DRN-4039127

The complaint

Miss P's complaint is about a second charge mortgage she arranged through Fluent Money Limited in 2018. She has said Fluent didn't properly establish, and then assess, her needs and circumstances, and so the loan was not suitable for her and was mis-sold. She has detailed several reasons for thinking the mortgage was mis-sold:

- Other options for consolidating her unsecured debts were not discussed with her.
- She was not advised that it would be cheaper to consolidate all of her unsecured debts onto her existing mortgage, rather than taking a second mortgage.
- Fluent didn't conduct a suitable affordability assessment and the mortgage was not affordable, causing her to over commit herself.
- Her history of missed payments on pre-existing credit arrangements was not appropriately considered.
- The mortgage ends after her likely retirement age of 60, and it was not discussed how she would meet the monthly payments after that age.
- The mortgage didn't repay all of her unsecured debts.
- Her home should never have been used to secure the consolidated debts.

Miss P says she has suffered extreme financial hardship as a result of the advice she received from Fluent and is at risk of losing her home. She wants the interest charged on the mortgage and any fees and charges to be refunded. She has also asked for compensation.

What happened

Miss P entered her details and some information about what she wanted to borrow into an aggregator website in December 2017. Miss P has told us she wanted to take out an unsecured loan to pay off two of her credit cards. The enquiry was passed to Fluent and it was informed Miss P had said she was interested in a secured loan. Fluent contacted Miss P shortly thereafter. It provided her with an 'Initial disclosure document' which set out what services it could provide. It also said that it recommended a prospective customer to consider whether they could obtain the finance they needed by other means, such as their current first charge mortgage, a remortgage or an unsecured loan.

A fact-finding exercise was completed before Fluent provided Miss P with any advice. This established that she was employed full-time with a salary of £25,000. She was also in receipt of benefits and tax credits, which provided her with around £5,300 additional income. Miss P confirmed that her income had recently reduced by around £500 because one of her children had gone to university. At the time, she had an existing mortgage of £24,000, a personal loan of around £9,000 and approximately £28,700 in credit card debt. The minimum payment on the combined credit card balance was just over £1,000 each month, but Miss P had been paying £1,200. The mortgage and the personal loan cost a total of approximately £650 each month. Fluent asked Miss P when she would like to retire, and she told it at age 60.

Fluent's recommendation initially detailed that it had looked at the different options available to Miss P. It confirmed that overall her credit profile was good, but the sporadic missed or late payments to her existing arrangements reduced the number of lenders that would consider her for borrowing. It was detailed that Miss P wanted the mortgage to repay credit cards totalling £28,500 over a term of five years. This would allow her to reduce the amount she was paying out for the debts and so her overall finances would be more comfortable. There was some discussion about the change the loan would create to Miss P's finances. Given the reduction in debt repayment of around £700, she believed that she would be able to overpay the personal loan and clear it within two years. Once that was paid off, and her main mortgage also was in around five years, she proposed to redirect the money from those payments to clear the secured loan before the end of the term.

Fluent detailed that it had originally advised Miss P to consolidate all of her unsecured debts, including the personal loan, which would have involved her borrowing £38,000, but Miss P had rejected the suggestion and only wanted to consolidate the credit cards. After Fluent and the lender completed affordability assessments based on the outgoings in Miss P's bank statements, a term of 13 years was recommended. This involved a monthly payment more than £170 lower than the budget Miss P had proposed of £500.

By the time the application was submitted, Miss P's credit card debt had increased to approximately £29,700 and so she would be left with a credit card balance of just under £1,200 after the mortgage was advanced.

Miss P accepted the recommendation and following this, the lender asker her some questions. This included asking for clarification about her wanting to retire at 60, as the loan term went beyond that age. Miss P responded in a letter dated 31 January 2018. She said '*I intend to work throughout the loan period and will not retire until thereafter. I was asked when would I like to retire and I said 60, but this was just saying that's what I would 'like' to do.*'

Miss P's second charge mortgage was advanced in February 2018. It was for £28,500 plus fees, with a repayment term of 13 years. The monthly payment (CMP) was set at £330.34, based on a fixed interest rate of 7.776% for five years.

Miss P complained to Fluent in January 2021. It responded to the complaint in its letter of 28 February 2021. It set out how Miss P had come to speak to it from December 2017, the process that had been gone through and the discussions that had taken place. Fluent highlighted the conversations that had been held about the amount of Miss P's debts that would be consolidated, when she planned to retire and the term of the loan. Fluent was satisfied that it had fulfilled its responsibility to know its customer and made an appropriate assessment of Miss P's circumstances and recommended a suitable product. As such, it rejected the complaint.

Miss P was not satisfied with Fluent's response and referred her complaint to this service. When she did, she explained that the personal loan she had in 2017 had been used to consolidate previous credit card debt two years earlier and the £28,000 of credit card debt that was consolidated in 2017 had been accumulated in only two years. Miss P said she was talked into taking a bigger loan than she wanted and over a longer term than planned. By 2019 she had accumulated a further £20,000 of credit card debt. Miss P said she told Fluent about her struggles to pay her existing debts in 2017 and didn't think it should have offered her the secured loan as it was not the right product for her, or the help she needed.

One of our investigators considered the complaint, but she didn't recommend that it be upheld.

Miss P didn't agree and said she didn't think the investigator had fully considered the information she had provided. She reiterated her comments about her situation at the time of the sale, the affordability of the mortgage and what she remembered telling Fluent. Miss P said that no matter what she said to Fluent at the time or what she agreed to, it didn't mean it was right for Fluent to sell her the mortgage. She asked that the complaint be referred to an ombudsman.

There was further correspondence exchange between Miss P and our investigator, but agreement couldn't be reached. As such the complaint has come to me for consideration.

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.

Having considered Miss P's comments, I think it would initially be worth explaining that the simple fact that a consumer has had financial difficulties is not reason for them to be declined for borrowing. There will be situations where refinancing or rearranging outstanding debts will enable the borrower to manage their financial situation effectively. So the fact that Miss P had missed some payments prior to the advice and had a default in the past, doesn't automatically mean that the mortgage was mis-sold. Whether Fluent provided her with suitable advice is entirely dependent on the situation at the time, including what she told it about her circumstances and plans.

I would say at this point that Miss P's description of her circumstances in 2017 differs significantly from that she gave to Fluent in 2017. The description given in 2017 was that she had got into quite some debt and the servicing of it was becoming harder, especially in light of the recent reduction in her income due to her daughter leaving home. She was at that time looking for a solution to reduce how much she was spending on servicing her debts to ensure their affordability and allow her to improve her situation. When assessing a complaint I can't use hindsight and must assess it based on the situation at the time of the advice and the information the advising business had available at that time.

I would also confirm that if a consumer asks for financial or mortgage advice from a broker, we expect it to consider the options available for the needs and requirements expressed. Fluent has said that at the time it only brokered second charge mortgages and so it couldn't recommend any other form of funding. However, it did highlight to Miss P when it set out what it could do for her that she should consider other options, including looking at whether she could increase the borrowing on her existing mortgage. So I think Miss P would have been aware that she could look into other options if she wanted to, although given she had been on an aggregator website, I think it likely she may have already done so to some degree. That said, the fact that she had missed recent payments on her existing arrangements would have significantly reduced the chances of her being able to either consolidate onto her first charge mortgage or take out a new one.

Miss P has said that she shouldn't have been sold a secured mortgage. I don't have access to the aggregator website information Miss P input, but I it seems unlikely that she would have been referred to Fluent for a secured loan if she had not shown some interest in that type of loan. Miss P is correct that, if there is the likelihood of a consumer not abiding by the terms of a secured loan or mortgage, opting for a secured loan could be seen as placing their home in jeopardy. However, where it appears that there is adequate affordability, repossession would not be a significant concern and so there is nothing wrong with a broker proposing a secured loan. There would also be a significant benefit to borrowing being secured in that the interest rate associated with this type of loan would be significantly lower than that charged on unsecured lending. I will comment on the suitability of the loan in more detail later in this decision, however, I would confirm at this stage that I don't consider that it was inappropriate for Fluent to recommend a second charge mortgage to Miss P.

I would at this stage comment on the matter of the mortgage ending after the age Miss P told

Fluent she would like to retire. As she told the lender at the time, this was an aspirational age for retirement. She didn't anticipate this happening and expected to be working throughout the whole of the mortgage term. In light of this, there is no reason for me to conclude the term was inappropriate because of how old Miss P would be at its end.

Miss P has commented that the mortgage advance didn't clear all of her unsecured debts and left her with the personal loan and one of her credit card debts. I would firstly highlight that Fluent recommended that Miss P borrow enough to clear all of her debts, but she didn't want to do that. She was conscious that the personal loan had a shorter term than was being recommended for the secured loan. Miss P explained that she believed once the remaining credit card debt had been cleared and her disposable income increased significantly, she would be able to direct additional funds to the personal loan and pay it off in less than two years.

When Miss P spoke to Fluent initially, she told it that she had been paying £1,200 to her credit card debt and this had been reducing the balance by around £100 each month. Given it was shortly before Christmas that Miss P spoke to Fluent, and the mortgage wouldn't be advanced immediately, the amount applied for would have cleared all of Miss P's credit card debt had she continued with her payments. It appears that she didn't do so and also increased her indebtedness during December 2017. Based on the conversations Miss P had with Fluent, I don't think it could have been expected to know this would happen. However, the amount that would have been outstanding if the mortgage advance was used to clear the credit card debt would have been relatively minor and given the increase to Miss P's disposable income, could have been repaid within a few months had she wanted to do so.

I now turn to the matter of affordability. I would firstly confirm, as our investigator did, that ultimately the decision about whether the loan was affordable was the lender's. It set the criteria for how affordability would be assessed and made the decision about whether it was willing to lend, how much it would advance and over what repayment term. So I can't consider whether the lending was irresponsible against Fluent. It appears that it was the lender's assessment of affordability that meant the term had to be extended by an additional year to 13 years. Again, I can't consider this issue against Fluent, and it would be a matter to be considered in Miss P's complaint against the lender.

However, Miss P is right that Fluent completed an assessment of affordability in order to be able to establish if it could help her with her plans. When completing such an assessment a broker is heavily reliant on the information provided by its customer. Miss P confirmed her net household income was just under £1,740 each month. She also told Fluent that her basic outgoings for food, insurances, bills etc. was around £525. When the cost of the mortgage and the personal loan were taken into account, that would have left her a disposable income of around £560 each month. This ties in with the budget Miss P set for the new mortgage of £500. However, it would not normally be considered appropriate to use all of a borrower's disposable income for any financial arrangements, as it would leave them without the ability to deal with unexpected expenses.

Fluent initially recommended a loan term that involved a monthly payment of over £100 less than it understood Miss P's disposable income would be if she paid off her credit card debt. When it became aware that her monthly outgoings were slightly higher than she'd estimated, having examined her bank statements, Fluent recommended a longer term to ensure the mortgage would be affordable. I know that Miss P won't agree with me, but it does appear that Fluent looked into the affordability of the mortgage in quite some depth and made some adjustments to the recommendation to ensure that, based on the circumstances at the time and Miss P's plans, the proposed loan was affordable.

I can only sympathise with the position Miss P now finds herself in, but I am not persuaded that, given her circumstances and plans at the time of the sale, the recommendation Fluent made was inappropriate.

My final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Miss P to accept or reject my decision before 20 July 2023.

Derry Baxter
Ombudsman