

Complaint

Ms T complains that Mitsubishi HC Capital UK PLC (trading as Novuna Personal Finance) unfairly entered into a fixed-sum loan with her. She's said the monthly were unaffordable.

Background

In March 2019, Ms T sought to buy a car. The purchase price of the vehicle was £15,599.00 she also purchased a warranty at £399 and an insurance policy for £399. This meant that the total cash price of her purchase was £16,297.00.

Ms T did not pay a deposit and also needed to settle the outstanding balance on her existing car finance. In order to do so, she had to pay £2,846.49 in order to cover the shortfall between what was owed and the amount she received for her existing vehicle. Ms T wanted to borrow the amount of the shortfall (as well as the total cash price for the new transaction) and this meant that she sought finance for a total amount of £19,143.49 in order to facilitate her purchase.

Hitachi, which was a lender within the Novuna Personal Finance group (for ease of reference I will refer to Hitachi during the course of this decision) agreed to provide Ms T with a fixed-sum loan for the £19,143.49 she needed to complete her purchase. The loan had interest, fees and total charges of £4,888.07 and an 84-month term. This meant that the total amount to be repaid of £24,031.56 was due to be repaid in 84 monthly instalments of £286.09.

Ms T's complaint was considered by one of our investigators. He didn't think that Hitachi had done anything wrong or treated Ms T unfairly. So he didn't recommend that Ms T's complaint should be upheld. Ms T disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

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 irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Ms T's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Ms T's complaint. I'd like to explain why in a little more detail.

Hitachi needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Hitachi needed to carry out proportionate checks to be able to understand whether Ms T could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Hitachi carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

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 that information – 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, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Hitachi has said that it agreed to this application after it asked Ms T to provide details of her monthly income and it decided to carry out credit searches on Ms T. The credit searches showed that Ms T had some a mortgage as well as some existing credit but this wasn't excessive and Ms T . Hitachi says that the information it had at the time indicated that the monthly payments on this agreement were affordable for Ms T.

On the other hand, Ms T says that she couldn't have afforded this.

I've thought about what Ms T and Hitachi have said.

The first thing for me to say is that much like our investigator, I don't think that the checks Hitachi carried out did go far enough. In my view, Hitachi needed to take further steps to ascertain Ms T's actual living costs, given the term of this agreement in order for its checks to have been proportionate. I've not seen anything to indicate that Ms T was asked for further information to confirm her living costs prior to this finance being agreed.

As Hitachi didn't carry out sufficient checks, I've gone on to decide what I think Hitachi is more likely than not to have seen had it obtained further information from Ms T. As I've explained bearing in mind the length of the term of the agreement and the amount of the monthly payment, I would have expected Hitachi to have had a reasonable understanding about Ms T's regular living expenses as well as her income and existing credit commitments.

To be clear I'm not going to carry out a forensic analysis of whether the loan payments were affordable. I'm simply going to consider what Hitachi is likely to have done if it obtained the missing information I think it should have done here. I say this because this information provided does appear to show that when Ms T's committed regular living expenses are deducted from her credit commitments, Hitachi was more likely that not to have concluded that Ms T could sustainably make the repayments due under this agreement.

I accept it's possible that Ms T's actual circumstances at the time might have been worse than what the information she's provided shows. I know that Ms T says that she wouldn't have been left enough spare funds for her family after the payment for this loan. But Hitachi won't have known this. All it could do was make a decision based on what it had, or is likely to have had, had it done proportionate checks.

I wouldn't expect it to carry out a full financial review of Ms T's family circumstances. I say this particularly as this was an asset that would have been for the benefit of the household and there were other members with income. Furthermore, there was nothing in the credit reference agency information gathered that appeared to indicate that Ms T was struggling financially either.

Given Ms T had chosen to purchase a vehicle at the time she did, it's difficult for me to accept that she would have proactively looked to have disclosed information that would have shown the payments to be unaffordable, in circumstances where it would not have been proportionate for Hitachi to go into the depth to find this out for itself.

Having considered everything, I'm satisfied that the available information indicates that Hitachi is likely to have concluded that Ms T did have sufficient funds left over, once her regular living expenses and discernible committed expenditure was deducted from the monthly income she declared, to make her monthly payments in a sustainable manner.

Therefore, while I don't think that Hitachi's checks before entering into this loan with Ms T did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have prevented Hitachi from providing these funds, or entering into this hire-purchase agreement with Ms T.

Overall and having carefully considered everything, I'm satisfied that Hitachi didn't act unfairly towards Ms T when it agreed to provide the funds and I'm not upholding Ms T's complaint. I appreciate that this will be very disappointing for Ms T. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Ms T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 20 June 2024.

Jeshen Narayanan
Ombudsman