

## The complaint

Mrs G complains that Mitsubishi HC Capital UK Plc trading as Hitachi Personal Finance lent to her when it shouldn't have.

## What happened

I issued a provisional decision in this case on 11 August 2022, where I set out a detailed background to this complaint. An excerpt of my provisional decision is below;

### ***"What happened***

*Hitachi lent Mrs G six loans, the details of the loans are as follows;*

<b>Loan number</b>	<b>Start date</b>	<b>Loan amount (£)</b>	<b>Term</b>	<b>Repayment amount (£)</b>	<b>End date</b>
1	04/04/2017	8,000	60 months	200	15/09/2017
2	29/08/2017*	1,695	48 months	31.78	03/07/2019
3	17/09/2017	3,000	24 months	166.93	03/07/2019
4	02/07/2019	12,000	60 months	268.10	live
5	25/09/2019*	1,270	48 months	23.81	23/02/2021
6	14/09/2021	8,750	48 months	256.82	live

*\*these are interest free loans Mrs G used to purchase goods.*

*When Mrs G complained to Hitachi, it didn't uphold her complaint, it said it carried out sufficient checks and the checks showed Mrs G could afford the loans. Mrs G then referred her complaint to this service where our adjudicator didn't think loans 2 and 5 should be upheld but she recommended that loans 1,3,4 and 6 should be upheld. Hitachi disagreed; it essentially says its checks were sufficient. As the complaint hasn't been resolved, it has been passed to me for a decision.*

### ***What I've provisionally 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.*

*Looking at Mrs G's complaint form, she says she wasn't complaining about loans 1, 2 and 5 but she thought the other loans shouldn't have been lent.*

*As Mrs G has said she wasn't complaining about those loans, I've focussed my decision on the lending of loans 3, 4 and 6. I've taken into account the other loans as they form part of Mrs G's lending history with Hitachi.*

*We've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. Hitachi is aware of its obligations under the rules and regulations in place at the time of this lending decision, including the Consumer Credit Sourcebook ("CONC"), so I won't repeat them here. But, briefly, it was required to carry out sufficient checks to ensure that Mrs G would be able to repay the borrowing applied for in a sustainable way. As set out in CONC 5.3.1G(2) that means that he could manage the repayments,*

*“...without...incurring financial difficulties or experiencing significant adverse consequences”*

*There are two questions I need to consider when deciding this case, which I will deal with separately below.*

*Were Hitachi's checks proportionate?*

*Hitachi has provided information to show it asked Mrs G about her income at the time it made each lending decision. It also says it searched her credit file but hasn't provided the full results of its searches instead, it has provided an internal document it says it inputted into its system using the raw data from the credit checks it carried out. To be clear, the rules didn't give a list of checks that Hitachi had to carry out, but Hitachi was required to carry out proportionate checks before making each lending decision.*

*At the time of loan 3, Mrs G's income was recorded as £3,645.15 per month, Hitachi recorded that Mrs G shared the mortgage payment with her partner and so it lent on the basis that she was paying £381 towards the mortgage. Hitachi also recorded that Mrs G was paying around £38.37 towards credit commitments. Based on this it thought Mrs G had enough income to repay the loan.*

*Before taking loan 3, Mrs G had borrowed twice from Hitachi, in fact loans 1 and 2 were running concurrently and she took out loan 3 two days after repaying loan 1 and so there's a question about whether Hitachi did enough before lending this loan bearing in mind Mrs G's history with it.*

*The borrowing continued into loan 4, from the information provided, Hitachi lent Mrs G loan 4 a day before she repaid loans 2 and 3. Loan 4 was now for three times more than loan 3 and it had a longer term. And by the time Hitachi lent loan 6, Mrs G's balance was still outstanding on loan 4 which meant at a point she was repaying three loans concurrently.*

*Overall, I don't think it was reasonable for Hitachi to rely on the same level of checks as it did for the initial lending when it lent loans 3, 4 and 6. I think it should have been looking to understand Mrs G's financial circumstances better, particularly as it should have been concerned she may have been dependent on credit. This could have been by verifying some of the information Mrs G provided through bank statements or payslips.*

*What would proportionate checks have shown?*

*To try and understand Mrs G's actual financial circumstances at the time, Mrs G has provided copies of her bank statements around the time of the loans. I've relied on these to assess what Hitachi would likely have found had it taken its checks further. Proportionate checks for loan 3 would likely have shown Hitachi Mrs G's income was less than she declared, the bank statements show that Mrs G earned around £1,595 in the months before she was lent loan 3. Mrs G would have been paying more than a quarter of her income towards credit commitments, this meant that over the 24-month term of the loan, she was likely to struggle to repay.*

*By the time of loan 4 onwards, Mrs G was borrowing from other lenders including high cost lenders, although her income had increased to around £4,600 Mrs G was needing to rely on credit quite significantly.*

*She was in a similar position at the time of loan 6, continuing to rely on credit - her overdraft and cash from her credit card as well as the loan from Hitachi.*

*Mrs G had continuously borrowed for more than four years, some of the loans ran concurrently, I think the continued need for Mrs G to return for more loans should have concerned Hitachi about her dependence on credit. Hitachi ought to have known she was reliant on credit and borrowing to repay other credit. In those circumstances, Hitachi shouldn't have lent those loans and it needs to put things right."*

The time to respond to the provisional decision has now passed. Hitachi didn't provide any further comments or evidence. Mrs G responded to say even though when she referred the complaint to this service, she said she didn't want loan 1 considered, she'd like this loan considered as well.

As this wasn't a new complaint and Hitachi already had a chance to comment on this loan, I reviewed that lending decision and explained my provisional findings to Mrs G. I said:

*"Mrs G has provided to my provisional decision to say she'd like me to review loan 1. Mrs G acknowledges she didn't want it reviewed when she completed the complaint form but on reflection, she would like me to make a decision on whether the first loan was affordable especially as the adjudicator made a finding on it.*

*I can see Hitachi already had a chance to review its lending decision for loan 1 so I have now considered whether that loan was fairly lent. The loan was for £8,000 with a monthly repayment of £200 over a 60-month period. This was Mrs G's first loan with Hitachi and there was no known previous history of lending as there was at the time of the subsequent loans. While Hitachi hasn't provided detailed record of its search into Mrs G's credit file, Mrs G has said her credit use at the time wasn't elevated. She argues that had Hitachi completed thorough checks like checking her payslips and bank statement then it would have seen she couldn't afford this loan.*

*Looking at the overall circumstances of this loan, I don't think it would have been proportionate for Hitachi to carry out thorough checks before agreeing to lend this loan. I say this because it was Mrs G's first loan, the repayment amount was a very small portion of her declared income of around £3,300 also there doesn't appear to have been any concerning information on the credit file. On that basis, I won't have expected Hitachi to be reviewing payslips or bank statements at this stage and so even if further checks would have revealed the loan wasn't affordable, this isn't something I would have expected Hitachi to have found from what I consider proportionate checks for this loan. So I think for this loan Hitachi's checks went far enough and those checks show Mrs G could afford the loan, on that basis, Hitachi wasn't wrong to lend this loan to Mrs G."*

In response to my provisional findings on loan 1, Mrs G disagreed. She says had Hitachi checks weren't reasonable and had it checked her bank statements, it would have seen that loan 1 wasn't affordable. Among other things, she has questioned why loan 1 is being treated differently to the other loans and if an adjudicator upheld that loan, why I'm inclined not to uphold.

### **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.

My provisional findings on loans 3, 4 and 6 aren't in dispute by either party so I see no reason to depart from my provisional findings on those loans.

In relation to loan 1, I'd start by saying this service has a two stage process and where a complaint can't be resolved at the initial stage like this one, it is referred to an ombudsman like me, who reviews all the information afresh and reaches a decision on what they think is fair and reasonable in all the circumstances of the complaint. I'm not bound by the findings of the adjudicator and I have carried out a full and independent review of the case.

Hitachi needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mrs G could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. *With this in mind, in the early stages of a lending relationship, I less thorough checks might be reasonable and proportionate.*

But certain factors might point to the fact that Hitachi should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

Loan 1 was the start of the lending relationship and given the cost of the loan and the monthly repayments, I wouldn't have expected Hitachi to request bank statements or payslips from Mrs G at that stage as a matter of course. What is different between loan 1 and the subsequent loans I've upheld is that by the time of those loans, Mrs G has started showing signs of being reliant on credit, having had concurrent loans with Hitachi and a concerning borrowing history. These weren't factors that were present at the time of loan 1.

Also, the results of its affordability checks showed Mrs G would have been left with sufficient disposable income after taking into account her credit commitments and the loan repayment. Even if Hitachi took into account the full mortgage payment as being Mrs G's responsibility, the checks show Mrs G was likely to still have sufficient disposable income for loan 1.

I appreciate that may not have been the true picture as Mrs G argues that her bank statements show she wouldn't have been able to afford the loan but Hitachi didn't need to see her bank statements or payslips at this stage and I think its checks were reasonable and proportionate to the lending circumstances. Those checks didn't reveal concerning details that should have prompted it to take its checks further.

Overall, I don't think Hitachi acted unfairly by lending to Mrs G based on reasonable checks which didn't show Mrs G would struggle to repay loan 1.

I appreciate my findings about loan 1 will likely disappoint Mrs G but I hope my explanation goes to assure her that I fully considered the lending decision. Based on the circumstances of the first loan, I won't be asking Hitachi to put things right for that loan. But I think it lent loans 3, 4 and 6 when it shouldn't have and it needs to put things right for those loans.

## **Putting things right**

- Remove all interest, fees and charges applied to loans 3, 4 and 6.
- Treat any payments made by Mrs G as payments towards the capital amounts of those three loans.
- If Mrs G has paid more than the capital then any overpayments should be refunded to with 8%\* simple interest from the date they were paid to the date of settlement,
- But if there's still an outstanding balance, Hitachi should agree a suitable repayment plan with Mrs G.
- Remove any adverse information about the loan 3 from Mrs G's credit file and remove adverse information about loans 4 and 6 after Mrs G has fully repaid the
- loans.

† HM Revenue & Customs requires Hitachi to take off tax from this interest. Hitachi must give Mrs G a certificate showing how much tax it's taken off if she asks for one.

## **My final decision**

I uphold Mrs G's complaint in part and direct Mitsubishi HC Capital UK Plc trading as Hitachi Personal Finance to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 18 October 2022.

Oyetola Oduola  
**Ombudsman**