

The complaint

Mr L complains that Evolution Lending Limited lent to him irresponsibly when it gave him a third charge mortgage.

What happened

In January 2023, Mr L took out a third charge mortgage with Evolution. He borrowed £15,000 over 15 years on a variable interest rate of 25.93%. There was a product fee of £1,500 and a lending fee of £675 – both were added to the loan, making the total amount borrowed £17,175. The purpose of the borrowing was to repay unsecured debt totalling £11,095.

Mr L complains that Evolution lent to him irresponsibly. He said the loan was unaffordable and should never have been agreed. Mr L said that Evolution should have looked at his bank statements – and if it had done so it would have seen that he was addicted to gambling and had spent significant amounts of money on it. He also said that his credit file would have shown around 30 loans (including short term lending) taken out in the year before the mortgage – and that he'd only taken out a second charge mortgage a month before this mortgage.

I issued a provisional decision proposing to uphold the complaint. My provisional findings, which form part of this decision, were:

Rules

The relevant rules in this case are the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB). I must take those rules, amongst other things, into account in deciding what I consider to be fair and reasonable in the individual circumstances of this complaint. MCOB 11.6 covers responsible lending. Its requirements for lenders include:

- *Before agreeing a mortgage, a lender must assess whether a customer will be able to pay the sums due under the mortgage and be able to demonstrate the mortgage is affordable.*
- *A lender must take full account of the net income of a customer, their committed expenditure, and the basic essential expenditure and basic quality-of-living costs of the customer's household.*
- *A lender may generally rely on any evidence of income or information on expenditure provided by a customer unless, taking a common sense view, it has reason to doubt the evidence or information. A lender must have evidence of income and take reasonable steps to obtain details of a customer's committed expenditure. A lender can either obtain details of a customer's expenditure or use statistical data.*
- *If a lender is, or should reasonably be aware from information obtained during the application process that there will, or are likely to, be future changes to the income and expenditure of the customer during the term of the mortgage, the lender must take them*

into account when assessing affordability.

- *A lender must take account of the impact of likely future interest rate increases on affordability by applying a stress test. The lender must have regard to market expectation and the prevailing Financial Policy Committee (FPC) recommendation on interest rate stress-tests. This applies to all regulated mortgage contracts, not just first charge mortgages. A second or subsequent charge lender must also apply any stress test to the first and any subsequent charge loans as well as its own lending. Since 2022 the FPC withdrew its recommendation.*

The FCA's high level principles say that firms must pay due regard to their customers interests and treat them fairly.

Income

Evolution recorded Mr L's income as £4,430.52 a month. It had payslips for October, November and December 2022 and January 2023.

It is not clear how Evolution reached the figure it did. But looking at the evidence we have I don't consider the figure that Evolution used was unreasonable. It did not take into account the bonuses Mr L received.

Expenditure

Evolution recorded total expenditure of £3,924.01 a month. The form provided by Evolution only included figures for mortgage £1,991, housekeeping £1,138.10, stress test £758.91 and other debts £36.

Evolution said it asked for bank statements to verify Mr L's expenditure. The bank statements did not show any payments to utility bills or that supported the day-to-day expenditure declared. Evolution accepted Mr L's explanation that the utility bills were paid by his parents as it was easier to do that than switch to his own name. Evolution asked Mr L if this was his only bank account, but Evolution said Mr L changed the subject and didn't answer the question.

I don't consider it was fair or reasonable for Evolution to let Mr L to proceed without answering whether he had any other bank accounts. The purpose of the bank statements was to verify Mr L's expenditure but the bank statements provided did not reflect the expenditure Mr L had declared. For example, there was no payments for insurance, food or many of the debts showing on his credit file.

Credit file

Mr L's credit file showed that he had taken out a second charge secured loan the month before, and two unsecured loans and two credit cards in the three months before taking this loan.

Evolution said Mr L told it that he was renovating his property, the costs had increased and he needed the additional borrowing to complete the work. I might have expected a responsible lender acting reasonably to question why there was no spending relating to renovation work showing on Mr L's statements. In my experience, many lenders would ask for evidence to show the work that was being undertaken and how much it will cost to complete. That is to make sure that the borrower is borrowing a realistic amount to complete the proposed work and does not end up in the same situation. Evolution did not do that.

But Mr L's credit file also showed:

- *A credit card taken out in February 2022. It was £1 below its limit of £4,300 and had been over its limit three times in the six months before the loan was taken out.*
- *A credit card that was also £1 below its limit of £2,400. Mr L had entered into payment arrangements three times and was over the limit twice in the past year.*
- *A credit card that was over the agreed limit. Mr L had entered into a payment arrangement once in the past year and had been over the limit twice.*
- *Two current accounts and a basic bank account.*
- *At least 14 short terms loan taken in the previous 12 months.*

Summary

Evolution's assessment was that Mr L would have disposable income of £506.51 after his outgoings and expenditure. Taking a common-sense view Evolution had a number of reasons to doubt the information given by Mr L.

First, it was not clear why someone with a disposable income of over £500 a month would need as much credit as Mr L had taken in the past 12 months and have been unable to maintain it within the agreed terms – particularly as there was significant bonus income on top of that. That indicated that Mr L was not managing his finances very well. That was not sustainable.

Second, the credit file showed that Mr L had three open bank accounts. Evolution accepted there was a need to verify Mr L's expenditure by way of bank statements. But it ought to have known that Mr L had more than one bank account.

Third, it ought to have been clear that the bank statements provided did not provide a full view of Mr L's declared expenditure. There were many items declared, which did not show on the statements provided. Even if it was reasonable for Evolution to understand that Mr L's parents paid his utility bills that did not explain why there was no other day-to-day expenditure or payments to other debts that it knew about.

Fourth, the sort code and account number that Mr L gave Evolution for the loan proceeds to be paid to and the direct debit to be collected from were different from the statements he'd given.

I consider it would have been reasonable for Evolution to insist on seeing Mr L's other bank statements. The outcome of that would have been that Mr L would have continued to be evasive and would not have provided the other statements – that would be sufficient reason for a responsible lender to decline the application. Or Mr L would have given Evolution his other bank statements that show more (but not all) of his expenditure, which we have. But I consider any responsible lender would have been unlikely to lend if they had received the bank statements. I will explain why.

Mr L has given us statement for three bank accounts. One of the bank accounts shows day-to-day expenditure in October and November 2022. The statements show:

- *Gambling. In October 2022 Mr L spent £327.52.*
- *A number of payments to pay day loans*

- A payment to a mobile phone bill of £42.60, payment to Sky of £63.60 and Spotify of £9.99 – that equals the communications amount of £116.19 declared. But the statements show payments to Apple totalling £52.35 in October 2022 and £275.22 in November 2022. – an average of £163.79. And payments of £8.99 to Amazon Prime. A difference of £172.78 from the declared amount
- Food and drink, £243.59 in October 2022 and £405.30 in November 2022 – an average of £324.45 against a declared amount of £169. A difference of £155.45 from the declared amount.
- Socialising £82.10 in October 2022 and £59.90 in November 2022 – an average of £71 against a declared amount of £50. A difference of £21. I have not taken into account Mr L's spending abroad during this time, which would significantly have increased the amount in this category.

If I ignore the gambling and payments towards payday loans, the additional expenditure showing on the bank statements is £349.23. That significantly reduces Mr L's disposable income to around £157.28. There were also other costs where it is not clear were properly taken into account in the expenditure:

- Train travel costs of £128.03 in October 2022 and £26 in November 2022 not accounted for in the declared expenditure.
- Fuel costs of £13.90 in October 2022 and £474.82 in November 2022 – an average of £244.36. That might be covered by vehicle costs – but even so that is more than declared.

In addition, Mr L was taking payday loans – and Evolution knew that Mr L had taken out a significant amount of debt shortly before applying the loan and was utilising 99% of his available credit. We also know that from time-to-time Mr L was gambling a significant amount of money.

I don't consider that a responsible lender acting reasonably would have agreed to lend to Mr L once it had seen his bank statements. I say that as they showed that his expenditure was significantly higher than declared and his wider circumstances did not support the loan was affordable and/or sustainable.

That does not take into account that Mr L operated at least two other bank accounts that show significant expenditure, gambling and usage of payday loans on top of what I have set out above. And I note that we have not seen the bank account the proceeds of the loan were paid to.

Looking at Mr L's overall circumstances, there was a significant risk to him of securing previously unsecured debts. His borrowing was unsustainable. And whichever way I look at things I don't see how giving him this loan was in his best interests.

I note what Evolution has said about Mr L's failure to properly disclose everything he should have. But it ought to have been clear to it that he was being evasive – it knew he'd not answered all of the questions it asked. It also knew that Mr L was neurodivergent and that might have played a part in both in his financial situation and his ability to accurately apply for the loan. It ought to have recognised that Mr L was in a vulnerable situation and that he was susceptible to harm if it acted without appropriate levels of care. But Evolution has not put forward any evidence that it adequately recognised Mr L's vulnerability or reasonably took it into account in the way it dealt with Mr L.

Overall, I do not consider that Evolution has shown that it fairly and reasonably considered Mr L's application. If it had done so, I don't see how a responsible lender acting in line with the relevant rules would have agreed to lend to Mr L in these circumstances.

I've found that Evolution did not treat Mr L fairly – and if it had it would not have approved the lending it did. In the circumstances consider it would be fair for Evolution to refund any interest and fees, and not charge any interest on the loan in the future.

Evolution responded to say it had nothing further to add. Mr L accepted what I said.

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.

As neither side has provided any substantive responses, I see no reason to reach a different decision than I did in my provisional decision. Evolution has not shown that it fairly and reasonably considered Mr L's application for a secured loan. If it had done so, bearing in mind the relevant rules, it would not have lent to Mr L.

My final decision

My final decision is that Evolution Lending Limited should:

1. Refund all interest and fees that were applied to the mortgage to date of settlement – including the lending fee and product fee.
2. Reduce the capital balance by the amount in step 1.
3. If, after step 2, there remains an outstanding capital balance, it should not apply any future interest or fees to the mortgage balance.
4. Reschedule the mortgage – as set out above – as if only the remaining capital balance was payable over the originally agreed term, with equal monthly instalments.
5. Deduct the total amount of payments made to the mortgage by Mr L since inception from the revised capital balance.
6. Provide a breakdown of the revised position of the mortgage to Mr L once the above steps have been carried out.
7. Correct Mr L's credit file in view of the revised payment schedule

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 4 December 2024.

Ken Rose
Ombudsman