

Complaint

Mr B has complained about a loan Mitsubishi HC Capital UK Plc (then “Hitachi” Capital (UK) PLC) provided to him. He says he believes proper affordability checks weren’t carried out when he applied for his loan.

Background

In January 2019, Hitachi provided Mr B with a fixed sum loan for £15,240.77. This loan was packaged to enable Mr B to purchase a car and consisted of £13,490.00 for the vehicle itself, £495 to purchase a warranty and £1,255.77 to settle the shortfall on Mr B’s old agreement after he part exchanged the vehicle for that purchase.

The total amount to be repaid of £20,016.00, which included interest, fees and charges of £4,775.23, was due to be repaid in 60 monthly instalments of £333.60.

One of our investigators reviewed what Mr B and Hitachi had told us. And she thought that Hitachi hadn’t done anything wrong or treated Mr B unfairly. So she didn’t recommend that Mr B’s complaint be upheld. Mr B disagreed and asked for an ombudsman to look at his complaint.

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 Mr B’s complaint.

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

Given Mr B’s response to our investigator’s assessment, I think that it would be helpful for me to set out that we consider what a firm did to check whether loan payments were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the

regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that the lender did enough to establish whether the repayments to an agreement were affordable, this doesn't on its own mean that a complaint should be upheld. We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

I kept this in mind when deciding Mr B's complaint.

Hitachi says it agreed to this application after Mr B provided details of his monthly income which it says it cross-checked against information from credit reference agencies on the amount of funds going into Mr B's main bank account each month.

It says it also carried out credit searches on Mr B which showed Mr B had five active accounts, one of which was an existing car finance agreement which was going to be settled with this loan, and no significant adverse information – such as defaulted accounts or county court judgments – recorded against him.

On the other hand, Mr B says his existing commitments meant that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr B and Hitachi have said.

The first thing for me to say is that much like our investigator, I don't think it was reasonable for Hitachi to have relied on statistical data for Mr B's living costs given the monthly payments, the cost of this credit and the term of the agreement. In these circumstances, I don't think that Hitachi's checks did go far enough.

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 Mr B. Bearing in mind, the length of time of the agreement and the amount of the monthly payment, I would have expected Hitachi to have had a reasonable understanding about Mr B's regular living expenses as well as his income and existing credit commitments.

I wish to be clear in saying that I'm not going to use the information Mr B has provided to carry out a forensic analysis of whether the repayments to his agreement were affordable. I say this particularly as Mr B's most recent submissions are being made in support of a claim for compensation and I need to keep in mind that any explanations he would have provided at the time are more likely to have been with a view to persuading Hitachi to lend, rather than highlighting any unaffordability.

Equally, what Hitachi needed to do was supplement the information it had on Mr B's credit commitments, with some further information on his actual living costs rather than estimates or assumptions. And the information Mr B has provided does appear to show that when his committed regular living expenses and existing credit commitments were deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due for this loan.

Overall and having carefully considered everything, given what I think further enquiries into Mr B's living expenses are likely to have shown Hitachi, while I accept that Hitachi's checks before providing this loan Mr B didn't go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped Hitachi from providing this loan.

In reaching my conclusions, I've also considered whether the lending relationship between Hitachi and Mr B might have been unfair to Mr B under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Hitachi irresponsibly lent to Mr B or otherwise treated him unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

I appreciate that this will be disappointing for Mr B. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 November 2024.

Jeshen Narayanan
Ombudsman