

The complaint

Ms D has a secured loan with Evolution Lending Limited and she has complained about how it treated her when she had financial difficulties.

What happened

Ms D took out this loan in June 2018. She borrowed £20,000 over a 15-year term at an interest rate of 19.56% (variable).

In early 2019 Ms D was made redundant and whilst initially her redundancy pay allowed her to maintain all her financial commitments, it would only last for so long and so Ms D accepted a new job with a lower salary.

The account went into arrears in December 2019 with no payments made in December, January and February.

Ms D has said that she had started to struggle financially, and when she contacted Evolution in January 2020 to discuss it she was shocked to discover that she was due to be charged over £40,000 in interest over the term of the loan, and that there had also been around £2,700 in set-up fees. She said she challenged this and asked Evolution to reduce the interest rate.

Ms D said she told Evolution that she wasn't in a position to make payments at that time, but that she'd put an arrangement in place once her financial situation changed. She says Evolution persisted in calling her despite her asking for email contact as she didn't want to discuss it over the phone during working hours.

Ms D complained to Evolution in January 2020 and it responded on 22 January 2020 not upholding the complaint. That complaint related to the total amount repayable, the level of interest, and information Evolution had reported to the credit reference agencies about the size of the debt. The final response letter contained an explanation that Ms D had six months from the date of the letter to refer the complaint to us. If she didn't do so, and there were no exceptional circumstances, Evolution said that it wouldn't consent to us looking at the complaint.

Evolution put in place a Covid payment deferral between March and August 2020 (inclusive). No payments were made in September or October 2020, and then from November 2020 payments of £1 a month were received until October 2021, at which point they stopped and no further payments were made (we have the transaction history up until April 2022).

Ms D contacted a debt charity and they made contact with her various creditors, including Evolution in October 2020. It was through the debt charity that the monthly payments of £1 I mentioned above were made.

Ms D referred the complaint to us in January 2021. This encompassed the January 2020 complaint, plus some new points.

Evolution issued a further final response letter in May 2021. It said it wouldn't be revisiting the January 2020 complaint, and it didn't uphold the rest of the complaint which covered:

- Evolution didn't reduce the interest rate when Ms D was in financial difficulties.
- Ms D was unhappy with the method and level of contact from Evolution.
- An issue with Ms D's employer.

Our investigator looked at things. He said we couldn't consider the issues that had been dealt with in the January 2020 final response letter as those complaint points hadn't been referred to us in time. He also said we wouldn't consider the issue relating to Ms D's employer as that didn't fall within our jurisdiction.

Ms D accepted that and said she may pursue those through other avenues, and so our investigator looked into the rest of the complaint.

In respect of the remainder of the complaint he didn't recommend it be upheld, saying the debt charity thought this was an unsecured debt which is why there was confusion and as a secured debt it wouldn't be included in the payment plan. He also said he didn't think the attempts at contact were excessive and Ms D didn't seem to have appeared to have discussed things with Evolution to try to find a way forward.

Ms D didn't agree and so it was passed to me to decide.

I recently issued a decision which set out which parts of this complaint we can and can't consider. I now issue this decision on the merits of the parts we can consider as the final stage of our process.

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 want to assure both sides that I've read and considered everything they've sent and said. I've also considered the information we received from the debt charity. If I haven't responded to a specific point it isn't because I haven't considered it. I have. I'm going to focus on what I think are the key issues in Ms D's case. My approach is in line with our rules and role as a free alternative to the courts. I want to assure all parties that no discourtesy is intended by this.

Before I go any further, whilst it doesn't form part of this complaint, I should deal with a comment Ms D has made:

"Also the settlement letter refers to my loan as a mortgage; to clarify the loan is a secured loan not a mortgage, all previous correspondence referred to the loan as a secured loan."

I understand it can be confusing, but the terms 'secured loan' and 'mortgage' are often used interchangeably. At its heart, the term "mortgage is a secured loan because it is a loan which is secured on a property. And a secured loan is also secured on a property by way of a mortgage deed. Often the term secured loan is used to refer to a second (or subsequent) charge such as Ms D has here, but it isn't wrong to refer to such a secured loan as a mortgage. In fact, since 2016, secured loans like this have come under regulation and are known as regulated mortgage contracts.

The original contract Ms D entered into is set out in the offer dated 26 June 2018. The covering letter for that is entitled "*Binding Mortgage Offer...*" The word mortgage is then used on numerous occasions throughout that document.

Ms D has said the debt charity she was dealing with can assist with all debts, regardless of the nature so she thinks Evolution acted inappropriately when it wouldn't accept the payments of £1 a month and contacted her, rather than the debt charity.

I think there has been some confusion as whilst the debt charity can assist with different types of debts, here the debt charity was putting forward a token payment plan (TPP) and with those the charity excludes the contractual monthly payments to any priority debts (such as this second charge secured loan) as non-payment of those can lead to a property being repossessed. Instead the debt charity includes the full monthly payment for all priority debts on the outgoings before the affordability of the plan is calculated. Any arrears on priority debts can be included in the TPP, but not the contractual monthly payments due. This information can be found on the debt charity's website in the section on TPPs.

Whilst the debt charity originally sent a TPP to Evolution, Evolution told the debt charity that the debt it was being contacted about was a secured loan, and I can see both the debt charity and Evolution told Ms D this. Evolution told Ms D:

"When we have reviewed your documents and spoken to [the debt charity] direct they have advised that we are listed as a non-priority creditor. They have asked that we contact you direct and to notify you of this as it will require you to contact them to advise them that we are a secured loan."

Can you kindly inform us once you have done this in order for us to offer the right level of support."

And

"as the contractual payment is already included in your outgoings, [the debt charity] have confirmed that they have informed you this needs to be paid directly to Evolution. However, we have not received a contractual payment on the account since October 2019."

According to its contact notes the debt charity emailed Ms D in January 2021, saying:

"We did sent [sic] you a letter in December, asking you to contact us about this account."

The creditor has informed us this debt is secured against your property. Which would mean it should be included in your budget and not your plan. All secured debts need to be paid and if you have arrears, you should try and come to an arrangement to make payments to them with the creditor. Which would be reflected in the budget."

As with all secured borrowing your home is at risk if you don't make the contractual payments."

The budget planner that was completed between the debt charity and Ms D includes the contractual monthly payment due to Evolution as an outgoing that Ms D would be paying in full – this can be seen in the 'type of expense' column with row 4 listed as 'Secured Loan/2nd Mortgage' and the monthly payment as £366.

Whilst Ms D has said her priority debt was her main mortgage, unfortunately that isn't what priority debt means in this sense. The debt charity defines priority debts and bills as "*Priority payments are the ones that could leave you homeless, without essential services, or where*

the creditor has extra powers to enforce the debt.” It then lists some examples of these and one of those listed is a secured loan saying that the property you secured the loan against can be repossessed.

Both Evolution and the debt charity told Ms D that the Evolution debt wasn’t included in her TPP, and so she needed to discuss with Evolution directly any arrangements she needed for this debt.

Ms D has complained about the number of calls Evolution made, and the fact she asked for email contact only.

The starting point here is the context to the contact. Ms D last made her contractual payment in November 2019. Since then only 12 payments of £1 each were made, against the 23 contractual payments due of around £365 a month (up until April 2022) – that is £12 paid versus instalments due of around £8,400.

This is a debt which is secured against Ms D’s home, and non-payment of it can lead to legal action being taken which could result in Evolution taking possession of the property. In that context it was important for Evolution to speak to Ms D to get a plan in place to try to stop that happening.

Unfortunately, Ms D wasn’t meaningfully engaging with Evolution as she needed to. Instead she was referring the lender to the debt charity, which wasn’t appropriate here for the reasons I’ve already explained, or she wasn’t answering its calls.

Whilst Evolution may have agreed to email contact that would be on the understanding that Ms D then engaged by email, but having reviewed all the contact here that wasn’t the case.

Evolution couldn’t simply accept no payments (or £1 a month payments) to this debt as the situation would then simply worsen month on month. It needed an active conversation with Ms D, following receipt of all the income and expenditure information it requested from her, to discuss what was possible. This didn’t happen as Ms D either referred Evolution (inappropriately) to the debt charity, said she couldn’t pay anything (without Evolution being able to undertake all the checks and discussions it needed on that), or didn’t answer at all.

I’ve looked at the volume of calls and I don’t find it excessive bearing in mind the context I’ve set out above. If Ms D had either answered the calls or made a call to Evolution at a time that suited her (its phone lines were open into the evening four days a week and on a Saturday morning), and had a meaningful engagement with Evolution in terms of discussing the account then I’ve no reason to believe the volume of calls wouldn’t have been much lower. The reason why Evolution made so many calls is because Ms D either wasn’t answering them, or when she did she wasn’t engaging in a meaningful manner with the process that needed to be followed.

There is a range of support measures a lender can consider when a borrower is in financial difficulties. But all those require an open and honest discussion between the lender and the borrower, and for both sides to fully engage in that. Having considered everything I don’t think Ms D was meaningfully engaged in this process, and for that reason Evolution couldn’t consider the best way to help her.

Having considered everything, whilst I can see what a difficult time this was for Ms D, I don’t think Evolution treated her unfairly in any aspect of this complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 1 October 2022.

Julia Meadows
Ombudsman