

The complaint

Mr T says that a secured (second charge) loan he took out in 2022 with Evolution Lending Limited was unaffordable and irresponsibly lent. He also complained that Evolution hadn't made reasonable adjustments in how it contacted him when he was in arrears.

What happened

Mr M was introduced to Evolution Lending by a third-party intermediary. He spoke to an adviser with Evolution Money Limited (which is Evolution Lending's customer facing arm).

The offer issued on 23 September 2022 shows Mr T was borrowing £24,956 (plus £2,921.04 fees) over a 15-year term on a repayment basis. The interest rate was 22.56% variable, which gave an initial monthly payment of £500.35.

The loan completed on 27 September 2022. The direct debits were returned as unpaid in July 2023 and January 2024, with both the monthly payments made up the same month. Payments were then missed in February, March, April, August and September 2024. From October 2024 Mr T started to pay an additional £50 a month towards the arrears, I understand in December 2024 Evolution reworked the account, extending the term and moving the arrears to the end of the term. This, in effect, removed the arrears balance at that time, albeit in January 2025 Mr T's normal monthly payment due that month was returned as unpaid so the account went back into arrears.

Mr T complained to Evolution about the loan in August 2024. Evolution issued a complaint response letter to Mr T on 17 October 2024 and provided a further letter on 21 February 2025 not upholding the complaint, although it did offer to reduce the arrears by £200 in recognition of the fact it hadn't always followed Mr T's requested reasonable adjustments post-sale.

Mr T referred the complaint to the Financial Ombudsman Service where it was looked at by one of our Investigators. Our Investigator upheld the complaint about the lending decision, saying she didn't think it was affordable and sustainable, but she didn't uphold the complaint about the reasonable adjustments.

Mr T accepted our Investigator's findings. Evolution didn't accept our Investigator's findings and so it was passed to me to decide.

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 Mr T also complained about how Evolution had treated him, in that it hadn't followed the reasonable adjustments he had requested, our Investigator didn't uphold this part of his complaint and Mr T didn't appeal against that. For that reason I won't be going into any detail about that element of the complaint as Mr T accepted our Investigator's findings that it shouldn't be upheld. What I would say, however, is that I agree with what our

Investigator said and had Mr T asked that part of the complaint be reviewed then I would have reached the same outcome for the same reasons.

I now move onto the part of the complaint that is still in dispute - the lending decision.

At the time of the lending decision, secured loan applications like this one were (and still are) covered by the rules of mortgage regulation, found in the MCOB section of the Financial Conduct Authority's Handbook.

The rules require a lender to assess affordability and not lend unless a loan is affordable. In making the assessment, a lender must obtain evidence of income, and information about expenditure. It can assess expenditure based either on a borrower's actual declared expenses, or it can use modelled expenditure information – such as typical expenditure figures for a household of this type – for living expenses but must always use actual figures for committed expenditure such as other credit agreements.

The rules also say that a lender is entitled to rely on what it's told about expenditure – unless, taking a common sense view, it has reason to doubt it.

I've taken into account what Evolution has said, and the information it received at the time, as well as what the rules of mortgage regulation say.

Mr T's credit report showed he had previously taken out unsecured debts, and then consolidated them, and one of his credit cards was over its limit (with the credit report showing he owed £10,440 against a limit of £9,000).

As part of the application Evolution had some calls with Mr T when it went through all his expenditure asking him what his normal monthly outgoings were for each of his household costs such as food, utilities, transport and clothing (for example). Evolution also looked at Mr T's bank transactions for a period from 30 June 2022 until 10 August 2022.

Our Investigator expressed her concerns to Evolution that despite asking Mr T in those phone calls what he normally spent each month on food, clothing and socialising, Evolution then used lower figures for those without checking with Mr T first. Mr T said he spent £185 on food, £150 to £200 on clothes and £150 on socialising. But after reviewing just six weeks of transactions on Mr T's bank account Evolution decided to reduce those figures to £169 for food, £111 for clothing and £102 for socialising.

Evolution responded to say *“With regards to the reductions in clothing and socialising expenditure, this was in line with their actual spending as evidenced in the statements we assessed. I do note that you don't think it's likely to have been reflective of [Mr T's] general spending on a long-term basis, but I would suggest that is a matter of opinion and not evidence based. I disagree that Evolution had a reason to doubt the information [Mr T] had given us.”*

But the call handler, when asking Mr T about these costs, even acknowledged that a person doesn't necessarily buy clothing every month, instead it is bought adhoc throughout the year as needed, so asked for a monthly average which is what Mr T gave when he said £150 to £200.

If Evolution didn't have a reason to doubt the information Mr T had given it, as it said to our Investigator, it makes no sense that it decided to override that information based purely on a small snapshot of his spending. The information Mr T gave was that he spent £185 on food (not £169), £150 to £200 on clothes (not £111) and £150 on socialising (not £102).

It may be the bank statements were a true reflection of Mr T's spending, and he had over-estimated in the phone call, but Evolution should not have made that assumption without checking with Mr T and giving him the chance to confirm what his actual spending was. By doing that Evolution has reduced Mr T's outgoings by over £100 a month (or even up to £150 a month if Evolution had taken the higher figure of up to £200 that Mr T said for clothes originally).

It also isn't clear how the Evolution summary figures were reached with the underwriter section showing £286.28 would be left after the mortgage stress tests as I have used the same figures as Evolution, apart from the food, clothing and socialising that I've mentioned above. I've also used the full monthly payment of £221.67 towards the recent loan as shown in the verified amount column, rather than the £45 in the allocated amount column. That's because this was an unsecured loan that had been taken out in May 2022, with a loan amount of around £2,440 and there were due to be 12 payments of £221 a month. Once everything is added together that gives me a final figure that shows Mr T's outgoings (after the stress test) were more than his income by around £30 a month.

Evolution has also said *"I would also like to highlight that [Mr T] had 2 items of credit that would end before his mortgage fixed rate did, and this would have freed up an additional £359.00 before there was any chance of his mortgage payments increasing."*

But I think there has been a misunderstanding by Evolution about when those items of credit were due to end and when Mr T's fixed rate would end on his first charge mortgage. Mr T was clear in the calls that his fixed rate product was ending that September; that is, he was in the process of arranging a remortgage for his first charge at the same time as taking out this second charge in September 2022. The two items of credit Evolution is referring to weren't due to end until May 2023 and May 2025.

The income and expenditure assessment was based on Mr T's mortgage product that he'd held since 2020 (which was a rate of 1.63%) which had a monthly payment of £661. That had been taken out at a time the Bank of England base rate was 0.10%. By the time this loan was being taken out (and Mr T was arranging his remortgage) base rate had risen to 1.75% and was generally expected to continue to rise. It isn't clear if Evolution obtained the details of Mr T's new mortgage arrangements, but he has provided those to us and his new mortgage was fixed at 3.48% for five years, with a monthly payment of around £865. So immediately his outgoings were £204 a month higher than the affordability assessment showed (which is the same amount the first charge mortgage was stress tested at).

Taking everything into account, until May 2023 Mr T would be paying the higher mortgage payment of £865, as well as both those items of credit totalling £359, and then from June 2023 until May 2025 Mr T would still be paying the £865 mortgage payment and one item of credit of £314 a month. It would only be from June 2025 that Mr T would only be paying the higher mortgage payment and neither of those items of credit.

Looking at Mr T's credit history he seemed to be over reliant on credit and even putting aside the fact the figures that were disclosed seem to indicate this loan was unaffordable, this should have raised questions over whether the loan was sustainable. The build-up of credit could indicate there were grounds for doubting whether Mr T was really living within his means – or whether, as his credit history potentially suggested – living beyond it.

Evolution has said *"I would also like to highlight that these outgoings form expenditure that is not committed expenditure. I would expect that consumers would adjust their spending on these forms of expenditure accordingly, especially if they had taken out secured lending."*

Whilst some of this could be discretionary expenditure, it still needs to be considered and a discussion held about which payments could possibly be reduced and to what level. But bearing in mind what Evolution knew, or ought to have known, about Mr T's debts, plus what

I can see on Mr T's bank statements, it seems unlikely he would have reduced his spending to the level required even if he needed to do so to ensure this loan was sustainable.

For all those reasons, I think the information Evolution used to assess Mr T's affordability significantly underestimated his expenditure and, based on the information that would have been available at the time (had it been asked for), it's more likely than not that the loan wasn't affordable for Mr T. I don't think Evolution took reasonable steps to ascertain whether the lending was affordable and sustainable, nor do I think it carried out a sufficiently robust affordability assessment.

Having considered everything very carefully I'm not persuaded Evolution acted responsibly when it agreed to lend to Mr T, and so I uphold this complaint.

Putting things right

To put matters right, Evolution should bring the loan agreement to an end and remove any adverse entries associated with this loan from Mr T's credit file. It should remove the £2,921.04 fees from the balance, as well as all interest charged on the borrowing to date. If any other fees have been added to the balance over the life of the loan those should also be removed.

Evolution should then treat all the payments Mr T has made as payments reducing the capital balance. If this results in a balance outstanding, Evolution should reach a sustainable arrangement with Mr T for the repayment of the remaining outstanding capital balance, without applying future interest. If, however, this means that Mr T has already repaid more than the capital he borrowed, the excess should be refunded to him, adding simple annual interest of 8% running from when any payments above the total capital amount were made to the date Evolution refunds them. In this scenario, Evolution may deduct income tax from the 8% interest element of my award, as required by HMRC – but should tell Mr T what it has deducted so he can reclaim the tax if he is entitled to do so.

I don't think it would be fair to ask Evolution to write off the remaining capital balance, if there is one, or to refund the payments made towards that capital. Mr T received the capital and used it to pay off other debts, so it's fair and reasonable that he pays back what he borrowed. But it's not fair and reasonable for Evolution to charge fees and interest for a loan it should not have entered into.

It is possible Mr T would have come to some arrangement with his unsecured creditors had this loan not existed. So it's not possible to be sure exactly what capital or interest Mr T 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 Mr T compared to the amount he would have had to pay towards the consolidated debts had they not been consolidated. But it's also possible he would have entered an arrangement such as an IVA or bankruptcy which would have led to him 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.

Although the existence of this loan caused Mr T distress and inconvenience, with the added worry that it was secured over his home, I don't award any compensation to Mr T separately for that. I think the saving made in writing off the interest on this loan, compared to what he would likely have had to pay had the debts not been consolidated, represents fair compensation for that.

Going forward, if a debt remains once the above work is completed, Mr T needs to correspond with Evolution about his situation either directly or with the help of someone

trained to give him free debt advice - such as StepChange or Citizens Advice - and have an open and honest dialogue about his circumstances and worries for both now and the future. They'll need to work together and that means Mr T will need to be frank about his situation. And Evolution will need to listen to what he has to say and, fairly and sympathetically, see if there's a way to work with him to agree a way forward.

If a suitable way forward can't be agreed then that would be a new complaint Mr T could make at the time, if he so wished, and that could then be referred to us as a new matter at the time (subject to our usual rules).

My final decision

I uphold this complaint and order Evolution Lending Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 15 December 2025.

Julia Meadows
Ombudsman