

The complaint

Mr B and Miss O complain that Equifinance Limited lent to them irresponsibly.

What happened

In January 2023, following advice from a third party broker, Mr B and his daughter Miss O took out a secured loan with Equifinance. The loan was for £66,490 repayable over 16 years. It included a broker fee of £4,995 and a lender fee of £1,495. The purpose of the loan was to repay unsecured debt totalling £47,992.35 and £12,007.65 for personal use.

Mr B and Miss O complain that Equifinance should not have given them the loan because Mr B had no way of paying it back and his credit score was “terrible”.

I issued a provisional decision proposing to uphold the complaint. My provisional findings, which form part of this decision, were:

Mr B and Miss O referred this complaint more than six months after the date Equifinance sent its final response. But Equifinance has consented to considering the complaint so I have the power to deal with it.

Rules

The relevant rules in this case are the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB). I must take those rules, amongst other things, into account in deciding what I consider to be fair and reasonable in the individual circumstances of this complaint. MCOB 11.6 covers responsible lending. Its requirements for lenders include:

- Before agreeing a mortgage, a lender must assess whether a customer will be able to pay the sums due under the mortgage and be able to demonstrate the mortgage is affordable.*
- A lender must take full account of the net income of a customer, their committed expenditure, and the basic essential expenditure and basic quality-of-living costs of the customer's household.*
- A lender may generally rely on any evidence of income or information on expenditure provided by a customer unless, taking a common-sense view, it has reason to doubt the evidence or information. A lender must have evidence of income and take reasonable steps to obtain details of a customer's committed expenditure. A lender can either obtain details of a customer's expenditure or use statistical data.*
- If a lender is or should reasonably be aware from information obtained during the application process that there will, or are likely to, be future changes to the income and expenditure of the customer during the term of the mortgage, the lender must take them into account when assessing affordability.*
- A lender must take account of the impact of likely future interest rate increases on affordability by applying a stress test. This applies to all regulated mortgage contracts, not just first charge mortgages. A second or subsequent charge lender must also apply any stress test to the first and any subsequent charge loans as well as its own lending.*

Did Equifinance lend responsibly?

Equifinance recorded that Mr B had a net monthly income as £2,461.67 and Miss O had a net monthly income of £1,182 – so a total of £3,643.67 a month.

Equifinance recorded Mr B and Miss O's monthly expenditure as £1,282.12 with a first charge mortgage payment of £827 a month. It said they had existing credit commitments of £1,378.30 for Mr B and £399.65 for Miss O. Total outgoings of £3,887.07.

The information Equifinance had showed that there was a shortfall of around £243 a month. But it also knew that Mr B had missed six payments due to two loans, with payments of £419 and £474. Despite the shortfall only being around £240 a month, Mr B was clearly struggling to pay a greater amount than that. In saying that it is difficult to determine exactly how much Mr B's shortfall was. Most of the debts were his and the mortgage was in his sole name. And it's not clear how much of a contribution Miss O made to declared expenditure. In reality Mr B's shortfall could have been higher.

Nevertheless, I consider that a responsible lender acting reasonably would have had reason to doubt that it had accurate information about Mr B's income and expenditure. If the information was correct, then he should have been able to manage to repay at least one of the loans in full, not fall into arrears of at least six months on both.

I also note that Equifinance recorded that Mr B would save £582 a month by consolidating his debts. But that was based on his expenditure including the two loans that were six months in arrears. Those loans did not form part of Mr B's expenditure for the six months preceding the loan and at the time of application – he had not been paying them. So his actual expenditure was around £900 less than stated. That meant Mr B would not actually save money – his expenditure would increase. Of course, I can see that the consideration was based on Mr B and Miss O's commitments. But I do not see that framing the consolidation exercise as a "saving" is entirely accurate in the circumstances here.

Equifinance asked Mr B for an explanation why he'd missed those payments. Its records say that Mr B had to take time off work to look after a relative who was unwell. It looked at the bank statements for Mr B's business from April to November 2022 (although I only have the statements from September to November 2022). Equifinance said, "have checked bank statements, the drop in income is June as below - income has returned to higher levels so we are happy to use the income as above - this ties in with the adverse explanation ."

If the information Equifinance recorded regarding the business bank statements is correct, then I am not sure it supports that the reason for the loan arrears was that Mr B had time off work. The business's income does reduce in June in comparison to other months. But the rest of the information recorded by Equifinance does not appear to show any real reduction in income in the other months. And the income from September to October 2022 showed a significant increase. Ultimately I do not consider the information that Equifinance had supported the reason given by Mr B for not paying the loans. It only shows a reduction in income for one month – but it does not explain why Mr B missed a further five loan payments after that.

Equifinance had Mr B's tax return for the year ending 2021, which showed gross total income of £29,684 with tax due of £5,123.96, taking into account the amount Mr B had overpaid and the refund he received. That is net annual income of £24,500, equivalent to £2,041 net per month.

The tax return for the year ended 2022 showed a gross total income of £38,122 with tax due of £6,581.86 taking into account the amount Mr B had overpaid and the refund he received.

That is net annual income of £31,540.14, equivalent to £2,628.35 net per month.

It's not clear that Equifinance did enough to check what Mr B's income was. While the tax returns were relevant, they only showed the position up to April 2022, at least eight months before the application. And they showed that Mr B's income fluctuated significantly year to year.

And it ought to have been clear to a responsible lender that a borrower who fell significantly into arrears on two loans who was self-employed and did not have a consistent income lacked resilience and/or their expenditure was higher than they'd declared.

Overall, in view of all the information available to Equifinance I consider it ought to have done more to verify Mr B's income and expenditure. There was a significant risk of harm to Mr B and Miss O if they secured previously unsecured debts and that was not sustainable. For example, Equifinance could have asked for bank statements for three months leading up to the application to verify their income and expenditure.

Looking at Mr B's bank statements for the month to 9 September 2022 showed a surplus of £1905.46, for the month to 10 October 2022, it showed a deficit of £3,148.37 and for the month to 9 November 2022 it showed a deficit of £698.13. There are a significant number of gambling transactions on all of the statements. For example, in the November statement, there are 29 gambling transactions totalling over £500. Further Mr B is regularly transferring at least £200 a month via money transfer service.

I consider a responsible lender who had seen those bank statements acting reasonably would have declined the application. It would have seen that Mr B's expenditure was higher than declared and that he made a significant number of gambling transactions. He had a worsening credit history that was not fully explained by Mr B having to care for a relative – and I'd note that it was possible that the same situation might arise again at some point. The evidence showed that Mr B's financial situation lacked resilience and there was a clear potential for harm if the loan was approved.

I'd also note that it is not clear why Mr B's daughter was added to the loan. There appears to be no real benefit for her from the loan – all the debts that were repaid were Mr B's. The only reason I can see for her joining the loan is to assist with affordability. I have not considered that here – or whether Equifinance did enough to make sure Miss O received independent legal advice before taking the loan out. It is open for her to raise that complaint now if she wishes – and it is up to Equifinance if it wishes to show that it took appropriate steps to protect Miss O's position bearing in mind what it knew about the nature of the transaction.

I said that Mr B and Miss O had the benefit of the funds lent, so the amount borrowed should not be written off. But it would not be fair for Equifinance to benefit from any interest or fees it has applied. So it should refund any interest and not charge any in the future.

Mr B and Miss O accepted my provisional decision. So did Equifinance. But it added that it would have expected Mr B to be more "forthcoming" about his gambling expenditure during the application process. It said gambling was a form of addiction and both Mr B and Miss O declared they did not have any addictions when they completed and signed a vulnerable customer questionnaire on 12 January 2023. Equifinance said it would have expected the customers to answer the questions honestly and in good faith – and it was reasonable for it to rely on the information as being correct when it considered whether to lend or not.

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.

Both sides have accepted my provisional decision – and I see no reason to change the outcome I proposed in my provisional decision.

Miss O has not made any complaint about being added to the loan, so I have not considered that complaint.

We do not appear to have a copy of the vulnerable customer questionnaire Equifinance has referred to. So I do not know what questions it asked. I don't know whether Mr B has a problem with gambling or not. And even if Equifinance did ask whether he had any addictions, he might not have thought that he was addicted. I don't consider the questionnaire is of any real relevance.

I agree that Mr B did have the opportunity to disclose his gambling and other expenditure that he did not fully declare. But I don't consider that makes any difference to my decision. That is because looking at all of the information that Equifinance had from Mr B and Miss O and the potential risk to harm to them of securing previously unsecured debts, then it ought to have done more to verify their income and expenditure, for example by looking at three months of bank statements.

If Equifinance had done so, it would have seen that Mr B's expenditure was higher than declared – and that was because of gambling and other transactions. In view of that, and the other information it had, including a significantly worsening payment history and a demonstrated lack of financial resilience, I do not consider a responsible lender acting reasonably would have approved the application.

Putting things right

I've found that Equifinance did not treat Mr B and Miss O fairly when it gave them this secured loan. If it had fairly assessed their application it would have declined it for the reasons set out above. But Mr B and Miss O had the benefit of the funds they raised whether it was to repay existing debts or for home improvements or a holiday. So I don't have any reason to write off those amounts.

To put matters right Equifinance should remove all interest and fees (apart from the broker fee) to the loan leaving only the capital that Mr B and Miss O borrowed and the broker fee - and it should not charge any further interest or fees.

Equifinance should treat all payments that Mr B and Miss O have made as payments to reduce the capital. If having done so they would have cleared the capital balance by now then Equifinance should refund the excess to them, adding simple interest of 8% from the date the payment was made until date of settlement.

If a balance remains outstanding then Equifinance should come to an affordable arrangement with Mr B and Miss O to repay the balance. It can retain the standard security over the property until the capital balance is repaid.

Equifinance should amend Mr B and Miss O's credit files to reflect the revised position.

My final decision

My final decision is that I uphold this complaint. Equifinance Limited should carry out the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss O to accept or reject my decision before 19 September 2025.

Ken Rose
Ombudsman