

The complaint

Mr S complains about how mortgage broker Fluent Money Limited dealt with his application to remortgage a Buy To Let ("BTL") property that he owns. He said that the mortgage Fluent recommended was never suitable, and Fluent caused delays in the application.

What happened

Mr S told us that the fixed interest rate on his existing consumer BTL mortgage was coming to an end. So he made an online enquiry on 25 March to remortgage, through an online comparison portal. Mr S was contacted by Fluent, who said he didn't qualify for that product, but recommended something else from a different lender (who I won't name here). Mr S applied for this lending through Fluent. He told us he'd stressed that speed was of the essence, as his existing mortgage's fixed rate period was ending at the end of April.

Mr S said he later found out that this was the only lender he met the criteria for, and he hadn't passed the lending threshold for this one by much.

Mr S said on 31 March his prospective lender had sent some documents to Fluent that he needed to complete, but they weren't sent on to him until 20 April. He said he returned them the same day, but no one acknowledged receipt until 26 April.

Mr S said he received a second request from the lender, via Fluent, on 6 May, but he later found out the lender had asked for this information on 20 April, and subsequently chased this on 26 April and 5 May. Again, Fluent had just not forwarded the request.

Mr S said he was on holiday on 6 May, so had to wait until 13 May to submit the requested information.

On 25th May he contacted the lender directly and was told his mortgage application had been declined. He immediately went back to his old lender, and arranged a new mortgage with it. His new mortgage rate was applied to his account from 26 May.

Mr S said that his complaint was on two points – one that Fluent should have known he wouldn't receive an offer from this lender, and two that there were excessive delays in handling his application.

Mr S said Fluent offered him £50 for delays, but that didn't cover the extra he'd paid on his mortgage while it was on his old lender's standard variable rate ("SVR") from 1 to 25 May, inclusive. Mr S said the difference between the two rates worked out as £888.36 per month, so he had paid around £800 more than the £50 offered. He wanted Fluent to pay that.

Fluent's response to Mr S's complaint said Mr S's prospective lender asked for documents on 31 March, which were supplied on 26 April. It noted that Mr S said he'd sent these before, but Fluent said they weren't received. Fluent didn't say when this request for documents had actually been passed on to Mr S. (He'd said it wasn't passed on until 20 April).

Fluent said Mr S's prospective lender asked for more information on 20 April, and Fluent

accepted it hadn't noticed this request until 5 May 2022. The requested budget planner was sent to Mr S on 6 May, and on 13 May he told Fluent he'd returned it directly to the lender.

Fluent said the lender reviewed this, and contacted it on 24 May 2022 to say Mr S's application had failed internal affordability criteria. Mr S found out directly from the lender on 25 May that the application had been declined, but Fluent only noticed this rejection was on its system on 26 May.

Fluent said it had checked affordability with the prospective lender at the outset, and the lender was content to lend, although affordability hadn't been passed by much. Fluent said there were unfortunately no other lenders available to recommend to Mr S.

Fluent didn't think it was wrong to recommend this lender, but it did say that requests for information from the lender hadn't been passed to Mr S in a timely manner and this did cause delays. It offered Mr S £50 to say sorry for that.

Our investigator didn't think Mr S's complaint should be upheld. He said that it's not unusual for a lender to provide a positive indication that it will lend, then change its mind once fuller detail is available and the application is underwritten. He couldn't see that Fluent had made a mistake in recommending this lender, or that it could have been aware of the very specific criteria which the lender later applied. He didn't think things would have changed if Mr S had been told that his affordability was borderline.

Our investigator said it's usual to get an offer within about six weeks, but Fluent hadn't guaranteed that. Our investigator said Fluent had operated within its normal timescales, and there were no excessive delays.

Our investigator didn't accept that Mr S had to pay his old lender's SVR for 26 days because of the actions of Fluent. He said Mr S could always have remortgaged with his old lender if he'd wanted to. But our investigator did think Fluent caused around two weeks of delays. He said a payment of £50 was fair for that.

Mr S didn't agree. He said the delay was five weeks, not two. Mr S also said although he might have been happy to pay the SVR rate to his old lender for a short time before securing a better deal with a new lender, he wasn't happy that he'd ended up on the SVR waiting for an application which was never going to be successful. Mr S felt that Fluent only accepted his application as a way to get commission.

Our investigator asked for more information about the timescales and delays in Mr S's application, and Mr S replied to draw attention to the request for documents made by the lender on 31 March, which he didn't get until 20 April, as well as the failure to acknowledge the documents he returned on 20 April until 26 April.

Ms S still thought that Fluent's brokers would have an incentive not to tell him that he didn't have a good chance of securing the lending, and he said Fluent had sent out misleading information, including an email titled "*Your application is in the bag [Mr S]*" which it clearly wasn't. Mr S also thought Fluent had advised him there were a range of lenders he was eligible for, but then later that there were no others prepared to lend.

Our investigator said he would ask Fluent for more information, and he then did so. In reply, Fluent made the following points.

On the delay in acknowledging documents, Fluent said although Mr S claimed to have sent documents on the same day they were requested, they weren't received. On 26 April he re-sent them, suggesting that the original file size might have prevented them being received.

Fluent said it did have restrictions on the size of files it could receive, which was part of ensuring its IT security.

Fluent strongly refuted the suggestion that its brokers were somehow incentivised not to tell applicants that they didn't have a realistic chance of success.

Fluent said its staff would only recommend products where lender criteria were met. But that was always only assessed at a high level when the recommendation was made. Fluent still didn't think it had made a mistake in recommending this lender.

Fluent said it couldn't locate any email which said Mr S's application was "*in the bag*" but it said it would avoid future use of such phraseology. (Mr S has since sent this email to us.).

Fluent said it had identified a number of lenders that Mr S could be eligible for, but the one it had recommended was the only one which was suitable for Mr S.

Fluent said it also wanted us to consider that Mr S had only given Fluent about five weeks to source and complete his mortgage. And this was during a period when all mortgage brokers, and lenders, were exceptionally busy, due to continual base rate increases by the Bank of England. Fluent said it would be unfair for brokers like it to bear the brunt of customer anger which was really a product of the turbulent market Fluent was operating in.

Our investigator then wrote to Mr S again, and said he hadn't changed his mind.

Mr S said if the files he sent on 20 April were too large, he would have expected Fluent to send an automated response to let him know. And Mr S said that only covered the delay from 20 April to 26 April. It didn't explain why Fluent waited until 20 April to forward a request from the lender that it had received on 31 March, some 3 weeks earlier.

Mr S also said these delays did affect the outcome, because they meant he didn't know he'd been turned down until after he'd started paying the SVR on his old mortgage. He could have avoided paying that if he'd simply been refused lending by this lender sooner. Mr S also said if Fluent couldn't process this application in time, it should have told him that.

Mr S also argued that the criteria he failed on, should have been known to Fluent when the recommendation was first made. And it was at this point that Mr S sent us the disputed email, saying his application was "*in the bag*". Mr S said this looked like a standard email to him, although Fluent now said such phraseology should not be used.

Mr S wanted his complaint to be considered by an ombudsman.

Before our investigator passed this case to me, he sought some further information from Fluent. Fluent said it had re-checked its server, and was confident it didn't get the email with attachments until 26 April 2022. It suggested Mr S's own email server may have blocked the email from that end. And on the delay between 31 March, when Mr S said the lender asked for further information, and the request being passed on to Mr S, which he'd said happened on 20 April, Fluent again blamed this on the market turmoil at the time.

This case then came to me and I reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

A number of issues have been explored in this complaint. But I think that the key issues are the two Mr S first identified – whether the recommendation Fluent made was suitable for him, and whether Fluent caused delays in his application.

On the first point, I've seen nothing to suggest to me that Fluent should always have known Mr S wouldn't finally be approved for lending by its proposed lender. I don't think Fluent can be expected to have such detailed knowledge of exactly how every lender will approach its affordability assessments.

Mr S says that if his case was somehow borderline, then he should have been told this. But I note that Mr S was warned that there was a concern over affordability. In the Advice and Suitability document that Mr S was sent on 30 March 2022, Mr S's position was assessed under a number of heads. The document included this assessment of affordability.

Affordability

When considering affordability, we must ensure the loan is manageable for you, whilst we also consider the potential lender's affordability calculations.

Your affordability is assessed as: Limited

After carefully assessing your affordability we recognised you had limited disposable income remaining after your general cost of living and mortgage payments. With this in mind, this only enables us to work with a very limited number of the lenders from our panel.

So I don't think Fluent had to tell Mr S that he wouldn't be able to get lending, because I don't think it knew that, or that it ought to have known. And I don't think it failed to alert him to concerns over the affordability of the lending he wanted.

On the second point, I think it's clear there were delays in this case. Although Fluent doesn't accept that it caused any delay between 20 April and 26 April, because it says it didn't get the documents Mr S sent, it does appear to accept that it caused the following delays -

- from 31 March to 20 April (when requests for information weren't passed on)
- from 20 April to 6 May (again, when requests for information weren't passed on)
- from 24 to 25 May (when it didn't notice Mr S's application had been refused – this was resolved by Mr S contacting the lender).

Fluent blames these delays on the market turmoil at the time. Mr S, not unreasonably, has said if this was an issue, then he should have been told about it at the start.

I think Fluent was likely to have been aware of the greatly increasing demands on its time by late March 2022, when Mr S started this application. There had by then been successive rate increases by the Bank of England. But Fluent didn't tell Mr S that his application might take rather longer than usual. And I think that wasn't just an omission on Fluent's part. When it issued its Advice and Suitability document to Mr S on 30 March 2022, Fluent does seem to me to have given reassurances about how quickly it could process this application. I note the following extracts, which I consider are relevant.

The document noted Mr S's priorities as follows –

Your main motivation for this mortgage was to secure the lowest interest rate available to you, as your current deal is coming to the end of the fixed period on the

30/04/2022 and you would like to avoid reverting onto the lenders standard variable interest rate.

And Fluent offered the following comments and reassurance in its recommendation –

This mortgage will meet your main motivation of securing the lowest interest rate available to you, which ensures that you will not revert onto the lenders standard variable interest rate once the fixed period on your existing deal comes to an end. ... As speed and ease of completion is important to you, [this lender] has a great track record of completing mortgages swiftly.

Whilst it may not have been Fluent's intention to commit to completing this mortgage before Mr S's existing fixed rate period ended, I think it would be reasonable for Mr S to have taken this as a reassurance that his application would complete in this time.

It seems likely that Mr S went onto his old lender's SVR on 1 May. He found out he'd been refused the new lending he applied for on 25 May, and applied promptly for a new fixed rate with that lender. This rate was (after some difficulties were ironed out) applied from 26 May.

That means there are twenty-five days when Mr S paid the SVR. If Fluent had passed on each of the two delayed requests for information it received from Mr S's prospective lender within a few days of receiving them, then it seems most likely that this would have been avoided, and Mr S could instead have arranged a new fixed interest rate mortgage with his existing provider that would have started as his old product ended.

Because of that, and in the particular circumstances of this case, I think it is reasonable to ask Fluent to cover those additional costs for Mr S.

Mr S sent us information from his pre-existing lender, who he eventually renewed with. That indicates his previous product ended at the end of April, and Mr S paid the SVR for May and June. His new fixed rate product was applied on 14 June, but (helpfully for present purposes) the lender said the product could have been applied on 26 May, and provided an amount for the overpaid interest of £553.79 for 26 May to 13 June, inclusive. If we divide £553.79 by 19 days, that gives a daily charge of £29.15. Multiplied by 25 days, that gives £728.75.

On the evidence I've seen so far, I think Fluent should pay £728.75 to Mr S. Fluent can count towards that amount, any payment it has already made to Mr S for this complaint. And I think that would provide a fair and reasonable outcome to this complaint. I don't think that Fluent has to pay further compensation, in addition to this.

I should note for completeness that Mr S referred to a misleading email sent by Fluent, which referred to his application as being "*in the bag*". I think it's unfortunate that Fluent didn't recognise what does appear to be standard wording from one of its marketing emails. However, I don't think that Mr S was actually misled by this email. And our service looks only at the particular circumstances of this complaint. So any wider implications of this, or possible impact in other circumstances, wouldn't be for me to comment on here.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Only Fluent replied.

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.

Fluent replied to object to my provisional decision. It began by noting that Mr S had owned a BTL property for at least 5 years and would have completed mortgage applications for this property in the past. So Fluent felt it would be reasonable to assume that Mr S would have known when he contacted Fluent on the 23 March 2022 that the timescale he wanted Fluent to work towards was not sufficient. But Fluent said that my view departed from the previous adjudication (which Fluent agreed with) because I had said Fluent was somehow at fault for this, due to informal prose within an email.

I don't think it's reasonable to assume that any prior mortgage applications by Mr S would mean he would automatically have been aware that, in the current market, a remortgage application made on 25 March might not complete by the end of April. But even if he had concerns about this, the wording Fluent refers to takes the form of reassurances given to Mr S, that Fluent had chosen a mortgage lender with a track record of completing mortgages quickly, and the mortgage it recommended "*ensures that you will not revert onto the lenders standard variable interest rate once the fixed period on your existing deal comes to an end*". I don't accept that this was simply informal prose in an email.

Fluent said Mr S had caused delays to the processing of his own application, when he was on holiday between the 6th and 13th of May 2022. Fluent said that also contributed to the mortgage not being completed within the customers ideal timeframe, but didn't appear to have been factored into my consideration of redress.

When I consider a complaint, I look at what went wrong. And where I can see mistakes have been made, I have to think about what would have happened if those mistakes weren't made. Here, Fluent received a request for further information from the lender on 20 April. Mr S's complaint to Fluent said that he'd been told by the lender that it then chased this with Fluent on 26 April and 6 May, and Fluent doesn't seem to me to have contested this. But it was only around the time of the third request that Fluent asked Mr S for the information the lender wanted. If Fluent had responded to the lender's first or second request, this additional delay due to Mr S's short holiday would not have occurred.

Fluent said I'd also stated that Fluent didn't notice the product had been declined, causing a delay between 24 and 25 May. Fluent said it thought 24 hours administrative time was not unreasonable, and its team would have relayed this information to the customer, if given time to do so. So it said this day should not be factored into my redress.

Fluent didn't tell Mr S his mortgage had been declined. Mr S contacted the lender, and then apparently told Fluent this. At this point, Fluent realised it had already received notification of this, which it had not yet shared with Mr S. I made no finding on how long this delay may have continued for, if Mr S hadn't obtained the information he received elsewhere.

I should note here that, if we do include this one day, then Fluent caused delays of 39 days in total. However, Mr S only paid additional interest for 25 days, and the interest I've asked Fluent to pay is based on this, not on the length of the delay it caused. So even if I were to agree entirely with Fluent's argument about this one additional day, my award in this case would not change.

Fluent also said that its recommendation is always made on an "*in principle*" basis so it didn't feel it was fair to assume it had provided Mr S with any guarantees of completion prior to his fixed rate deal coming to an end. Fluent said that the industry was in turmoil during this time,

with little or no notice given by lenders when products were withdrawn from the market. And it said that each time this occurred, it was left with literally hundreds of customers suddenly without products, which it needed to address in order to prevent mass foreseeable harm.

Fluent said this additional strain naturally caused unavoidable backlogs, which although it had endeavoured to resolve as expediently as possible, regretfully led to the issues seen with Mr S's case. So Fluent said its view was that the delays within Fluent were not the cause of Mr S's complaints, but symptoms of errors of governmental policy and their impact on the credit risk policies of the lender industry. It wanted to know why the upstream causes of the problem weren't being held accountable. Fluent said that my adjudication was setting a damaging precedent for the market, and it wanted me to reconsider.

Decisions of our service are specific to the case, and don't provide a binding precedent. And here, this decision is, in my view, quite clearly a result of the individual facts of this case.

I have not, as Fluent suggested, assumed that Fluent provided guarantees that it would be able to arrange Mr S's mortgage in time. Rather, I've looked at the actual wording of its communications with Mr S, and noted that far from warning him of the possible effect of the market turmoil and delays which it now describes (which I said Fluent must have been aware of from the outset) it instead gave Mr S reassurances that this work could be completed within his deadlines. And I also found that if requests for information from the lender had been passed to Mr S reasonably promptly, within a few days of receipt, instead of overlooked, then it was likely the lender's decision in this case could have been provided to Mr S within these deadlines.

For the above reasons, I haven't changed my mind in this case. I'll now make the decision I originally proposed.

My final decision

My final decision is that Fluent Money Limited must pay Mr S £728.75.

Fluent Money Limited can count towards that amount, any payment it has already made to Mr S for this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 August 2023.

Esther Absalom-Gough

Ombudsman