

The complaint

Mr K complains that Equifinance Limited irresponsibly lent him a second charge mortgage (secured loan).

What happened

In September 2019 Mr K contacted a broker I'll call F to discuss taking out a secured loan. He wanted to explore consolidating existing unsecured debt to reduce his outgoings. At this time Mr K had a personal loan and a car finance agreement. The car finance agreement was due to end in 2024, and was at an interest rate of 10%. The personal loan would run until 2023 and was charged at 5%. The combined monthly payments to both loans were around £534.

F recommended a loan to Mr K, with Equifinance as the lender. The loan was for £22,500 over a term of 20 years on a repayment basis, with an interest rate of 12.5% fixed for the first five years and a monthly payment of £282.77. Included in the loan amount were a broker fee of £1,350 and a lender fee of £995. The secured loan therefore reduced Mr K's monthly outgoings by around £250 per month.

In 2022 Mr K complained. He'd experienced problems maintaining the monthly payments on the loan. While this was because his circumstances had changed following the loss of his job, he said he'd come to realise the loan was never appropriate for him. He said he wasn't in the right frame of mind at the time he took it out because of personal circumstances. He said that he'd exchanged loans which would have been paid off within a few years for a much more expensive loan over 20 years – and which was secured on his property. He said the loan was irresponsibly lent and should never have been given to him.

Since taking out the loan, Mr K has experienced financial difficulties. He's lost his job, and struggled to make repayments. He also complains about the support Equifinance has offered.

Our investigator thought the complaint should be upheld. He said that while the loan appeared affordable, there were other matters that ought to have led Equifinance to question whether it was sustainable for Mr K, so he didn't think it ought to have lent. But he thought the support offered to Mr K when he experienced financial difficulties was fair and reasonable.

Equifinance didn't agree that it had lent irresponsibly and asked for an ombudsman to review the complaint. I issued a provisional decision setting out why I didn't intend to uphold it.

My provisional decision

I said:

"I've also considered a separate complaint Mr K has brought against F, and have let the parties on that case know that I'm provisionally minded to uphold that complaint and find that the loan was mis-sold to Mr K on the basis that it wasn't suitable for him

to consolidate his existing debts. Having reviewed both complaints, I have a good overview of all the circumstances that led to Mr K taking out this loan.

It's important to note that Equifinance was the lender, but it didn't sell the loan or give Mr K advice. That was done by F, and it was therefore F's responsibility to ensure the loan was suitable for him. It wasn't up to Equifinance to check that the loan met his needs – but Equifinance did need to ensure that it was responsible to lend. That means checking that Mr K would be able to repay the borrowing in an affordable and sustainable way.

Equifinance was therefore required to ensure the loan was affordable for Mr K. As the investigator explained, it made some mistakes in this – including mis-calculating the amount of commission Mr K received from his employer. But I agree with the investigator that looked at in the right way the loan would still have been affordable for Mr K, and so I don't think I can fairly uphold this complaint based on that alone.

Responsible lending is not just about whether the loan appears immediately affordable, though. I'd also expect Equifinance to consider whether the loan was affordable – and sustainable – for Mr K in the long term.

Equifinance reviewed Mr K's credit file and noted that he didn't have any missed payments or other apparent problems with credit. His credit file did show that he'd recently taken out substantial credit. Around six months before this loan application he'd re-mortgaged his main mortgage, increasing the balance. He'd also taken out a personal loan and a car finance loan. There wasn't a substantial amount of prior credit before that.

Our investigator said that this pattern of recently taking out large amounts of credit, only to then seek to consolidate it into this loan, ought to have led Equifinance to have made further enquiries. If it had made those enquiries – including asking to see recent bank statements – it ought then to have questioned whether this loan was sustainable for Mr K. That was because of the pattern of credit, and because it appeared that he'd put much of that extra borrowing into a savings account and was using it to live beyond his means.

I've thought carefully about this. The rules of mortgage regulation don't 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 K had given it about his expenditure, and didn't need to ask for supporting information such as bank statements – unless there were common sense grounds for doubting what he'd said.

With hindsight, knowing what the bank statements showed, I agree with our investigator that there were real questions about whether this loan was sustainable for Mr K, because the information on the bank statements would have led Equifinance to question whether Mr K had given accurate information about his expenditure, and whether he would be able to afford the repayments from his income once his savings had run out without making substantial changes to his spending.

However, I can only say that Equifinance ought to have taken this into account if there are grounds for saying that, acting fairly and reasonably, it ought to have asked for more information about Mr K's expenditure based on what it knew or ought to have known at the time of the application.

I'm not persuaded of this. There was nothing in what Mr K had said about his expenditure which was a cause for concern or presented common sense grounds for doubting what he had said. And I don't think his credit history ought to have prompted further investigation of his expenditure either. While he'd taken out substantial borrowing some months before this application – not having done so in the past – the purpose of this loan was to consolidate that debt and reduce his monthly outgoings.

Whether or not that was a suitable course of action is a matter for the broker, not the lender– in the related complaint I have found that it wasn't, and provisionally upheld the complaint against F. But as far as the lender's obligations are concerned, I don't think the fact that Mr K had taken out two loans previously which he was now applying to consolidate was enough to raise concerns about his level of expenditure or the sustainability of how he managed his credit commitments. This is not a case where the borrower had a long history of taking out and consolidating debt, or of taking out substantial volumes of credit suggestive of financial problems.

On balance, therefore, I'm not persuaded that anything in the expenditure Mr K declared on his application, or in his past credit record, ought to have led Equifinance to question the expenditure he'd declared on common sense grounds. It follows that I don't think I can fairly find that it ought to have known about and taken into account the pattern of spending shown on his bank statements as part of its lending decision. It was entitled to rely on what Mr K had told it.

I do have real concerns about the appropriateness of this loan for Mr K in his circumstances as they were at the time. But those concerns relate to the suitability of consolidating his unsecured debt in this way, and that is a matter for F not for Equifinance. I don't therefore intend to uphold the complaint that the loan was irresponsibly lent.

After the loan was taken out, Mr K fell into financial difficulties. Although it appears that he was living beyond his means at the time this loan was taken out, his difficulties with payment appear to have begun as a result of the loss of his job at the start of the coronavirus pandemic in 2020. Equifinance agreed a payment deferral with Mr K in May 2020, and extended it to April 2021.

In 2021, Mr K told Equifinance that he hadn't found a new job, but that he had accepted an offer to sell the property. Later in 2021, Mr K told Equifinance that the sale had fallen through but that he'd found another job. Equifinance agreed a payment plan to start clearing the arrears.

Unfortunately Mr K's situation didn't improve, and he entered an individual voluntary arrangement (IVA) in respect of unsecured credit he'd taken out since this loan was granted. As a secured loan, this mortgage wasn't included in the IVA. But Mr K maintained the repayment plan until late in 2022, when he lost his job again. After reviewing his income and expenditure, Equifinance said there wasn't an affordable arrangement it could agree. In January 2023, when he brought this complaint, Mr K told Equifinance he'd found another job.

I'm sorry to hear of the difficulties Mr K has had. If he hadn't taken this loan, but instead had kept the unsecured debt that was consolidated, his circumstances might have been different – the debt could have been included in his IVA, for example. I've taken that into account in the redress I've proposed in the complaint against F.

But because I haven't upheld this complaint about Equifinance's lending decision, I can't hold it responsible for the situation he found himself in. And I'm satisfied that in

all the circumstances it offered Mr K appropriate support and forbearance and tried to work with him to reach an affordable way forward. I think it acted fairly and reasonably in all the circumstances.”

Equifinance didn't provide any further information. Mr K noted that I'd upheld his complaint in full against F. He asked that I consider requiring this loan to be removed from his credit file.

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.

I've considered the responses to my provisional decision as well, and I've considered again my findings on the separate complaint against F.

Having done so, I find I haven't changed my mind. I don't think this loan was suitable for Mr K, and for that reason have upheld the complaint against F. But I'm not persuaded, based on what it knew and could reasonably have been expected to know at the time, that Equifinance lent irresponsibly.

I haven't required the loan to be removed from Mr K's credit file. Credit file reporting is the responsibility of the lender, not the broker, so it's not something I could include in the redress against F.

In respect of this complaint, I haven't found that Equifinance lent irresponsibly. It accurately reported to the credit reference agencies that Mr K borrowed this money, and accurately reported the conduct of the loan. I also bear in mind that if Mr K hadn't taken this loan he would have continued with the unsecured debts, which would also have been reported to his credit file. And even if I were to require Equifinance to remove this loan from his credit file, it would still show significant adverse entries relating to the IVA and the debts included in it. And I bear in mind that part of the purpose of a credit file is to ensure future lenders are aware of past history – which helps protect borrowers from future lending that may be inappropriate for them. Finally, if Mr K accepts my decision against F, his loan will be settled in any event – and marked as such on his credit file. In all the circumstances, I don't require Equifinance to remove the record of the loan.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 10 January 2024.

Simon Pugh
Ombudsman