

The complaint

Ms S complains that Evolution Lending Limited irresponsibly lent her a second charge mortgage (secured loan).

What happened

In early 2019 Ms S contacted a company called Evolution Money Limited to discuss taking out a secured loan to consolidate some unsecured debt. Evolution Money recommended that she borrow £15,000 over ten years, at an interest rate of 26.82% variable. The loan was with Evolution Lending, Evolution Money's sister company. Although Ms S dealt with Evolution Money throughout, and Evolution Money made the lending decision on Evolution Lending's behalf, as the lender Evolution Lending is ultimately responsible for the decision to lend to Ms S even if an agent made that decision under delegated authority.

Ms S now complains about the loan. There's a separate complaint about Evolution Money, in respect of its advice to recommend the loan. This complaint is about the lending decision Evolution Lending made.

Ms S says that she was vulnerable because of mental illness, and had recently come out of an abusive relationship and was now a single mother. Evolution Lending ought to have taken her circumstances into account. She says she was in financial difficulty at the time, having taken out a series of payday loans and been subject to a County Court judgment (CCJ).

Ms S complains that the value of her property and her income and expenditure were manipulated to enable the loan to go ahead – including leaving out a substantial commitment for car finance.

As the loan is on a variable interest rate, the monthly payments are increasing. Ms S says that she now owes more than she borrowed and that she is required to pay around half of her take-home pay to service the loan. She says it should never have been lent to her.

I issued a provisional decision setting out my thoughts on the complaint.

My provisional decision

I said:

"I've carefully considered all the information Evolution Lending received and took into account when it made the lending decision (or when Evolution Money made the decision on its behalf under delegation).

In lending responsibly, I'd expect Evolution Lending to consider whether the loan was affordable and sustainable for Ms S – over its whole term, not just at the start. In considering income and expenditure it's required to obtain evidence of income and information about expenditure, and can rely on what it's told unless there are common sense grounds for doubting it.

I can see the car finance loan was taken into account – it was included in the

unsecured debts listed as part of Ms S's expenditure. So I don't think Evolution Lending acted inappropriately in that respect.

However, there are other matters that do give me cause for concern. During the initial interview with Ms S, Evolution Money noted that as well as a main mortgage she had a help to buy loan secured over her property.

Evolution Money and Evolution Lending didn't ask for evidence of this loan, but accepted Ms S's recollection that it represented a 20% equity share. I can also see this loan recorded as being secured against Ms S's property in the Land Registry entry Evolution obtained.

The help to buy loan was taken out in November 2017, when Ms S bought her property. Help to buy loans are interest free for the first five years, but interest becomes chargeable after the fifth anniversary – so from December 2022. This therefore is an additional item of expenditure that Ms S would be liable for, for most of the duration of this loan (even if not at the start). But Evolution Lending made no attempt to find out how much the payments would be from 2022 and didn't factor them into its affordability assessment. Nor did it check whether Ms S had the consent of the help to buy lender for further secured lending – in my experience such consent is contractually required but rarely given. And it didn't think about what the consequences for Ms S, and for the security of this lending, might be if consent was not obtained and the help to buy lender later took action for breach of the loan agreement.

Evolution Lending did include benefits income in the affordability assessment. But I'm not persuaded that doing so was appropriate. A substantial part of the benefit income recorded was disability benefits paid to Ms S for assistance with the care of her younger daughter. There was no assessment of whether her daughter's needs resulted in extra expenditure offsetting this income, and no consideration of whether these benefits were likely to be payable for the duration of the loan term.

Ms S says the benefits were withdrawn earlier this year following an improvement in her daughter's condition; it is not hindsight to say that it should not be assumed that disability benefits are payable indefinitely and that Evolution Lending should have considered whether they would be part of Ms S's household income for the life of the loan. If it had enquired into this at the time it may or may not have been reasonable to assume Ms S would continue to receive these benefits throughout the term based on what was known at the time, but Evolution Lending did not make those enquiries.

Removing the disability benefit income and adding in the help to buy payments which would start in 2022 are enough to make the loan unaffordable, even without the other matters I discuss below. And as I've said it's not enough just to look at Ms S's financial situation on the day of the loan application. Evolution Lending is required to consider whether it would be affordable throughout the term, taking into account future changes it ought to have known about.

I'm also not persuaded that Evolution Lending made sufficient checks of Ms S's employment income. During the initial application call Evolution Money confirmed she was in full time employment and asked Ms S whether she'd had any sick leave in the last 12 months. She told it that she hadn't.

Evolution Lending is entitled to rely on what it is told – unless there are common sense grounds for doubting it. In my view, there are such grounds in this case. Although Ms S had said she hadn't taken any sick leave, her December 2018 payslip

– provided as part of her application – showed that a substantial part of her salary that month was sick pay.

Ms S says that at the time of the application she was vulnerable and had experienced periods of mental illness. She says that some months after the application these problems became so bad that she lost her job because of ill health. Having listened to the calls with Evolution Money, there's no evidence she told it about her health issues at the time, and nothing that ought to have led it to be concerned about Ms S's health or vulnerability in what she said.

But the December payslip ought to have led Evolution Lending to question why Ms S had said that she hadn't had any sick leave. And it ought to have led to Evolution Lending making further enquiries about Ms S's health and ability to work, and whether her income would be sustainable. There's no evidence it considered this either. Had it made those enquiries, it would have learned more about Ms S's wider circumstances and her vulnerable position, as well as the health problems that later led to her losing her job in the months after the loan was taken out.

I've also noted that there are missed payments on Ms S's credit record, and a substantial new unsecured loan, all of which are around the time of the sick leave at the end of 2018. Evolution Lending accepted what Ms S told Evolution Money, that the missed payments were because of poor advice from a friend. But it didn't investigate this further, consider why it coincided with additional lending, or consider why it appeared to coincide with a period of sick leave. Also in late 2018 Ms S had taken a payday loan which she hadn't paid back and was in arrears.

I've also noted that Ms S had a County Court Judgment (CCJ) for almost £10,000. The CCJ was also granted in late 2018, a few months before this loan was taken out. Ms S said that she was disputing this as it was her ex-partner's debt. But a court had already concluded that Ms S was responsible for it, just a few months earlier, and given the value of the CCJ there was a real risk that the creditor would take action to recover the debt. Settling the debt was not included in the consolidation funded by this loan.

Even though further enforcement action for the full amount of the CCJ could be taken at any moment, impacting Ms S's ability to repay this loan, Evolution Lending only included 1% of the balance as a notional amount in Ms S's monthly expenditure. She wasn't actually paying this amount and there's no evidence the creditor would have accepted this amount if offered. I don't think this was reasonable.

I think that if Evolution Lending had considered the matters I've set out above, and made a fair lending decision in light of those matters, it's more likely than not it wouldn't – acting fairly – have agreed to lend. I think by taking a common sense view of the information in its possession it ought to have noted that Ms S appeared to have experienced significant financial and health problems in late 2018, just a few months before this loan. This ought to have led Evolution Lending to investigate further whether secured lending would be sustainable for her, especially if her health problems were to recur.

And Evolution Lending ought to have included the help to buy loan expenditure from 2022 onwards, and questioned whether to have included Ms S's daughter's benefit income. All of this ought to have led Evolution Lending to question whether the loan was affordable. In addition, the CCJ and Ms S's recent pattern of sick leave coinciding with further lending and missed payments ought to have led Evolution Lending to question whether the loan was sustainable for her.

In all the circumstances, therefore, I don't think that, acting responsibly, Evolution Lending ought to have lent to Ms S. To put matters right, it should bring the loan agreement to an end and remove all trace of it from her credit file. It should remove the £699 lending fee and £1,500 product fee it charged from the balance, as well as all interest charged on the borrowing to date. It should then treat all the payments she has made as payments reducing the capital balance.

I don't think it would be fair to ask Evolution Lending to write off the remaining capital balance. Ms S received the capital and used it to pay off other debts, so it's fair and reasonable that she pays back what she borrowed. But it's not fair and reasonable for Evolution Lending to charge fees and interest for a loan it should not have entered into. So it should work with Ms S to come to an affordable and sustainable arrangement for the repayment of the remaining capital only.

I can see that Ms S has experienced financial difficulty in making repayments, beginning in 2019 when she lost her job and continuing more recently as the monthly payments have increased in line with changes in the interest rate. If Evolution Lending had not lent, Ms S would not have experienced these problems – though she may well have had difficulties with the unsecured debt she would have retained had it not been consolidated into this loan. However, it's also possible Ms S would have come to some arrangement with her unsecured creditors had this loan not existed. So it's not possible to be sure exactly what capital or interest Ms S would have had to pay if the debts had not been consolidated into this loan.

It's likely that removing all interest from this loan results in a saving to Ms S compared to the amount she would have had to pay towards the consolidated debts had they not been consolidated. But it's also possible she would have entered an arrangement such as bankruptcy which would lead to her paying less (though with other consequences). It's likely there is some saving in removing interest from the loan. But nevertheless I think it's a fair outcome to this complaint because I don't think it's fair and reasonable for Evolution Lending to recover fees and interest charged under a loan agreement that ought never to have been entered into. And because the existence of this loan caused Ms S substantial distress and inconvenience when it became unaffordable for her, with the added worry that it was secured over her property. I don't propose to compensate Ms S separately for the distress and inconvenience this lending and the associated financial difficulties caused her. I think the saving made in writing off the interest on this loan represents fair compensation for that."

The responses to my provisional decision

Ms S said that she was pleased I intended to uphold her complaint. She said that she'd already paid back more than she had borrowed. She said that the loan had caused her substantial distress and financial difficulties, including having to rely on the support of family to make the repayments, and having to default on other debts to keep up with this loan. She set out some of what she had experienced.

Evolution Lending didn't agree that the complaint should be upheld. It said the loan achieved its goal of reducing Ms S's outgoings. It said that if there was any additional expenditure because of Ms S's daughter's disability that would have showed on her bank statements. And as she was five years old at the time, it was reasonable to assume that it would be paid for the duration of the loan term.

Evolution Lending said that Ms S had said she hadn't had time off sick. She could have told it that she had. It agreed it could have questioned the December payslip, but says it acted in

good faith and there was no reason to believe Ms S would have given more information if it had asked about it. It also pointed out that Ms S had not had time off sick in the two subsequent months. It said that Ms S lost her job during the pandemic, and that couldn't have been foreseen at the time of the lending decision.

And it said it did ask about the help to buy loan, and took into account that it was for 20% of the property's value. It is not responsible for whether or not Ms S complies with the terms of her agreement with that lender.

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've also considered the responses to my provisional decision – having done so, I see no reason to change my mind.

I don't think it was reasonable to assume that the disability benefits would have been paid for the duration of the loan without further investigation – benefits awards are not always indefinite, and many conditions which give rise to a benefit entitlement are not permanent either. Evolution Lending didn't address the point that it failed to take into account the interest Ms S would have to pay on the help to buy loan for most of the term of this loan. That should have been taken into account.

And Evolution Lending is generally entitled to rely on what it is told – unless there are common sense grounds for doubting it. The fact that Ms S's December payslip showed that there was substantial sick pay gave common sense grounds for doubting what she said about not having had time off sick. In my view Evolution Lending ought to have asked Ms S about this, and carried out further checks – such as asking for earlier payslips. Had it done so I think it's more likely than not it would have discovered Ms S's health problems, which it ought then to have factored into considering whether taking a secured loan was sustainable for her.

Putting things right

For all the reasons I gave in my provisional decision, quoted above, I remain of the view that this complaint should be upheld. And I haven't changed my mind about how to put things right either. I've taken into account what Ms S has said about her difficult circumstances. But I must bear in mind that if she hadn't taken this loan, she would still have had the debts she consolidated. I am directing Evolution Lending to write off all interest and charges. That benefits Ms S in that she would have had to pay interest on the unsecured loans, unless they would have been defaulted or she would have entered an insolvency arrangement had they not been consolidated. I've also taken into account the fact that I have awarded compensation against Evolution Money for the impact of its unsuitable recommendation. I'm satisfied that, taken in the round, the compensation I have awarded is fair in all the circumstances.

My final decision

My final decision is that I uphold this complaint.

I direct Evolution Lending Limited to bring the loan agreement to an end and remove all fees and interest charged since inception. It should re-calculate the loan balance so that all payments Ms S has made to date are used to reduce the capital balance.

If, having done so, there is a capital balance outstanding Evolution Lending should come to an affordable arrangement with Ms S for repayment of the remaining capital. It may retain the charge over her property until the capital is repaid but should not charge any further interest.

If on the other hand Ms S has already paid enough to have repaid the original capital borrowing, Evolution Lending should refund any excess payments to her, adding simple annual interest of 8% running from the date of each payment to date of refund. It may deduct income tax from the 8% interest element of my award, but should tell Ms S what it has deducted so she can reclaim the tax from HMRC if she is entitled to do so. It should also remove the charge over her property.

Evolution Lending Limited should also remove the loan from Ms S's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 15 January 2024.

Simon Pugh
Ombudsman