

complaint

This complaint is about a secured loan of £5,000 Mr C took out in 2013 with Evolution Lending Limited. Mr C says Evolution failed to do adequate checks into his financial circumstances, and had it been more thorough, it would have rejected his application. He'd like to be put in the position he'd have been in if the loan hadn't been granted.

background

By way of a provisional decision dated 12 August 2019, I set out, with reasons, the basis on which I was minded to determine this complaint, subject to the further submissions of the parties. I gave the parties until 30 August 2019 to reply; Evolution hasn't replied yet but Mr C has, and confirmed he's said all he wishes to say. There's no detriment to Evolution if I determine the complaint now rather than wait until 30 August 2019.

In summary, Mr C's response is:

- He used a standard template to start his complaint and was unaware it referenced the wrong regulatory standards, or even that others existed. The main thrust of his argument is that Evolution should have asked for than one month's information about his spending pattern;
- He prioritised the payments to this loan because it was secured, and he didn't want to lose his home. He avoided talking to Evolution - even excluding it from a debt management plan he went into in 2015 - because he was scared of how it might react if it knew he was in financial difficulties.
- He continued to take out short-term loans with various providers, after taking out the secured loan from Evolution. He eventually paid the loan and other debts off from an inheritance;
- As to what he might have done differently if Evolution had refused him, he couldn't be sure. He'd applied to many lenders first, all of which had turned him down, before Evolution accepted him. What he really needed was debt advise, and he only got that in 2015;
- He accepts he lied, out of desperation, but Evolution should have asked for more information rather than lend to a desperate man. He is in a much better position now, financially and personally.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm grateful to Mr C for the openness and honesty in his response to my provisional decision. He's spoken with remarkable frankness about the problems he had during the period under examination. I don't wish to appear unsympathetic; on the contrary, I can imagine the pressure and stress of dealing with his situation must have been immense for Mr C. I'm pleased that he's been able to get the support he needed, and has turned his circumstances around.

The problem as far as his complaint is concerned, as I alluded to in the provisional decision, is it turns on what he would have done in 2013, if Evolution had turned him down. Looking at everything he's told us, that's not a conclusion I can safely reach. Mr C talks about having searched high and low for a lender willing to lend to him in 2013. I said in the provisional decision that if Evolution had turned him down, Mr C would have most likely continued searching for a creditor (and being less than frank about the seriousness of his situation) and not stopped until he'd found one that would accept him. I haven't changed my mind on that.

my final decision

My final decision is that I don't uphold this complaint. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 September 2019.

Jeff Parrington
ombudsman

CONTENT OF PROVISIONAL DECISION

complaint

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background

Mr C borrowed £5,000 in 2013, repayable over four years. At the time of applying, he says he was addicted to gambling, reliant on payday loans and heavily in debt on credit cards. Mr C made all of the payments in full and on time, and the loan was repaid in early 2017, slightly ahead of schedule, via a lump sum.

In 2018, Mr C complained that Evolution had been at fault in granting the loan. He said he'd deliberately understated his expenditure when applying but Evolution should have been able to tell from analysing his bank statements and credit file that the loan was unaffordable. Evolution rejected the complaint and Mr C referred it here.

Our investigator recommended the complaint be upheld. He concluded that Evolution hadn't properly assessed the severity of Mr C's gambling expenditure or his payday lending activity in the two-month period before applying for the loan. In essence, he thought the loan helped Mr C to continue gambling. To settle the complaint, he said Evolution should refund all interest and charges applied during the life of the loan, with interest on the refunded sums at 8% simple.

Mr C accepted the investigator's recommendations but Evolution asked for the complaint to be reviewed by an ombudsman. It said the investigator had applied the wrong standards when assessing its obligations; at the time the loan had been taken out, it was subject to Office of Fair Trading rules, and they say creditors shouldn't be held liable for relying on information from consumers that later proves to be inaccurate.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've come to a different conclusion from the investigator about how this complaint should fairly be resolved.

The parties to the complaint have placed a considerable amount of emphasis on regulatory standards. They're important to a degree, albeit it helps if the standards being quoted are the correct ones. In that respect, Evolution's case has the advantage over Mr C's, as he has referenced a regulatory framework that relates to consumer credit and which only came into effect after he took out his secured loan.

But whilst I have to be mindful of regulation and relevant law, my over-arching obligation as an ombudsman is to decide what is fair and reasonable in all the circumstances. When I do that here, taking into account everything the parties have said provided thus far, I'm not persuaded it would be fair to say Mr C should be relieved of the cost of the money he borrowed.

I say that because even if there were shortcomings in Evolution's assessment of the loan's affordability, that on its own isn't enough for me to find in Mr C's favour. I need also to be satisfied that he's suffered detriment as a result and that but for Evolution granting the loan, his current position would be materially better than it is. There's nothing in the evidence before me that gives me reason to think that.

It's significant that Mr C never missed a payment to the loan, and even repaid it early, receiving an interest rebate as a result. That, on face value, doesn't suggest he had trouble managing it. If he'd had to take other more expensive credit during the loan period to cover the instalments, I'd have expected Mr C to have shown us evidence of that.

But assuming that did happen, I also have to consider what Mr C might have done differently if Evolution had refused the loan, as he's now saying it should have done. Mr C has said he was desperate to borrow the money, so much so that he tried to conceal the extent of his difficulties from Evolution by pretending his expenses were lower than they actually were.

That's not very helpful to Mr C's case. Firstly, Mr C is admitting to having attempted to obtain credit in reliance on information he knew to be false. It seems to me that if Mr C were sufficiently desperate to borrow money that he was prepared to do that, there's a reasonable likelihood that if Evolution had turned him down, he'd have looked elsewhere until he found a lender that was willing to provide the money he needed. That being so, it's hard to see how his situation would be significantly different now.

The other damaging aspect of Mr C's admission is that he's effectively asking this service to make an award of compensation that rewards his deception. Just because Evolution might have failed to spot any anomalies in the information that supported Mr C's application, I don't think it's fair and reasonable that he should now benefit from them.

my provisional decision

For the reasons set out above, but subject to the further submissions of the parties, my provisional decision is that I don't intend to uphold this complaint or make any order or award against Evolution Lending Limited.

I'll review my provisional decision after 30 August 2019, or sooner than that if both parties confirm they've said and provided all they wish to that is materially new. There's no need for either party to repeat anything they've already said.

Jeff Parrington
ombudsman