

Complaint

Mr R has complained about a personal loan that Mitsubishi HC Capital UK PLC (trading as Novuna Personal Finance) provided to him. He's said that the loan was unaffordable, shouldn't have been approved because of his financial situation and as a result led to missed payments and further financial issues.

For the sake of clarity, as Mitsubishi HC Capital UK PLC lent to Mr R using its then trading name of Hitachi Personal Finance (rather than its current trading name of Novuna Personal Finance) I have referred to "Hitachi" throughout this final decision.

Background

In May 2017, Hitachi provided Mr R with a loan of £25,000.00. The loan had an APR of 9.3% and a term of 71 months. This meant that the total amount of £32,272.34, which included interest, fees and charges of £7,272.34, was due to be repaid in 71 monthly repayments of £454.54.

In September 2024, Mr R complained saying said that his loan was unaffordable and this led to him experiencing further financial issues. Hitachi did not uphold Mr R's complaint as it thought that it carried out reasonable checks into Mr R's circumstances and the results of these showed that the monthly repayments were affordable. When Mr R's complaint was referred to our service, Hitachi told us that we couldn't look at it as it was made too late.

One of our investigators reviewed what Mr R and Hitachi had told us. She reached the conclusion that we could look at Mr R's complaint. However, she wasn't persuaded that proportionate checks would have shown that this loan was unaffordable for Mr R. So the investigator didn't recommend that Mr R's complaint be upheld.

Mr R disagreed with the investigator and asked for an ombudsman's 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Hitachi has argued that Mr R's complaint was made too late because he complained more than six years after it provided him with his loan, as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the lending relationship between Mr R and Hitachi was unfair to Mr R as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr R's complaint. Given the reasons for this, I'm satisfied that whether Mr R's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr R's complaint should be considered more broadly than just the lending decisions. I consider this to be the case as Mr R has not only complained about the circumstances behind Hitachi's individual decision to provide him with his loan, but also the fact he alleges that the provision of this loan created and perpetuated an adverse financial situation.

I'm therefore satisfied that Mr R's complaint can therefore reasonably be interpreted as a complaint that the lending relationship between himself and Hitachi was unfair to him. I acknowledge the possibility that Hitachi may still disagree that we are able to look at Mr R's complaint and that Mr R may disagree with the investigator's conclusions on whether he complained in time, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr R's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr R's complaint can be reasonably interpreted as being about that his lending relationship with Hitachi was unfair to his, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Hitachi) and the debtor (Mr R), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr R's complaint, I therefore need to think about whether Hitachi's decision to lend to Mr R, or its later actions resulted in the lending relationship between Mr R and Hitachi being unfair to Mr R, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr R's relationship with Hitachi is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr R's ability to repay this loan in circumstances where doing so would have revealed the monthly payments to have been unaffordable, or that it was irresponsible to lend. And if this was the case, Hitachi didn't then somehow remove the unfairness this created.

Our typical approach to complaints about irresponsible or unaffordable lending

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 R's complaint.

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 a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what 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 meant that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances were 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've kept this in mind when deciding Mr R's complaint.

Application to Mr R's complaint – Did Hitachi act fairly and reasonably when deciding to provide Mr R with his loan?

Hitachi says it agreed to Mr R's application after he provided details of his employer and his annual income. It says it cross-checked this against information from credit reference agencies on the amount of funds Mr R received into his main bank account each month. It also carried out a credit search to ascertain Mr R's existing indebtedness.

In its view, when reasonable repayments to Mr R's existing credit commitments were combined with his mortgage payments and deducted from his monthly income, he had sufficient funds left over to meet the repayments to this loan as well as his other committed expenditure.

On the other hand, Mr R has said he should never have been provided with this loan due to his existing indebtedness and his financial situation.

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

The first thing for me to say is that this wasn't simply a case of Hitachi accepting over-optimistic declarations of Mr R's monthly disposable income at face value. Hitachi took steps

to check Mr R's income and while its credit searches did show that Mr R had some existing debts, these weren't excessive (compared to the amount of his income) and at the time of the applications, at least, were being reasonably managed.

I accept that Mr R's actual circumstances may not have been fully reflected either in the information he provided, or the information Hitachi obtained. Indeed, I've noted that Mr R has referred to having taken out a loan for a similar amount not too long before this one. However, as the loan Mr R has referred to was taken just before this one and it takes some time (up to 90 days) for credit reports to update, not only do I think that Hitachi was unaware of Mr R's other loan, I don't think that it could reasonably be expected to have known about it even though it carried out a credit check.

For the sake of completeness, I would also add that even if I were to accept that Hitachi should have done more here, at the absolute most I would have expected Hitachi to have had a reasonable understanding about Mr R's actual regular living expenses. And having considered the information Mr R has provided us with, I don't think that Hitachi finding out more about Mr R's actual regular living costs would have made a difference here.

I say this because the information provided shows that when Mr R's committed regular living expenses, other non-discretionary expenditure and the existing credit commitments Hitachi knew about were deducted from his income, he did have the funds to make the monthly payments to this loan.

In reaching my conclusions, I've also noted what Mr R has said about what a review of his bank statements would have uncovered. However, there isn't a requirement for a lender to obtain bank statements from a customer before agreeing to lend to them. In my view, requiring bank statements irrespective of the circumstances does not appear to be in keeping with the principle of carrying out an assessment that is proportionate.

I consider that a lender insisting on reviewing a customer's bank statements irrespective of the rest of the circumstances (such as the amount lent, the monthly payments due and what any other information the lender may hold indicates) would be disproportionate. In my view, it would be an example of simply continuing to apply a process to a situation, without taking account of the situation and what else a lender might know about the customer.

So I wouldn't expect a lender to automatically carry out a forensic review of bank statements (in the way that Mr R has) before lending to a customer, in the way that Mr R appears to be suggesting. In my view, whether it would be proportionate to take such a course of action would depend on the rest of the circumstances of the borrowing.

I've therefore considered whether the circumstances at the time of Mr R's application warranted a full review of his bank statements. In this case, Mr R had a decent salary and his repayment record on his existing credit was reasonable. For example, he doesn't appear to have had any significant adverse information - such as defaulted accounts or County Court Judgments ("CCJ") - recorded against him.

Given what I've said about what his disposable income was at the time, I think that it is unlikely that there was anything in the information Hitachi likely gathered at the time that would have suggested the repayments were unaffordable. So, in my view, the circumstances here did not suggest that a manual review of multiple months' worth of bank statements was necessary in this instance.

I'm sorry to hear about what Mr R has told us about his gambling and I accept that it is possible that Hitachi might have reached a different lending decision had it actually known about what Mr R has now told us when it was considering his application. But the key thing

here is not only did Mr R not make Hitachi aware about his gambling as part of his application for this loan, I don't think it can be reasonably expected to have known about this either, as it didn't need to ask for copies of Mr R's bank statements.

In these circumstances, whilst I do sympathise with what Mr R has said and I'm not seeking to dismiss or trivialise what he's told us, it's simply the case that Hitachi could not have factored this into its lending decision.

Overall, and based on the available evidence I don't find that Mr R's relationship with Hitachi, in respect of this loan, was unfair. I've not been persuaded that Hitachi created unfairness in its relationship with Mr R by irresponsibly lending to him when providing him with his loan. I don't find that Hitachi treated Mr R unfairly in any other way, in relation to his loan, either based everything I've seen.

So overall and having considered everything, while I can understand Mr R's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mr R. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 23 September 2025.

Jeshen Narayanan
Ombudsman