DRN-5386321

The complaint

Miss C says that a secured (second charge) loan she took out in 2017 with Equifinance Limited was unaffordable and irresponsibly lent.

What happened

Miss C applied for this loan in October 2019 through an independent mortgage broker. The offer issued on 19 November 2019 shows Miss C was borrowing £15,500 (plus £2,080 fees) over a 20-year term on a repayment basis. The interest rate was fixed at 12.50% for five years, after which it would move to Equifinance's standard variable rate (which was 12% at the time of the offer). That gave an initial monthly payment of £199.73.

The loan completed on 21 November 2019, and Miss C repaid the loan in July 2023 when she sold the property.

Miss C complained to Equifinance about the loan in January 2024. Equifinance issued a complaint response letter to Miss C on 12 February 2024. It said responsibility for the suitability of the advice and ensuring Miss C understood the product sat with the broker. It said it had evidenced Miss C's income by way of payslips, and her expenditure was assessed in comparison to national average, and when found to be low the discrepancy was questioned. It said that most of Miss C's debts were being consolidated, leaving her in a better financial position. It said Miss C's credit report showed no evidence of financial stress, and once everything was considered there was a monthly surplus, so it said the loan was affordable.

Miss C referred the complaint to the Financial Ombudsman Service where it was looked at by one of our Investigators. She said Equifinance had carried out adequate affordability and creditworthiness checks and hadn't lent irresponsibly. She didn't uphold the complaint.

Miss C didn't agree and so it was passed to me to decide.

What I've decided – and why

I issued a provisional decision in February 2025, the findings of which said:

> 'Equifinance didn't give Miss C advice or assess whether the loan was suitable for her – another firm did that. So, Equifinance wasn't responsible for that advice and wasn't required to assess itself whether the loan was suitable. But it was required to lend responsibly.
>
> At the time of the lending decision, secured loan applications like this one were (and still are) covered by the rules of mortgage regulation, found in the MCOB section of the Financial Conduct Authority's Handbook.
>
> The rules require a lender to assess affordability, and not lend unless a loan is affordable. In making the assessment, a lender must obtain evidence of income, and information about expenditure. It can assess expenditure based either on a borrower's actual declared

expenses, or it can use modelled expenditure information for living expenses – such as typical expenditure figures for a household of this type –but must always use actual figures for committed expenditure such as other credit agreements.

The rules also say that a lender is entitled to rely on what it's told about expenditure – unless, taking a common-sense view, it has reason to doubt it.

Equifinance carried out an assessment of Miss C's income and expenditure. I've reviewed the information it considered, and I have some concerns about whether the loan really was affordable for Miss C.

Equifinance recorded her income as being £1,986.53 per month, and her expenditure – excluding the debts to be consolidated into this loan and including a stress test on her first charge mortgage – as being around £1,950 per month. This left around £92 per month surplus, which led Equifinance to conclude the loan was affordable.

But something that was apparent to me when I reviewed the information that Equifinance was given when it was deciding whether to lend was that the details on Miss C's first charge mortgage couldn't be correct.

Equifinance said it had no cause to doubt the accuracy of the information it had been provided about Miss C's first charge mortgage, but I don't agree. An additional £18 a month when increasing the interest rate by 3% on a mortgage of £104,900 clearly isn't right.

The broker declared that Miss C held a mortgage of £105,000 with a term of 22 years, on an interest rate of 3% and a monthly payment of £698. A letter from her first charge lender to the broker confirmed the balance was £104,900 and the monthly payment was £698.

A mortgage of £104,900 on an interest rate of 3% with a remaining term of 22 years gives a mortgage payment of just £543. To get a payment of £698 on a mortgage of £104,900 either the term needed to be just under 16 years, or the interest rate needed to be around 5.7%. It was readily apparent to me that something was incorrect, and that means it should have been readily apparent to Equifinance too as I was looking at the same information that it held when deciding whether to lend.

I think Equifinance should have asked for further verification on Miss C's first charge mortgage, and had it done so it would have discovered the mortgage balance was around £104,900, the remaining term was around 20 years, and the monthly payment was £698, with the mortgage held on a variable rate of 5.23%.

Equifinance's calculation for the stress test was based on incorrect information and due to that it only included an extra £18 a month, whereas the true figure should have been around £187 a month extra. That £169 a month difference wipes out the surplus Equifinance had calculated Miss C would have and makes this application fail the affordability check by about £67 a month.

I also think Equifinance should have done more to verify Miss C's outgoings as she'd declared spending much below the expected amounts, and her credit file showed she had taken out two relatively large debts earlier in the year; in March 2019 she'd taken out a £13,500 hire purchase agreement and in April 2019 she'd taken out a £15,000 personal loan. She'd also built-up sums on credit cards, her overdraft and held other finance such as a communications loan (I assume to purchase a new mobile phone). All of which, put together, indicate that Miss C was possibly spending more than she declared.

Miss C said she only drove to and from work, a journey of about 20 minutes – so that is 40 minutes a day. Bearing in mind Miss C worked full time that would be around 20 days a month, and on top of fuel there would be MOT, servicing and other maintenance costs, meaning a declared monthly cost of £30 (excluding insurance) seemed too low even just for that use.

I've considered what Equifinance has said, and the information it received at the time, as well as what the rules of mortgage regulation say.

I do think that Equifinance ought to have made further enquiries into Miss C's expenditure at the time. Although the minimum standard required by the rules is only to obtain information about expenditure, there is an overarching obligation to act fairly and as a responsible lender.

I think there were grounds for doubting some of the individual expenditure Miss C declared. And, more broadly, there were grounds for doubting whether Miss C was really living within her means – or whether, as her credit history suggested – living beyond it.

I'm therefore satisfied that, acting responsibly, Equifinance ought to have made further enquiries as it had reason to doubt what it had been told, and that should have included requesting copies of her bank statements.

I've reviewed the bank statements and I'm satisfied that, had Equifinance viewed these at the time, then it shouldn't have lent because the loan would have been shown to have been unaffordable.

The bank statements show spending way more than that which was declared. I don't intend to list all the expenditure on here, but some key highlights Equifinance would have seen had it reviewed Miss C's bank statements is that Miss C was spending a large sum on lotteries each month (around £250 between 14 September and 14 October 2019), she had some health costs (£13 to an opticians each month), a payment to a regulatory body for her profession (£16 a month) and buildings and contents insurance at £33 a month (rather than the £18 that had been declared). The months I have seen show, in total:

- 15 June to 15 July 2019 £1,997 in £3,368 out
- 16 July to 15 August 2019 £2,295 in £2,853 out
- 14 September to 15 October 2019 £3,423 in £3,913 out
- 16 October to 15 November 2019 £2,014 in £2,438 out

Whilst some of this could be discretionary expenditure, it still needs to be considered and a discussion held about which payments could possibly be reduced and to what level. But bearing in mind what Equifinance knew, or ought to have known, about Miss C's history of debt and the type of spending it seems unlikely she would have reduced her spending to the level required even if advised to do so to get this loan.

For all those reasons, I think the information Equifinance used to assess Miss C's affordability significantly underestimated her expenditure, and based on the information that would have been available at the time (had it been asked for), it's more likely than not that the loan wasn't affordable for Miss C and that Equifinance didn't take reasonable steps to ascertain whether it was or carry out a sufficiently robust affordability assessment.

Having considered everything very carefully I'm not persuaded Equifinance acted responsibly when it agreed to lend to Miss C, and so I'm minded to uphold this complaint.'

I set out how I thought things should be put right and asked both sides for any final points they wanted to make.

Miss C accepted my provisional decision and Equifinance didn't respond, despite a reminder of the deadline.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, and having considered the full file afresh, I see no reason to depart from the findings I reached in my provisional decision.

Putting things right

I don't think it is fair and reasonable for Equifinance to have charged Miss C interest or fees for lending she should never have been given. It is fair that she repaid the capital, since she had the benefit of that and if I were to ask Equifinance to refund the capital too that would mean Miss C would effectively have the consolidated debts written off – which would leave her in a better position than she would have been in had this lending not happened. I am aware Miss C later entered into an individual voluntary agreement and I've taken that into account in my considerations of what is fair to put things right.

I direct Equifinance to:

- Calculate the total amount Miss C has paid in respect of this loan, including all fees, monthly payments and the redemption figure;
- Calculate the total amount Miss C borrowed, disregarding interest and all fees whether charged by the lender or the seller,
- Pay Miss C the difference between those two figures, adding simple annual interest of 8%* running from the date the loan was redeemed, to the date of payment; and
- Amend Miss C's credit file so that the record of this loan is removed.

* Equifinance may deduct income tax from the 8% interest element of my award as required by HMRC. But it should tell Miss C what it has deducted so that she can reclaim the tax if she's entitled to do so.

My final decision

I uphold this complaint and direct Equifinance Limited to compensate Miss C as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 8 April 2025.

Julia Meadows
Ombudsman