

## The complaint

Mrs I complains that Fluent Money Limited incorrectly recommended that she should take out a second charge loan. As a result, she breached the conditions of her help-to-buy loan and lost a mortgage offer.

## What happened

Mrs I bought her home under the help-to-buy scheme. She had a first charge mortgage and an equity loan (the help-to-buy loan).

In 2020, Mrs I received mortgage advice from Fluent Money. She wanted to consolidate some unsecured debt. Fluent Money recommended that she should take out a second charge secured loan for £19,000 – and Mrs I accepted that advice

In 2023, Mrs I obtained a mortgage offer from a new lender for her first charge mortgage. She was borrowing £117,000 on a fixed interest rate of 4.69% for 62 months. She wanted to repay her first and second charge loans. When the administrator of the help to buy-loan (T) found out what Mrs I was intending to do, she said it would not let her repay the second charge mortgage unless the help-to-buy loan was also repaid. It said she was in breach of the terms and conditions of the help-to-buy loan. Mrs I was unable to proceed with her new first charge mortgage.

In August 2023, Mrs I repaid her first charge mortgage and the help-to-buy loan. She took out a new first charge mortgage for £123,000 with an interest rate of 5.79% for 62 months.

Mrs I complains that Fluent Money did not take into account or explain the implications of recommending a second charge mortgage when she had a help-to-buy loan.

An investigator thought the complaint should be upheld. He said that the second charge loan Fluent Money recommend was unsuitable for Mrs I. He said Fluent Money should pay Mrs I £5,173.28 – the difference between the interest she would have paid had the initial first charge mortgage gone ahead and the interest she is now paying.

In addition the investigator said that Fluent Money should refund the fees for the aborted remortgage of £420, a valuation fee to redeem the help-to-buy loan of £125, a fee to repay the second charge loan, broker fee of £2,090 and the second charge lender's fee of £2,090 – with interest at 8% simple per year. He also said Fluent Money should pay Mrs I £600 for any distress and inconvenience.

I issued a provisional decision. While I considered the complaint should be upheld, I did not consider that Fluent Money should pay the difference in interest. My provisional findings, which form part of this decision, were:

*Fluent Money was giving Mrs I mortgage advice. It should have recommended a mortgage that was appropriate for her needs and circumstances – having taken reasonable steps to obtain “all information” relevant to that. A firm must base its determination of whether a mortgage is appropriate to a customer's needs and circumstances on the facts disclosed by*

*the customer and other relevant facts about the customer of which the firm is or should reasonably be aware.*

*When Mrs I spoke to Fluent Money she wanted to borrow to consolidate unsecured borrowing and said she'd prefer not to secure the debt against her home. Fluent Money then told Mrs I that it "takes a lot of years to lose your property and I mean that's like every single month missing your payments....that takes a helluva lot of years to go through something like that". It went on to say that it would only recommend something that was in Mrs I's best interests – it explained the maximum term for an unsecured loan was seven years and longer for secured loans. It also said that secured lending was less risky than unsecured to lenders so interest rates tended to be lower, but it could not say for sure what would be cheaper. Mrs I said she'd go through the secured advice process.*

*Fluent Money gathered information about Mrs I's circumstances, including that she bought the property using the help-to-buy scheme for 20% of the property's value. I can't see that Fluent Money asked any additional questions about the help-to-buy loan. Fluent Money went on to recommend a secured second charge loan for £19,000.*

*I have seen the help-to-buy credit agreement. It is clear that the terms of the agreement said that Mrs I was only allowed one secured mortgage unless T agreed a further secured loan. The terms went on to say that T would only agree increases in the secured debt for home improvements. Looking at the terms of the help-to-buy loan, I'm satisfied that the fact the loan was secured by way of an equitable charge that would still give the help-to-buy lender priority would not make any difference to that. There was still a requirement to obtain T's consent.*

*Mrs I did not get permission from T for the new secured loan. Looking at the information we have and my knowledge of these types of loans, T was unlikely to consent to such a loan being taken out for debt consolidation.*

*Fluent Money took reasonable steps to gather information about Mrs I's circumstances, including that she had bought the property under the help-to-buy scheme. But I need to decide if that went far enough. Fluent Money's position is that it was for Mrs I to make sure that she was complying with the terms of the help-to-buy loan. But it was acting as a mortgage broker. It ought reasonably to have known that help-to-buy loans carry a number of restrictions around secured lending. It follows, that to be able to reasonably recommend a secured loan to Mrs I, Fluent Money ought to have asked more questions about the terms of the help-to-buy loan.*

*If Fluent Money had asked for more information about the help-to-buy loan, then it would have come to light that T was required to consent to any additional secured borrowing – and that it was only likely to do so for home improvements. So Fluent Money could have told Mrs I to get consent from the lender or looked at other options. But from my experience, T was unlikely to agree to new borrowing secured against Mrs I's property.*

*In those circumstances, I don't consider it was fair or reasonable for Fluent Money to recommend a secured loan to Mrs I. Without the T's consent, Mrs I was in breach of the terms of the help-to-buy loan by taking secured borrowing.*

*Where a business has not treated a consumer fairly, I look to put the consumer back in the position they would have been in had they been treated fairly. So I must consider what Mrs I would most likely have done had she received fair and reasonable mortgage advice from Fluent Money.*

*It seems likely that Mrs I would still have looked to consolidate her debt on an unsecured*

basis. This is what she initially wanted to do. I would add that Fluent Money's initial explanation about the risk of losing her home if Mrs I did not keep up payments was misleading. While repossession should be a last resort, it would not necessarily take a lender a "lot of years" to take possession.

It is difficult to say what options were available to Mrs I – we do not know the terms on which she could have refinanced her existing debt on an unsecured basis. So I do not consider there was any loss when she took the secured loan – I have not seen any evidence Mrs I could have obtained a cheaper interest rate. But Fluent Money should refund the £2,090 fee it charged and the lender's fee of £1,295 with interest. It should also refund the £180 she had to pay to redeem the secured loan. I say that as Mrs I would not have had to pay those fees had she been given fair and reasonable advice.

The investigator said that if Fluent Money had not recommended she take a secured loan, Mrs I would have been able to complete a remortgage on her first charge for £117,000 at an interest rate of 4.69% fixed until 1 June 2028. Mrs I intended to repay her existing first charge mortgage and the secured loan. But when her solicitor contacted T, she found out she would need its consent to agree to the remortgage. She applied for that in April 2023.

I am considering what Mrs I would likely have done had she been treated fairly. So in 2023, but for the advice from Fluent Money to take the secured loan she would have the first charge mortgage she was looking to repay, the consolidated but unsecured debt and the help-to-buy loan. It seems likely that Mrs I would still have wanted to consolidate the unsecured debt. That is what she wanted to do with the secured debt. And there would have been advantages to her of doing that – the interest rate would have been cheaper and she would still have had lower payments over the longer term.

I consider that Mrs I would still have applied for the first remortgage. But she would still have needed to ask for T's consent to do that. That is because she was increasing the secured debt. She would always have needed the T's consent to proceed with that mortgage – she was increasing the amount of the secured debt and that was because she was consolidating unsecured debt. So it is unlikely that T would have agreed to that.

I consider it likely that the outcome of the first remortgage application would have been the same – even if she had not taken the secured loan on the advice of Fluent Money. Mrs I would always have had to arrange a different mortgage. She could not have proceeded with the first remortgage as she would still have needed T's consent. I don't consider I could fairly say that Fluent Money should meet any costs relating to the abortive mortgage application. I am not sufficiently persuaded that it was ever feasible for that mortgage to go ahead.

Mrs I would always have had to repay the help-to-buy loan if she wanted to consolidate the unsecured borrowing. I think it more likely than not that she would have ended up going with the second remortgage – repaying the help-to-buy loan. So I don't consider it would be fair for me to say that Fluent Money should pay Mrs I the difference between the two interest rates. And she would always have had to pay any fees relating to the redemption of the help-to-buy loan. I don't consider Fluent Money should meet those costs.

I thank Mrs I for her honesty in explaining the impact this matter has had on her. I don't doubt how stressful she found everything and the resulting impact on her health. Mrs I has experienced distress, inconvenience and some pain and suffering over a period of around six months. As I explained, Mrs I would likely have faced some of the same issues in 2023, even if Fluent Money had not recommended the secured loan. But I accept that the unsuitable secured loan has caused and added to the impact of this matter on Mrs I. In all the circumstances, and considering how we make awards of this type, I consider it would be fair for Fluent Money to pay Mrs I £500 to reflect any distress, inconvenience, pain and

*suffering.*

I proposed that Fluent Money should:

- Refund the broker fee of £2,090.
- Refund the lender's fee of £1,295.
- Pay interest on the above amounts at 15% from the secured loan's inception to the date it was repaid. From the date the secured loan was repaid, pay interest on the above amounts at 5.79% - on the basis that those amounts were added to Mrs I's remortgage in 2023.
- Refund the £180 fee incurred for removing the charge relating to the secured loan.
- Pay interest at 8% simple per year from date the fee was paid until date of settlement.
- Pay Mrs I £500.

Fluent Money responded to say that it would need evidence of when Mrs I repaid the secured loan to comply with my proposed settlement. It also said it was unclear if interest was payable on the £180 fee and that it did not understand what "date of settlement" meant.

Mrs I did not accept my provisional findings. She made a number of points, including:

- She did not agree with the submissions that Fluent Money made in response to the investigator's view.
- If Fluent Money had made her aware of T's restrictions on secured lending, she would have either consolidated her borrowing in an unsecured loan or not at all. She was not in a desperate situation and was looking to consolidate her debt into one payment. So she would not have needed to include the consolidated debt in a remortgage – she would have looked to take out a mortgage to repay her existing mortgage and the help-to-buy loan and there would have been no issue with that.

It was the secured loan recommended by Fluent Money that complicated things as the fixed rate was due to expire, and the variable rate payments were too expensive for her. She could not remortgage the secured loan but not the help-to-buy loan as that was in breach of T's conditions. And she did not have enough equity in her home to repay both the secured and help-to-buy loan. She was left with no option but to repay the help-to-buy loan and the secured loan with a loan from her family.

Mrs I considers that Fluent Money is therefore responsible for the costs incurred in applying for a new mortgage. As such she paid the redemption fees for the help-to-buy loan twice and there were also duplicated legal fees.

- It was Fluent Money's acts and omission that had impacted her physical and mental health. Mrs I detailed the impact on her. She was disappointed that I had reduced the compensation for distress and inconvenience.

I asked Mrs I for some more information about the first remortgage. She told me that her initial plan was to borrow enough to repay both the secured loan and the help-to-buy loan. But her home was valued at less than she hoped. As a result she could not borrow enough to repay both loans.

Mrs I considered that Fluent Money was responsible for the first remortgage not going ahead. If she did not have the secured loan, there would have been no issue in borrowing enough to repay the help-to-buy loan.

### **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 see no reason to reach a different outcome in respect of my decision that Fluent Money did not act fairly and reasonably in recommending a secured loan to Mrs I. What remains in dispute is what is a fair way to put things right.

I thank Mrs I for her clarification of the circumstances. In view of that, and having reviewed everything again, I consider it would be fair and reasonable for Fluent Money to pay the difference between the cost of the first and the second remortgage. I say that because Mrs I has given us evidence that it was her intention to include the help-to-buy loan in the first remortgage. So I am satisfied that the existence of the secured loan is what prevented her doing that. If the secured loan did not exist, Mrs I could have continued with the first remortgage, even when her property was downvalued.

I also accept that Mrs I needed to refinance the secured loan as it was due to revert to a variable rate that she could not afford. So Mrs I was left in a difficult position because of the poor advice from Fluent Money – she could not refinance the secured loan because T would not agree to that. And she could not refinance the help-to-buy loan because the secured loan would remain and that was not affordable for her.

On reflection and after careful thought, Fluent Money should pay the difference of 1.1% between the interest rate on the first remortgage (4.69%) and what Mrs I has ended up paying (5.79%) over the fixed rate period of 60 months – but only on £117,000, the amount offered on the first remortgage. I am not sure that the difference set out by the investigator is correct – my own calculations give me a higher figure. But I will leave it for Fluent Money to calculate the difference.

We also have evidence that Mrs I incurred legal fees of £420 for the aborted application that should be refunded, with interest. While we have an invoice for that amount, Mrs I will need to produce evidence to show that it was actually paid and the date she paid it.

Mrs I said that she has had to pay a valuation fee twice to redeem the help-to-buy loan. She said the first one lapsed because the first remortgage fell through. Mrs I would always have had to pay for one valuation to redeem the help-to-buy loan. It would not be fair for Fluent Money to compensate her for that. But I am satisfied on the evidence we have that she has had to pay for an additional desktop valuation of £125 because of the delay in repaying the help-to-buy loan because the first remortgage fell through. So Fluent Money should refund that with interest from 12 July 2023. I have seen evidence the fee was paid on that date.

I see no reason to change the conclusions I reached in my provisional decision about the other financial losses suffered by Mrs I.

That leaves compensation distress and inconvenience. I am not disputing or downplaying what Mrs I has told us about the impact of this matter on her. My proposed award was based on the fact that I did not consider that Fluent Money was the cause of all of the problems Mrs I experienced in 2023. Bearing in mind I have now found that Fluent Money's acts and

omissions led to the first remortgage falling through, I consider £600 is a fair amount to reflect the distress and inconvenience this matter has caused to her.

Fluent Money asked a number of questions in response to the provisional decision. We do not know the date when Mrs I repaid the secured loan. Fluent Money can request that information from Mrs I or she can provide it to us and we can pass it to Fluent Money.

Interest is payable on all the fees that Mrs I has incurred as a result of the unfair advice from Fluent Money – that reflects that she has been deprived of that money. Where the fees have been added to a loan or mortgage, I have awarded interest at the relevant interest rate. Where the fees have been paid directly by Mrs I, I have awarded interest at 8% simple

“Date of settlement” is the date that Fluent Money calculates and pays the redress to Mrs I.

## **My final decision**

My final decision is that Fluent Money Limited should:

- Refund the broker fee of £2,090.
- Refund the lender's fee of £1,295.
- Pay interest on the above amounts at 15% from the secured loan's inception to the date it was repaid. From the date the secured loan was repaid, pay interest on the above amounts at 5.79% - on the basis that those amounts were added to Mrs I's remortgage in 2023.
- Refund the £420 legal fees for the aborted remortgage – providing Mrs I can produce evidence to show they were paid and when they were paid. .
- Refund the £125 desktop valuation fee paid on 12 July 2023.
- Refund the £180 fee incurred for removing the charge relating to the secured loan.
- Pay interest at 8% simple per year from date the fee was paid until date of settlement.
- 1) Calculate how much interest Mrs I will pay over 60 months on a balance of £117,000 on a repayment mortgage with an interest rate of 5.79%. 2) Then calculate how much interest Mrs I would have paid over 60 months on a balance of £117,000 on a repayment mortgage with an interest rate of 4.69%.
- Pay Mrs I the difference between 1) and 2) above.
- Pay Mrs I £600.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 25 October 2024.

Ken Rose  
**Ombudsman**