DRN-4777318

The complaint

Miss F's complaint is about the advice she received from Fluent Money Limited trading as Fluent Money in 2020 to take out a second charge mortgage. As it has been concluded that the lender should not have agreed to lend, Miss F thinks Fluent should refund the fee it charged for the advice as that advice must have also been wrong.

What happened

Miss F spoke to Fluent in July 2020 about consolidating some debts into a secured mortgage. She was sold a second charge mortgage for £27,000, plus fees, over a term of 30 years and with a fixed interest rate. During the process Miss F provided Fluent with information about her circumstances, and financial documentation.

Fluent has not, despite several requests, provided the recording of the first conversation Miss F and the mortgage adviser had, in which her needs and circumstances would have been discussed. It has, however, provided the call from later that day in which the mortgage adviser explained the details of the loan she was recommending and why.

The mortgage adviser set out why the lender had been selected – that it didn’t restrict lending as some did, in that it didn’t limit the amount of borrowing to same amount as the applicant’s annual salary. In addition, it would take into account Miss F's child benefit payments for the affordability assessment, which many lenders didn’t. The term was increased from the 20 years Miss F wanted to 30 years to get the monthly payments close to the amount she was budgeting for – the recommendation was for a mortgage costing £20 per month more than the £250 monthly budget. However, even with the above, the mortgage adviser told Miss F that she was only able to get an agreement in principle for £30,000, which was less than Miss F had asked for. This mean that while Miss F would be able to clear her credit cards and commercial borrowing, along with a £10,000 loan to a friend, she wouldn’t be able to repay money she owed a family member.

The remainder of the conversation revolved around why the arrangements would facilitate Miss F re-mortgaging and consolidating the second charge loan into first charge lending. Miss F was told the credit cards and loan would be paid off by Fluent from the advance, and the remaining funds paid to her. She questioned this and wanted the whole advance paid directly to her, but Fluent explained that if it didn’t pay off the loans and credit cards, the cost of them each month would have to be factored into the affordability assessment, and her application would fail.

Fluent provided Miss F with its initial written recommendations on 16 July 2020. It confirmed that Miss F wanted to borrow £30,000 to consolidate some debts, in order to reduce her monthly outgoings and to get her finances into one manageable payment each month. It also stated the budget Miss F had set was £250 and wanted the mortgage over 30 years. It was explained that Miss F wanted the stability of payments, and so a fixed rate was recommended, and she wanted the option to repay the loan if she was able to re-mortgage to consolidate the amount into a first charge mortgage.

The mortgage lender, after assessing all of the information it had been given, decided that it was not willing to lend Miss F the amount she wanted. Rather it was only willing to lend £27,000 plus fees. On 6 August 2020 Fluent sent Miss F a replacement recommendation letter. The two letters were identical, other than Fluent changed most of the figures to reflect the new loan amount and costs, although not all. A new illustration for the loan was also provided. Miss F emailed Fluent five minutes later to confirm she was happy with the revised recommendation.

Fluent then asked Miss F for various pieces of documentation to support the application. On three occasions it asked for recent bank statements. On the first two occasions Miss F provided “filtered” statements. The first only showing her child benefit payments and the second, only showing her direct debits to evidence her outgoings. Fluent explained that Miss F needed to provide her bank statements in full for the latter purpose, and they were provided.

The printout from Miss F's banking app covered the period 26 May to 21 July 2020. When Miss F provided the banking information, she said that if the lender queried the number of transactions, it was to be told that she was running two fund raising pages for a friend and the transactions were transfers of the money raised. The bank statements contained a large number of electronic payments and cryptocurrency firm transactions – 70 in all worth a total amount of almost £15,000.

When the mortgage completed, £3,105 of the advance was paid to Fluent. The majority of the advance was used to pay off credit cards and a loan and the remaining balance was paid to Miss F has confirmed that she didn’t use the money paid to her to repay further debts, but rather it was used for gambling. Subsequently Miss F approached a debt charity for assistance to deal with the unsecured debts and a payment plan was arranged.

Miss F complained to both Fluent and the lender in 2022. Fluent responded to the complaint on 17 May 2022. It didn’t agree that the mortgage had been mis-sold or that there was evidence of gambling in the bank statements Miss F provided. It said that it could not accept responsibility for Miss F's decision to withhold information from it during the application.

The lender also declined the complaint against it. Miss F referred her complaint about the lender to this Service and one of my Ombudsman colleagues issued a final decision on the case. He concluded that the lender should not have accepted the application. Redress was awarded, but as the broker fee had been charged for a service that was separate to the lender’s actions, Miss F was told she would need to approach Fluent about that fee.

Fluent responded to the complaint in a letter of 17 October 2023. It initially highlighted that Miss F had previously complained about the mortgage having been mis-sold, and it had responded to that complaint in a letter of 17 May 2022. Miss F was reminded of what Fluent had said at that time. It also explained the role of a mortgage broker and said that the Ombudsman’s final decision about the lending decision didn’t have any bearing on the work it had done.

Miss F wasn’t satisfied with Fluent’s response and referred her complaint to this Service. Following this one of our Investigators looked into whether we could consider the complaint, given that a mis-selling complaint had been responded to in 2022. As the correct referral rights had not been given to Miss F at the time, the Investigator was satisfied the complaint was one we could consider. Fluent accepted her conclusions.

The Investigator went on to consider the sale of the mortgage and she recommended that it be upheld. She was not satisfied that Fluent had fulfilled its obligations when providing advice to Miss F and that it should not have made the recommendation it did. The

Investigator concluded that Fluent should have identified from the information it had that Miss F's spending activity was not consistent with her declared income. As a result, it was recommended that Fluent refund the fee it took for providing the advice, and that refund should be paid to the lender to reduce the amount Miss F owed. In addition, the Investigator recommended Fluent pay Miss F £750 compensation for the upset the situation had caused her

Fluent didn’t accept the Investigator’s conclusions as it disagreed that the advice had not been suitable and that it hadn’t fulfilled its obligations under the rules that applied. In particular, it said that no aspect of Miss F's credit history had given rise to concerns about the product recommended, as it had demonstrated that she would be able to afford the payments. In addition, it considered that the Investigator’s conclusion that Miss F should have been told to speak to her creditors about repayment plans, would have affected her credit file and so would be unsuitable as it would impact her ability to refinance her first charge mortgage in the future. Fluent also said that when it examined Miss F's transaction history there were no common indicators to suggest she was gambling at all, let alone excessively. It said that Miss F had given a plausible explanation for the e-money transactions on her account.

Miss F accepted the Investigator’s conclusions.

The Investigator considered Fluent’s additional comments, but she was not persuaded to change her conclusions. Fluent didn’t respond to the Investigator and it was decided that the complaint should be reviewed by an Ombudsman.

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.

In reaching my view of this complaint, I have considered the rules of mortgage regulation as they were at the time, including the obligations on a broker to take reasonable steps to ensure that the contract is suitable and appropriate for the customer. In doing so, I have taken into account what Miss F told Fluent, her behaviours, as well as what it should have known or ought to have known from its assessment of the documentation provided.

Fluent has effectively said that it ticked the boxes that the Regulator set and recommended a product that fitted with what Miss F wanted. However, there is more to providing advice than ticking boxes and giving a customer what they want. The adviser has an obligation to assess their customer’s circumstances and determine what is right for that individual. Sometimes that means not selling anything, even if the adviser can find a product that would fit with the customer’s requirements.

Miss F gave Fluent her payslips. Her employment income appears accurately recorded. I have also considered what Miss F said about her expenditure. Miss F eventually provided eight weeks of transactions from her banking app. Contained in that document there were payments to:

Month	**Description**	**Instances**	**Total**
Part May 2020	e-money provider	6	£1,316.10
June 2020	e-money provider	46	£11,769.14

	cryptocurrency firm	3	£258.02
Part July 2020	e-money provider	15	£1,465.56

The maximum number transactions in one day was 13 and totalled £2,622.31.

While there is nothing on Miss F's banking transactions to suggest any of these are payments to online gambling sites, I am aware from evidence provided on another complaint Miss F has brought to us that until gambling payments from credit cards were banned, Miss F gambled using credit cards. And once that ban was in place, she moved to using e-money providers.

As I say, there is nothing on the banking transactions provided to Fluent that suggests these are obviously gambling related. However, the statements do show that Miss F was making regular, and very large – especially compared to her income – payments to e-money providers. In my experience, such a pattern of payments can be suggestive of gambling.

As I have mentioned above, when Miss F was asked for two months of bank statements, she provided filtered information, as she had done when she was asked to evidence her child benefit payments. As an experienced broker, I would have expected this to have raised a flag with Fluent – that there was something on the full statements that she didn't want it to know about.

The rules of mortgage regulation require a broker to demonstrate a duty of care toward its customers. Before giving advice a broker is required to seek information of income and expenditure. None of these payments, or any other matter of concern, was declared by Miss F when Fluent asked her about her expenditure. In general, a broker is allowed to rely on the information a customer provides it with. However, based on the banking transactions Miss F provided, and the clear indication that there was something on them that she didn't want it to see, I consider Fluent should reasonably have had grounds for doubting the accuracy or completeness of the expenditure information she had given it.

While Miss F told Fluent the transactions were linked to a fund-raising campaign, I am not persuaded this should have stopped it having concerns about the transactions on her account. I say this as there are no transactions going into the account from either the fundraising or the social media sites she gave it details off. In addition, the fundraising site showed that there had only been 21 donations over the previous months that totalled £410. In the circumstances I would expect Fluent to have questioned what these payments were and considered whether payments of such a size and frequency were relevant to the suitability of the loan, especially affordability, given how tight that assessment had been.

I have thought about what Fluent should have done in response to the concerns that the information it had been given should reasonably have raised. I consider that Fluent should have asked Miss F to explain the transactions. If she maintained that the transactions were linked to fund-raising, further evidence should have been requested.

I am also satisfied that the banking information Miss F provided showed that she was funding the transactions by transferring money in from other accounts she held. In addition, there were payments made by friends and family, and further lending, some of which had not been declared when she told the broker about her liabilities. This undeclared borrowing consisted of three loans of:

- £24,000 advanced on 17 June 2020;
- £7,500 advanced on 26 June 2020; and
- £7,500 advanced on 6 July 2020.

As the additional borrowing was not to be consolidated, and Fluent had not been told about it, I consider that Fluent would have known that the affordability assessment it had done would have been inaccurate. Indeed, given how tight affordability had been without those loans needing to be maintained, I think Fluent should reasonably have concluded that the suitability of its advice was in question, as the additional monthly payments to the new borrowing would likely make the mortgage it had recommended unaffordable.

Had Fluent properly considered the information it had, it would have been aware that Miss F not only had the approximately £35,000 of unsecured debt she had declared to it, but also another £39,000 that had been taken on in the three weeks before she applied for her mortgage. I think reasonably, that beside Fluent having concerns about the suitability of the mortgage it had recommended, it should have considered whether the evidence it had indicated that Miss F wasn't managing her money as she had said she was, but rather she was potentially in a spiral of debt that she couldn't extract herself from.

Fluent said it had fulfilled its obligations under the rules that applied. In particular, it said that no aspect of Miss F's credit history gave rise to concerns about the product recommended, as it demonstrated that she would be able to afford the payments. Miss F's credit file may well not have indicated problems because the three loans detailed above had been taken too recently to be showing on it yet. However, Fluent had evidence of those loans. It also had evidence that Miss F had not been honest with it in relation to either her indebtedness or her outgoings. That information ought reasonably to have led Fluent to make further enquiries and had it done so, I am persuaded it would have known the recommendation it had made was unsuitable for her and it should have stopped the application from moving forward.

I note that Fluent has said that the Investigator's conclusion that it should have told Miss F to speak to her creditors, rather than allowing the mortgage application to go ahead, would have been unsuitable. This is because taking such action would have affected her credit file and impacted her ability to refinance her first charge mortgage in the future. It is true that there would have been implications for Miss F entering into payment arrangements with her creditors. However, there were also implications of her borrowing money that she couldn't afford, especially when that money was secured on her home as it increased the potential for her to lose her home.

Given that I have found that the advice Fluent provided was not suitable, I don't consider it is appropriate for it to have received remuneration for that service. This is especially so as its own service agreement says it doesn't charge a fee unless an application is successful, which this one should not have been as Fluent should have stopped the application when it became aware of the issues regarding Miss F's expenditure, additional borrowing and affordability. As such, Fluent should refund the broker fee. The payment should be made to Miss F's lender to reduce the outstanding balance of the mortgage. As all interest charged on the loan has already been refunded, there is nothing more needed to compensate Miss F for her financial loss.

In addition to the financial loss Miss F has suffered, it is clear this matter caused her considerable upset and worry. I think in the circumstances the £750 compensation the Investigator recommended is appropriate and proportionate.

Putting things right

In settlement of the complaint Fluent should:

- pay Miss F's lender a sum equal to the broker fee it deducted from the mortgage advance; and

- pay Miss F £750 compensation.

My final decision

My final decision is that I uphold this complaint. In full and final settlement of the complaint I order Fluent Money Limited trading as Fluent Money, to pay the sums detailed in ‘putting things right’ above.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss F to accept or reject my decision before 20 September 2024.

Derry Baxter
Ombudsman