

The complaint

Mr W complains that Equifinance Limited lent to him irresponsibly

What happened

Mr W took out a 25-year loan with Equifinance in 2018 to consolidate some of his existing debts. At the time, Mr W had over £51,000 in existing unsecured debt – just over £17,000 was left outstanding after the sale of this loan.

The loan remains open and is now in arrears as Mr W fell into financial difficulty less than six months after taking out the loan.

In 2023, Mr W made a complaint to Equifinance, alleging that the lending was unaffordable. He didn't think Equifinance had carried out proportionate checks before agreeing to lend to him and had it done so, it would have found that he could not afford it. Mr W has told us that had the lending not gone ahead, he would have entered a debt management plan which would have bettered his financial position. He has subsequently entered a DMP since taking out the loan from Equifinance for his remaining unsecured debt.

Equifinance did not uphold Mr W's complaint. It said it was satisfied it met its obligations and that the lending was affordable for Mr W. It explained it had relied on the income and expenditure (I&E) completed by Mr W with his broker which indicated he would have surplus funds following the consolidation. It also highlighted that the application passed a stress test to determine if Mr W would still be able to afford the repayments should interest rates rise.

Unhappy with Equifinance's response, Mr W brought his complaint to this service.

One of our investigators looked into the complaint and thought it should be upheld. She thought Equifinance should have requested bank statements from Mr W which would have shown that he was over committed each month and had undeclared expenditure (such as child maintenance costs amongst other items) and was therefore unable to afford the loan. She thought the information Equifinance had gathered from Mr W and his credit file gave it enough information to show Mr W was struggling to manage his finances and was relying on short-term debt to meet his outgoings.

The investigator recommended that Equifinance refund all interest, charges and set up fees applied to the loan, treat all payments made by Mr W as reducing the capital balance and remove all interest going forward.

Equifinance disagreed. It said the I&E showed a good income from steady employment, reasonable expenditure and that Mr W had a good credit score with only one late payment in four years. So, it was reasonable for it not to request bank statements. It also highlighted that Mr W had misrepresented his financial position by failing to declare he had children for whom he was responsible for paying child maintenance. Had this been declared, it says its underwriting would naturally have taken this into account.

As the complaint could not be resolved informally, it has been passed to me to decide.

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.

When considering what is fair and reasonable in all the circumstances, I am required by DISP 3.6.4R of the Financial Conduct Authority's ("FCA") Handbook to take into account:

'(1) relevant:

- (a) law and regulations;
- (b) regulators' rules, guidance and standards;
- (c) codes of practice; and

(2) (where appropriate) what [I consider] to have been good industry practice at the relevant time.'

I also focus on what I think is material and relevant to reach a fair and reasonable outcome. So, although I have read everything that has been supplied to me, I may not address every point that has been raised.

This loan was sold by a separate firm so I cannot comment on whether the advice to take out this secured loan was suitable for Mr W. But the obligation to assess affordability and whether it is responsible to lend, falls on Equifinance as the lender.

In assessing whether to lend, Equifinance was required to consider evidence of Mr W's income and information about his expenditure.

Equifinance carried out an affordability assessment (using ONS data when higher) and obtained payslips to verify Mr W's income. However, it used a higher figure in its affordability assessment than that declared by the broker. Relying on an income of around £3216 instead of the broker's figure of approximately £3160. Had it used the figure provided by the broker, which mirrors Mr W's lowest payslip across the three months, Mr W's application would not have passed the stress test.

While it would be reasonable for Equifinance to take an average of the three payslips provided, this would still have resulted in a lower average net income than the figure used. And while the average is only £18pm lower than the figure used by Equifinance, given how tight the affordability was in this case (when looking at declared expenditure) it is a relevant consideration for me to take into account.

In looking at expenditure, it considered the I&E provided by Mr W's broker, as well as Mr W's credit file but it did not obtain evidence of the outgoings such as bank statements.

The rules of mortgage regulation do not require a lender to obtain evidence of expenditure in the same way they do of income. They require it to obtain information about expenditure - and a lender can rely on what a borrower says unless there are common sense grounds for doubting it.

So, Equifinance was entitled to rely on the information Mr W had given it about his expenditure and didn't need to ask for supporting evidence such as bank statements – unless there were common sense grounds for doubting what he had said.

Having looked at the evidence, I am not persuaded Equifinance took a realistic view of Mr W's expenditure in relying on the information disclosed in the I&E and his credit file for

the affordability assessment. It ought to have had common sense grounds to doubt what it had been told based on other information within its possession at the time.

Mr W's credit file showed he had recently taken out several lines of credit, including payday loans. It also showed Mr W exceeding his credit limit on four of his credit cards.

I can see Mr W was questioned about the pay day loans and credit card limits and gave an explanation. But rather than consider these reasonable grounds to doubt the information it had been given, Equifinance accepted Mr W's explanation that he had been exceeding his credit cards and using pay day loans to pay for home renovations which had cost more than he expected.

Pay day loans are a high-cost form of credit and while I can understand there may be a scenario where a consumer feels they have no option but to take one to cover a home emergency, I am not persuaded they are something you would ordinarily turn to for non-urgent home renovations.

Similarly, Mr W held a notable amount of credit and store cards at the time, attracting a high rate of interest and he was over his credit limit on four of those (being almost at the limit on the remainder). Mr W's explanation for this was the same as for the pay day loans – house renovations costing more than planned. While renovations are undoubtedly costly and the use of finance to cover such costs is not uncommon, I am not persuaded that the explanation for Mr W's borrowing in this manner was plausible. Non urgent home renovations can be paused, postponed, or cancelled and would not be considered essential spending that would typically warrant incurring high-cost lending fees and being over committed each month.

Taking this into account, the information Equifinance had at the time suggested Mr W was either struggling to maintain his monthly finances and in a pattern of needing to rely on high-cost credit to do so, or he was financially irresponsible and choosing to further increase his debt and rely on high-cost credit to carry out non-urgent home renovations. Either way, this amounts to a common-sense reason to doubt the information Mr W had provided about his expenditure and warranted a request for further evidence.

In addition to this, I can see that the affordability assessment said some of Mr W's payday loans would be cleared before the lending commenced, but it is unclear how Equifinance thought Mr W would be able to do this given his declared monthly income showed him at a deficit and there is no evidence that Mr W had any savings upon which he could rely to repay these. So, the more likely scenario at the time of the application is that these debts would either persist or Mr W would need to take out further borrowing to cover them.

I also can't see that Equifinance factored in any expenditure on insurance. And given Mr W owned his own home, Equifinance ought to have considered buildings insurance expenditure as a minimum.

Taking everything into account, the information Equifinance had at the time suggests Mr W was struggling to maintain his finances and was regularly relying on short-term, high-cost finance to cover his outgoings. This ought to have been enough for it to question the information it had been provided about Mr W's expenditure and warranted a request for additional evidence.

The investigator also highlighted that Mr W was responsible for paying child maintenance, the costs of which were not considered but should have been. Equifinance has said Mr W is responsible for misrepresenting his position and it could not have taken this into account as it was unaware Mr W had dependents.

I do not intend to comment on this point given I have decided that, even without this additional expenditure, Equifinance should have realised it had common sense reasons to doubt the information Mr W had given it. This should have led to Equifinance requesting Mr W's bank statements at which point it would have seen that he was overcommitted each month, living in his overdraft, had significant undeclared expenses, was relying on friends and family for support and often had more going out than he had coming in.

Overall, having considered all the available evidence, I am not satisfied Equifinance met its obligations when granting this lending to Mr W. I find that the lending was unaffordable for him and Equifinance had enough information at application stage to doubt the information it had been provided.

Putting things right

To put matters right, Equifinance should bring the loan agreement to an end and remove any adverse entries associated with this loan from Mr W's credit file. It should remove any lending and/or product fees it charged from the balance, as well as all interest charged on the borrowing to date. If any other fees have been added to the balance over the life of the loan (such as arrears fees) those should also be removed along with any interest they accrued. Equifinance should then treat all the payments Mr W have made as reducing the capital balance.

If this results in a balance outstanding, Equifinance should reach a sustainable and affordable arrangement with Mr W for the repayment of the outstanding capital balance and can retain a charge over the property in the meantime.

If, however, this means that Mr W has already repaid more than the capital he borrowed, the excess should be refunded to him, adding simple annual interest of 8% running from when any payments above the total capital amount were made to the date Equifinance refunds them. In this scenario, Equifinance may deduct income tax from the 8% interest element of my award, as required by HMRC – but it should tell Mr W what it has deducted so he can reclaim the tax if he is entitled to do so. In this case, it should also remove the charge from the property.

I don't think it would be fair to direct Equifinance to write off the remaining capital balance if there is one. Mr W used the capital to pay off other debts, so it's fair and reasonable that he pays back what he borrowed. But it is not fair and reasonable for Equifinance to charge fees and interest for a loan it should not have granted.

My final decision

For the reasons I've explained, I uphold this complaint and direct Equifinance Limited to compensate Mr W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 April 2024.

Lucy Wilson
Ombudsman