

## **The complaint**

Ms S complains that Evolution Money Limited mis-sold her a second charge mortgage (secured loan).

## **What happened**

In 2019 Ms S took out a second charge loan with Evolution Lending Limited, a sister firm of Evolution Money. Evolution Money advised and recommended the loan to consolidate Ms S's unsecured debts.

Ms S now complains about the loan. There's a separate complaint about Evolution Lending, in respect of its lending decision. This complaint is about the advice Evolution Money gave her to take the loan out.

Ms S says that she was coerced into taking out the loan by Evolution Money. She says that she was vulnerable because of mental illness, and had recently come out of an abusive relationship and was now a single mother. Evolution Money ought to have taken her circumstances into account. She says she was in financial difficulty at the time, having taken out a series of payday loans and been subject to a County Court judgment (CCJ). Ms S complains that the value of her property and her income and expenditure were manipulated to enable the loan to go ahead – including leaving out a substantial commitment for car finance.

As the loan is on a variable interest rate, the monthly payments are increasing. Ms S says that she now owes more than she borrowed and that she is required to pay around half of her take-home pay to service the loan. She says it should never have been sold to her.

Evolution Money didn't agree it had mis-sold the loan. It said it specialised in loans for customers with past credit problems. It said it had a detailed discussion with Ms S about her circumstances – including credit history and income and expenditure. It said that Ms S had told it about the CCJ, but told it that she was disputing the debt as it was her ex-partner's not hers, but the CCJ was still taken into account. Evolution Money recommended Ms S borrow £15,000 over ten years at an interest rate of 26.82% variable.

Evolution Money said the loan was then underwritten, including checking proof of Ms S's income and expenditure, and a full affordability assessment was carried out. Evolution Lending then issued a mortgage offer, and then spoke to Ms S to confirm she understood the offer and wanted to go ahead. It said the loan was suitable and met Ms S's needs at the time she took it out.

I issued a provisional decision setting out my thoughts on the complaint.

## **My provisional decision**

I said:

“I've dealt separately with a complaint against the lender, Evolution Lending. I've

provisionally found that the loan was irresponsibly lent, because:

- Evolution Lending took account of benefits income as part of its affordability assessment, even though part of the benefits income was disability benefits awarded for the care and needs of her younger daughter – without checking whether that income was likely to be received over the whole term of the loan.
- Evolution Lending did not take account of the help to buy loan secured over Ms S's property or the payments that would become due under that loan from 2022 as part of its affordability assessment.
- Evolution Lending did not check information given by Ms S about her circumstances even though there were common sense grounds for doubting it. In particular it didn't note that a substantial part of her recent income included sick pay even though Ms S had said she hadn't had any time off work sick. Nor did it cross-reference this information with her credit file and note that there were substantial increases in her indebtedness and missed payments on existing credit around the same time as she was off work sick. It didn't therefore take this into account in thinking about whether the loan would be sustainable for her.
- Evolution Lending didn't take appropriate account of the CCJ or the impact it could have on Ms S's ability to repay this loan.
- Taking all that into account, Evolution Lending didn't take proper account of whether the loan would be affordable and sustainable for Ms S. Had it done so, acting responsibly, it's more likely than not it wouldn't have lent.

As the separate firm that advised Ms S to take this loan out, Evolution Money is not responsible for Evolution Lending's lending decision. But it is responsible for the advice it gave, including the requirement to make a suitable recommendation.

I've listened to the calls Ms S had with Evolution Money and considered the recommendation letter it sent her. Having done so, I'm not persuaded that it gave her any real advice at all. The calls with Ms S were focussed on understanding how much she wanted to borrow and then selling her a loan that met that requirement, as well as on her finances for the purpose of affordability checks – not on considering what, if anything, was suitable for her in her particular circumstances as they ought to have been understood.

The rules of mortgage regulation require an adviser to consider whether a loan is suitable, taking into account its customer's needs and circumstances. And, in particular in relation to debt consolidation loans, an adviser should consider the costs associated with increasing the period over which debt is to be repaid, whether it is appropriate to secure unsecured debt, and whether it would be more appropriate to reach an arrangement with existing creditors rather than take out secured lending.

There's no evidence Evolution Money gave consideration to any of this. It warned Ms S that consolidating her debt might make it more expensive over the long term, and it warned her of the potential consequences of securing it to her property. But giving a generic warning isn't the same as thinking about whether it was advisable to do so. Evolution Money didn't discuss with her, or give any consideration to, whether doing so was suitable for Ms S in her particular circumstances.

For the same reasons as I've separately found that it was irresponsible for Evolution Lending to have lent, I think it was unsuitable for Evolution Money to have recommended

that Ms S take out this loan. It ought to have noted from her payslips that – despite what she had said – she had taken substantial time off sick and enquired into that. It should have considered whether this related to the financial problems around the end of 2018 evident from her credit file, whether there was a risk of a recurrence of the health problems that led to her taking sick leave, and whether there were grounds for considering whether a secured loan would be a sustainable solution for her. Had it made those enquiries, it would have learned more about Ms S's wider circumstances and her vulnerable position, as well as the health problems that later led to her losing her job in the months after the loan was taken out.

Evolution Money also discussed with Ms S that her property was subject to a help to buy loan, and while it took that into account in assessing loan to value, it didn't consider the impact of making future payments on whether further secured borrowing would improve her financial position and be suitable for her. In my view it ought to have recognised that Ms S would be required to make interest payments to the help to buy lender for most of the term of this loan, even if not at the start. It also didn't advise Ms S to seek the consent of the help to buy lender for further secured lending – as, under the terms of the help to buy contract, she is required to do. In my experience, such consent is rarely given and so in recommending this secured loan Evolution Money may well have placed Ms S in breach of the terms of her help to buy loan.

In my view all this was relevant to whether it was appropriate to recommend that Ms S secure existing unsecured debt to her home, with the extra risk that brings if something goes wrong. That's especially the case where, as here, the loan to value (including the main mortgage and help to buy loan) exceeds 100%.

Related to this is the question of whether it would have been more appropriate for Ms S to come to some arrangement with her existing unsecured creditors rather than take out an unsecured loan. Ms S told Evolution Money that she'd considered this, and a friend had offered to look into it further. Ms S said that she'd stopped making payments while waiting for the friend to get back to her – this was her explanation for the missed payments in late 2018 – but that nothing had come of it. Evolution Money didn't follow up on this, or consider whether it might be more appropriate for Ms S to explore things more formally rather than take out a secured loan.

As I say, having considered the interactions between Ms S and Evolution Money, it seems to me that its focus was more on selling Ms S the loan she said she wanted, rather than giving her advice, or considering whether the loan was suitable for her. In my view, it wasn't. Based on information in Evolution Money's possession and which it ought to have considered, there were real questions as to whether the loan would be sustainable for her, and whether consolidating her existing unsecured debt, exceeding her property's loan to value, was a suitable course of action in her particular circumstances.

For those reasons, I don't think Evolution Money acted fairly and reasonably and I think it mis-sold this loan to her. I've said that I've also provisionally upheld a complaint that Evolution Lending didn't lend responsibly. In that complaint, I've told the parties that I'm minded to require Evolution Lending to remove the fees and interest it has charged from the loan balance and only recover the capital from Ms S. I'm mindful that requiring Evolution Money to further compensate her for the financial loss from the lending would result in double compensation. And while Evolution Money should not have recommended the loan, the ultimate responsibility in this case lies with the lender which agreed to it.

I don't therefore think it would be fair to require Evolution Money to compensate Ms S

further for the financial consequences of taking out this loan. But I do think that if it had not recommended it, her application would not have gone any further and the loan would not have been taken out. Given suitable advice, she might have reconsidered coming to an arrangement with her unsecured creditors rather than taking out further borrowing. Evolution Money's recommendation caused Ms S distress and inconvenience in that she ended up with a loan that wasn't suitable for her and wasn't affordable or sustainable. While the primary responsibility for that lies with the lender, I think it's fair that Evolution Money pays her £500 compensation for its part in what happened."

### **The responses to my provisional decision**

Ms S said that she was pleased I intended to uphold her complaint. She said that she'd already paid back more than she had borrowed. She said that the loan had caused her substantial distress and financial difficulties, including having to rely on the support of family to make the repayments, and having to default on other debts to keep up with this loan. She set out some of what she had experienced, and said that she didn't think £500 compensation was enough – it's the equivalent of less than two months' payments.

Evolution Money didn't agree with my provisional decision. It said it made a recommendation based on Ms S's needs and circumstances, and the advice given was appropriate. It explained to Ms S that it could only advise on its own loans. It was Ms S's choice not to consider other options. All Evolution Money could do was consider whether any of its products met Ms S's needs. Evolution Money said that the loan achieved the objective of reducing Ms S's outgoings.

Evolution Money said that Ms S had told it she hadn't had time off sick. She could have told it that she had. It agreed it could have questioned the December payslip, but says it acted in good faith and there was no reason to believe Ms S would have given more information if it had asked about it. It also pointed out that Ms S had not had time off sick in the two subsequent months. And it said it did ask about the help to buy loan, and took into account that it was for 20% of the property's value. It is not responsible for whether or not Ms S complies with the terms of her agreement with that lender.

### **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.

I've also considered what Evolution Money has said in its response to my provisional decision. But I haven't changed my mind. I accept that Evolution Money only advises on its own products, not the whole of the market. But that doesn't change the fact that it is required to give advice, not merely to sell a loan. And in giving advice it should take into account that if there is no suitable option available it should not recommend a loan.

As this was a debt consolidation loan it was also required to consider whether it would be better for Ms S to take alternative action such as entering an arrangement with her creditors, and whether it was appropriate to secure previously unsecured debt. That doesn't require Evolution Money to give debt management advice – but it does require it to take into account all the circumstances in deciding whether a secured loan is suitable. As I said in my provisional decision, it appears that in this case its focus was on selling Ms S a loan, not on considering whether it was suitable for her.

In giving advice, Evolution Money is entitled to rely on what it is told – unless there are common sense grounds for doubting it. The fact that Ms S's December payslip showed that there was substantial sick pay gave common sense grounds for doubting what she said

about not having had time off sick. In my view Evolution Money ought to have asked Ms S about this, and carried out further checks – such as asking for earlier payslips. Had it done so I think it's more likely than not it would have discovered Ms S's health problems, which it ought then to have factored into considering whether taking a secured loan was suitable for her.

I think Evolution Money misses the point I made about the help to buy loan. Help to buy loans are interest bearing after five years – so Evolution Money ought to have considered the impact of starting to pay interest on Ms S's financial situation. While it was for the lender to carry out the affordability assessment, this is also relevant to whether the loan was suitable for her. I also don't agree that Evolution Money couldn't have been expected to think about whether Ms S would be in breach of her obligations to the help to buy lender if she took this loan – in my view that's clearly relevant to whether this loan was suitable for her wider circumstances.

### **Putting things right**

Overall, I remain of the view that this complaint should be upheld. I'm satisfied that Evolution Money did not give proper consideration to whether this loan was suitable for her – in my view it was not.

I've taken into account what Ms S has said about the impact of this loan on her. I do think compensation is warranted – Ms S should never have been advised to take the loan, and it's clearly had a substantial impact on her. However, I also need to take into account that she would still have had the debts she consolidated had she not done so. And I need to take into account that, in the complaint against the lender, I have directed the lender to write off all interest and charges. That benefits Ms S in that she would have had to pay interest on the unsecured loans, unless they would have been defaulted or she would have entered an insolvency arrangement had they not been consolidated. It's fair to take that benefit into account in determining fair compensation. I remain of the view that £500 is fair in all the circumstances.

### **My final decision**

My final decision is that I uphold this complaint and direct Evolution Money Limited to pay Ms S £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 15 January 2024.

Simon Pugh  
**Ombudsman**