

The complaint

Mr B and Miss O complain that Fluent Money Limited gave them bad advice when it recommended they should take a secured second charge loan.

What happened

In December 2022, Fluent Money gave Mr B and Miss O mortgage advice. It recommended that they should take out a secured second charge loan for £60,000 to repay £47,000 of debts, £10,000 for a holiday and £3,000 for home improvements. It charged a broker fee of £4,995 for the advice, which was added to the loan.

Mr B and Miss O complain that Fluent Money should not have recommended the mortgage to them, for a number of reasons, including:

- It should have checked Mr B's personal bank statements rather than just his business bank statements.
- Mr B was advised not to take another loan with an existing lender as that would damage his prospects of the second charge loan being approved. That led to the existing loan defaulting.
- It should not have required Miss O to be added to the loan to meet affordability requirements.
- It accepted his estimated valuation of the property without requiring a full valuation.
- It added the broker fee to the loan without discussing it with them.
- It failed to take into account that the loan was unaffordable and that Mr B had a poor credit score.

I issued a provisional decision proposing to uphold the complaint. My provisional findings, which form part of this decision, were:

Fluent Money was giving Mr B and Miss O mortgage advice. It was required to take reasonable steps to ensure that the mortgage it recommended would be suitable for Mr B and Miss O. That meant it should take reasonable steps to gather all information necessary for the purpose of giving advice. The mortgage could only be suitable if it was appropriate to their needs and circumstances.

As the main purpose of the loan was to consolidate existing debts, Fluent Money should have considered whether the mortgage was suitable for Mr B and Miss O taking into account the costs associated with increasing the period over which the debts would be repaid, whether it was appropriate for Mr B and Miss O to secure a previously unsecured debt and where the customer was known to have payment difficulties, whether it would be appropriate for the customer to negotiate an arrangements with their creditors, rather than take a mortgage.

Mr B initially approached Fluent Money for a loan in his sole name. Fluent Money told him that it “wouldn’t be able to get it to pass affordability in just [Mr B’s] name.” Mr B suggested adding his wife or daughter. There was a discussion about adding his wife, but Fluent Money suggested adding his daughter instead because he’d said his wife’s first language was not English and she would struggle to understand.

During that conversation Mr B told Fluent Money that Miss O had a daughter. That does not appear to have been disclosed on the application to the lender. That was relevant to the lender’s consideration of affordability.

Fluent Money’s recommendation letter said that Mr B and Miss O’s main need was for the debt to be consolidated into “one manageable amount”. While that might have reflected Mr B’s needs, it does not record what Miss O’s needs and circumstances were. And as I will explain I am not persuaded it was reasonable for Fluent Money to conclude that the loan it recommended was actually “manageable”.

I can see that there was an appropriate warning regarding the potential for Mr B to pay back more by securing the debts. But I can’t see that there was any consideration given to whether it was appropriate to secure previously unsecured debts or bearing in mind Mr B’s known payment difficulties, whether he should have sought help from his existing lenders instead of taking this loan. In fact, Fluent Money told Mr B not to enter into a formal arrangement with his existing creditors as it could harm his application for the new loan.

Fluent Money discussed why Mr B was in arrears on two of his existing unsecured loans. Mr B said that he’d agreed an arrangement with both those lenders and that he was paying one of them £19.82 a month where the contractual payment was £419 a month. Usually, where a lender agrees a reduced payment, they gather information about a borrower’s income and expenditure and agreed a concessionary payment that is affordable. So it would be reasonable to conclude that after assessing what Mr B could afford the lender reached the conclusion that he could only afford to pay £19.82 a month – a shortfall of £399.18 a month.

The above information was also not consistent with Fluent Money’s understanding – or what it reasonably should have understood – about Mr B’s existing arrangements. I say that as it gathered information about Mr B and Miss O’s income and expenditure for the lender and that showed that there was a deficit of around £240 a month. But it knew that Mr B could not keep up repayments on debts as they stood – and that he could not afford the full repayments on the two loans where the payments were around £900 a month.

While it was for the lender to check affordability of the loan, I don’t see how a broker could reasonably find a loan was suitable for a consumer where it ought to have had doubts that the new loan was affordable and sustainable – particularly bearing in mind the objective to have a “manageable” loan payment. Further, Fluent Money has not demonstrated that it gave due regard Mr B and Miss O’s interest in whether it was appropriate to secure previously unsecured debts, particularly in view of Mr B’s known payment difficulties.

The loan was sold by Fluent Money as “saving” Mr B £647 a month. But that was based on him maintaining the two loans where he was in arrears. He was not doing that. So in fact, his existing expenditure was around £900 lower than stated as he was only making nominal payments towards the loans with contractually monthly payments of £419 and £474. That meant his expenditure would go up after taking the new loan and compared to his existing position when the loan was taken out, where he was only making reduced payments to the loan.

The lender asked for clarification of Mr B's travel costs as they were lower than the ONS estimate. Mr B told Fluent Money they were only £100 as he was working close to home. That information was passed to the lender. But as far as I can see it did not provide Mr B's full explanation where he said "sometimes I'm travelling 70/80 miles to work so the [travel costs] do get a little bit more then." That was relevant to affordability and would likely have affected the lender's affordability calculations.

Overall, I do not consider Fluent Money treated Mr B and Miss O fairly when it recommended this loan to them. It is not clear that it provided all of the information the lender needed to assess affordability. The information it had should have caused it to doubt that the loan it recommended was affordable and sustainable – Mr B would end up paying more each month than he was at the point the loan was granted as he was only paying nominal amounts towards two loans.

Mr B was clearly already in significant financial difficulty at the time Fluent Money gave him advice. In view of all the information available to him I do not consider it was fair or reasonable to conclude that the loan it recommended would improve his position.

In the circumstances, bearing in mind the doubts about affordability and Fluent Money's obligation to pay due regard to Mr B and Miss O's interests, there is more it could have done to consider and explain whether it would have been preferable to negotiate with unsecured lenders rather than securing the debts and putting their home at risk.

In the circumstances I do not consider it would be fair for Fluent Money to apply a broker fee where it has not provided advice that was fair and reasonable. Both Mr B and Miss O will have been caused avoidable distress and inconvenience by what happened and I think they need to be compensated for that too.

Mr B was already in a difficult position. If he did not take the loan that was recommended then he would still have encountered financial difficulty and is likely to have had the inconvenience of dealing with his unsecured creditors. But it has added the worry that his home is now at risk. I think £300 is a fair amount to reflect the impact of the poor advice on him.

The impact on Miss O is greater. She has had the inconvenience of going through an advised sales process and providing information to support the application. She has also become liable for a significant debt that had nothing to do with her. There will also likely be an ongoing impact on her credit file as a result of the loan. I consider £500 would be a fair amount to reflect the impact of the poor advice on her.

Mr B and Miss O accepted my provisional decision. Fluent Money did not. It responded to make a number of points, including:

- Fluent Money is a mortgage broker. It is not authorised to give formal debt counselling or advise of debt management plans. The decision criticises Fluent Money for not "advising" Mr B to negotiate arrangements with unsecured creditors. That is not something it is permitted to do under its FCA permissions. Mr B was already on reduced arrangements with some lenders, but the main purpose of him approaching Fluent Money was to secure an alternative arrangement as the lenders would not allow reduced payments indefinitely.
- The complaint points addressed in the provisional decision differ from those raised by Mr B and Miss O and addressed by the investigator. Rather than addressing the original complaint, the decision focuses heavily on criticising Fluent Money's processes and approach as a whole. It is concerned the change in scope means it is now responding to

new points that were not part of the original complaint and where it was not given the opportunity address before the provisional decision.

- It carried out an affordability assessment using proof of income and details of expenditure given by the customers, as required at the time. The lender also carried out its own assessment and approved the loan.
- The provisional decision said it should have doubted affordability because Mr B was making reduced payments to two loans. Those were temporary arrangements that could not last indefinitely. Continuing with them would likely have led to defaults, debt sale and possible enforcement action. The loan it recommended provided a long-term solution in line with customer's objectives and was proven to be affordable based on the assessment conducted.
- The finding that the loan increased Mr B's monthly outgoings overlooks the fact that the reduced payments were a short-term concession, not a sustainable position. While the new loan payment was more than Mr B was paying when the loan was arranged, it was less than the full contractual payments for the two loans. The new loan created a long-term affordable solution for Mr B, who knew that the reduced payments on the existing loans was only a temporary arrangement.
- Miss O was added to the application to help meet affordability requirement after Mr B had suggested adding his wife or daughter. She had no debts of her own to consolidate. Her inclusion was solely to help Mr B qualify for the loan and she was credit checked and assessed for that purpose. That was explained to and agreed by Miss O. The provisional decision said that her needs were not recorded. But given her position, the key consideration and objective, which she understood and accepted, was to support and assist her father.
- All known dependants were disclosed to the lender.
- Given the nature of Mr B's business, his travel expenditure differed from month to month and therefore a typical or average amount has been provided. The affordability assessment demonstrated a surplus income that was sufficient to allow for higher costs without affecting the loan's sustainability.
- Fluent Money discussed and signposted other options including formal insolvency and negotiating with creditors. It explained that those options would have damaged Mr B's credit file, risked his business and would have affected his ability to obtain a mortgage. On that basis the consolidation loan was considered the most appropriate way forward, allowing him to meet his commitments in a single affordable payment while avoiding defaults.
- The broker fee was explained before proceeding and was set out in the documentation.

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.

Jurisdiction

Fluent Money issued responses to Mr B's complaint on 18 September 2023 and 17 November 2023. Mr B referred his complaint to us on 20 May 2024. That is more than six months after the date of both responses from Fluent Money.

However, neither response meets the definition of a "final response" under our rules. That is because neither response indicated whether or not Fluent Money consented to waive the relevant time limits in DISP by including the appropriate wording set out in DISP 1 Annex 3R.

Therefore, I am satisfied I have the power to consider this complaint. Mr B made the complaint to Fluent Money on 20 July and 26 September 2023. More than eight weeks have elapsed since Fluent Money received the complaints.

The complaint

I do not agree that the complaint I have considered is different from the one that Mr B initially made to Fluent Money. Mr B was clearly dissatisfied with the advice he'd received from Fluent Money. And its response to that complaint explicitly addresses the suitability of the loan. Mr B's complaint form says Fluent Money "...are refusing to accept any responsibility for their advisor's bad recommendation or for mis-selling me the loan".

I do not see how the complaint could be characterised as being about anything other than the advice given by Fluent Money. I am satisfied that Fluent Money has had ample opportunity to respond to that complaint. Even if that was not correct, Fluent Money has been given a fair opportunity to respond when I issued a provisional decision.

I make no comment on Fluent Money's wider practices and processes. I am merely determining what I consider to be fair and reasonable in the individual circumstances of this complaint as I am required to do

Debt advice

I am sorry of my decision was not clear. I did not say that Fluent Money should give Mr B debt counselling or advised on a debt management plan. What I said was:

In the circumstances, bearing in mind the doubts about affordability and Fluent Money's obligation to pay due regard to Mr B and Miss O's interests, there is more it could have done to consider and explain whether it would have been preferable to negotiate with unsecured lenders rather than securing the debts and putting their home at risk.

That reflects the FCA's Mortgage and Home Finance: Conduct of Business sourcebook (MCOB) 4.7A15R:

When a firm advises a customer in relation to entering into a regulated mortgage contract where the main purpose for doing so is the consolidation of existing debts by the customer, in addition to the factors at MCOB 4.7A.6 R, it must also take account of the following, where relevant, in assessing whether the regulated mortgage contract is suitable for the customer:

- (1) the costs associated with increasing the period over which a debt is to be repaid;*
- (2) whether it is appropriate for the customer to secure a previously unsecured loan; and*
- (3) where the customer is known to have payment difficulties, whether it would be appropriate for the customer to negotiate an arrangement with his creditors rather than to take out a regulated mortgage contract.*

While Fluent Money might well have discussed other options with Mr B, that was not all it was required to do. It was required to take into account Mr B's known payment difficulties and consider whether it would be appropriate for him to negotiate with creditors rather than take out a mortgage. While Mr B might have expressed a preference to avoid any further damage to his credit file, that does not override Fluent Money's duty to consider his circumstances and to pay due regard to his interests.

While the loan might have avoided further damage to Mr B's credit file in the short term, I consider that a mortgage broker acting reasonably ought to have had real doubts about the affordability and sustainability of the arrangement it was recommending. That was likely to cause much greater harm, that could include putting Mr B's home at risk of repossession along with the damage to his credit file he was looking to avoid.

Affordability

The recommendation letter said that after "*carefully assessing your affordability*" Mr B and Miss O would have a "*reasonable amount of disposable income remaining after your general cost of living and mortgage payments.*" It went on to say that "*the loan will fulfil your main motivation of consolidating debts into one manageable repayment, whilst reducing your outgoings by approximately £647 a month*".

Fluent Money based its affordability assessment on the full contractual payments that were due to two loans of £419 and £474 a month. That adds up to £893 a month. Based on that information Mr B and Miss O had an existing deficit of around £240 a month. Fluent Money said by taking the new loan, Mr B and Mrs O would be £647 a month better off and that the new loan payment was manageable. I do not consider that was accurate or reasonable.

I say that because Mr B was only making nominal payments towards the two loans. So in fact, what reflected his circumstances at the time the advice was given and his actual expenditure was at least £800 a month less than declared. So, by taking the new loan, Mr B's expenditure would actually increase compared to what he was paying at the time of advice.

I accept that the payment arrangements were short term as they stood. But in view of the information available to Fluent Money it had good reason to doubt that the new loan was actually affordable and sustainable for Mr B and Miss O. And it was misleading to present the new loan as a "saving" or "manageable" without at least a significantly more detailed and accurate explanation of the difference between Mr B's current position and what it would be under the new loan.

I do not consider that it was reasonable for Fluent Money to consider the new loan was affordable. It had good reasons to doubt the information it had from Mr B. The information it had about his existing position would indicate that Mr B's actual income and/or expenditure might be different from what it understood. That was not a sound basis for it to recommend a new mortgage to Mr B, bearing in mind the potential for harm to him.

Miss O

I am surprised at Fluent Money's response regarding Miss O. Fluent Money had a duty to pay due regard to her interests. Just because Miss O agreed to help her father solely to assist with affordability would mean that did not apply. The arrangement was clearly on the face of it against her best interests.

Information passed to the lender

For the avoidance of doubt the information passed to the lender regarding dependants and travel costs does not make any difference to my overall findings here.

I can see that a dependant was declared on the application. But the lender's notes show when that was queried it was confirmed that they were not financially dependent on Mr B.

I accept that Mr B's travel costs would likely vary due to the nature of his work. But I do not consider it was accurate for Fluent Money to say that "typical or average" costs were submitted to the lender. The expenditure form provided to the lender said transport costs were "£100 approx." But that appears to be based on Mr B's current arrangements. Mr B told Fluent Money "*sometimes I'm travelling 70/80 miles to work so the [travel costs] do get a little bit more then.*" I do not see how those likely increased costs were reflected in the information given to the lender.

Conclusion

I accept that Mr B might have had a preference to avoid further damage to his credit file. But for the reasons I have set out, I consider that a reasonable mortgage broker ought to have had doubts that the recommended loan was affordable and sustainable for Mr B and Miss O.

Fluent Money was giving mortgage advice. That did not mean it had to do what Mr B wanted. Rather, it should have recommended a mortgage that was suitable for Mr B and Miss O. I consider that it had reason to doubt that the proposed loan was affordable and sustainable, and that it met Mr B's needs to reduce his outgoings and have a "manageable" payment. And it is not clear how by recommending the loan in those circumstances it paid sufficient regard to either Mr B or Miss O's interests, bearing in mind the potential for harm in securing previously unsecured debts.

Overall, I see no reason to reach a different outcome that I set out in my provisional decision.

My final decision

My final decision is that Fluent Money Limited should:

- Refund the broker fee of £4,995.
- Pay Mr B £300.
- Pay Miss O £500

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss O to accept or reject my decision before 19 September 2025.

Ken Rose
Ombudsman