing of the lending decisions, and the size of the credit limits provided. I've reviewed Ms G's complaint on its individual circumstances being mindful of the approach explained above.

Taking all things into consideration, the evidence I've seen doesn't satisfy me that Virgin Money created unfairness in its relationship with Ms G by lending to her irresponsibly.

Did Virgin Money act unfairly or unreasonably towards Ms G in some other way?

Ms G has explained she did reach out to Virgin Money for support. I can see Virgin Money did reduce her credit limit in January 2020 to £3,000. Additionally, Virgin Money offered to support Ms G, but its records show she didn't want to complete an income and expenditure assessment, and she was concerned about the impact to her credit file.

Having considered everything, I'm not persuaded Virgin Money created unfairness in the relationship in some other way. I'm satisfied it offered to support Ms G in repaying the balance. I note following the complaint being referred to our service Virgin Money have reached out to Ms G to offer support. I appreciate Ms G's concern about her credit file, and I understand why she wouldn't want any adverse information recorded. However, if Ms G needs support and it is agreed she should pay less than what is contractually required under the agreement, then it is right for this to be recorded on her credit file because it is information about how she is managing her credit.

I appreciate Ms G's concern about this, but I can't reasonably conclude Virgin Money ought to have done more in the circumstances or that it has treated her unfairly in some other way.

Summary

Overall, and based on the available evidence I don't find that Ms G's relationship with Virgin Money is or was unfair. It's not clear enough to me that Virgin Money created unfairness in its relationship with Ms G by lending to her irresponsibly initially, or in respect of how it supported her when she was struggling to make repayments. I don't find that Virgin Money treated Ms G unfairly in any other way either based on what I've seen.

My final decision

For the reasons outlined above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 25 July 2025.

Laura Dean
Ombudsman