

The complaint

Mr S complains that Equifinance Limited (Equifinance) should not have issued him a mortgage offer as it was aware of the position in relation to the ownership of the property from the outset. He says that fact that the application subsequently did not proceed for this reason has cost him time and money.

What happened

Mr S and his two siblings inherited a property from their parents. The property title on the Land Registry is in only Mr S's name. There is a declaration of trust for his two siblings, who each own a 25% share of the property. A restriction is also in place on the property title to protect their interests. The title shows that Mr S is the registered owner and there is a restriction on the title which states "*No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court*".

Mr S's existing mortgage deal was coming to an end in around June 2024 and he wanted to secure a new mortgage deal along with taking more equity from the property. His existing lender would not offer further borrowing so Mr S decided to take out a second charge loan on the property. A broker assisted Mr S with his application. A loan with another second charge lender was initially recommended but fell through due to the nature of the ownership of the property.

On 22 March 2024, the broker submitted an application for a mortgage with Equifinance. Mr S says that he was assured by the broker that Equifinance was aware of the situation regarding the restriction and shared ownership. Mr S says that he received a call from Equifinance confirming that it was happy to proceed to offer and on this basis he instructed a solicitor to commence the legal side of the application.

Mr S instructed a solicitor and she sent out documentation to his siblings. A mortgage offer was produced on 12 April 2024. When the paperwork from Equifinance was sent to him – including the legal charge document – Mr S asked the first solicitor to look at it. Due to potential conflict of interest issues (as she had previously contacted his siblings) the first solicitor suggested that Mr S contact a second solicitor.

Mr S therefore went to a second solicitor to look at the paperwork, including the legal charge, who indicated that this was acceptable save for one clause relating to a declaration as to the beneficial ownership of the property. The relevant clause stated "*By signing this Legal Charge, you hereby declare that you (or both/all of you where there is more than one of you) own all of the legal and beneficial title to the property to be charged to us as security for the loan and that you have not granted any other legal or equitable interest in your property to any other person or company, which will include any legal or equitable charge which has yet to be registered or noted in the title register, any declaration of trust over the property resulting from matrimonial proceedings, any gift of the property made by you, or otherwise*".

The second solicitor advised that Mr S was unable to sign this as it was not true and entered into correspondence with the broker. Mr S's second solicitor queried whether Equifinance would remove the clause and its solicitors said that that they would not agree to this. As a result of this, Mr S was advised that he should not sign the declaration and the application did not proceed.

Mr S says that Equifinance should never have offered him the mortgage as it was aware of the situation regarding the ownership of the property throughout (through the broker). Mr S says that he has paid £700.80 in legal expenses and has a second bill of approximately £500 to pay. He would like Equifinance to reimburse these expenses and to compensate him for the time wasted and the stress the matter has caused him.

Equifinance says that whilst the application was being reviewed by its underwriters, it received correspondence from Mr S's first solicitor on 11 April 2024 advising that she would be temporarily removing the restriction from the title to enable to registration of the further loan secured against the property and that once the loan with Equifinance had been added, they would apply to have the restriction reinstated. The solicitor asked for consent from Equifinance to re-register the restriction after completion and it confirmed on 22 April 2024 that it was happy for her to remove the restriction and reinstate it once the loan had been completed.

Equifinance says that Mr S becoming the sole legal owner would have made the loan acceptable and the proposal of removing the restriction was made by Mr S's first solicitor. It says that such a restriction could not be applied and removed at will whilst the protected trust remained unaltered and that in reality the removal of the restriction would have required evidence that it was no longer protecting a valid interest. Therefore, it questions how the restriction was ever to be removed without Mr S becoming the sole beneficial owner. Therefore, Equifinance says that if the title was presented absent of restriction then it could assume that the trust had ended and it could register its charge. It was assumed that the existing trust would come to an end and that a subsequent trust was to replace it, subject to an existing Equifinance loan.

Equifinance says that it proceeded with the mortgage offer on 12 April 2024 on this basis: that what was proposed by the first solicitor could be done and that there would be clear title. Although Equifinance says that its solicitor did not think that this was possible, it says that if Mr S's solicitor was able to achieve this then Equifinance was able to proceed. It says that it was reasonable to accept this as a viable course of action as it was supported by Mr S's first solicitor.

Equifinance says that it then received correspondence from Mr S's second solicitor on 3 May 2024 stating that the restriction would not be removed and requesting an amended legal charge document, and subsequently on 7 May 2024 sharing an amended legal charge and asking Equifinance to approve this. Equifinance says that it was unable to accommodate amending the legal charge and that the offer was provided on the basis that the restriction would be removed. It says that the indication from the second solicitor that the restriction would not be removed was contrary to what it had been advised by Mr S's first solicitor.

Equifinance's solicitor says that they spoke with both solicitors instructed by Mr S and that it became apparent that the trust was not coming to an end and that there was no basis to apply for the restriction to be removed. As the property was to remain in trust, the loan could not proceed.

Equifinance says that Mr S's decision to proceed was based on independent legal advice from his solicitors and it was not its solicitor's responsibility to challenge Mr S's decision as he was not their client. Equifinance had relied on the fact that Mr S had received the correct legal advice at the time and the second solicitor had provided Equifinance with a conflicting proposition, which it was not willing to accept.

Our Investigator looked into Mr S's complaint and did not think Equifinance needed to take any further action. He was satisfied that Equifinance was not responsible for recommending the loan, nor for any legal advice. It was aware of the situation with the restriction on the property and agreed to offer the loan on the basis of the legal advice given by Mr S's first solicitor. The Investigator thought it was reasonable for Equifinance to act on the information provided by the broker and Mr S's first solicitor. However, something changed and the

second solicitor advised that the restriction would not be removed and the legal charge would need to be amended. The Investigator did not think it was unreasonable or unfair that Equifinance refused to agree to the amendment of the legal charge as it needed this to ensure its security.

Mr S disagreed with this, so the case came to me to make a decision. I set out in my provisional decision dated 11 December 2025 why I was minded to find that Equifinance had not acted unfairly or unreasonably. I invited both parties to let me have any further comments and evidence by 8 January 2026.

Equifinance has not provided any further submissions. Mr S has made some further representations and I have set these out in more detail below.

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.

Having considered the responses to my provisional decision dated 11 December 2025, I remain of the view that Equifinance does not need to take any further action and that this complaint should not be upheld.

In my provisional decision I set out the following:

“Having carefully considered all the evidence and arguments, I agree with the Investigator's outcome but wish to clarify the reasons for this.

On the evidence I've seen so far, I'm not minded to find that Equifinance has acted unreasonably or unfairly in issuing the mortgage offer to Mr S.

I should start by saying that when taking out a mortgage, it is the borrower's responsibility to ensure that the title of the property is fit for the lender's security.

In Mr S's case, the title of the property was not fit for a standard security as his siblings had a beneficial interest in the property, with a restriction on the title to protect their interests.

I can see that Mr S sought legal advice and his first solicitor indicated that she could resolve the issue with the title. The first solicitor wrote to the broker on 11 April 2024 explaining how this would be achieved. The solicitor asked for Equifinance to provide consent for part of the process they were suggesting and Equifinance subsequently confirmed that consent would be granted if required once the loan had completed.

Equifinance's solicitors advised that it could proceed with the loan if there was clear title. I think it was reasonable for Equifinance to believe that if the restriction was removed in accordance with what it was told by Mr S's solicitor, then there would be clear title and that there would therefore be no barrier to it lending. It therefore issued its mortgage offer on this basis on 12 April 2024.

I am satisfied that it was not for Equifinance (or its solicitor) to advise Mr S, as it did not act for him, and he was legally represented. Likewise, it was not Equifinance's responsibility to assess or advise on the actions being taken by Mr S's first solicitor in respect of the trust.

Overall, I am satisfied that Equifinance acted fairly and reasonably in issuing the mortgage offer based on what it was told by Mr S's first solicitor.

On 3 May 2024, Mr S's second solicitor wrote to the broker setting out that he had reviewed the second charge paperwork and that the standard legal charge would not

work due to the nature of the ownership of the property. The solicitor confirmed that the legal charge had been signed with the relevant clause struck out and initialled.

On 7 May 2024, the second solicitor wrote to the broker enclosing an amended version of the legal charge, which was signed but with the relevant clause removed and explaining that Mr S was unable to confirm that the property was his alone. The email stated that Equifinance was aware of the issue and *“either they need to allow the deletion, provide a legal charge document with an amended clause or provide some form of side agreement, executed by them as a deed, which absolves [Mr S] of any liability under that clause”*.

Equifinance uses a standard legal charge and it was not prepared to make amendments on a case by case basis due to the cost and administration involved as this would have to be agreed and signed off by the Land Registry. I don't think that this is unreasonable in the circumstances and, in any event, Equifinance understood that there would be clear title at the time the loan completed.

Equifinance has maintained that it would still have offered the loan if the restriction was removed from the title as advised by Mr S's first solicitor. However, on the basis of the advice from Mr S's second solicitor, the title was no longer fit for Equifinance's security and the loan could not proceed.

As set out above, it was for Mr S to ensure that the title was fit for Equifinance's security. Whilst his first solicitor had advised that she could achieve this and ensure clear title, the correspondence from the second solicitor indicated that this was not the case and that the legal charge could not be signed in its current format as Mr S was not the sole legal owner.

As the position had changed from what had been agreed when the offer was made, I don't think that Equifinance has acted unfairly or unreasonably in not agreeing for the legal charge to be amended to allow the loan to proceed without clear title.”

As set out above, Equifinance has made no further representations in response to the provisional decision.

Mr S has responded to the provisional decision setting out why he disagrees.

I've given careful consideration to all that he has said, but I won't address each and every point that has been raised as I have already dealt with much of what has been said when coming to my provisional decision.

Mr S has suggested that I have not understood what has happened. He says that this Service is “bent and incompetent”, that the decision “stinks of corruption or incompetence” and that we are “supposed to protect the consumer... [but] do nothing of the sort”.

I am sorry to see that Mr S feels this way and I would like to reassure him that this is not the case. My findings are based on the evidence from both sides. Whilst I have not found that Equifinance has done something wrong – as Mr S believes – this does not mean that I do not understand what has happened or that I am corrupt – it simply means that I disagree with Mr S's view based on the evidence that I have seen.

Mr S says that he is alarmed that this Service is not interested in the fact that he was asked by the broker to act illegally and unethically. This complaint is against Equifinance so I am only considering the actions of Equifinance. I cannot consider what the broker did and didn't do and this has been dealt with in a separate complaint.

Mr S says that it was the assessment of the first solicitor that the removal and reinstating of the restriction could be done ‘in principle’. He says that no legal work was instructed until he had been fully vetted by the broker and then Equifinance, both of whom were fully informed about the situation. Mr S says that the second solicitor found that he would be unable to sign the legal charge and requested that the relevant clause was removed. He says that he would

have been perfectly happy to sign if they had done so. However, he says that Equifinance refused to remove that clause, so it wasn't a change of mind on his part, nor was it conflicting opinions of two solicitors. Mr S says that the first solicitor only said that the removal of the restriction could be done 'in principle' and they had not seen the charge document at that stage. He says that Equifinance issued its standard charge document which it would have been well acquainted with. Therefore, he says that it should not have been surprised at his reluctance to sign and the legal restrictions and it did nothing to assist.

Mr S suggests that it was the role of Equifinance to assist him in being able to sign the legal charge. I disagree. As set out in my provisional decision, it was Mr S's responsibility (or his legal representatives') to ensure that the title of the property was fit for Equifinance's security. When Mr S applied for the mortgage, Equifinance was informed by his first solicitor that the restriction on title would be removed. It was on this basis – that there would be clear title – that it issued its mortgage offer.

Mr S says that the restriction does not form any part of the ownership and is simply the protection element for his siblings and their share of the property. Whilst I accept that the restriction does not of itself confer beneficial ownership, it was not unreasonable for Equifinance to proceed on the basis that the restriction could not simply be removed without any change to the ownership of the property. Had the restriction been removed on this basis – as Equifinance had been told it would – then Mr S would have been able to sign the legal charge as there would have been clear title.

Regardless of whether the first solicitor had seen the charge document, she informed Equifinance that the restriction on title would be removed. It was not the responsibility of Equifinance to ensure that this was possible or enquire into how this would be achieved. As Mr S's second solicitor indicated that there would no longer be clear title, the position had changed from what had been agreed when the offer was made and the mortgage could no longer go ahead.

Having considered Mr S's further submissions, they do not change my provisional view. I am satisfied that Equifinance has not acted unfairly or unreasonably in not agreeing for the legal charge to be amended to allow the loan to proceed without clear title.

My final decision

For the reasons I've explained in my provisional decision and above, my decision is that I do not uphold this complaint against Equifinance Limited and do not require it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 February 2026.

Rachel Ellis
Ombudsman