DRN-4481675

The complaint

Mr and Mrs B complain that Fluent Money Limited mis-sold them a second charge mortgage (secured loan).

What happened

In 2018 Mr and Mrs B approached Fluent Money, a mortgage broker, for advice about taking a secured loan to consolidate unsecured debt.

They originally intended to borrow around £40,000 to pay off their debts. During the advice process, Fluent Money explained that they might be able to borrow more than that if they needed further funds. Mr and Mrs B ended up borrowing around £65,500, with £20,000 being used for home improvements and £5,500 added to cover Fluent Money's fee of £4,800 and the lender's fee of £600 (I have rounded all figures for ease).

The loan was arranged on repayment terms over 17 years, with an initial two year fixed rate of 4.3% followed by a variable rate of 3.8% over the lender's base rate (which, at the time the loan was taken out, was the same as the Bank of England base rate). That meant the monthly payments were £450 – though that was subject to change after the initial fixed rate period if the base rate increased.

In 2023 Mr and Mrs B complained that Fluent Money had mis-sold the loan. They said the loan was unaffordable for them, because of their debts. And they complained that they'd been persuaded to take a higher loan than they wanted.

Fluent Money said that Mr and Mrs B were not in financial difficulty and hadn't missed any payments on their existing unsecured debts. But they were paying around £870 per month to those debts – consolidating them reduced their outgoings by over £400 to £450 even after factoring in the additional borrowing they took.

Fluent Money said that Mr and Mrs B initially enquired about borrowing £20,000 – but that they would need to borrow £40,000 to clear all their debts as they'd wanted. Fluent Money asked if Mr and Mrs B would be interested in borrowing more than that if possible, and they said they wanted an extra £20,000 for home improvements. Fluent Money gave Mr and Mrs B two illustrations – one with and one without the extra £20,000. Mr and Mrs B decided to borrow the higher amount as the payments were still manageable and it meant they could fund their home improvements. Fluent Money said that Mr and Mrs B weren't pressured into borrowing more, but decided to do so in full knowledge of the options open to them. It said that the loan was affordable for them and it had made a suitable recommendation. The lender had checked that the loan was affordable and concluded it was before deciding to lend.

Mr and Mrs B weren't happy with that and brought their complaint to us. They said that at the time of taking out the loan they were desperate because of the level of their debts. Mrs B was working away from her family and couldn't afford to pay for accommodation. Fluent Money knew they were in financial difficulties and shouldn't have sold them the loan.

Our investigator didn't recommend that the complaint should be upheld, so Mr and Mrs B asked for an ombudsman to review their complaint.

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 doing so, I've taken into account the rules of mortgage regulation which applied at the time. This was an advised sale, so the relevant rules can be found in section 4.7A of the regulator's mortgage rules, available online.[1]

There are separate rules applicable to the lender (in section 11.6). The rules make clear that it's a matter for the lender to consider whether a loan is affordable as part of a responsible lending assessment.

However, while the decision on whether or not the loan passes affordability criteria is a matter for the lender, I'd expect an adviser – such as Fluent Money – to take affordability into account as part of giving advice; it wouldn't be appropriate to recommend a loan that was clearly unaffordable or arrange an application that would be unlikely to satisfy the lender's criteria.

In summary, Fluent Money was required to take full account of Mr and Mrs B's needs and circumstances and then recommend the most suitable loan of those available to meet those needs and circumstances – which includes recommending that they not take a loan if there is no suitable loan available. In giving advice, Fluent Money was entitled to rely on what Mr and Mrs B told it unless there were common sense grounds for doubting it.

There are specific additional requirements for loans for debt consolidation, as this one was. In assessing whether the loan is suitable, the adviser should take account of the costs of increasing the period over which debts should be repaid, the risks of securing unsecured debt, and – if there are payment difficulties – whether it might be more appropriate to come to an arrangement with unsecured creditors.

In this case, there's no evidence that Mr and Mrs B were in payment difficulties. They had a low loan to value on their main mortgage, and all their credit commitments were up to date. The income and expenditure information Fluent Money took didn't show that the debts were unaffordable if they weren't consolidated, and showed that this loan would be affordable. Mr and Mrs B didn't tell Fluent Money that they were in financial difficulty, just that they wanted to consolidate debts to reduce outgoings overall and make things more comfortable.

The debts consolidated were an unsecured loan, three credit cards and an overdraft. All were in Mrs B's sole name, though Mr and Mrs B told Fluent Money that the loan was used, in part, to pay off finance on Mr B's car.

There wasn't a detailed discussion about the risks of securing previously unsecured debt, as there ought to have been. But I don't think this means that the advice given was unsuitable. Overall, the loan met Mr and Mrs B's needs at the time and enabled them to meet their objectives.

I'm also not persuaded that Fluent Money pressured Mr and Mrs B into taking out extra borrowing. It did ask whether they wanted any extra money for other purposes. But it gave illustrations of borrowing both the debt consolidation amount and the higher amount for

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[1] https://www.handbook.fca.org.uk/handbook/MCOB/4/7A.html

home improvements, and Mr and Mrs B chose to take the latter option in full knowledge of the costs of doing so. Although that higher balance meant that the loan repayments were higher than the amount Mr and Mrs B initially said they'd budgeted for, the payments were made clear to them. And the payments were still affordable on the income and expenditure information Mr and Mrs B had given, and still substantially lower than they were paying to the unconsolidated debt.

It seems that Mr and Mrs B's circumstances have changed since the loan was taken out. Mrs B told our investigator that they are now separated and Mr B is not living in the property. This will have increased their outgoings – at a time when they're now on the lender's variable rate and interest rates are increasing. But I don't think this is something Fluent Money could have foreseen at the time.

Based on what Fluent Money knew and ought to have known at the time of the advice, I think it made a suitable recommendation. The loan it recommended was – for a second charge loan – at a low interest rate. It met Mr and Mrs B's needs and circumstances by allowing them to reduce their outgoings significantly while accessing further money for home improvements. It appeared affordable based on their circumstances at the time. There's nothing that persuades me that this loan was mis-sold.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Ms B to accept or reject my decision before 8 April 2024.

Simon Pugh
Ombudsman