DRN-4528465

The complaint

Mrs E complains that Evolution Lending Limited (Evolution) lent irresponsibly which has led to her falling into financial difficulties.

What happened

Mrs E was referred to Evolution by an intermediary who is not a respondent to this complaint. She was seeking a loan to consolidate all her unsecured debt to be secured as a third charge mortgage on her property for the longest term available.

Ultimately, Evolution recommended Mrs E take out a £47,500 loan across a twenty-year term with a monthly payment of £583.01. The loan was on a variable interest rate.

Mrs E says the loan is unaffordable for her and has caused her to fall into arrears on both this loan and her other commitments. She's also said she was vulnerable at the time of sale as she was suffering some lasting impacts from medical treatment which impacted her mental clarity, and that she had only recently consolidated a significant amount of debt so it should have been clear to Evolution that she was not managing her finances well. Mrs E has also said Evolution didn't accurately reflect her income at the time or that this would drop due to the time she had taken off for ill health.

Dissatisfied with Evolution's decision to lend, Mrs E raised a complaint.

Evolution responded to the complaint to say Mrs E did not disclose any medical conditions or vulnerabilities at the time despite having the opportunity to do so, and that she appeared to fully understand what it was that she was agreeing to. It also highlighted that it took an average of Mrs E's income and discounted some other forms of income so the amount it relied on was less than what Mrs E had declared at the time. In addition, it considers the lending to have been affordable for her.

Unhappy with Evolution's response to the complaint, Mrs E referred her case to our service.

One of our investigators looked into the complaint and thought it should be upheld. She had a number of concerns with Evolution's decision to lend but ultimately did not think that Mrs E's actual income and expenditure information supported that this loan would be affordable for her. In summary, she didn't think Evolution had factored in that the child benefit Mrs E was receiving would end during the term of the loan or that she was spending significantly more on groceries than the figure used by Evolution in its calculations.

Mrs E agreed with the investigator's assessment and recommendations.

Evolution responded to say that while it noted Mrs E's bank statements and financial standing report showed she was spending significantly more on food than what she had declared and what Evolution had noted, she had said she would change her spending habits to ensure she could meet her loan repayments and therefore made a fully informed decision to go ahead.

As the complaint could not be resolved informally it has been passed to me for a final 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.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

I note Mrs E alleges she was suffering side effects from medical treatment at the time of the loan application. As a result, she says she was experiencing brain fog and suggests she did not fully understand what she was signing up to. Mrs E thinks Evolution ought to have known this and not gone ahead with the application.

I have listened to the calls Mrs E had with Evolution and can see that she explained she was fully recovered, back to work and that there was nothing about her health or other circumstances that would impact her ability to take out a loan with Evolution. Given this, and that Mrs E came across as fully present, engaged and as though she understood what she was applying for, I do not agree that Evolution ought to have recognised that she was suffering with her health to the extent that it was impacting her decision making.

In deciding whether to lend, a lender must consider whether the loan will be affordable and sustainable over the whole term of the loan. In doing so, it must obtain evidence of income and information about expenditure. A lender is entitled to rely on the information it is given unless there are common sense reasons to doubt it.

Evolution obtained payslips from Mrs E and her P60, so I am satisfied it took a reasonable view of her income, supported by evidence. I am aware Mrs E thinks Evolution artificially inflated her income by relying on higher bonus payments and by not factoring in that her income would drop following the loan application. But having listened to the sales calls where Mrs E described her income, I do not agree with her comments.

Mrs E did not notify Evolution that her income was due to drop and there was nothing within the calls that ought to have put Evolution on notice that this was a possibility. And I can see it took an average of Mrs E's income across four months, reviewed her end of year take home as well as discounting other forms of income she received at the time. So, I am satisfied Evolution's approach here was reasonable given the information it had at the time.

To gain information about Mrs E's expenditure, Evolution discussed Mrs E's outgoings with her over the phone, obtained bank statements as well as her credit file and a financial standing report. Having done so, it deemed that the loan to be affordable for Mrs E, including if interest rates increased in the future.

Having looked at the evidence available to Evolution at the time, I am not persuaded it took a realistic view of Mrs E's expenditure. It ought to have had common sense grounds to doubt what it had been told based on other information in its possession and should have checked that information against an independent source, such as bank statements. Particularly as it already had these in its possession when making the decision to lend.

Mrs E was in receipt of a good income, notably above national average yet only twenty-four months after taking out a sizeable, secured loan to consolidate her debt and needing to borrow funds from family, she had spent over £47,000 on loans, credit cards and retail finance agreements. Her debt to credit ratio was back to 100% and she was regularly exceeding her overdraft on her current account. This ought to have been a flag to Evolution that it had common sense grounds to doubt what it had been told by Mrs E.

And in any event, Evolution had already requested and received bank statements when carrying out its affordability assessment. Which means it had important and relevant information about Mrs E's expenditure in its possession. It should have taken the full contents of these into account when determining if this loan would be affordable and sustainable for her over the full loan term. Had it done so, I am not persuaded it would have concluded that this lending was affordable for Mrs E.

I say this because Mrs E disclosed her food and associated costs spend as around £450 per month in one of the calls and then agrees with Evolution that it could be more like £367 per month for her family of three. However, the information Evolution had in its possession at the time showed a significantly higher average spend of over £700 per month, not including the amount spent on takeaways and eating out – which pushes the monthly average to over £900. I note Evolution did call Mrs E about her spending on food and was assured that there was a reason for this difference and that such spending would not continue, but given the size of the discrepancy, that it covered the three months prior to the application and Mrs E's general approach to her spending, I am not persuaded it was reasonable for Evolution to rely on this.

For all those reasons, I think the income and expenditure Evolution used to assess Mrs E's affordability significantly underestimates her expenditure and I disagree with its conclusion that Mrs E would be left with a disposable income after the consolidation. Instead, using the information Evolution had in its possession at the time it decided to lend, it appears Mrs E would still have been exceeding her income even after the loan with Evolution.

And based on that information, I am satisfied it is more likely than not that the loan was not affordable for Mrs E and that Evolution did not carry out a sufficiently robust affordability assessment. And my conclusion that the loan was unaffordable is supported by Mrs E now being in notable arrears on both this loan and her other secured debts.

That is enough for me to uphold this complaint and say that Evolution should not have lent this loan. But there are further factors which lead me to question whether it was responsible to lend.

Mrs E was consolidating unsecured debt, most of which she had built up in the twenty-four months since taking out her second charge loan (also for debt consolidation). The bank statements, credit file and Mrs E's own comments on the calls with Evolution confirm she was in a pattern of spiralling debt, consistently reliant on taking out credit to meet both essential and non-essential spending as well as help from family members. Considering Mrs E had amassed a significant amount of unsecured debt in a relatively short period since her last secured loan and was willing to tie that debt to the equity in her house rather than change her spending habits, I would've expected the adviser to press more here to gain a better understanding of whether it was realistic Mrs E would be able to change her spending.

In my view, having only recently taken out a second charge loan and been declined by her first charge lender to roll unsecured debt into her first charge mortgage and yet still needing to consolidate over £47,000, ought reasonably to have led Evolution to be concerned that Mrs E was in a pattern of increasing debt. And that, coupled with what it should have considered about her expenditure as set out above, ought to have led Evolution to question whether this loan would have been sustainable for her. And in those circumstances, I am not persuaded it was appropriate or responsible to allow Mrs E to secure spiralling debt she was not managing properly to her property, further increasing her indebtedness. It follows that I uphold this complaint.

I am aware Evolution have pointed to Mrs E's profession, her decline of seeking help elsewhere and her comments that she knew she had to change the way she managed her money. But I am not persuaded this means Evolution's decision to lend was responsible.

Irrespective of Mrs E's profession, it was clear she struggled to manage her finances responsibly. She was also in a pattern of heavy reliance on debt and relying on consolidation and help from family to juggle her financial commitments and lifestyle. And while Mrs E said she knew she had to change her habits and that they ought to cut back as a family, it was clear from Mrs E's spending habits in the months that followed her last successful secured loan application, that the need to secure debt against her home had not driven a change in behaviour or spending. Comments in the call highlight a significant amount of non-essential spending that was continuing despite Mrs E's escalating debt position. Mrs E had the opportunity to change her spending following the last consolidation and she did not do so. As a result, I am not persuaded it was reasonable for Evolution to rely on her comments that she knew her spending habits needed to change.

Putting things right

In the circumstances I have set out above, I don't think it is fair or reasonable for Evolution to have charged Mrs E interest or fees for lending she should never have been given.

It is fair for Mrs E to repay the capital, since she has had the benefit of that money and if I were to ask Evolution to refund the capital too, that would mean Mrs E would effectively have the consolidated debts written off – which would leave her in a better position than she would have been in had this lending not happened. Instead, Evolution should:

- Remove all interest, fees and charges it applied to the loan balance.
- Treat all payments Mrs E has made to date as repayments of the capital. It should then recalculate the outstanding balance and reach a sustainable arrangement with Mrs E for the repayment of the remaining capital balance.
- It should also remove any adverse entries associated with this loan from Mrs E's credit file if there are any.

My final decision

For the reasons I've given, I uphold this complaint and direct Evolution Money Limited to resolve the complaint in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 9 January 2025.

Lucy Wilson
Ombudsman