

The complaint

Miss M's complaint is about a second charge mortgage she took out on the recommendation of Fluent Money Limited. Her complaint points are:

- The mortgage was mis-sold and should never have been approved as she was unemployed at the time with a poor credit rating. As such, she wants evidence of the checks Fluent completed to verify her being '*worthy of such a loan.*'
- She was told there would be no early repayment charge (ERC) if she paid off the mortgage early, but that is not the case.

What happened

Miss M had an existing mortgage on her home in 2019 and sought assistance from Fluent in March of that year to arrange further borrowing secured against her home. She took out a second charge mortgage through Fluent with a lender I will call C. The mortgage was for £15,000 plus fees, and due to be repaid over a term of five years. The funds were to be used to clear an existing credit commitment, pay for a bathroom refit and repairs to the roof of the mortgaged property.

When Miss M initially spoke to Fluent it asked her what her needs and requirements were, and it established what her circumstances were at the time. She told it she was employed and Fluent asked her to provide proof of her income, bank statements and it completed a credit search. Fluent explained to Miss M that her credit score was quite low and this meant that a number of the lenders it dealt with wouldn't consider an application from her. However, it had identified a lender – C - that would accept the application. It also confirmed it had done an affordability check, which showed that when the general cost of living plus Miss M's existing financial commitments were deducted from her net income, the new mortgage was affordable and left her with a disposable income.

Fluent explained to Miss M why it was recommending the mortgage with C. It confirmed the loan had a fixed interest rate throughout its term and the mortgage was very flexible. This was because she could make unlimited overpayments of a minimum of £100, and there were no ERCs involved in her doing so.

Miss M accepted the recommendation for a mortgage with C and an application was made at the end of March 2019. The payslips, bank statements and credit search information Fluent had obtained was submitted to the lender along with the application. The application was accepted and a mortgage offer issued at the end of April 2019. Before this happened, Fluent contacted Miss M and asked whether there had been any changes to her needs or circumstances. She confirmed that there had not been any changes. She was told that if there were any changes, she should let Fluent know.

Miss M has said she became unemployed in April 2019, after the application was made, but before the mortgage was advanced. There is no evidence on Fluent's records that Miss M made it aware of this fact.

Although there were a few occasions in 2020 where the monthly payment was made late, Miss M maintained the payments to the mortgage throughout.

In 2020 and 2022 Miss M complained about the advice she had received from Fluent. Both complaints included the complaint point about the ERC.

In 2022 Miss M complained to Fluent that:

- She was unhappy her application was accepted as she didn't think it should have been because she was unemployed and had bad credit.
- She was unhappy there was an ERC if she paid the mortgage off early, as she had been told there would not be any charge.
- She wanted copies of call recordings from the time of the sale as she didn't believe all the appropriate checks were completed prior to the application completing.

Fluent responded in a letter of 6 January 2023. It responded to the first complaint point and highlighted that it was the lender that was responsible for the decision to assess her circumstances. In relation to the early repayment charge issue, it referred Miss M back to its final response of December 2020. In addition, it told Miss M what she needed to do to obtain copies of the call recordings.

Shortly thereafter, Miss M asked us to consider her complaint. When Fluent was informed, it highlighted that the ERC issue had been referred to us too late and so it didn't fall within our jurisdiction. As for the matter of the affordability checks completed when the loan was granted, it pointed out that it was a broker, and it was C that approved the application.

One of our Investigators looked into our jurisdiction to consider the complaint points and concluded we could not look at the ERC issue. The Investigator then went on to consider the merits of the complaint about the checks conducted and suitability of the mortgage for Miss M. He didn't recommend that part of the complaint be upheld.

Miss M didn't accept the Investigator's conclusions and asked that the complaint be looked at again. She said that she questioned the employment that was recorded on Fluent's documentation from the time of the sale and asked what steps were in place to verify the legitimacy of employment documents. She suggested that Fluent should have contacted the employer contained in its records to ensure that she was employed by it. She reiterated her comments about what she had been told about the ERC. Miss M also said that she considered the payslip provided to Fluent containing reference to holiday pay would have alerted it to the fact she was no longer employed.

The Investigator responded further to Miss M's concerns about the checks completed at the time of the sale, but her comments didn't change his conclusions. Miss M asked for a second opinion and so it was decided that the complaint should be referred to an Ombudsman for review.

I issued a decision setting out our jurisdiction to consider the two aspects of the complaint on 6 November 2023. I concluded that the complaint about what Miss M was told about the ERC wasn't one we could consider because of the delay in referring it to us. However, we could consider the remainder of the 2022 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.

Miss M has told us she was unemployed at the time the mortgage was advanced. That may be the case, but I am satisfied that she didn't make Fluent aware of that fact. I note that Miss M believes that Fluent should have made checks with her employer to ensure that she had told it the truth about her employment. However, I don't consider that was necessary. A broker or lender is entitled to rely on the information a potential borrower gives it. Indeed, it would be inappropriate for a broker to assume its customer was lying without good cause.

In addition, Fluent checked with Miss M in the middle of April 2019 if there had been any changes in her circumstances since it had asked its questions and made its recommendation. She responded that there had been no changes and didn't contact it to tell it she had been made unemployed, if that happened subsequently, as she was asked to do. I can't find Fluent was at fault for not being aware that Miss M's circumstances had changed by the time she accepted the mortgage offer and the advance was paid in May 2019.

As our investigator highlighted to Miss M, while a broker will complete some affordability checks to increase the likelihood of an application being accepted by a particular lender, the final decision about whether to accept the application is made by the lender. That said, Fluent has provided us with details of the affordability check it did before making its recommendation to Miss M. Having seen those checks, I don't think it was unreasonable for Fluent to believe the mortgage it was recommending was affordable, based on what it knew about her circumstances at the time.

Miss M told Fluent that she wanted to obtain further funds to repay a debt, complete essential repairs on her home and renovate her bathroom. There is nothing about these needs that would have concerned Fluent. It then assessed her ability to pay for the loan she wanted, and it established from the information she had given, it was affordable. Miss M's credit rating was also taken into account when sourcing a lender. Overall, I can't find the mortgage was mis-sold or that appropriate checks were not completed.

My final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Miss M to accept or reject my decision before 7 December 2023.

Derry Baxter
Ombudsman