

The complaint

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

What happened

On 17 April 2014, Mr S entered into a contract to purchase a solar panel system from a supplier. The system cost £12,627.00 which he paid using a fixed sum loan agreement from Mitsubishi which was repayable over ten years. The total amount payable was £18,832.80, through 120 monthly repayments of £156.94.

Mr S (represented by a claims management company) wrote to Mitsubishi on 20 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.

Mr S’s claim explained that he had been told that through buying the system he would:

- Make huge savings on his electricity bill.
- Receive a great return on his investment.
- Earn hundreds of pounds in income per year.
- The system would pay for itself after six years through Feed-In Tariff (“FIT”) payments.

Mitsubishi responded to the claim to say that it was made after the deadlines set in the Limitation Act 1980. However, it went on to say that it didn’t think there had been a misrepresentation.

Unhappy with Mitsubishi’s response, Mr S raised a complaint and referred the matter to the Financial Ombudsman Service.

Our investigator looked into what had happened and felt Mitsubishi had confused matters by assessing the misrepresentation claim whilst saying it was made out of time. As a result, Mitsubishi apologised for this and offered to pay Mr S £370 compensation as a gesture of goodwill. Our investigator thought that was a fair way to resolve the complaint, given the claim appeared to have been made outside the time limits in the Limitation Act 1980 – which would mean Mitsubishi had no liability if there was a misrepresentation or breach of contract by the supplier.

Mr S was not happy with this and asked for an ombudsman 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 S 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, relevant rules and regulations, good practice, and the facts of Mr S's complaint. In this decision I'll refer those that I consider to be most central to my conclusions.

relevant considerations

Mr 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 why it can be held responsible for a purchase Mr S made using credit. I'm satisfied 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 Mr S fairly when it declined his s.75 claim. And as the reason Mitsubishi gave for declining Mr 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 1980

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 S'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 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, Mr S says the benefits of the solar panel system were misrepresented and so he entered a contract which wasn't the value for money he expected. Mr S 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 S's financial loss occurred when he contracted to pay for the solar panel system using a fixed sum loan agreement on 17 April 2014, and he began to make loan repayments.

Mr S raised his claim with Mitsubishi on 20 July 2020 which is more than six years from when the damage occurred, and his cause of action accrued.

Breach of contract

Mr S has mentioned breach of contract in his letter of claim. But his specific allegations are all about misrepresentations on the part of the supplier, not about breaches of the contract. So, I don't think Section 5 of the Limitation Act is important here.

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 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 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 S's claim as I've already explained he raised his 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 Mr S knew, or ought to have known, that he had a claim for misrepresentation against the supplier. And whether that extended the time in which he could make a claim.

I think Mr S ought to have known if the benefits from the system did not match what he had been promised about one year after installation of the solar panel system. This is because he was given an estimate of benefits set out on an annual basis, which I think was clear. So, after one year he would've been able to check whether the actual benefits received matched those he had been told he would receive by the supplier.

The solar panel system was installed on 21 May 2014. Mr S received FIT statements confirming the income from the solar panel system. I'm not sure exactly when he received sufficient statements covering a one-year period. But it would likely have been before the end of 2015. So, the three-year period would not have extended the time in which Mr S could make a claim.

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

January 2016 – since Mr S would've had access to FIT statements sufficient to compare the actual benefit he had received with what the supplier told him to expect.

Summary

In this decision I am considering whether Mitsubishi has acted in a fair and reasonable manner when dealing with Mr 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 acknowledged it may have confused matters by also responding to the claim in its letter (despite saying it had been made out of time) and has offered £370 compensation as a gesture of goodwill. I think that is reasonable in the circumstances.

Mr S' claims management company said that as a consumer he wasn't aware of any time limits that would affect his ability to make a claim. Whilst I understand his 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 persuade me that Mr S was unable to make a claim within time. His claims management company says the Covid-19 pandemic may have affected this, but I think Mr S ought to have known there was a problem such that he could've made a claim from at least January 2016. Pandemic related restrictions were not put into place until 2020 and would not have prevented a claim being made electronically. Mr S had several years prior to this when he could've made the claim. And once he contacted his claims management company, it ought to have been aware of the time limits that would apply.

So, I cannot fairly ask Mitsubishi to do anything else now.

My final decision

My final decision is that I don't uphold Mr S's complaint. If it hasn't already done so, Mitsubishi should pay Mr S £370.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 February 2023.

Phillip Lai-Fang
Ombudsman