

The complaint

Mrs H and Mr H complain that Evolution Money Limited gave them misleading information about the loan they applied for which led to it being mis-sold.

What happened

Mrs H and Mr H were introduced to Evolution Money Limited (Evolution Money) in September 2022 and asked for a loan to consolidate their existing debt. They had approached several other lenders and brokers before this point and had been declined any further lending. They were told Evolution Money may be able to help them as they grant lending to those with impaired credit history.

Evolution Money assessed Mrs H and Mr H's circumstances and recommended that they take out a variable interest rate loan secured on Mrs H's property across a term of 15 years. The total amount borrowed including fees amounted to £30,375.

The loan was to consolidate a mixture of unsecured credit card debt, loan agreements, family debt and buy now pay later agreements – including a number which were interest free. Mrs H and Mr H also asked if they could borrow some extra funds to fill their cars with fuel and to buy some food as things were tight at home. Evolution Money explained it could not recommend additional borrowing for food, but it should be able to help with their goal to consolidate.

During the sale Mrs H and Mr H were asked several questions about their circumstances and intentions at the time. Including whether they had any plans to sell the property the debt would be secured against. In response, Mrs H and Mr H said they may look to sell in the 'next year or two'.

The adviser proceeded with the application and suggested to Mrs H and Mr H that they explore refinancing this loan in approximately three months' time when their fixed interest rate with their first charge lender was due to expire.

Following the loan approval and draw down, the variable interest rate on the loan increased on several occasions. Mrs H and Mr H queried the lender's method and calculations and raised concerns that it was not following the Bank of England base rate. After several interest rate increases, Mrs H and Mr H received funds from a family member to repay the loan in full ahead of their property being sold. The loan was settled in July 2023 and Mrs H and Mr H moved in with family to help with finances following the sale of their home.

Unhappy that the interest rate increases on their loan were different to what they thought they were told during the sale, Mrs H and Mr H complained. Evolution Money investigated their concerns but didn't uphold their complaint. It thought its adviser had made it clear that the loan was on a variable interest rate which could increase.

Dissatisfied with Evolution Money's response, Mrs H and Mr H referred their complaint to our Service.

I issued a provisional decision upholding this complaint in June 2024. In summary, I said Evolution Money's recommendation that Mrs H and Mr H take out this loan was unsuitable. While it met their objective of achieving a monthly saving across their debts, it increased their overall indebtedness and led to them incurring approximately £4,000 in fees and charges. While this may be appropriate for someone looking to keep the loan for the longer term, Mrs H and Mr H put Evolution Money on notice that they were considering selling their property in as little as 12 months' time. I wasn't persuaded that increasing their debt and incurring this level of fees was suitable for someone who may end up repaying the loan shortly after taking it out.

Mrs H and Mr H agreed with the conclusions I had reached. They added that they were asked about their intentions to sell their property by other lenders who then sought to decline their application after finding out that they may do so within one to two years of a loan being taken.

Evolution responded to my decision maintaining its previous objection that this Service has looked into a broad mis-sale complaint despite the consumer's complaint being limited to concerns surrounding interest rate increases. And as such, it did not have a chance to investigate this complaint and respond to the consumers directly.

It also disagrees that its recommendation was unsuitable. It is confident it met Mrs H and Mr H's objective of achieving a monthly saving across their debts and it says the fees and charges on the loan were clearly explained before Mrs H and Mr H agreed to take it out.

As both parties have now responded to my provisional decision and the deadline to do so has now passed, it is appropriate for me to issue my 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.

Evolution Money disputes that Mrs H and Mr H raised a mis-sale complaint and instead believes their complaint to solely be about the interest rate increases. I disagree. Mrs H and Mr H complained that they were misled during the sale as to how the interest rate would vary on their loan. At its base, this is a complaint that the product they were sold was not as described and they were misled during the sale.

The Financial Services and Markets Act 2000 says that there must be an Ombudsman scheme to deal with complaints (us). It talks about the Financial Conduct Authority's right to make rules for us, which say that we shouldn't look at a complaint if a consumer has not communicated its 'substance' to the business. The word substance is important – because it means the subject matter (i.e. the crux) of the complaint. It's not about the way a complaint is written or expressed but about the crux of the complaint – what is it really about.

Our remit has also been set out and considered in court. Where it has been agreed that our jurisdiction is inquisitorial and that there is a wide latitude within which the Ombudsman can operate.

This means that I am expected to do more than just look at a complaint as it's written. I must think about what lies at the heart of the complaint and look at the whole picture. This is also what Evolution Money should have done when it received Mrs H and Mr H's complaint – get to the crux of the complaint, investigate its substance. While Evolution Money chose not to treat this as a mis-sale complaint and instead limited its investigation to a narrow focus on

the interest rate rises themselves, it would be inappropriate for me to do the same.

Mrs H and Mr H are complaining about the information they believe they were given during the sale and how this differs from how the product worked in practice. So, it follows that to determine the substance of Mrs H and Mr H's complaint, I must look at how the loan was sold to them in the round, as well as the information they were given about the applicable interest rate.

I would also note that Evolution Money was notified by this Service that we would be looking at this case as a mis-sale complaint just under a year ago and it has received both an investigator's assessment setting out the scope of the complaint with initial findings and my provisional decision setting out the same. In response it has set out its position as to why it considers the recommendation it made to be suitable and has sent evidence to support its conclusions on this point.

In summary, I am satisfied this Service has determined the scope of the complaint appropriately and Evolution has had an opportunity to respond to our initial findings on the full extent of the complaint on more than one occasion.

I will now turn to the merits of the complaint itself.

As I set out in my provisional decision, this was an advised sale. So, Evolution Money was required to assess Mrs H and Mr H's needs and circumstances before making a recommendation. And if having done that, it found that it did not have a suitable product to offer, it should not have made a recommendation at all.

It is not in dispute that Evolution Money met one of Mrs H and Mr H's stated needs – to reduce their monthly outgoings. But the recommendation must be suitable overall and there are many factors to consider when recommending a consumer secure existing debt against their home – achieving a monthly saving for the consumers does not absolve Evolution Money from this obligation.

During the sale Evolution Money rightly asked Mrs H and Mr H whether they had any plans to sell the property within the year. As I set out in my provisional decision, I assume such a question was asked because if the answer was 'yes' there may be a question as to whether taking out a secured loan which comes with several fees would be suitable. Particularly as such an action would lead to the consumer increasing their overall debt position. While this may be suitable over the long term, it would not always be appropriate if the loan was only intended to be kept for a short period.

In this case, Mrs H and Mr H said they thought they might sell the property within a year or two. At this point in the sale, the adviser was put on notice that Mrs H and Mr H were thinking about selling their property in as little as 12 months' time. I accept Mrs H and Mr H did not go on to set out the detail of their plans, but I would argue this is because they were not asked nor were they told why this would be an important consideration when determining the suitability of this loan. Despite being notified that the loan may be repaid within a year, the adviser moved the conversation on without probing further.

I would have expected the adviser to try and find out more about any future plans and timelines for sale and weigh this up against the cost Mrs H and Mr H would incur to consolidate their debt with Evolution Money for such a short period of time.

The combined cost of this lending and the early repayment charge amounted to over £4,000. In addition, the amount of Mrs H and Mr H's total debt would also increase given the interest applied to the loan. While such a proposition may be suitable for someone looking to keep

their loan for the longer term, I am not satisfied it offered the same benefits to Mrs H and Mr H who were potentially looking to refinance or repay the loan in a year's time. So, it follows that I do not think Evolution Money met its obligations to provide a suitable recommendation to Mrs H and Mr H given the information it had at the time.

Evolution Money has said that it clearly disclosed the fees applicable to this loan. While this may be the case, it does not change that its adviser had to make a suitable recommendation based on the needs and circumstances of Mrs H and Mr H. And on this occasion, I am not persuaded it did this.

Mrs H and Mr H have also said the way the interest rate was described to them was misleading. I have considered this point carefully but having listened to the sales call, I do not find that Evolution Money misled them about how the interest rate on their mortgage would vary.

Overall, taking everything into account, I uphold this complaint.

Putting things right

To put things right Evolution Money should:

- Refund all product, lending, application and early repayment and exit fees incurred by Mrs H and Mr H under this loan agreement.
- Refund a sum equal to the amount of interest they paid on the above fees.
- Apply interest at 8% simple per annum to the above figures from the date Mrs H and Mr H settled the loan to the date of payment.

My final decision

For the reasons detailed above, I uphold this complaint and direct Evolution Money Limited to compensate Mrs H and Mr H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 5 September 2024.

Lucy Wilson
Ombudsman