

## **The complaint**

Mr C complains that Fluent Mortgages Limited failed to provide the service it said it would and he's lost out as a result of its failings.

## **What happened**

The facts of this complaint are well known to both Mr C and Fluent Mortgages, so I've not set these out in detail.

In summary, Mr C approached Fluent Mortgages to act as a broker in finding him a new residential mortgage. It charges a fee of £995 for its service and Mr C doesn't think, based on the level of service he received, that it is fair he pays this fee.

He has said Fluent Mortgages caused a number of delays in the process and provided him with a maximum borrowing figure based on agreements in principle (AIP) that were not correct. The first application made to Lender A was declined because of a missed utility bill payment on Mr C's credit file. This added a delay to the process and an application needed to be made to a new lender, Lender B. After a full application was made, the offer to lend was significantly lower than Mr C had originally been told he could borrow and he needed to make up the shortfall in this borrowing amount with the assistance of his family.

As well as issues with the amount of borrowing promised, Mr C has said there was a number of delays during the process. This meant the property purchase took longer than it should have and Mr C needed to pay for short term accommodation before being able to complete the purchase.

Our investigator looked at this complaint and initially said that she didn't think Fluent Mortgages needed to do anything else as she didn't think it had done anything wrong. Mr C responded to this view with more information and our investigator changed her recommendation.

She felt there had been some delays in Fluent Mortgages providing Mr C with an AIP and he needed to chase this. She wasn't persuaded the AIP amount generated had relied on an ambiguous £20,000 additional income figure on the application, so she didn't think it was impacted by this. And she felt Fluent Mortgages had acted quickly to find another lender when Lender A rejected the application made and Mr C had been informed about Lender A's decision soon after this.

She felt Fluent Mortgages progressed the application with Lender B correctly and provided Mr C with information about its decision to offer less than the AIP amount promptly and Mr C was happy to pursue this application with the highest amount of borrowing possible.

She was not persuaded Fluent Mortgages caused a delay with the identity checks and information needing to be requested again before completion. She hadn't seen anything to show Mr C had provided this information after being asked to provide it and it was reasonable that Fluent Mortgages chased this ahead of completion.

She didn't think it would be fair to ask Fluent Mortgages to waive its broker fee. She thought there may have been some confusion about whether this could have been added to the balance of the mortgage but the broker had confirmed with Mr C that this wasn't an option. Mr C had responded to say he understood this and it shouldn't be a problem.

Overall, she felt Fluent Mortgages had fulfilled their role as a broker to source a suitable mortgage. But it added some delays and inconvenience at the start of the process when Mr C needed to chase for an update on the AIP. To recognise the impact of this inconvenience, she recommended an award of £100.00. She didn't ask Fluent Mortgages to cover any of the cost Mr C said he incurred when the mortgage didn't complete as quickly as he'd hoped as she didn't think it was responsible for any delays which could be attributed to this.

Fluent Mortgages accepted the recommendation. Mr C did not. He reiterated his previous points and that he felt he had lost out as a direct result of Fluent Mortgages and its actions. He did not feel it was fair to pay the broker fee and he asked that the case be referred for decision.

I issued a provisional decision on this complaint on 18 December 2023. I said the following:

*I'm planning on increasing the award on this complaint as I think Fluent Mortgages could have done more to manage Mr C's expectations.*

### **Expectations on borrowing**

*It isn't disputed that Mr C received information indicating that he might be able to borrow up to £320,000. This was something he was keen to do if it could be facilitated but I've not seen anything to demonstrate that Fluent Mortgages ever made a promise this was a guarantee and any AIP was only ever an indication of what a lender might be able to provide once a full application was made and assessed.*

*Unfortunately, when the AIP application was made, Lender A declined this due to a missed payment on Mr C's credit file. Mr C did highlight concerns to Fluent Mortgages about the impact of this missed payment and it said it didn't think this would be a problem based on his credit score. I think it could have been clearer on this point that each lender will make its own determination on whether it is happy to lend and the credit score and information that feeds into this will be something considered. So while Fluent Mortgages held a belief that this wouldn't be an issue, it couldn't make a guarantee on this. Ultimately the decision to decline the application was Lender A's.*

*When Lender A declined Mr C's application Fluent Mortgages was able to find another AIP with Lender B which gave a similar potential maximum borrowing. As with Lender B though, this was only an indication of what could have been achieved and there was no guarantee.*

*However, I am not persuaded Fluent Mortgages included all the information it should have with the AIP application and information was missed which could have changed the potential borrowing from the outset.*

*The AIP application included the details of the rental income figures and these matched what Mr C had provided and the AIP produced an amount based on this. But it also had a section to record the purchase dates of the properties and this section was left blank.*

*As the broker, I think Fluent Mortgages should have understood whether the length of ownership on the rental properties would have impacted the potential borrowing with the AIP and it should have clarified this with Mr C if it was unaware of these dates. I appreciate the*

*AIP with Lender B was produced quickly in response to Lender A declining the application and the application produced a figure when this information wasn't included. But this meant it provided an AIP with some information missing from the application form. And Fluent Mortgages should have been aware that the missing information could have negatively impacted the overall borrowing available to Mr C.*

*When the full application was submitted, Lender B had a number of questions surrounding Mr C's income with some of this being from his employment and some from rental income. Mr C had questioned whether this would be an issue and affect his total affordability with Fluent Mortgages in his initial enquiries and he had been reassured this shouldn't be an issue. This was despite Mr C making it clear that one of his rental properties had not been rented out for as long as the other, so his ability to demonstrate the earning over a longer period was not there. When Fluent Mortgages responded to the questions about this, it was responding with Lender A and its criteria in mind and it was not the rental income which caused an issue with this application. So I don't think it provided incorrect advice at this point, but it failed to think about how this might change if Lender A wasn't an option.*

*Mr C was unable to demonstrate two years' worth of income for both properties and this reduced his total borrowing with Lender B. He was able to repay some short-term borrowing which increased Lender B's starting position and Mr C was able to proceed on this basis, but I think it is fair to say Fluent Mortgages could have done more to ensure the AIP was a more accurate reflection of what Lender B might offer based on Mr C's income and its policy on rental income.*

*Mr C said a number of times he decided to use Fluent Mortgages because it indicated he could borrow a higher amount than he'd been able to get when looking at online calculators. So I think it was a clear and key driving factor as to why he decided to use its services over another. While I don't think the initial advice he was given about what could be achieved with Lender A was incorrect and this was information at enquiry stage that Mr C relied on to work with Fluent Mortgages. I do think it should be recognised that Fluent Mortgages didn't use all of the information it could have when submitting the AIP application with Lender B.*

*When Lender A declined the application Fluent Mortgages needed to find another lender and it was able to get a similar level of borrowing AIP quickly. With the pressure added by the seller of his new property when this was needed, I think it is unlikely Mr C would have looked to change brokers at this point, even if the correct information had been added to the AIP. But I understand his frustration at paying a broker fee when the outcome he expected in using it did not come to fruition.*

### **Overall delays**

*I appreciate Mr C believes Fluent Mortgages caused delays in the mortgage process and this has meant he's lost out as a result. I am not persuaded this is the case, or that it would be fair to consider any consequential loss Mr C says he experienced when he was unable to move into his new property at the end of August.*

*Although I agree there was a failing to make it clear to Mr C what his potential borrowing might be based on Lender B's lending criteria, I'm not persuaded there was a material delay to the mortgage application. Mr C would have still needed to provide the information he did for Lender B to confirm what it was happy to offer and this happened regardless of what the AIP indicated was available from the start. And Mr C did not send in his ID documentation until sometime after this had first been requested.*

*Mortgage applications and house purchases can take time and while Mr C has said he has managed to complete a number of these in the past within six weeks. I don't think there was*

*any unreasonable delay in this completion and I've not seen anything to indicate it would be fair to ask Fluent Mortgages to refund Mr C any of the costs he incurred when waiting to move into his new house with short term accommodation.*

*But as our investigator highlighted, Mr C did need to chase for his AIP application to be made and the details of this to be provided to him. He explained he was being chased by the seller for these details and this was adding stress to the situation which I think could have been avoided if these were provided sooner. So I think it is right this additional distress is recognised by Fluent Mortgages.*

### **other issues**

*Beyond the delay I've mentioned above, I've not seen that Fluent Mortgages treated Mr C unfairly with the service offered. I agree there may have been confusion caused over the broker fee and whether this could be added to the mortgage, but I think this was clarified in writing and Mr C acknowledge that he understood this point.*

*Fluent Mortgages appears to have worked promptly with Lender B when providing information required and has explained what was needed and when during the application. So I've not seen anything to persuade me there was failing here.*

*Overall, I think Fluent Mortgages could have managed Mr C's expectations better, had it provided more information in the AIP application. But I am not persuaded, based on the time pressure placed on the sale by the seller, that Mr C would have done anything differently had the AIP provided a lower figure at this point. And ultimately any decision to lend is not guaranteed until the full application is made and agreed by the lender.*

I recommended that Fluent Mortgages increase the distress and inconvenience payment to £300. But I stopped short of asking it to refund the fee charged for its service.

Fluent Mortgages responded to the decision to say it was disappointed with the proposed outcome. It felt any errors made had a minimal impact. It had not provided any guarantees to Mr C on the amount he might be able to borrow and because of this a loss of expectation could not be created.

Mr C also responded and explained why he felt the decision did not go far enough. He highlighted that recent conversations with his lender have led him to believe that Fluent Mortgages failed to ascertain the correct income data for his rental properties. He said it only ever asked for gross rental figures which had the impact of falsely inflating his borrowing potential when this was not something the lender would have accepted.

He feels Fluent Mortgages caused a delay of over a week to the mortgage process – a timeframe he doesn't consider immaterial. Fluent provided incorrect information on the rental income and time needed to demonstrate this, resulting in Mr C completing his self-assessment ahead of when it was needed. And Mr C feels it is incorrect to say confusion was caused with the broker fee and whether this could be added to the mortgage. He feels this was corrected not clarified by the broker and it should be accepted he was given incorrect advice about this by Fluent Mortgages.

Ultimately Mr C maintains that Fluent Mortgages over promised on what it could provide and when it wasn't able to do this, he has paid a broker fee that he doesn't feel was warranted or justified.

The complaint has been passed back to me to reconsider.

## **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 have decided to uphold this complaint in line with my provisional decision. I appreciate this is not an outcome that either side is happy with, but I feel it is a fair and reasonable outcome.

While Fluent Mortgages may not agree it did cause a loss of expectations because any borrowing indicated by an AIP is not guaranteed, it will give an indication of what might be available. And this should be based on correct information. As I've explained, I don't think it took account of all of Mr C's additional income correctly when completing the application for the AIP and it hasn't shown me this is the case. So in the absence of this, I do feel it failed to do what it should have resulting in an AIP which inflated what Mr C might have been able to borrow. It follows that his expectations were not managed.

Mr C has not provided any new points which I have not already taken into consideration. The information from his lender now about what it requires to determine his income on the rental properties relates to what I said about the AIP and correct information being used for this. And as I said, Fluent Mortgages should have ensured it provided the correct information to make sure the AIP was not inflated. When it didn't do this it didn't manage Mr C's expectations, but ultimately, the lending decision was made by the lender.

To clarify my point on the broker fee and this being added to the mortgage, I accept that incorrect information was given at first, this is why I stated confusion may have been caused. The incorrect information could have led to Mr C believing this fee could be added to the mortgage. The mistake was later corrected when it was confirmed in writing this couldn't happen.

I appreciate the frustration of being given incorrect information by Fluent Mortgages and with the other issues that have been highlighted in my decision, it adds to the distress of the situation. This has all been considered when thinking about the award and what is fair and reasonable to put things right.

Mr C maintains that he doesn't feel it is fair to pay the broker fee when the service received is somehow short of what he expected. I agree things could have been better, but as I've set out, I don't think it would be fair to ask Fluent Mortgages to refund the broker fee. While Mr C was not able to get the level of borrowing he hoped to achieve, Fluent Mortgages did provide a service in sourcing a mortgage. I think it would be unreasonable to say the fee is not due. But it is right it recognises the failings and impact of these.

## **Putting things right**

To recognise the impact of failing to provide the AIP sooner and the loss of expectation Mr C experienced when the AIP with Lender B was submitted without all of the relevant information, Fluent Mortgages should pay Mr C £300.00.

## **My final decision**

I uphold Mr C's complaint for the reasons I've explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 February 2024.

Thomas Brissenden  
**Ombudsman**