

The complaint

Mr W complains about a personal loan Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance provided to him. He says he couldn't afford the loan, and the repayments required made an already difficult financial situation worse.

As the loan was agreed when Mitsubishi HC Capital UK Plc was known as Hitachi, I will refer to them as Hitachi in throughout this decision.

What happened

In July 2021 Hitachi provided Mr W with a loan of £25,000. After interest and charges the total amount due was £36,802.35, repayable in 81 monthly instalments of £454.35.

In July 2023 Mr W complained to Hitachi saying that they didn't undertake appropriate checks before lending to him. He said the agreement wasn't affordable and he missed payments to other lenders because of the loan. Hitachi didn't agree with Mr W's complaint. In their view they carried out reasonable checks which showed Mr W could afford the repayments, and they lent on this basis.

Mr W remained dissatisfied with Hitachi's response and referred the complaint to our service, where it was considered by one of our investigators. Although our investigator didn't think Hitachi's checks had been proportionate, it was her view that proportionate checks would have shown that the agreement was affordable for Mr W. For this reason, she didn't think the complaint should be upheld.

Mr W didn't agree with our investigator's view. He said his income fluctuated due to overtime, which wasn't guaranteed. And he didn't think the investigator ought to have included income from the sale of shares he held when calculating his income.

Our investigator considered what Mr W said. She conceded his income was lower than her initial calculation but remained of the opinion that the information Hitachi would likely have found would have led them to conclude the agreement was affordable. As no agreement could be reached Mr W asked for an ombudsman's decision – and the complaint came to me.

I issued a provisional decision on 15 August 2024, saying I was inclined to uphold Mr W's complaint. In that I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm inclined to uphold Mr W's complaint. I agree with our investigator that Hitachi didn't conduct proportionate checks when assessing if the proposed agreement was affordable to Mr W. But I think that, had they done so, they'd have seen Mr W could likely not afford the proposed repayments. I'll explain why.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether to lend to a consumer. In

summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case. What's proportionate depends on the specific circumstances of each application. We'd expect lenders to think about the nature of the credit (the amount repayable and the term, for example) and about the applicant's individual circumstances. And we'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way.

Did Hitachi complete a reasonable and proportionate affordability check?

In his application Mr W told Hitachi his annual income was £47,864. Hitachi verified this using data from one of the credit reference agencies (CRA) and were satisfied Mr W's net monthly income was around £3,017. I'm satisfied Hitachi undertook reasonable checks to verify Mr W's income.

Hitachi carried out a credit search and saw that Mr W had existing unsecured debt of around £36,700 with monthly repayments of around £1,252 per month. It also showed Mr W had a mortgage with monthly repayments of around £828. As it was a joint mortgage Hitachi determined Mr W's share as £414. The new loan had repayments of around £454 per month. Hitachi calculated that Mr W would be left with around £897 each month after paying his mortgage, his credit commitments, and the new agreement. They said that based on national averages this amount was sufficient to meet all other expenses.

Mr W also provided a copy of his credit report. This shows he was generally managing his credit commitments well. However, I could also see that Mr W had been in arrears on a personal loan between December 2019 and December 2020. Further payments were missed from June 2021. It's possible Hitachi weren't aware of the later arrears as they might not have been reported at the point of Mr W's application. But they'd have been aware of the earlier arrears throughout 2020 from their own credit search.

So, Mr W had been in arrears for a sustained period of time and had only recently brought the account up to date. I think this ought to have led Hitachi to consider whether Mr W might be struggling financially. The proposed loan would double Mr W's existing unsecured debt and would take his total monthly credit repayments (excluding the mortgage) to around £1,706 – almost 55% of his net monthly income. The loan term was almost seven years so Mr W would be required to make repayments for a sustained period of time. I'm satisfied that in the circumstances Hitachi should have carried out further checks before agreeing to lend to Mr W.

If Hitachi had carried out proportionate checks, what would they have shown?

A proportionate check would have involved finding out more about Mr W's committed expenditure. There are different ways a lender can go about checking a prospective borrower's committed expenditure. I can't be sure what Hitachi would have done had they decided to conduct further checks, or what Mr W would have told them. In the absence of anything else, I've placed significant weight on the information contained

in Mr W's bank statements for the three months leading up to his application as an indication of what would most likely have been disclosed.

Mr W sent us two sets of bank statements – one for a current account in his sole name and one for a joint account. While I've reviewed both sets, I've only included information contained in the statements for the account Mr W held in his sole name in my assessment of his income and expenditure. This is because the other account appears to have been funded solely by transfers from the joint account holder.

I've already set out that I'm satisfied Hitachi did enough to verify Mr W's income. I note that our investigator thought Mr W's net monthly income was higher. Mr W explained this was due to overtime, which wasn't guaranteed. I could see Mr W's wages varied in the three months leading towards his application. In the month immediately before Mr W's application, his wage was around £3,027 – so broadly what Hitachi had been able to verify. The agreement would see Mr W making repayments for almost seven years, so it was important for Hitachi to consider the sustainability of making repayments. And so I'm inclined to say it was reasonable for Hitachi to rely on the amount they were able to verify as part of their income check.

Turning to Mr W's committed expenditure, his bank statements show Mr W paid the full monthly mortgage repayment of around £828. I haven't seen anything to suggest Mr W received a contribution to the mortgage from another party. And so, I think it's reasonable to say Hitachi would have included the full mortgage amount in their assessment of Mr W's committed expenditure. The statements also show Mr W was spending around £134 per month on phone, TV and internet costs, around £45 per month on insurance policies and £15 for road tax. It appears that council tax and utilities were paid from the joint account and so I've not included them in my calculation.

Hitachi's credit check showed Mr W credit cards with a total balance of around £17,479. They allowed a monthly repayment of 3% of the outstanding amount, so around £524. This would only see Mr W making minimum repayments towards his outstanding debt. CONC requires a firm to assume that revolving credit is repaid over a reasonable term. I'm inclined to say Hitachi should have used at least 5% of the outstanding amount (around £874) to reflect that. Mr W had three unsecured loans with monthly repayments of £728. In total, I think Hitachi ought to have allowed £1,602 to meet Mr W's monthly credit commitments.

So, Mr W's non-discretionary and committed expenditure was around £2,624 per month. Adding on the repayments under this agreement means Mr W would have needed to make payments of around £3,078 per month out of his income of £3,017. This doesn't take into consideration food, petrol, discretionary and emergency expenditure. Overall, I'm inclined to say that if Hitachi had undertaken proportionate checks, it's likely they would have concluded the repayments wouldn't be affordable for Mr W. It follows that they couldn't have fairly decided to lend to Mr W.

Did Hitachi act unfairly in any other way?

I've also considered whether Hitachi acted unfairly or unreasonably in some other way given what Mr W has complained about, including whether their relationship with Mr W might have been unfair under s.140A Consumer Credit Act 1974.

However, I think the redress I have directed below results in fair compensation for Mr W in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case."

Mr W accepted my provisional decision. Hitachi didn't respond.

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.

As neither party has raised any additional arguments or provided further information for me to consider, I've got nothing further to add – my findings are unchanged from those set out above.

Putting things right

I've concluded that Hitachi shouldn't have agreed the loan for Mr W in July 2021. It's fair that Mr W repays the capital amount he borrowed as he's had the use of the money. But I don't think it's fair that he pays any interest, fees or charges associated with the loan.

To put things right for Mr W, Hitachi should do the following:

- Cap the amount Mr W needs to repay at the capital amount he borrowed, this being £25,000;
- Deduct any payments Mr W made from the loan capital; and
 - If this results in Mr W having paid more than the amount he borrowed, any overpayments should be refunded together with 8% simple interest calculated from the date the overpayments were made to the date of settlement.*
 - If he hasn't yet repaid the capital then Hitachi needs to set up an affordable repayment plan for the balance and treat Mr W fairly and with forbearance if he's experiencing financial difficulty.
- Remove any adverse information about this loan from Mr W's credit file once settled.

*HM Revenue & Customs require Hitachi to deduct tax from the refund of interest. Hitachi must give Mr W a certificate showing how much tax has been deducted if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr W's complaint. Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance need to settle the complaint 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 30 September 2024.

Anja Gill
Ombudsman