

The complaint

Mr and Mrs H's complaint is about a secured loan they have with Evolution Lending Limited. They believe the decision to lend to them in 2016 was irresponsible and that appropriate checks were not undertaken before the lending decision was made.

What happened

In 2016 Mr and Mrs H approached Evolution for a secured loan to consolidate some debts. They wanted to borrow £20,000 but Evolution was only willing to lend them £15,000 because of a missed payment to a secured loan the month they applied. Mr and Mrs H borrowed £15,000 plus fees, over a term of 15 years, at an interest rate of £26.82% per annum. The monthly payment was £364.31. The funds released were to be used to consolidate six loans and credit cards, to which Mr and Mrs H were paying slightly around £1,000 each month. Mr and Mrs H have paid more than the contractual payment required throughout the period of the loan.

Mr and Mrs H have provided a copy of a review of a debt management plan (DMP) conducted about a year before they approached Evolution for new borrowing. In addition, they have provided a document from the time they took out an earlier loan with Evolution (which was consolidated into the 2016 one) that showed that Evolution knew they were in a DMP in 2013. Mr and Mrs H have said they told Evolution they were in a DMP in 2016 and that this should have indicated to it that it was a bad idea to lend to them.

Evolution provided a copy of the fact find that was completed at the beginning of the process, which detailed what Mr and Mrs H wanted and some information about their circumstances. This includes a question about whether Mr and Mrs H were in a DMP – the answer recorded was 'no'. Evolution have confirmed that it was not aware of the debt management plan being in place in 2016.

Evolution has provided a copy of the credit file search it conducted in 2016 for Mr and Mrs H that it obtained in 2016. There was no indication on it that there was a DMP in place from this document. I note that the businesses involved in the debt management plan appear to be predominantly debt collection agencies, and it doesn't appear that they recorded information on Mr and Mrs H's credit files. Evolution also confirmed that it had required bank statements, pay slips and employer references before it agreed to lend to Mr and Mrs H.

It appears from the information available; Mr and Mrs H took out further credit following the debt consolidation with Evolution. In May 2018 they entered into an individual voluntary arrangement (IVA).

Mr and Mrs H complained to Evolution in 2021. Evolution responded to Mr and Mrs H's complaint. It explained that its records showed that Mr and Mrs H had contacted it to asked for a loan for home improvements and debt consolidation in order to reduce their outgoings. It set out the process and checks it had done before agreeing the loan and said that Mr and Mrs H hadn't mentioned that they were in a DMP. It said that there was no indication during the process that they intended to reuse the credit that they were consolidating with

the Evolution loan and it so it didn't accept that it had any liability for that decision, which was the cause of them entering into the IVA. Evolution didn't uphold the complaint.

Mr and Mrs H weren't satisfied with Evolution's decision and referred the complaint to us.

One of our investigators considered the complaint, but didn't recommend that it be upheld. He considered that the advice Mr and Mrs H received was suitable and the loan met their needs as they were at the time. He was satisfied that Evolution hadn't been aware of the DMP and that it had done the checks it should have. In relation to the IVA, based on what they had told us, this had been necessary because new debts had been run up, which there was no evidence in 2016 they intended to do.

Mr and Mrs H didn't accept the investigator's conclusions. They indicated that they didn't believe that Evolution completed credit checks as they would have shown defaults on several of their accounts. They questioned whether a lender should be able to lend to customers who had obviously failed in meeting their financial obligations. In addition, Mr and Mrs H suggested that Evolution should have asked if they were in a DMP, given they had debts they had defaulted on.

The investigator considered Mr and Mrs H's further comments, but was not persuaded to change his opinion of the complaint. He did, however, confirm that the fact find from the beginning of the process asked about DMPs and IVAs and it had been confirmed that Mr and Mrs H didn't have either in place.

Mr and Mrs H remained unhappy. They listened to the call recordings Evolution had provided and highlighted that they'd mentioned an additional loan, not contained in the credit report or the earlier information they had provided, in the conversation in which they were told they could only borrow £15,000 due to having missed a secured loan payment the previous month. They said that the existence of that loan meant that any benefit to them of consolidating some of their debts was negated. In addition, they highlighted that they were told by Evolution that paying off a credit card debt ended that debt, but this was incorrect as it is "revolving credit".

As agreement couldn't be reached, it was decided that the complaint should be passed to an ombudsman for consideration.

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 would firstly comment on Mr and Mrs H's view that if there were defaults on their credit files, they shouldn't have been offered borrowing. They are entitled to their opinion, but there is nothing wrong with consumers who have been in financial difficulties being offered borrowing, as long as appropriate checks and assessments are made about their abilities to maintain any new arrangements. The reason many lenders won't lend where there has been a history of poor credit is because the risk to the lender is higher.

While Mr and Mrs H don't believe that Evolution completed suitable checks, it is clear that it asked them questions about their needs and circumstances. It also asked for evidence of their income and outgoings, obtained referenced from their employers and checked their credit files. So I am satisfied that Evolution completed the type of checks and assessments that would be expected before an application for borrowing was considered.

Mr H has said that he told Evolution that he and Mrs H were in a DMP in 2016 and this is

evidenced by the documentation produced in 2015. There was clearly a DMP in place in 2013, which Evolution was aware of at the time, and in 2015. Whether that plan was still in place over a year later when Mr and Mrs H contacted Evolution has not been evidenced. However, having looked at the credit files Evolution obtained in 2016, it doesn't appear that the debts involved in the DMP were still being reported as active on the credit file, which isn't unusual for debts that have been sold on to debt collection agencies or are in DMPs.

The fact find indicates that Evolution asked Mr and Mrs H whether they were in a DMP or an IVA, and the answer to both questions was given as 'no'. There is also no mention of the DMP in any of the conversations that were subsequently had. On that basis, I can't find that Evolution was aware of the DMP and should have factored it into its consideration of Mr and Mrs H's application.

Mr and Mrs H have commented that an additional loan was mentioned in one of the conversations and the existence of that loan meant that the debt consolidation was pointless as it took up the money that was saved. I have to acknowledge that there is mention of a loan that Evolution wasn't aware of. Evolution told Mr H that it wasn't aware of the loan when he mentioned it. Mr H very quickly moved the conversation on and told Evolution to forget about it. The loan in question doesn't appear on Mrs H's credit file and it would appear that when asked about their circumstances, Mr and Mrs H didn't mention it. This could be because they were concealing its existence or Mr H was mistaken in the name of the company when he mentioned the loan. It isn't clear which is the case, but in the absence of any evidence of the loan's existence I can't speculate on what it might have meant to any lending decision Evolution would have made in 2016.

Mr and Mrs H are correct in their comment that credit cards are 'cyclical debts' if a consumer chooses to treat them that way. However, as Evolution said, when a credit card is paid off completely, the debt ends. It would only be if a consumer chose to spend further money that they couldn't afford to pay back that new debt would exist. As our investigator highlighted, there was no indication in the conversations that Mr and Mrs H had with Evolution that they intended to take further credit or run up their credit card balances after they took out the consolidation loan. It was Mr and Mrs H's choice to do that and I can't find Evolution responsible for the consequences of that decision.

I am not persuaded that Evolution was wrong to lend to Mr and Mrs H, given the information it had available to it at the time. However, even if I had found it had done something wrong, any redress I would award would be to place them in the position they would have been in, but for the mistake. It is clear that Mr and Mrs H were determined to consolidate some of their debts in order to reduce their outgoings as they applied to another lender for the same purpose at the same time. So had Evolution turned their application down, it is entirely possible they would have taken the borrowing elsewhere. Alternatively, if that had not been possible, they may have had to enter into an IVA at an earlier stage, as they confirmed in 2016 that they were struggling to maintain their debts and needed to reduce the monthly payments. So had Evolution turned them down, I am not persuaded they would have been in a materially different position from that which they ended up in.

My final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs H to accept or reject my decision before 11 January 2023.

Derry Baxter
Ombudsman