

The complaint

Mr W says Fluro Platform Limited irresponsibly lent to him.

What happened

Mr W took out a loan for £20,000 over 60 months on 13 November 2023 for home improvements. The monthly repayments were £474.95 and the total repayable was £28,508.80. The loan is now part of a debt management plan (DMP).

Mr W says Fluro's checks were inadequate. He was being pressured to take out the loan as part of a scam and at that time he lacked the mental capacity to make such a borrowing decision.

Fluro says it carried out proportionate checks using open banking data and a credit check that showed Mr W could afford the loan. Once Mr W contacted it about the scam it placed a 60-day hold on his account and subsequently accepted the reduced repayment offer from his DMP administrator.

Our investigator did not uphold Mr W's complaint. He said Fluro's checks were proportionate and showed the loan to be affordable. He said Fluro was unaware of Mr W's mental health issues at the time of the loan application and it has responded fairly since becoming aware.

Mr W disagreed with this assessment and asked for an ombudsman's review. He said, in summary:

- He was experiencing severe mental health issues at the time. Even though he did not disclose this, an application for a large loan should consider the potential for financial and psychological vulnerability.
- He was being threatened by the scammer and Fluro's checks into the purpose of the loan did not go far enough. More rigorous questioning could have revealed inconsistencies that might have flagged both his vulnerability and the fraudulent purpose of the loan. The checks were not sufficient in this case given his mental state and the circumstances of duress.
- Given his mental health condition, the threats from the scammer, and the duress he was under, Mr W believes the lending decision was exploitative. The loan should never have been approved given the severity of his situation.

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'm sorry to hear that Mr W was the victim of a cruel scam. I note that Mr W has raised other complaints about the banks and financial parties involved with this scam. I can't comment on those issues here, my scope is solely to review Fluro's lending decision.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr W's complaint.

Fluro needed to carry out proportionate checks to be able to understand whether Mr W could afford to make the monthly payments before lending to him. Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

I can see Fluro asked for certain information before lending to Mr W. It asked for his monthly income and verified this using open banking data. It carried out a credit check to understand his credit commitments and repayment history. It also used this to understand Mr W's housing costs as he had a mortgage. It added a buffer to allow for any interest rate changes. It used national statistics to estimate Mr W's living costs and the open banking data to ensure there were no signs of financial pressure. It asked about the purpose of the loan which was home improvements. From these checks combined Fluro concluded Mr W could afford the loan and would have £593 monthly disposable income after taking on this loan.

I think these checks were proportionate given the monthly repayment relative to Mr W's verified income, and based on the initial results they returned. From Mr W's comments I don't think he is disputing what the pounds and pence affordability assessment showed, rather than not enough was done to probe the context of the borrowing. But I think Fluro had the information it needed to make a fair lending decision in the circumstances. I'll explain why.

Fluro learnt that Mr W would have nearly £600 disposable income remaining. The open banking data showed no signs of financial strain. The credit check showed he had only £1,900 of debt across one credit card and one loan that was well-managed. Mr W was a homeowner and so it was plausible he would take out a loan for home improvements. There were no indicators that the lending could have adverse financial consequences for Mr W.

I accept that unfortunately the checks did not reveal Mr W was being pressured by scammers to take out the loan. But I cannot fairly find Fluro should have done more that might have led it to discover this. It would have not have been proportionate to ask more questions about the purpose of the loan given all the other characteristics of the loan application. I have seen no evidence that Fluro missed or ignored any indicators that something might be amiss.

Mr W's dissatisfaction is, however, broader than the fact Fluro did not probe the purpose of the loan enough. He also feels the decision to lend to him was irresponsible given his mental capacity at the time. In relation to a complaint against a lender for irresponsible lending, the Financial Conduct Authority (FCA) CONC Guidelines chapter 2.10 on Mental Capacity Guidance is the relevant set of provisions that needs to be considered.

Given what Mr W has said about his mental health at the time, it's appropriate to consider what the guidance says. But after reviewing it, combined with the evidence I have been sent by Fluro, I do not have enough to fairly find that the lender did something wrong.

The starting point is set out in CONC 2.10.4 of the Guidance which states that 'A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity.'

And the FCA Guide lists some behavioural indicators which, if the lender observes any, may lead to the firm having reasonable grounds to suspect that a customer may have some form of 'mental capacity limitation'. These are in CONC 2.10.8 and are a guide list. They are too numerous to set out here. Having reviewed the sorts of flags and behavioural indicators the regulator has listed in CONC 2.10.8 then I have no evidence to indicate that Fluro knew, or reasonably suspected, that Mr W lacked capacity or was in anyway vulnerable when he applied for the loan.

And even if it did have any grounds, CONC 2.10.7 guidance states '...this does not necessarily mean that the customer does not have the mental capacity to make an informed borrowing decision.'

So as I've said, based on the available evidence I cannot fairly find that Fluro did something wrong in this regard. To be clear, I am not saying that Mr W wasn't vulnerable at the time, or lacking in mental capacity, only that Fluro wasn't aware nor ought to have been aware. It follows Fluro had no reason to conclude that giving the loan to Mr W might have adverse financial consequences for him. I do not under estimate the severity of his situation, but I would have to have found that this was something Fluro was aware of, or ought to have known about, to reach a different conclusion.

Finally, I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Fluro lent irresponsibly to Mr W or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

I am sorry Mr W has suffered so much as a result of a cruel scam. I hope he now has all the support he needs. If not StepChange (tel: 0330 055 2198) and MIND (tel: 0300 123 3393) are organisations that can provide free assistance, with debt management and mental health respectively.

My final decision

I am not upholding Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 31 December 2024.

Rebecca Connelley
Ombudsman