

## **The complaint**

Mrs S has complained about the way Mitsubishi HC Capital UK Plc trading as Hitachi Personal Finance (“Mitsubishi”) has dealt with a claim she made under section 75 Consumer Credit Act 1974 (“s.75”).

## **What happened**

In April 2014, Mrs S entered into a contract to purchase a solar panel system from a supplier. The system cost £8,611.00 which she paid for using a fixed sum loan agreement from Hitachi that was repayable over ten years. She paid off the loan early, in January 2018.

Mrs S, represented by a claims management company (“the CMC”), wrote to Mitsubishi in July 2020 to make a claim under s.75. The purpose of s.75 is to provide protection for consumers who pay for goods or services using credit. The creditor (Mitsubishi) is jointly and severally liable with the supplier for any breach of contract or misrepresentation by the supplier – subject to certain considerations being met.

Mrs S’s claim explained that she was told the feed-in tariff payments would cover the cost of the loan agreement. The CMC later said she expected the system to pay for itself within 6 years.

Mitsubishi said Mrs S had made the claim too late, since she had not contacted Mitsubishi within six years of the sale.

Unhappy with Mitsubishi’s response, the CMC raised a complaint and referred the matter to this Service to look into. One of our investigators reviewed things but concluded that Mitsubishi had not acted unfairly by rejecting Mrs S’s s.75 claim.

In summary, our investigator said that Mrs S’s claim against the supplier of the system was made outside of the timescales set out in the Limitation Act 1980, although Mitsubishi had caused some confusion by commenting on the merits of the claim at the same time as saying the claim was made too late.

Mitsubishi acknowledged this and said it would pay Mrs S £300 as a gesture of goodwill. Our investigator thought this was reasonable.

Since Mrs S remained unhappy, I’ve been asked to make a 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.

In this complaint I’m considering whether Mitsubishi has treated Mrs S fairly in its response to her s.75 claim. There are a number of things I’ve taken account of when reaching my decision, including the law, relevant rules and regulations, good practice and the facts of

Mrs S's complaint. In this decision I'll refer to those that I consider to be most central to my conclusions.

#### relevant considerations

Mrs S's complaint is about a claim under s.75 and so naturally the appropriate parts of the Consumer Credit Act 1974 are relevant here.

As I've explained above, s.75 sets out why a claim can be made against Mitsubishi, and it can be held responsible for a purchase Mrs S made using a point-of-sale loan. I'm satisfied in this instance that there's an appropriate relationship between the parties for Mitsubishi to consider a s.75 claim.

There are also high-level principles which apply to all firms authorised by the financial regulator (the "FCA"). Principle 6 of the FCA Principles states:

*"A firm must pay due regard to the interests of its customers and treat them fairly".*

So, Mitsubishi must have treated Mrs S fairly when it declined her s.75 claim. And as the reason Mitsubishi gave for declining Mrs S's claim was that it was made outside of the relevant time limits, the Limitation Act 1980 is of particular relevance.

#### The Limitation Act

The Limitation Act is the law which sets out the time limits which apply to different causes of action that a party can pursue. As Mrs S's rights to claim against Mitsubishi under s.75 are on the same basis of those she could make a claim against the supplier, I consider the relevant time limits set out in the Limitation Act are:

- Section 2 which applies to causes of action founded in tort law – which includes claims for misrepresentation.
- Section 5 which applies to causes of action founded on simple contract law – which includes breaches of contract.
- Section 9 which applies to causes of actions for sums recoverable by statute.
- Section 14A which sets out when time limits are linked to when a claimant had the necessary knowledge and right to bring a claim.

#### Misrepresentation

s.2 of the Limitation Act states, *"An action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued"*.

For me to determine whether a claim was brought within six years, I have to decide when the cause of action, or damage, took place. The damage is the financial loss arising as a result of the misrepresentation.

In this case, Mrs S says the benefits of the solar panel and heating system were the inducement that made her make the purchase. But her s.75 claim is that those benefits were misrepresented and so she entered a contract which wasn't the value for money she expected. Mrs S says were it not for the misrepresentation about the potential benefits, then she wouldn't have entered the contract to purchase the system at all.

So, Mrs S's financial loss occurred when she contracted to pay £8,611.00 for the solar panel system in April 2014, and she started to make payment of those sums.

Mrs S raised her claim with Mitsubishi in July 2020 which is more than six years from when the damage occurred, and her cause of action accrued.

#### Breach of contract

s.5 of the Limitation Act states, *“An action founded on simple contract shall not be brought after the expiration of six years from the date which that cause of action accrued”*.

A breach of contract occurs when one of the parties to that contract doesn't perform the obligations set out in the contract. So, Mrs S would have six years to raise a claim from when a loss occurred as a result of the breach of contract.

While Mrs S has mentioned breach of contract in her claim, the points she has made about what the supplier did wrong describe misrepresentations, not a breach of contract. So, I don't think this s.5 is relevant to my decision in this case.

#### Sums recoverable by statute law

s.9 of the Limitation Act states, *“An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued.”*

I've considered this section because the basis of Mrs S's claim against Mitsubishi is under s.75 and so is a sum recoverable by virtue of enactment (statute law from an act of parliament). But I don't think this changes the position compared to the other provisions in the Limitation Act. s.75 makes the lender jointly and severally liable for a supplier's misrepresentation or breach of contract – effectively making Mitsubishi “step into the shoes” of the supplier.

This means that the limitation period under s.9 is the same as for misrepresentation and breach of contract – and gives rise to effectively the same cause of action.

#### s.14A Limitation Act

Although the limitation time period is six years for cause of action as set out above, s.14A provides for a second period in which a claim can be made. That is, if later than the six-year period, three years from the earliest date on which the claimant had both the knowledge required to bring a claim for damages, and the right to bring such a claim.

This is a relevant consideration for Mrs S's claim as I've already explained she raised her complaint with Mitsubishi over six years from when the contract was entered, and damage suffered. So, applying s.14A in this instance I've considered when Mrs S knew, or ought to have known, that she had a claim for misrepresentation against the supplier.

I think Mrs S ought to have known something was wrong at most around one year after installation of the system. This is because she was given an estimate of the annual benefit the system would provide. After one year she would've been able to compare the actual benefits with the estimate to see if the system was delivered the estimated benefit. As such this part of the Limitation Act would not extend the time she had to make a claim beyond the original six years.

So, I consider it reasonable for Mitsubishi to have concluded the claim was made out of time, and that Mrs S did know, or ought to have known she had a claim for misrepresentation by

around July 2015 – as she would've had access to feed-in tariff statements and electricity bills allowing her to work out the benefit she was receiving.

### Summary

In this decision I am considering whether Mitsubishi has acted in a fair and reasonable manner when dealing with Mrs S's s.75 claim. It is for the courts to ultimately decide whether or not any right to claim against the supplier (and so Mitsubishi) has expired under the Limitation Act but given the information available and representations made by both parties, I'm satisfied Mitsubishi has applied the rules fairly and made a reasonable decision.

Mitsubishi has offered £300 as a gesture of goodwill because it accepts that it may have caused some confusion by saying the claim was made out of time but then commenting on its merits. I think that offer is fair.

I'm aware Mrs S has said that as a consumer she wasn't aware of any time limits that would affect her ability to make a claim. Whilst I understand her point, the time limits are set out in law – and so I can't say it's unreasonable for Mitsubishi to apply them.

I've not seen any evidence to show Mrs S was unable to make a claim within time. So, Mitsubishi would have no liability under s.75.

### **My final decision**

My final decision is that Mitsubishi HC Capital UK Plc trading as Hitachi Personal Finance should pay Mrs S £300 if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 13 February 2023.

Phillip Lai-Fang  
**Ombudsman**