DRN-4252409

The complaint

Mr G complains that Evolution Money Limited ("Evolution") mis-sold him a secured loan.

Mr G has also brought a complaint against the lender about the lending decision and the action it took against him when he was in financial difficulties. I have dealt with that complaint in a separate decision.

What happened

Mr G took out a second charge mortgage for £11,950 (plus fees) in March 2017 in order to consolidate debt following advice from Evolution.

Mr G said that he had a drug and alcohol addiction at the time he took out the loan and was already suspended from his job. He spent the sum paid to him of around £7,300 on drug debts. Mr G made the first payment but was then unable to make any further payments as he lost his job. The lender subsequently instigated legal proceedings and an arrestment of earnings order was granted by the Court. Mr G sold the property in June 2022 and the remainder of the balance of the mortgage was settled at that point.

Evolution says that Mr G was referred to it on 24 February 2017. Evolution then completed a telephone application with Mr G in order to ascertain the suitability and affordability of the loan, which included a fact-find, credit search and income and expenditure (I&E) assessment. It says that Mr G was asked questions about his credit file and there were no mortgage arrears or missed/late payments and he was maintaining his credit commitments. A verbal I&E assessment was also completed to ensure the loan was affordable and sustainable for him. During the call Mr G stated that he was employed and didn't have any work-related disciplinary proceedings against him and was not aware of any changes to his employment circumstances.

Evolution says that based on the initial checks Mr G qualified for a loan of £11,950 and a mortgage illustration document was issued. Following Mr G's confirmation of the terms, the application was passed to Evolution's case management department to assess the supporting documentation and validate the information he had provided verbally. Evolution says that its records indicate a verbal job check was completed with Mr G's employer. The loan funds were released to Mr G on 10 March 2017.

Evolution says that the loan was used to consolidate nine existing credit commitments for which Mr G was making a monthly payment of between £500 and £600, and therefore the loan benefitted him by reducing his monthly expenses. It says that Mr G applied for the loan by deception and lied regarding his employment status and any anticipated change to his circumstances. It says that it was not aware of this during the loan application.

Investigator's View

Our investigator looked at the case and concluded that Evolution hadn't given suitable advice.

She set out that the recommendation by Evolution ought to have been made on a Consumer Buy To Let (CBTL) basis in Mr G's circumstances.

The investigator didn't think Evolution could reasonably have foreseen that Mr G would lose his job. However, she wasn't persuaded that the advice from Evolution to Mr G to take the second charge loan was suitable. It left him in negative equity, secured many unsecured debts to his property and no questions were raised around his level of gambling or whether the loan would be sustainable for him as a result. She was of the view that Evolution should have declined to provide advice and explained that it couldn't make a recommendation that was suitable to his circumstances.

In order to put things right, the investigator thought that Evolution should refund the broker fees paid by Mr G.

Evolution's Response

Evolution says that the job check it completed didn't indicate that Mr G was undergoing disciplinary action. However, he later confirmed that he had lied about this. It says that had Mr G told the truth about this, it would have changed its decision to lend.

Evolution disagrees that lending with a loan to value (LTV) of 110% is unreasonable as it says this fit within its lending criteria and that the risk sits with Evolution and not Mr G.

Evolution says that its records show that the level of gambling was discussed with Mr G and that he advised that he was in a work syndicate and was placing bets on behalf of his colleagues.

In relation to the short-term loans, Evolution says that it appreciates that this paints a picture of Mr G's past borrowing, but the loan consolidated all the active ones to break the cycle of Mr G continuing to use them. It also says that, although Mr G was using his overdraft balance to pay creditors, this was an arranged overdraft which he was not exceeding and was also cleared with the loan funds.

Evolution said that it is not positioned to give debt advice so is unable to comment on whether an IVA, bankruptcy or coming to an arrangement with his creditors would have been a better option for Mr G.

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.

Having looked at the evidence, I agree with the investigator's view for broadly the same reasons and I've explained my reasons further below.

The Mortgage

It was clear from the information Mr G provided to Evolution when taking out the mortgage that he wasn't living in the property the loan was to be secured on. The property was already owned by him and it was his only buy to let property. Mr G has also confirmed to this service that the first charge mortgage was on a residential basis and that he had previously lived in the property.

As a result of this, the Mr G should have been sold a CBTL mortgage. This isn't a regulated mortgage contract governed by the regulator's rules on mortgage lending (known as MCOB). Instead, the standards and conduct of a CBTL mortgage are governed by the rules set out in Schedule 2 of the Mortgage Credit Directive Order 2015 (MCDO).

The Advice

The loan taken out by Mr G in March 2017 was for £11,950 over a term of seven years. Added to this was an arrangement fee of £1,195 (payable to Evolution as the broker) and a servicing fee of £956. The loan was on a variable rate of 26.82% at the time the loan was taken (APRC 35.51%). The monthly payment was £347.95 with the total amount repayable being £29,227.56.

Mr G's property was valued at £48,000. The outstanding amount of the first charge mortgage on Mr G's property was £40,837, so along with the money borrowed for the loan with Evolution, this meant a loan to value (LTV) ratio of 110%. Once the fees added to the loan are included, this gave an LTV of over 114%.

As set out above, the mortgage should have been lent on a CBTL basis and was therefore governed by MCDO. These rules set out the standards for providing advice and state:

> "*13 (4) Where a creditor or credit intermediary provides advisory services to a borrower, the creditor or credit intermediary must -*
>
> *(a) obtain the necessary information regarding the borrower's personal and financial situation, preferences and objectives so as to enable the recommendation of suitable [CBTL] mortgage contracts;*
>
> *(b) base its recommendation on information that is up-to-date and takes into account reasonable assumptions as to risks to the borrower's situation over the term of the proposed agreement, including information on the typical rental levels and rental demands within the property's locality, the impact of future interest rate rises, rental voids, and rental arrears and typical letting costs;*
>
> *(c) act in the best interests of the borrower by -*
>
> *(i) informing itself about the borrower's needs and circumstances; and*
>
> *(ii) recommending suitable mortgages in accordance with paragraphs (a) and (b); and*
>
> *(d) give the borrower a record on paper or another durable medium of the recommendation provided."*

I've listened to the call between Mr G and Evolution which took place on 24 February 2017. Mr G said that the purpose of the loan was to consolidate debt and that he wanted a monthly payment of about £250. He was looking to borrow around £7,500 over no more than a five-year term. He told the advisor that it was most important for him to reduce his monthly outgoings as he wanted to go on holiday.

Mr G said that he was struggling with payments but keeping up to date, although he had missed a few credit card and payday loan repayments.

The advisor noted that Mr G had a relatively low credit score of 451, when the average for their customers was around 500. He told Mr G that this was due to him having a high balance to limit ratio of 99%, along with the payday loans. At this stage the advisor said "Those are the reasons you've probably come through to us, But it's not going to deter us, that's something that we can offer finance against". I don't think it was appropriate for the advisor to indicate that a loan could be offered in these circumstances before going through the credit file and obtaining further information about Mr G's financial situation.

The advisor then went through Mr G's credit file and calculated that the credit cards and payday loan debts amounted to £7,921 and that he was spending £851.40 a month on these debts. Some of the reasons he gave for the payday loans were that he needed funds for a flight to attend a job interview, that he needed a deposit for a holiday and that he had taken some loans for his sister.

The advisor said that it wasn't possible to partially consolidate the debts so Evolution would have to offer a higher loan amount of £8,000. Mr G then asked about consolidating the overdraft of £3,000, which would mean a loan of £11,000. The advisor then said that Mr G qualified for a loan of up to £15,000 subject to affordability. He advised that this left Mr G in negative equity and that for anything above an LTV of 110% the interest rate went up. Therefore, to get the best rate the maximum amount of the loan would be £11,950 which would be exactly 110% LTV.

Mr G asked what the monthly payments would be for various loan terms and following this said to the advisor to go for seven years. After this, the advisor went through the I&E assessment. He had an income of £1,784.75 and after the consolidation he was left with a disposable income of £245.87 including a percentage for a stress test.

The advisor recommended that Mr G take a loan of £11,950 over a term of seven years. He set out that, when Mr G was asked to prioritise between the monthly repayments, the amount of the loan and the term, his main concern was getting a budget of around £250 a month. Although the loan payments were £347, Mr G was saving over £500 compared to the £851 he was clearing off so the advisor said he had "achieved that budget because your outgoings aren't actually exceeding £250, they're actually decreasing". The total amount of loan Mr G was looking for was initially £7,500; the advisor said he could achieve that but Mr G had asked for further funds as it serves more of a purpose, clears almost everything off and reduces his monthly outgoings. Finally, the advisor said that Mr G had asked for term of five years but Mr G had requested to extend that to seven years to make it suit his needs a bit more.

Having regard to the recommendation, it didn't fit with any of the criteria Mr G said he wanted at the beginning of the call; the monthly repayment was almost 40% higher than the budget he declared; the amount of the loan was almost 60% more than he requested, and the term was also 40% longer than the maximum he said he wanted at the outset.

Whilst I appreciate that Mr G increased the amount of the loan to almost £12,000, this was after being told what the maximum amount he qualified for was and, of that, the maximum he could get at a lower interest rate if the LTV was under 110%. At no point did the advisor question whether it was in Mr G's best interests to increase the amount borrowed and no mention was made of the interest rate he would have got if he'd taken the £7,500 that he initially wanted, which would have meant an LTV of around 100%. Likewise, the increasing of the term and the monthly figure was a result of the fact that the higher loan amount meant Mr G's initial budget and maximum term were no longer possible.

Giving advice doesn't mean that Evolution *had* to find a loan for Mr G. It had the option to simply advise him that it was unable to recommend any loan as being suitable for him in his circumstances.

I accept that, at the outset of the call, the advisor said that Evolution does 'encourage customers to look at other sources of funding' and asked if Mr G had contacted his current mortgage provider or considered applying for an unsecured loan. Mr G said that he'd had a 'falling out' with his mortgage provider and said that this was a quicker option. No further clarification was sought in relation to this. The advisor offered details for the Money Advice Service but Mr G said he didn't need these. This was before the advisor had asked any questions about Mr G's financial situation, gone through his credit file or completed the I&E. And it appears to me that no further consideration was given to the possibility that a second charge loan might not be suitable for Mr G at all based on his individual circumstances.

Overall, the recommendation appears to have been largely based on Mr G asking the advisor to increase the loan amount and then Mr G picking which term he wanted based on the repayment amount. Having listened to the advice call, it is my view that the advisor simply recommended what Mr G asked for, as opposed to considering whether it was suitable for him or in his best interests.

Whilst being taken through the I&E, Mr G was asked how much he spent on lotteries or gambling each month. He said that there were a few entries for gambling on his statements and that he gave £10 a month to a staff lottery fund. The advisor asked what Mr G would pay out in total for gambling each month and Mr G said that he spent £150-200 a month. The advisor then said "If we see entries like that, that does get questioned, it won't prevent us from giving you the loan so don't worry about that but just bear in mind you will get questioned when they see your bank statements". The advisor doesn't appear to have included anything on the I&E for gambling expenditure and didn't ask any further questions about this.

The bank statements show a significant number of gambling transactions in the period before the loan was approved. For the month from 25 January 2017 until 24 February 2017, there was a total of £820 paid out on gambling over 63 transactions (including the £10 staff lottery).

Mr G has confirmed that he had a gambling addiction and that the loan was taken out at the height of his addiction. Although the advisor didn't know that, I don't think he made the obvious enquiries about Mr G's gambling expenditure that he should have done and think that he should have asked further questions about this before determining whether the loan was suitable or in Mr G's best interests. Further, I don't think it was appropriate for the advisor to say that gambling transactions wouldn't prevent Evolution from giving the loan.

Evolution says that Mr G was asked questions about his credit file and there were no mortgage arrears or missed/late payments and he was maintaining his credit commitments.

I disagree that Mr G was maintaining his credit commitments. His credit file, which the advisor went through, shows that he had opened 15 accounts in the last six months, that he had taken £1,145 of cash advances on credit cards in the last 12 months, that 13 credit searches for loan applications had been done in the last three months and 55 in the last 12 months.

The credit file also showed that an arrangement had been in place for the last 2 months for two of the payday loans and that payments were behind (or late) for three other payday loans. The credit file also showed that four of the credit cards were over their limit, two were close to the limit and the payments were behind (or late) for two of the cards.

The bank statement also showed that Mr G was frequently near his overdraft limit and had exceeded it occasionally. For example, on 30 December 2016, 24 January 2017 and 31 January 2017, Mr G was already over his overdraft limit of £3,000 then spent money on gambling transactions which took him further over his limit. These examples indicate that Mr G was clearly not managing his debts sustainably and that he potentially had a gambling problem. The statements also showed that direct debits for a loan and a credit card had been returned unpaid. So I don't think the information available to Evolution demonstrated that Mr G was maintaining his credit commitments at all.

Of the active loans and credit cards on the credit file, all but one of the credit cards had been opened in the previous six months. In addition to these, Mr G had taken out a further unsecured loan of almost £10,000 for a new car in October 2016. I also note that during the I&E call Mr G told the advisor that he had taken out payday loans to travel to a job interview, to pay for a deposit on a holiday and to give to his sister. He also told the advisor that reducing his outgoings was important as he wanted to go on holiday. Given the information available to Evolution, I think it ought to have questioned whether Mr G was managing his finances and whether securing his debts on his property would be suitable for him or in his best interests.

Evolution says that the loan was used to consolidate a number of credit commitments and therefore benefitted Mr G by reducing his monthly expenses. It has also said that the funds from the secured loan consolidated all the active short-term loans to break the cycle of Mr G continuing to use them.

Whilst the loan reduced Mr G's monthly expenditure by consolidating some – but not all – of his debts, on the information available to the advisor at that time, it would have increased his overall indebtedness by over £3,000. This was due to the additional amount of £1,029 paid to Mr G on top of the £10,921 for the consolidation, along with the arrangement fee of £1,195 and a servicing fee of £956. I also note that one of the credit cards with a balance of £1,900 was interest-free, so consolidating this card meant that Mr G would have to pay more interest on this. I accept that the advisor initially advised that it was not worth consolidating this debt and that it was up to Mr G if he took the advice or chose to clear it. However, the amount of the loan which the advisor recommended to Mr G still included the amount to consolidate this debt.

The consolidation also meant that the debt was secured against his rental property – which provided part of his income – over seven years which would add a significant amount of interest to the amount he initially borrowed and mean that his property could be repossessed if he was unable to maintain the repayments. This would also have left him in negative equity as the LTV was 114% including the fees which had been added to the loan.

In its response to the investigator's view, Evolution disagreed that lending with an LTV of 110% was unreasonable as it says this fitted within its lending criteria and that the risk sits with the lender and not Mr G. Firstly, the LTV was 114% as the fees were added to the loan which was secured on Mr G's property. Further, the fact that Evolution says this met the requirements of its internal policy doesn't of itself mean it has acted fairly. I would expect Evolution to take this into account when determining whether the loan was suitable for Mr G and in his best interests in the other circumstances of this case.

In combination with the other information available to Evolution, this should have indicated that Mr G was already heavily indebted and that a further loan – particularly another loan secured against his property – may not have been suitable for him. And I don't agree that the lender was taking all the risk. This loan placed Mr G in negative equity on the property, meaning it's likely he wouldn't be able to re-finance the lending, for example to reduce the interest rate; that he couldn't sell the property to repay it should it prove unsustainable; and that he would be left with a shortfall if it was ever repossessed. These seem to me to be substantial risks that Mr G was exposed to by virtue of this loan.

For the reasons above, I don't think the recommendation by Evolution was appropriate, having regard to the information it held about Mr G's financial circumstances and gambling, particularly given the large amount of the loan and the fact it would be secured against his property putting him in negative equity. Given Mr G's circumstances, I don't think a secured loan was in Mr G's best interests or that Evolution should have advised Mr G that a secured loan was suitable for him.

Evolution says that Mr G applied for the loan by deception and lied regarding his employment status and the purpose of the loan being to fund drug debts. It says that the job check it completed didn't indicate that Mr G was undergoing disciplinary action.

Evolution has provided a document to show that it requested a job check from Mr G's employer on 3 March 2017, albeit there is no record of who carried out the check and who was spoken to at the employer (a "0" has been entered next to the contact name).

I accept that it's likely Mr G misled Evolution as part of the loan application. But Evolution ought to have had regard to the matters I've set out above as part of its recommendation, regardless of what Mr G has said. As explained by the investigator, Mr G's employment status has had no impact on the reason the complaint has been upheld. For the reasons set out above, even if Mr G had remained in his job the loan wouldn't have been suitable for him based on the information available to Evolution.

Putting things right

In order to put things right, Evolution should refund the arrangement fee of £1,195, which was added to the loan and paid to Evolution by the lender.

In my decision on Mr G's case against the lender, I've concluded that the lender shouldn't have offered the loan to Mr G. The arrangement fee was added directly to the loan and was paid to Evolution by the lender, but I've directed the lender to disregard this when calculating redress. As I've directed the lender to pay Mr G simple annual interest of 8% on any overpayments he is calculated to have made to the entire loan as a result of my decision, I'm not asking Evolution to apply interest to the refund for the arrangement fee on top of this.

In light of the above, I require Evolution to do the following to put things right:

- Evolution should refund the arrangement fee of £1,195 paid by Mr G (which was added to the loan and paid to Evolution by the lender).

My final decision

For the reasons I've explained above I uphold this complaint against Evolution Money Limited and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 10 January 2024.

Rachel Ellis
Ombudsman