

Complaint

Mr S has complained about personal loans Mitsubishi HC Capital UK Plc (trading as Novuna Personal Finance) provided to him. He says that the loans were unaffordable and so shouldn't have been provided to him.

As the loans were provided to Mr S whilst Mitsubishi HC Capital UK Plc was known as Hitachi, I will refer to it as Hitachi during the course of this decision.

Background

Hitachi initially provided Mr S with a first loan for £3,000.00 in April 2018. This loan had a term of 24 months and the total amount to be repaid of £3,365.62, including interest, fees and charges of £365.52, was due to be repaid in 24 monthly instalments of £140.23.

Hitachi then provided Mr S with a second loan also for £3,000.00 in December 2018. This loan had a term of 36 months and the total amount to be repaid of £4,177.08, including interest, fees and charges of £1,177.08, was due to be repaid in 36 monthly instalments of £116.03.

One of our adjudicators reviewed Mr S' complaint and he thought Hitachi didn't do anything wrong when providing loan 1. But he also that Hitachi ought to have realised that it shouldn't have provided Mr S with loan 2. So he partially upheld the complaint.

Mr S didn't disagree with our adjudicator's assessment. But Hitachi disagreed with the outcome on loan 2. So the case was passed to an ombudsman for a final decision. As the parties appear to be in agreement on the outcome reached for loan 1, this decision on only looking at whether Hitachi should have provided Mr S with loan 2.

My findings

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

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr S' complaint.

Having carefully considered everything I've decided to uphold Mr S' complaint. I'll explain why in a little more detail.

Hitachi needed to make sure it didn't lend irresponsibly. In practice, what this means is Hitachi needed to carry out proportionate checks to be able to understand whether Mr S could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

The information Hitachi has provided suggested that it carried out credit checks before Mr S was provided with both of his loans. The results of which showed that Mr S was significantly more indebted when he applied for loan 2 than he was at the time he was provided with loan 1.

Indeed Mr S now had approaching £24,000.00 in unsecured debt, when he only had around £4,000.00 in unsecured debt when he applied for loan 1 eight months earlier. I think that Hitachi ought to have been concerned as to why Mr S had an apparent want or need for so much additional credit in such a short period of time.

Furthermore, when Mr S approached Hitachi in December 2018 he was approaching for a second loan before he'd even successfully repaid his first one. And he'd now have to make payments to two Hitachi loans. I think that this coupled with the fact that Mr S was returning for funds so soon after his first loan in circumstances where his indebtedness was rapidly increasing, meant that Hitachi ought to have carried out further checks before determining that loan 2 was affordable for him.

I think further checks would have extended into finding out more about Mr S' actual expenditure. And as Hitachi didn't carry out such checks, I'm satisfied that its checks before providing Mr S with loan 2 weren't proportionate.

As proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told Hitachi that it shouldn't have provided this loan to Mr S.

Mr S has provided us with evidence of his financial circumstances at the time he applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Mr S has provided, it doesn't mean it would've shown up in any checks Hitachi might've carried out.

But in the absence of anything else from Hitachi indicating what this information would have shown, I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Mr S' financial circumstances were more likely than not to have been at the time.

To be clear, I've not looked at Mr S' bank statements and the other information he's provided because I think that Hitachi ought to have obtained this before lending to him. I've consulted this information because it is readily available at this stage and it contains what I now need to reconstruct the proportionate check Hitachi should have but failed to carry out.

Having considered this information, I'm satisfied that had Hitachi carried out a proportionate check here it would have seen that Mr S was already in a difficult financial position at the time and also found out why this was the case. I'm also satisfied that reasonable and proportionate checks would more likely than not have shown Hitachi that Mr S' existing precarious financial position was because he was struggling financially.

I'm therefore satisfied that reasonable and proportionate checks would more like than not have shown Hitachi that it shouldn't have provided loan 2 to Mr S. As Hitachi provided Mr S

with loan 2, notwithstanding this, I'm satisfied it failed to act fairly and reasonably towards him.

Mr S ended up paying and is still being expected to pay interest, fees and charges on a loan he shouldn't have been provided with. So I'm satisfied that Mr S lost out because of what Hitachi did wrong and that it should put things right.

Fair compensation – what Hitachi needs to do to put things right for Mr S

Having thought about everything, Hitachi should put things right for Mr S by:

- removing all interest, fees and charges applied to loan 2 from the outset. The payments Mr S made, whether to Hitachi or any third-party debt purchaser, should be deducted from the new starting balance – the £3,000.00 originally lent. If Mr S has paid more than £3,000.00, on loan 2, then Hitachi should treat any extra as overpayments. And any overpayments should be refunded to Mr S;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr S to the date of settlement†
- if no outstanding balance remains on loan 2 after all adjustments have been made, all adverse information Hitachi recorded about loan 2 should be removed from Mr S' credit file.

† HM Revenue & Customs requires Hitachi to take off tax from this interest. Hitachi must give Mr S a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr S' complaint. Mitsubishi HC Capital UK Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 August 2023.

Jeshen Narayanan
Ombudsman