

The complaint

Mr T has complained about the way Mitsubishi HC Capital UK Plc (“Mitsubishi”) has dealt with a claim he made under section 75 (s.75) of the Consumer Credit Act 1974 (“s.75”).

What happened

In April 2014 Mr T entered into a contract to purchase a solar panel system (“the system”) from a supplier. Mr T paid for the system using a fixed sum loan agreement from Mitsubishi, which was repayable over ten years.

Mr T engaged a claims management company (“the CMC”), which wrote to Mitsubishi in September 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.

Mr T’s claim explained that he was told the system would be self-funding, in that it would pay for itself through the benefits it provided. Those benefits are through Feed-In Tariff (“FIT”) payments and electricity savings (from using electricity generated by the system rather than buying it from an energy supplier). The CMC says the benefits over one year only cover three monthly loan repayments and so the system was misrepresented to Mr T – inducing him to purchase the system.

Mitsubishi responded to say that Mr T’s claim was made too late, since the time limits set out in the Limitation Act 1980 meant that the supplier would have no liability for any misrepresentation during the sale of the system – and as such nor would Mitsubishi. However, it also said that it felt the system was not misrepresented in any case.

Unhappy with Mitsubishi’s response, Mr T raised a complaint and referred the matter to this Service to look into. Mitsubishi then arranged for £300 to be credited to Mr T’s account, as a gesture of goodwill, to recognise any inconvenience and confusion caused by it also commenting on the merits of the claim in its initial response while saying the claim was made out of time.

One of our investigators looked what had happened and concluded that Mitsubishi had not acted unfairly by rejecting Mr T’s s.75 claim and said its offer of compensation was fair.

The CMC disagreed. It said that section 14 (s.14) of the Limitation Act provided more time to make the claim. And since Mr T was unaware he had a reason to claim until after he contacted the CMC the claim was made in time.

Our investigator wasn’t able to resolve the matter, so 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 Mr T fairly in its response to his s.75 claim. There are a number of things I've taken account of when reaching my decision, including the law, rules and regulations, good practice, and the facts of Mr T's complaint. In this decision I'll refer to those that I consider to be most central to my conclusions.

relevant considerations

Mr T's complaint is about a claim under s.75 and so naturally the appropriate parts of the Consumer Credit Act 1974 are relevant here.

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 Mr T fairly when it declined his s.75 claim. And as the reason Mitsubishi gave for declining Mr T'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 Mr T's rights to claim against Mitsubishi under s.75 are on the same basis of those he 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 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, Mr T says the benefits of the system were the inducement that made him make the purchase. But his s.75 claim is largely that those benefits were misrepresented and so he entered a contract which wasn't the value for money he expected. Mr T says were it not for the misrepresentation about the potential benefits, then he wouldn't have entered the contract to purchase the system at all.

So, Mr T's financial loss occurred when he paid for the system using a fixed sum loan agreement from Mitsubishi, which meant he owed money to Mitsubishi. This was in April 2014. So, he had until April 2020 to make the claim.

Mr T raised his claim with Mitsubishi in September 2020 which is more than six years from when the damage occurred, and his cause of action accrued.

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 Mr T’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 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 Mr T’s claim as I’ve already explained he raised his claim 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 Mr T knew, or ought to have known, that he had a claim for misrepresentation against the supplier.

I think the latest that Mr T ought to have known he had a claim for misrepresentation was about one year after installation of the system. By that time, he would have access to a full years’ worth of FIT statements and electricity bills, from which he could work out the benefits of the system and compare this to the loan repayments. The CMC has pointed out that the FIT payments only covered three month’s repayments and the electricity savings were minimal. With this in mind, s.14 would not provide additional time for Mr T to make his claim.

Summary

In this decision I am considering whether Mitsubishi has acted in a fair and reasonable manner when dealing with Mr T’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 credited Mr T’s account with £300 compensation to recognise any inconvenience and confusion caused by it commenting on the merits of the claim while also saying it was made out of time. I think that was fair.

I’ve not seen any evidence to show Mr T was unable to make a claim within time, and so I cannot fairly ask Mitsubishi to do anything else now. I realise this will come as a disappointment to Mr T, but I must assure him I’ve considered everything impartially.

My final decision

My final decision is that Mitsubishi HC Capital UK Plc's response to the claim was reasonable, and its offer of compensation was fair.

If it hasn't already done so, Mitsubishi HC Capital UK Plc should credit Mr T's loan account with the £300 compensation it offered him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 7 March 2023.

Phillip Lai-Fang
Ombudsman