

The complaint

Miss A complains that Evolution Lending Limited (“Evolution”) lent to her irresponsibly as she had numerous debts at the time she took out her secured loan. She also says that Evolution didn’t treat her fairly when she was in financial difficulties.

What happened

Miss A took out a second charge mortgage for £5,500 with Evolution in December 2018 in order to consolidate debt.

Miss A says that she took out the loan to consolidate some outstanding debt. However, she says that Evolution didn’t check any of her bank statements and didn’t ask for proof that the other debts had been cleared after it gave her the loan. She says that a full check of her credit file would have shown that she had a huge amount of debt including payday loans.

Miss A also says that throughout the loan she encountered a number of problems which resulted in financial difficulties and also had a baby which meant she had a significantly reduced income. However, she says that Evolution was unsympathetic and wouldn’t let her reduce her monthly payments after she explained her situation, so she felt pressured to make the contractual payments.

Miss A says that her financial situation and the service she received from Evolution affected her mental health. She was signed off work for eight months in 2020 and had to borrow money from family and friends after having a baby as Evolution wouldn’t allow her to reduce her payments when her income was reduced. Miss A would therefore like Evolution to refund all the interest she has paid and to remove any adverse information from her credit file.

Evolution says that it is a specialist lender which seeks to help consumers access credit where they would typically be refused by other lenders who base their decisions solely on traditional credit scores or credit reports. It says that it does this by completing a detailed and evidence-based affordability assessment and ensuring that affordability, suitability and sustainability are assessed.

Evolution says that the relevant checks were completed during Miss A’s application to ensure the loan was affordable and sustainable for her, including proof of her income and expenditure (I&E). It says that it considered the payday loans taken by Miss A. The aim of Miss A consolidating her debts was to make the payments more manageable and break the cycle of payday loans. Evolution says there was a clear benefit to the loan, as there was a significant reduction to her monthly outgoings.

Evolution provided a quote for the loan and Miss A confirmed she was happy with the terms verbally. She was then sent a copy of the application pack to review which included the mortgage illustration with the key terms and rates and a copy of the loan agreement.

Evolution says that on the occasions it was made aware that Miss A was struggling to meet her contractual monthly payments (CMPs), it completed I&E assessments to take into account her essentials and priority bills. It says that it offered the possibility of agreeing reduced payment plans and made her aware of places she could get independent debt advice. Evolution says that on each occasion Miss A made the decision to continue to make the CMP and no undue pressure was applied to her to make the payments.

Our investigator looked at the case and concluded that Evolution didn't do anything wrong when underwriting Miss A's loan application or dealing with periods of financial difficulty for her. He was of the view that Evolution had considered Miss A's income and that the outgoings shown on the bank statements it relied upon demonstrated that the loan was affordable. This was especially considering that the loan was for debt consolidation and gave Miss A a monthly saving of £215.07. The investigator found that it wasn't Evolution's responsibility to check that Miss A had used the funds for the declared purpose. In relation to Miss A's financial difficulties, the investigator was of the view that Evolution's resolution on each occasion it was contacted by Miss A was in line with what he would expect and in line with the relevant regulations.

Miss A disagreed with this so the case has come to me to make a decision. She said that she was very young when the loan was taken out so didn't believe Evolution did enough to make sure she knew what she was agreeing to. She maintained that the loan was given to her unfairly and, as a result of the lender not checking she had paid the other debts off, the funds were used for other things putting her further in debt.

I set out in my provisional decision dated 15 September 2023 (reproduced below) why I was minded to uphold Miss A's complaint. I invited both parties to let me have any further comments and evidence by 13 October 2023.

Miss A responded to say that she had no further points to make. Evolution also responded to say that it had reviewed my findings and, whilst there were some minor points it didn't agree with, overall it agreed with the provisional decision.

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 considered the responses to my provisional decision dated 15 September 2023, I remain of the view that Evolution lent irresponsibly and that this complaint should be upheld.

In my provisional decision I set out the following:

"Having looked at the evidence, I disagree with the investigator's view and I've explained my reasons further below in relation to the irresponsible lending and financial difficulties elements in turn. On the evidence I've seen so far, I'm minded to find that Miss A's loan was lent irresponsibly by Evolution.

Irresponsible Lending

The loan taken out by Miss A in December 2018 was for £5,500 over a term of four years. Added to this was a product fee of £550 and an administration fee of £499. The monthly payment was £229.91, with the total interest payable being £4,486 and total amount repayable being £11,035.40. The loan was on a variable rate of 32.46% (APRC 47.65%).

Evolution says that it directly consolidated five lines of credit, with the remaining funds transferred directly to Miss A. Some of these were to be used to clear her overdraft and repay a loan to a family member. Based on the information in the bank statements, Evolution says Miss A was paying approximately £444.98 to her creditors which was due to be consolidated (including £100 per month for her overdraft). After the consolidation, the monthly payment to Evolution would be £229.91, which reduced her monthly expenses by £215.07.

Miss A's secured loan is a regulated mortgage contract which means that the regulator's rules on mortgage lending (known as "MCOB") apply. At the time Miss A

took out the loan, these rules set out – in summary – that it's the responsibility of the lender to carry out a detailed affordability assessment. MCOB sets out some of the key requirements, including (but not limited to):

- A lender must assess whether a consumer will be able to pay the mortgage repayments, not just at the start but over the term
- A lender must not enter into the mortgage agreement unless it can demonstrate that the mortgage is affordable for the consumer
- A lender must take full account of the customer's income, and must obtain adequate evidence of the income declared by the consumer
- A lender must take full account of the customer's committed expenditure (credit and contractual commitments) and take reasonable steps to obtain details of the customer's actual outstanding commitments
- A lender must take full account of the customer's basic essential expenditure and quality of living costs of the customer's household

The rules set out requirements and guidance in relation to the assessment of a consumer's expenditure. In particular, MCOB 11.6.12 sets out that for the purposes of its assessment of whether the customer will be able to pay the sums due a lender "may generally rely on any evidence of income or information on expenditure provided by the customer unless, taking a common sense view, it has reason to doubt the evidence or information". In other words, it's acceptable for a lender to rely on information about expenditure given by an applicant without seeking evidence to corroborate it – unless there are grounds to doubt what is said.

Evolution did obtain a copy of Miss A's credit report and a bank statement for two of her accounts, the first covering the period of 1 November to 3 December 2018 for what appears to be her main bank account, and the second covering the period of 29 October to 28 November 2018 for another current account with a different bank. So I accept that it did take reasonable steps to obtain details of her actual credit commitments as it was required to do under MCOB 11.6.13. However, I think once Evolution obtained these documents that should have led it to question what Miss A had said about her expenditure on credit commitments and living and other expenses – for a number of reasons which I will expand upon below.

Evolution says it validated the information provided by Miss A by reviewing proof of her income (three months' wage slips) and proof of expenditure (34 days' bank statements). It says this confirmed that Miss A had disposable income of £41.94 after the inclusion of the payment to Evolution. It says this accounted for Miss A's priority, committed and essential expenditure and the loan was therefore assessed as affordable and sustainable for the term. Having looked at the bank statements, I disagree that no further outgoings were apparent over and above those entered on the I&E.

I've looked at the bank statements provided to Evolution and there are a number of transactions shown which don't seem to be accurately reflected in the outgoings in the I&E:

- During the first phone call on 3 December 2018, the advisor went through Miss A's credit report and referred to one of her credit cards which hadn't been paid for four months (not the credit card which was being consolidated). Miss A told the advisor that she was in an arrangement with this bank to pay £50 a month (but more when she could). The advisor checked that Miss A had paid this for the previous month and told her that if this wasn't being paid over a certain period of time, Evolution would have to allocate 3% of the

balance to the I&E which would amount to £220 a month (as the outstanding balance was over £7,000). I note that the advisor said that if he put this in, alongside Miss A's mortgage and other debts, the loan would be unaffordable for her. Miss A confirmed that she was paying £50 a month towards this credit card during the I&E call later that day and I can see from the bank statement provided to Evolution that a £50 payment was made to this credit card (and annotated as such by Evolution) on 20 November 2018. However, in the I&E there are no outgoings noted in the fields for either credit cards or arrangements.

- During the I&E call on 3 December 2018, Miss A said that she spent no more than £100 a month on food, which included household and toiletry items. The I&E has included a figure of £169 for food. The bank statement for Miss A's main account has been annotated by Evolution and numerous transactions have been marked as 'food'. There are other transactions on the statement which seem to relate to supermarkets but haven't been labelled as such and it is unclear why. In any event, even including only the transactions which Evolution itself has marked as 'food', the total amount is £393.94, which is significantly higher (by £224.94) than the £169 used in the I&E.
- Miss A said during the I&E call that she had a music subscription which was £15 a month. I can see from the bank statement provided by Miss A that a payment of £14.99 was made in respect of this (along with two other payments to the same provider totalling £3.78). There are no outgoings noted in the field for media in the I&E spreadsheet and I can't see that this has been taken into account anywhere else.
- Miss A said during the I&E call that she spent 'a fiver here or there' when she had it on gambling, with an average spend of £30 a month but sometimes less and never really more than that. Evolution has confirmed that the entry of £30 under 'Other' in the I&E relates to the gambling expenditure. The bank statement shows that, for the month up to 3 December 2018, she spent £151 on gambling transactions, which is significantly higher (by £121) than the £30 used in the I&E. Whilst I accept that there were gambling winnings paid into the account of £270, this cannot be considered to be guaranteed income.
- On the bank statements (including both the main and secondary accounts) there are regular transfers to one person in particular, totaling £164.71 (over 11 transactions) for the month up to 3 December 2018. There are also payments of £20 (over two transactions) to another person and a payment of £130 to 'mum'. Evolution hasn't provided any information to indicate that it questioned these transactions and I can't see that they have been taken into account in the I&E.
- The bank statement for the main account shows that £230 was withdrawn in cash during the month up to 3 December 2018. Evolution hasn't provided any information to indicate that it questioned what the cash was used for and I can't see that any of this has been taken into account in the I&E.
- The statement for Miss A's secondary account shows that she paid £27 for overdraft fees during the month up to 28 November 2018. It was intended that the overdraft for her main account would be paid off by this loan and the fees for that overdraft therefore weren't included in the I&E. However, there was no suggestion that Miss A would be paying off the overdraft in the secondary account, yet in the I&E there are no outgoings noted for this overdraft.

In addition to the outgoings supported by the bank statements made available to Evolution, there is also another figure which Miss A declared during the I&E call on 3 December 2018 which doesn't appear to have been accounted for on the I&E statement when calculating her expenditure:

- Miss A said that she was paying a phone bill she took out for her ex-partner's mother which amounted to £190 as she was paying this off at £10 a month. There are no outgoings noted in the field for mobile telephone on the I&E and I can't see that this has been taken into account anywhere else.

Having looked at the I&E statement, it is clear what the majority of the figures relate to and – other than the amounts entered for food and gambling referred to above – the amounts which have been entered are generally consistent with what was declared by Miss A and/or what appears on the bank statements. Evolution has confirmed that the figure on the I&E of £122 for 'Housekeeping' relates to clothing expenditure of £62 a month and socialising of £60 a month and that the figure on the I&E of £30 for 'Other' relates to gambling expenditure. So the outgoings above appear not to have been taken into account in the I&E.

In respect of the £50 for the credit arrangement, the £14.99 music subscription, and the £10 for the phone bill, Miss A clearly declared these expenses to Evolution (and there was evidence in the bank statements for the first two), yet they have still not been entered as outgoings in the I&E. Taking just these figures into account, they amount to an additional £74.99 a month expenditure for Miss A which has not been included in the I&E.

The I&E shows figures of £169 for food, £30 for gambling (under 'other') and nothing for overdraft. But the bank statements available to Evolution show an additional £224.94 expenditure on food (£393.94 in total), an additional £121 expenditure on gambling (£151 in total) and £27 for the overdraft on the secondary account. This amounts to an additional £372.94 a month overall, which also hasn't been included in the I&E.

It doesn't appear that Evolution has used any of the information available to it in the bank statements to question whether the outgoings in the I&E are accurate despite having reason to doubt the evidence or information it had been provided by Miss A about her outgoings.

On top of this, there is the £314.71 transferred to others and the £230 of cash withdrawals over the course of the month up to 3 December 2018. It doesn't appear that Evolution has asked any questions in relation to what these figures were for and whether they were regular expenditure for Miss A. In any event, none of these amounts have been included in the I&E either.

Given that Miss A's disposable income was calculated to be only £41.94 without any of these outgoings being included, it is my view that, had they been included as they should have been, the loan would clearly have been unaffordable for Miss A.

Whilst the loan reduced Miss A's monthly expenditure by consolidating some – but not all – of her debts, it increased her overall indebtedness by almost £3,000. This was due to the additional amount of £3,203 on top of the consolidation (less the overdraft of around £1,400 she was paying off), along with the product fee of £550 and an administration fee of £499). It also meant that the debt was secured against her home over 4 years which would add a significant amount of interest to the amount she initially borrowed and mean that her home could be repossessed if she was unable to maintain the repayments.

For the reasons above, I don't think Evolution carried out adequate checks having regard to the information it held about Miss A's financial circumstances, particularly given the fact the loan would be secured against her home.

Had Evolution considered whether the information in its possession gave common-sense grounds for doubting what was on the I&E, as I think it fairly should have done, I think it ought reasonably to have questioned whether the loan was affordable and sustainable for Miss A. And given that it was secured on her property, the impact of that on Miss A could be significant. I think this ought to have led Evolution, acting fairly, to question whether it was responsible to lend in these circumstances.

I think the information available supports that the loan was not affordable or sustainable for Miss A. It is my view that had Evolution properly reviewed the information available to it, it would not have been able to demonstrate that the loan was affordable or sustainable for Miss A.

Overall, I don't think it was reasonable for Evolution to offer Miss A the loan secured against her home. I am of the view that it didn't carry out sufficient checks and, had it done so, it would have shown that the loan was unaffordable and unsustainable for Miss A and should not have been offered. In all the circumstances I am minded to find that Evolution lent irresponsibly.

Whilst I don't think the loan should have been given, Miss A has had the benefit of the money borrowed, so I think it right that she should have to repay that amount. However, had the loan not been given then she would not have had to pay the fees, charges or interest incurred on this.

In order to put things right, Evolution should remove all interest, and the fees it charged, from the loan balance. It should treat all payments Miss A has made to date as being repayments of capital. It should then re-calculate the outstanding balance and reach a sustainable arrangement with Miss A for the repayment of the remaining outstanding capital balance. It should also remove any adverse entries associated with this loan from Miss A's credit file.

I recognise that this is not an ideal way of putting things right – it doesn't take into account the fact that Miss A did consolidate some (though by no means all) of her existing debts, and has therefore, through my award, saved interest on that debt she would otherwise have paid. However, given the interest rates charged by Evolution, and the difficulty of estimating what Miss A would have paid towards other debts, I think it's reasonable to take a relatively simple approach to resolving this matter by simply saying that Evolution should not retain fees and interest on money it ought not fairly to have lent. I'm satisfied that this is as close to fair compensation as it is reasonably possible to get in this case.

So I recognise that there is likely to have been some saving through consolidating high-interest short-term loan and credit card debt into the secured loan, albeit I don't think I can accurately estimate that saving, and I don't think it's likely to be very substantial. However, my award for financial loss will result in Miss A having paid no interest on any of the consolidated debt. In recognition of the fact that this may, to some extent, leave Miss A over-compensated, I do not intend to award further compensation for any distress and inconvenience in addition to that award.

Financial Difficulties

Miss A says that Evolution was unsympathetic when she was in financial difficulties and wouldn't let her reduce her monthly payments.

Evolution says that Miss A was maintaining the CMP until 20 May 2020, when she went into arrears. I've seen the contact log between Miss A and Evolution and listened to the relevant calls.

Miss A contacted Evolution on 28 July 2020 as she was unable to make the July payment due to being off work sick and getting half of her normal pay. She had recently returned to work so said she would be able to make the CMP going forward. It was agreed that she would not pay the July payment as she didn't have enough to do so. Miss A was told that this would affect her credit file. An I&E assessment was completed and showed disposable income of £175.09 after the monthly repayment and it was agreed that she would pay the CMP plus £60 a month towards the arrears (around £360) and this would be reviewed in October. Miss A said that she hoped to be able to clear all of the arrears then as she wanted to do this as soon as possible.

On this occasion, Evolution agreed that Miss A didn't need to make the CMP for July as it wasn't affordable for her. It also made an arrangement going forward based on the information provided by Miss A, which she agreed to. So I think Evolution has treated Miss A fairly.

On 19 August 2020, Miss A contacted Evolution as she was unable to make the full payment along with the £60 towards the arrears the following day due to her partner being out of work and having to pay for car repairs of £800. The advisor said that they would work with her but if it made an arrangement it needed to be satisfied that Miss A would be able to keep to this and, if she wasn't making the CMP, the arrears were going up. It was agreed that Miss A would cancel the direct debit at her bank and that she would review her finances and call back the following day to make a payment of £100 and discuss what they could do on the account.

Following this, I can't see that Miss A called or that any further discussion was entered into until Miss A called again on 18 September 2020, when she advised that she was unable to make the full CMP due to some unexpected car repairs. It was agreed that she would make a payment of £30 that month and pay the next CMP in full plus £100 towards the arrears. She was advised that her credit file would show as three payments in arrears.

Again, I don't think Evolution has treated Miss A unfairly. Each time she contacted it, it agreed to accept a lower payment and to put an arrangement in place going forwards which Miss A agreed to. So I think Evolution has tried to work with Miss A to get the mortgage back on track.

On 20 January 2021, Miss A called to discuss the arrangement of making additional payments as she was on maternity leave. She explained that she was receiving a full pay of £1,300 for the next two to three months but then it would go down to about £600 a month. She said that she was trying to pay as much as she can and could make the CMP but the extra £100 would be a stretch this month. The advisor said that they didn't think it was in Miss A's best interests to continue paying the additional arrangement amount now while she was trying to save money and it was therefore agreed that Miss A would continue to just make the CMP while she was receiving full pay and that the situation would be reviewed when this changed. The adviser was concerned that when the pay dropped the loan wouldn't be affordable for Miss A and explained that the loan had been recapitalised so was not currently in arrears.

Again, I think Evolution has treated Miss A fairly here as it agreed that she didn't have to pay the additional amount before her pay reduced due to maternity leave. I also note that Miss A thanked the advisor and said that she was glad that she had called and that the advisor had been really helpful.

On 20 April 2021, Miss A called to advise that her pay was going to reduce to £600 a month and that she would receive £200 a month from her ex-partner. She was advised that Evolution would look to help over that period but that it didn't offer payment holidays so any arrangement would mean that the account would go into arrears which would have an impact on her credit file, but that it wouldn't seek to take

any further action in relation to the arrears. Miss A advised that she would make the next two payments and agreed to call in June when her wage was due to change so that her circumstances could be reviewed to establish what was affordable. She said that her plan was to go back to work in January and make the full payment in addition to paying towards the arrears. The advisor also gave her details of debt advice agencies.

Evolution contacted Miss A on 3 August 2021. Miss A was asked if the CMP was affordable for her and she said it wasn't at the moment. She was advised that it wasn't possible to reduce the CMP permanently but that Evolution could agree a reduced monthly payment on a temporary basis (which could have a negative impact on her credit file), with a view to starting to address the arrears when it was affordable. It was agreed that the account would be put on hold for a week for Miss A to provide evidence that the loan wasn't affordable (in the form of bank statements and wage slips) as Evolution would be agreeing for her to pay less than the contractual amount. It would then review these and call her back to make an appropriate arrangement.

On 30 September 2021, Miss A called as she was struggling with her finances and hadn't been able to make the payment that day. She wasn't sure when she would be able to make this. It was explained that Miss A's account was in arrears which would affect her credit file so it was in her best interests to try and clear this, however it had to be affordable. The advisor said that if Miss A couldn't afford to make a double payment the following month, then Evolution could look at putting an arrangement in place. It was agreed that Evolution would call back on 4 October 2021 to see if there was any affordability to make any payment.

On 7 October 2021, Evolution emailed Miss A proposing a payment arrangement to bring the account up to date as it hadn't been able to get hold of her on 4 October as agreed.

On 30 October 2021, Evolution called Miss A, who confirmed that she was still on maternity leave and receiving a reduced income and that her ex-partner hadn't been able to give her any money as he wasn't working. She said that she wasn't going to be able to make a payment until 9 November 2021 when her ex-partner would be able to give her some money and then she would be able to pay £50 a week. Following this, Miss A said that she would be able to pay more than CMP from 19 November 2021. Evolution reminded Miss A that whilst the arrears were still on the account this would show on her credit file.

Miss A called on 11 November 2021 to ask about the arrears balance on the account. Miss A advised that her income was £600 a month on maternity pay so this was very straining on her and she had buried her head in the sand. Evolution said that Miss A had contacted it so it would try and support her and said that a reduced payment plan could be agreed. Miss A said that she was going to make her CMP at the end of the month and the advisor asked if she would have enough to cover her living expenses as it didn't want her to struggle. Miss A said 'probably not' but that she would 'make do' as she didn't want the arrears to increase.

Whilst I can appreciate that Miss A was struggling financially, I think Evolution has treated her fairly as it advised her that it would be willing to come to an arrangement whilst her income was lower and Miss A agreed to make the CMP up until that point and also once she was on a reduced income as she didn't want the arrears to increase. Evolution wouldn't be able to reduce the CMP as this was what had been agreed at the outset. However, it did agree to accept lower payments without taking any further action in the circumstances. The fact that the difference between any lower payments and the CMP would be treated as arrears isn't unreasonable and is

what I would expect to see as Miss A wouldn't be maintaining the amount she had agreed to pay under the terms of the contract.

Miss A returned to work on full pay from March 2022 and has made the full CMP payments since then with additional payments towards the arrears."

As set out above, Miss A has made no further representations in response to the provisional decision.

Evolution has confirmed that whilst there were some minor points it didn't agree with, overall it agreed with the provisional decision. It accepted that, whilst Miss A said her food spend was £100 (and it entered £169 in the I&E as this was the minimum), the evidence available to it contradicted this. Evolution also accepted that there was a regular transfer of £130 each month to 'mum' and that this alone would have resulted in a negative disposable income. In relation to the gambling transactions, Evolution said that it asked for further bank statements but accepted that its questioning around this area wasn't strong enough to support the inclusion of the figure of £30 for this in the I&E. It said that the £10 for the phone bill she took out for her ex-partner's mother and the £50 payment for the credit card had been included in the I&E under the heading of 'Catalogues'. However, it accepted that this did not correct the issues identified with the food spend, transfers and gambling.

As there have been no further representations from Miss A and Evolution agrees with the provisional decision, I see no reason to change my provisional view.

For the reasons set out above and in my provisional decision, I am of the view that the loan was unaffordable and unsustainable for Miss A and that Evolution lent irresponsibly. Whilst I don't think the loan should have been given, Miss A has had the benefit of the money borrowed, so I think it right that she should have to repay the sums borrowed. However, had the loans not been given then she would not have had to pay the fees or interest incurred on these.

Putting things right

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

- Evolution should calculate the amount borrowed without any fees, charges or interest (£5,500). It should then treat any payments made to it by Miss A as payments towards this capital amount.
- If this results in an overpayment, Evolution should pay Miss A simple annual interest of 8%* on any overpayments, running from the date they were paid to the date of settlement.
- If there is still a balance outstanding, Evolution should agree a suitable repayment plan with Miss A.
- Evolution should remove any adverse information about the loan from Miss A's credit files.

* HM Revenue & Customs requires Evolution to take off tax from this interest. Evolution must give Miss A a certificate showing how much tax it's taken off if they ask for one.

My final decision

For the reasons I've explained in my provisional decision and above, my decision is that I uphold this complaint against Evolution Lending 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 Miss A to accept

or reject my decision before 6 December 2023.

Rachel Ellis
Ombudsman