

The complaint

Mr and Mrs S complain that GE Money Consumer Lending Limited has rejected the claims that they've made under the Consumer Credit Act 1974. They're being represented in their complaint by a claims management company.

What happened

Mr and Mrs S entered into an trial membership agreement with a holiday company in June 2007. The price of the membership was £3,595 and they made a payment of £1,195 so the balance due was £2,400. They also entered into a fixed sum loan agreement with GE Money at that time for an interest free loan of £2,400. In August 2007 they entered into a purchase agreement for membership of the holiday club. The price of the membership was £15,669, less a trade-in value of £5,000, so the balance due from them was £10,699. They also entered into a fixed sum loan agreement with GE Money at that time for £13,099 which was the £10,699 due under the purchase agreement and £2,400 for refinancing their outstanding loan.

Mr and Mrs S's representative made claims to GE Money under sections 75 and 140A of the Consumer Credit Act in February 2021 that:

- the timeshare and the purchase agreement are null and void under EU Directive;
- the loan agreement is unenforceable;
- the timeshare was misrepresented to Mr and Mrs S; and
- GE Money didn't carry out an affordability assessment on Mr and Mrs S's ability to repay the loan.

It also said that Mr and Mrs S only became aware of these issues when it was advised by it and that clearly falls within the three years date of knowledge rule.

GE Money said that the loan account was no longer held on its systems so it determined that it had been closed for at least six years. It set out in detail the reasons that it didn't uphold Mr and Mrs S's claim and it said that any claim that they might otherwise have had was time-barred under the Limitation Act 1980. It apologised for the delay in its response and it offered to pay them £25 for any distress and inconvenience that may have been caused. They weren't satisfied with its response so a complaint was made to this service.

Our investigator didn't recommend that Mr and Mrs S's complaint should be upheld. She said that their claims were outside of the time limits in the Limitation Act and were raised too late, so she thought that it was fair for GE Money to turn down their claims.

Mr and Mrs S's representative, on their behalf, has asked for this complaint to be considered by an ombudsman. It has responded in detail and says, in summary, that the timeshare agreement is governed by EU Directive and that it and the credit agreement are null and void which makes the relationship between Mr and Mrs S and GE Money unfair. It also says that they wouldn't have known that they had a cause of action against GE Money until they

consulted it in 2020 – so the complaint was made within three years of their date of knowledge and isn't time-barred.

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.

Having done so, I agree with the outcome recommended by our investigator for these reasons:

- we don't have a free hand to consider every complaint that's referred to us and our rules, which we are required by law to follow, say – amongst other things – that we can't normally deal with a complaint if it's referred to us more than six years after the event complained of; or (if later) more than three years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint;
- Mr and Mrs S's complaint is that GE Money turned down their Consumer Credit Act claims and I accept that they referred their complaint to our service within six years of that happening - but I need to consider whether the Limitation Act applies to their claims;
- Mr and Mrs S's claims are under sections 75 and 140A but I'm not determining the outcome of those claims in this decision as only a court would be able to do that, but I'm considering whether or not GE Money's response to those claims was fair and reasonable in the circumstances;
- section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met);
- Mr and Mrs S's claim under section 75 is that the timeshare was misrepresented to them and that they wouldn't have bought it if it hadn't been misrepresented to them - if the criteria for a claim under section 75 were met, GE Money would be expected to consider that claim unless the claim was brought outside of the time limits set out in the Limitation Act in which case it would be entitled to rely on the Limitation Act and to not consider the claim;
- the time limit for a misrepresentation claim (whether under section 2 or section 9 of the Limitation Act) is six years from the date on which the cause of action accrued (which is when everything needed to make a claim had occurred);
- I consider that Mr and Mrs S could have made a claim to the holiday company or GE Money about the misrepresentations that they say induced them into buying the trail membership and the timeshare when they entered into the agreements in June and August 2007 as that was when they say that they entered into agreements based on the misrepresentations of the holiday company and suffered a loss as they entered into the loan agreements with GE Money;
- I consider that their cause of action accrued at that time, so they would have had six years from then to bring a claim against either the holiday company or GE Money – but they didn't make a claim against GE Money until February 2021, more than thirteen years later which was outside of the time limits set out in the Limitation Act so I consider that their claim is now time-barred;
- Mr and Mrs S's representative says that Mr and Ms C only became aware that they could make a claim to GE Money after they sought advice from it in 2020 – but when

they had the knowledge to bring a claim doesn't assist them for the purposes of the Limitation Act – the time limits for a claim under some sections of that Act are extended where a claimant doesn't have knowledge at the time when the cause of action accrued, but I don't consider that those sections are applicable to Mr and Mrs S's claims;

- Mr and Mrs S's representative says that there was an unfair relationship between Mr and Mrs S and GE Money and section 140A gives a court the power, amongst other things, to require a creditor to repay any sum paid by the debtor under a credit agreement if it determines that there's an unfair relationship between the debtor and the creditor;
- the courts have said, when considering section 140A, that the time for limitation purposes runs from the date that the credit agreement ended (if it was not still running at the time the claim was made) and the limitation period for a claim under section 140A is six years;
- the loan agreement for £2,400 that Mr and Mrs S entered into in June 2007 was for twelve months and the loan agreement that they entered into in August 2007 shows a loan of £2,400 being refinanced – so I consider it to be reasonable to conclude that the June 2007 loan ended in August 2007;
- GE Money says that the account for the loan that was entered into in August 2007 is no longer held on its systems and that it has determined that it has been closed for at least 6 years and that the latest that it could have been open was February 2015 – neither Mr and Mrs S nor their representative has provided any evidence to show that the loan continued after February 2015 and I consider it to be more likely than not that their section 140A claim was made outside of the time limits set out in the Limitation Act and is now time-barred;
- Mr and Mrs S's representative says that the trial membership agreement and the purchase agreement are null and void under European law – but I'm not persuaded that the agreements were illegal at the time that they were entered into and I don't consider that Mr and Mrs S would have had three years from when they were advised by their representative that they had a cause of action to make a claim against GE Money - I consider that any claim about the legality of the agreements would now also be time-barred;
- their representative also says that the loan agreements are null and void - but I'm not persuaded that the loan agreements were illegal at the time that they were entered into and I consider that any claim about the legality of the loan agreements would now also be time-barred;
- I'm not persuaded that there's enough evidence in these circumstances to show that there's been a breach of law or regulation by the holiday company for which GE Money would be liable;
- Mr and Mrs S's representative has said that GE Money should have told them about any commission that it paid to the holiday company for arranging the loans – but I've not been provided with any evidence to show what commission, if any, was paid by GE Money to the holiday company;
- from what this service has seen across the industry, if commission was ever paid it tended to be low and of less than 10% and I'm satisfied that GE Money wouldn't have breached any duty in making any such payment – nor was it under any regulatory duty to disclose the amount of any commission paid in these circumstances - and I don't consider that the level of commission that was normally paid in this type of situation was sufficiently high to mean that GE

Money should have appreciated that not disclosing any commission to Mr and Mrs S risked the relationship being unfair under section 140A;

- Mr and Mrs S's representative says that GE Money didn't carry out affordability assessments on Mr and Mrs S's ability to repay the loans – but I've seen no evidence to show that the loans weren't unaffordable for them and I've seen no evidence to show that they complained to GE Money about the affordability of the loans or asked it for any information about the affordability assessments before February 2021 – as the loans were made to them in 2007 and ended before February 2015, I consider it to be more likely than not that any complaint about the affordability of the loans would now be time-barred;
- I'm not persuaded that there's enough evidence to show that Mr and Mrs S were unduly pressured into entering into the trial membership agreement, the purchase agreement or the loan agreements or that the holiday company used unacceptable commercial practices against them – they didn't complain to GE Money about those issues until February 2021 – more than thirteen years after they entered into the agreements and I consider that it would be reasonable to expect them to have complained to GE Money about any such issues before then;
- GE Money issued a substantive response to Mr and Mrs S's claims in June 2021 – it apologised for its delay in responding to their claims and offered them £25 compensation which I consider to have been fair and reasonable – and I consider that it was fair and reasonable for it to say that any claim that they might otherwise have had was time-barred under the Limitation Act; and
- I sympathise with Mr and Mrs S for the issues that they've had with their timeshare and the difficulties that they've described, but I find that it wouldn't be fair or reasonable in these circumstances for me to require GE Money to refund to them any of the money that they paid under the loan agreements, to pay them any compensation or to take any other action in response to their complaint.

My final decision

My decision is that I don't uphold Mr and Mrs S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 26 October 2022.

Jarrold Hastings
Ombudsman