

The complaint

Mr and Mrs E complain that Evolution Lending Limited irresponsibly lent them a second charge mortgage (secured loan). They complain that they couldn't afford the monthly loan payments and the loan didn't repay all of their existing debts.

What happened

In 2019 Mr and Mrs E took advice from a broker about consolidating their unsecured debts and borrowing money for home improvements. The broker recommended they take out a second charge secured loan with Evolution. Mr and Mrs E went ahead with that recommendation and borrowed a total of £17,199 (£15,000 plus fees).

The loan was arranged over a term of eight years, on a capital and interest repayment basis. The interest rate was variable with an initial rate of 22.42% and monthly payments of £364.68.

In early 2024 Mr and Mrs E made a complaint. They said the loan had been unaffordable from the start and soon after taking it out they had to borrow more money elsewhere in order to afford the monthly payments and their other bills. They said the loan hadn't repaid all the debts they had in 2019 as intended and it had made their financial situation worse.

Evolution said it had done nothing wrong and it had properly assessed Mr and Mrs E's application and circumstances, and it had lent responsibly. It said Mr and Mrs E had wanted to prioritise borrowing the full amount of £15,000 ahead of repaying all their existing debts, and they had agreed with it before taking the loan that there was no benefit in consolidating defaulted debts which weren't incurring any interest.

Mr and Mrs E referred their complaint to us. Our Investigator concluded that Evolution hadn't lent responsibly and the loan was unaffordable for Mr and Mrs E. She recommended that Evolution re-work the loan without fees and interest, refund to Mr and Mrs E any excess they had paid plus interest, and remove the loan from Mr and Mrs E's credit files.

Mr and Mrs E said they were pleased with that conclusion, but Evolution did not accept it. It still considered it had done enough to check that the loan would be affordable in the long term and it had taken proper account of Mr and Mrs E's expenditure and the reasons for past arrears, as well as of foreseeable changes in their circumstances such as changes to the benefit payments they received.

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 had a duty to lend to Mr and Mrs E responsibly, and in doing so it had to take account of whether the proposed new loan would be affordable for them on a sustainable basis. In assessing Mr and Mrs E's application it obtained various information and documents from them and spoke to them on the phone a number of times for clarification

when it had questions. Alongside evidence of income and information about expenditure it was entitled to rely on what Mr and Mrs E told it unless it had common sense grounds for doubting it.

The income and expenditure assessment Evolution completed said that Mr and Mrs E's monthly income came to £2,546.78 from their jobs plus £189.79 from child benefit and child tax credit. Evolution confirmed these figures with payslips, bank statements and credit file checks.

Mr E was paid weekly and Mrs E monthly. Evolution obtained four weekly payslips for Mr E and three monthly payslips for Mrs E. They showed that Mr E's income was fairly consistent, and his net pay was around £265 a week. However, Mrs E's payslips showed that she received varying amounts for overtime plus some additional payments. The June 2019 payslip included more than £400 for overtime, the July 2019 payslip included just under £270 for overtime plus just under £520 in bonuses and profit share, and the August 2019 payslip included just over £80 for overtime.

The average of these three monthly payslips gives a net monthly income of around £1,395 for Mrs E, which is very close to the £1,393.96 Evolution recorded in its affordability assessment. It recorded a net monthly income of £1,152.82 for Mr E, which is also within a few pounds of the average amount based on the payslips it received. Adding Mr and Mrs E's benefit payments gave a total net monthly income of £2,736.57.

I can see how Evolution got to this figure, but I don't think it was reasonable to rely on it when assessing whether the new loan payments would be sustainably affordable. It was clear from the payslips Evolution had that the amount of overtime Mrs E did from month to month varied significantly – earning her from around £400 in one month to around £80 in another. The "Pay to date" figure on the payslips doesn't change that fact. And there was nothing to say that the £520 bonus and profit share she received in July 2019 would be guaranteed in future.

The ages of Mr and Mrs E's children were also relevant – the children were around 11 and 14 years old at the time of the loan application. So it was clear that Mr and Mrs E wouldn't be eligible to receive child tax credit and child benefit payments for the full eight years of the loan. Some or all of those benefit payments could have stopped within around two years, once the eldest child reached 16.

Evolution has pointed out that it identified this and it asked Mr and Mrs E how they would manage if their benefit payments stopped. Mr and Mrs E told it that they would work extra overtime to make up the income. I think however that there were common sense grounds for Evolution to have doubted this. It had already taken account of the income Mrs E was earning from overtime in its assessment of her monthly income and it knew from her payslips that the amount she was earning each month through overtime varied considerably. In the circumstances, I don't think it was reasonable to assume that Mrs E would be in a position to work overtime regularly on a monthly basis for the eight-year term of the loan or that she would be able to increase her hours further later in the term to the extent that she could make up for the loss of child benefit and/or child tax credits as her children got older.

When assessing the affordability of the loan Evolution calculated Mr and Mrs E's monthly expenditure to be £2,318.16. Based on that figure and its income assessment Mr and Mrs E had £418.41 available for the monthly payments to the new loan. The monthly loan payments were £364.68.

Our Investigator set out the concerns she had about parts of Evolution's expenditure assessment, but even leaving those and the history of arrears on the credit check Evolution

did to one side, in the light of my conclusion above about the variable and non-guaranteed or non-long term nature of a significant part of Mr and Mrs E's income (the overtime, bonus, profit share and benefits) I think that a reasonable conclusion for Evolution to have reached was that this loan wasn't going to be affordable. A reduction in Mr and Mrs E's monthly income of just £55 – which might have arisen as a result of only a few hours less overtime – would have made the loan unaffordable.

Mr and Mrs E did then struggle to afford the monthly loan payments alongside all their other bills and fell into arrears on the Evolution loan in early 2020. Evolution has said that Mr and Mrs E's financial difficulties were a result of changes in circumstances rather than because the loan was unaffordable, but I don't agree. Its own records say that Mrs E told it in June 2020 that she was struggling to repay the loan arrears "with household finances reducing due to the loss of overtime / bonus etc". While the coronavirus pandemic is likely to have played a part in that and this wasn't foreseeable, the non-guaranteed nature of this element of Mr and Mrs E's income was foreseeable and without it the loan wasn't going to be sustainably affordable. Mr and Mrs E have since accrued further arrears elsewhere, including on their first charge mortgage, and have taken on more unsecured debt.

For these reasons and in all the circumstances, I don't think that Evolution should have lent this loan to Mr and Mrs E. In reaching that conclusion, I have kept in mind that Evolution wasn't responsible for advising Mr and Mrs E about the suitability or otherwise of the loan for their needs. It was for the broker who recommended the loan to do that. But Evolution was responsible for deciding whether or not to lend and for lending responsibly.

To put things right, Evolution should bring the loan agreement to an end and remove it from Mr and Mrs E's credit files. It should remove all the fees and interest added to the loan to date, and then treat all the payments Mr and Mrs E have made as payments reducing the capital balance.

I don't think it would be fair to require Evolution to write off the remaining capital balance. Mr and Mrs E received that money and used it in part to pay off other debts, so it's fair and reasonable that they pay back what they borrowed. While they haven't paid interest on the debts which were repaid by way of this loan, given the financial difficulties they have faced they may well have come to some arrangement with their unsecured creditors had they not taken out the Evolution loan. So it's not possible to be sure exactly what capital or interest Mr and Mrs E would have had to pay if the debts hadn't been consolidated into this loan.

It's likely that removing all interest from this loan results in a saving to Mr and Mrs E compared to the amount they would have had to pay towards the consolidated debts if they hadn't been consolidated. But it's also possible that Mr and Mrs E would have entered an arrangement such as bankruptcy which would have led to them paying less (though with other consequences). There is likely to be some saving in removing interest from the loan. But in the circumstances I think doing so is a fair way to put things right, and I don't think it's fair and reasonable for Evolution to charge fees and interest for a loan it shouldn't have entered into. I have also kept in mind that Mr and Mrs E have experienced some upset and worry as a result of the existence of this loan, the further financial difficulties it caused them and the fact that it is secured on their home. I think the saving made in writing off the interest on this loan represents fair compensation for that. I make no additional award for the impact of this loan on Mr and Mrs E's credit files to date, since I can't fairly conclude that they have paid more interest on their other debts as a result of it given the level of their other debt and the arrears that already existed in 2019.

If there is a balance remaining on the loan after Evolution has reconstructed it in the way I've set out, it should work with Mr and Mrs E to come to an affordable and sustainable arrangement for the repayment of the remaining capital only.

My final decision

My final decision is that I uphold this complaint.

I require 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 Mr and Mrs E have made to date are used to reduce the capital balance.

If, having done so, there is a capital balance outstanding, Evolution Lending Limited should come to an affordable arrangement with Mr and Mrs E for repayment of the remaining capital. It may retain the charge over their property until the capital is repaid but it should not charge any further interest.

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

Evolution Lending Limited should also remove the loan from Mr and Mrs E's credit files.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E and Mr E to accept or reject my decision before 11 July 2025.

Janet Millington
Ombudsman