

The complaint

Mr M complains that Mitsubishi HC Capital UK Plc declined a loan application he made due to his age.

What happened

Mr M applied for an interest free loan, provided by Mitsubishi, to purchase some flooring for his house on 13 October 2021. The application was declined and Mitsubishi wrote to Mr M to tell him this. Mr M complained to Mitsubishi.

Following Mr M complaining, Mitsubishi again wrote to Mr M on 20 October 2021 saying the loan had been declined due to his age and the type of finance he was applying for. It explained how he could appeal this decision. Mr M replied on the same day and asked for an official complaint to be raised.

Mitsubishi didn't uphold Mr M's complaint so he referred it to our Service. Mr M said he'd been discriminated against because of his age. He said he'd had to use a credit card to pay for the flooring and has since taken out a loan. This had cost him more due to interest charges and meant he had less credit available for other purchases he needed. Mr M believes that the declined Mitsubishi application has had an impact on how other local businesses are dealing with him.

One of our Investigators looked into this complaint. She said that Mitsubishi hadn't provided any evidence to explain why Mr M's application was declined based on his age. She didn't think it fair that the initial letter from Mitsubishi didn't tell Mr M how to appeal the application. Our Investigator noted that it was Mr M's decision to proceed with the purchase using other means, but she thought that Mitsubishi should pay Mr M £250 for the distress and inconvenience caused by declining the application because of Mr M's age and not telling Mr M he could appeal the decision sooner.

Neither Mr M nor Mitsubishi accepted our Investigator's opinion.

Mr M said he needed new flooring because of mobility issues and he'd now taken out a loan which was charging interest, whereas the finance from Mitsubishi would've been 0% interest.

Mitsubishi said that it wouldn't provide details of its lending criteria, but that this was designed to consider the overall risk of lending in the circumstances. It agreed to pay £100 compensation.

As agreement couldn't be reached, the complaint has been passed to me to review and make a final decision.

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.

Mr M says that Mitsubishi has discriminated against him based on his age. He says this

breaches the Equality Act 2010.

It's not our role to say whether a business has acted unlawfully or not – that's a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things into account including relevant law and what we consider to have been good industry practice at the time. So, although it's for the Courts to say whether or not Mitsubishi has breached the Equality Act 2010, we're required to take the Equality Act 2010 into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of the complaint.

The Equality Act 2010 lets financial services providers make decisions based on age when providing services. This is known as the 'financial services exemption'. But this doesn't mean that businesses can apply age limits and refuse to lend to a consumer because of their age without any justification.

Where a business has carried out a risk assessment involving age, it must base its assessment on relevant information from a source on which it's reasonable to rely. In other words, it can't just make assumptions or take into account irrelevant considerations. If a business's risk assessment doesn't meet those requirements, set out above, then it can't rely on the exemption from the Equality Act 2010. Though in certain circumstances it may nevertheless be able to show that any discrimination is objectively justified and so not unlawful. This area is complex and this is only a very brief description of the relevant law. As I say, it's not for me to make a finding about whether or not Mitsubishi has acted in breach of the Equality Act. But, nevertheless, this is relevant law for me to take into account in deciding whether or not it treated Mr M fairly and reasonably in all the circumstances.

The initial letter sent to Mr M gave no reason for the loan being declined. It was the next letter that suggested the lending was declined because Mr M was 84 years old. It provided no further detail. This second letter also set out that Mr M could appeal this decision. However, given that Mr M had been told his application had been declined due to his age, I can see why he would've been reluctant to appeal this. His age wasn't likely to change following any appeal. And this letter suggests that the decision Mitsubishi made was directly based on his age.

Our Investigator asked Mitsubishi for details of its age limits and for further information regarding any risk assessment Mitsubishi may've carried out when setting its age limits. Mitsubishi said it wasn't required to disclose its lending criteria and provided no details of any risk assessment it had carried out. It also hasn't confirmed the exact reasons Mr M's application was declined, the answer it gave in response to this question was very vague.

Mitsubishi is required to cooperate with our investigations under its regulatory requirements. So, it's frustrating that it hasn't provided any further details on its lending criteria and any risk assessment it may have carried out – both of which are enquiries it's reasonable for us to make and expect responses to. I've taken into account its failure to respond to those enquiries in deciding this case.

Mitsubishi says that the loan was automatically declined due to Mr M's age. It's not explained this decision, and it's not shown me its lending policy in this area, or explained its rationale for that policy. It's not explained what risk assessments it has carried out, or the sources of information relied on in those assessments. It's given no evidence of how it arrived at its maximum age for this type of loan, or even what the maximum age is – if it has a maximum age limit. In the circumstances, without further evidence and taking into account relevant law as well as my wider remit, I think it's likely Mitsubishi's decision was solely or mainly based on Mr M's age, and I'm not satisfied that this was fair and reasonable in all the circumstances.

Mitsubishi hadn't completed a credit check, nor had it underwritten the loan or looked at matters such as affordability. Because of this, I can't safely say that Mr M would've been approved for the loan, even if it weren't for his age. Mr M acknowledges that he needed this flooring. And like our Investigator, I note that Mr M proceeded with the flooring purchase in the knowledge that he'd have to pay interest on it. So, I'm not going to ask Mitsubishi to compensate him for the interest he is now paying.

However, Mitsubishi's decision led Mr M to believe that his application had been declined based solely on his age. It hasn't provided evidence to satisfy me this was a fair and reasonable basis for declining the loan. And this must've been upsetting for Mr M. Furthermore, it took some days for Mitsubishi to tell Mr M he could appeal this decision. I think Mitsubishi should compensate him for this.

Putting things right

I've thought carefully about the impact this has had on Mr M. Whilst Mitsubishi was not obliged to agree to Mr M's application, it's not provided the required information to evidence that it gave it proper consideration or that it was entitled to decline for the reasons it gave – Mr M's age. I agree with our Investigator that Mitsubishi HC Capital UK Plc should pay Mr M £250 to compensate him for the distress and inconvenience this matter has caused.

My final decision

I uphold this complaint and direct Mitsubishi HC Capital UK Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 March 2023.

Rob Deadman
Ombudsman