

The complaint

Mr and Mrs O complain that GE Money Consumer Lending Limited (GE Money) unfairly turned down their claims under the Consumer Credit Act 1974 (CCA).

What happened

Mr and Mrs O bought membership of a timeshare from Business C in September 2007. The cost of the timeshare was £15,238 and it was funded by a point of sale loan from GE Money, arranged by Business C. The loan was for a higher amount than this, because it included an amount for 'refinancing'. The loan was in joint names and it was set to run for fifteen years. GE Money says that the loan was repaid in full in February 2011 and it has provided evidence to support this.

In February 2020, Mr and Mrs O contacted GE Money to claim that, at the time the loan was arranged, Business C didn't have the correct regulatory permissions to arrange the loan. Mr and Mrs O are represented, but for ease I will generally refer to them throughout this decision.

GE Money treated the claim as a complaint and didn't uphold it. It said that the complaint had been brought too late. But that, in any case, Business C did have the necessary permissions to arrange the loan.

Mr and Mrs O then contacted us. In addition to maintaining that Business C hadn't had the right permissions when it arranged the loan, they also raised a number of new issues. In summary:

- Business C had misrepresented the benefits of the timeshare membership.
- Mr and Mrs O had been put under pressure during the sale and didn't recall being given additional time to sign the loan documentation.
- GE Money hadn't carried out the correct affordability checks.
- There was an unfair relationship between GE Money and Mr and Mrs O due to various issues, including misrepresentation by Business C of the timeshare membership benefits and the high interest on the loan.
- Mr and Mrs O's allegations are supported by the fact that a Spanish court found the structure of Business C to be akin to a fraud.

We notified GE Money of the additional points raised. It sent another final response letter which said, in summary, that most of the issues had been raised too late. And that for a number of the issues, Mr and Mrs O should contact Business C about them.

An investigator here looked into things and reached a view. He said, in summary, that the claims under CCA had been brought too late. He said that for section 75 (s.75), Mr and Mrs O had 6 years from the date the "cause of action accrued" to make a claim to the

supplier and that he thought this was the date of sale. He said that for section 140A (s.140A), Mr and Mrs O had 6 years from when the credit agreement ended to make a claim. He said that in both instances Mr and Mrs O were out of time and that he therefore couldn't say that GE Money had handled their claims unfairly.

Mr and Mrs O disagreed. They said, in summary, that:

- The view in relation to the time limits set out in the LA was overly technical. The Ombudsman Service has an inquisitorial remit, looks at things on a fair and reasonable basis and should take a holistic view of matters.
- The issues with the timeshare membership were fraudulently concealed from Mr and Mrs O at the point of sale and only came to light when they saw material online about timeshare mis-selling and when they subsequently sought advice. As such, the limitation period was postponed under section 32 (s.32) LA.
- The investigator's view didn't address the concerns raised about Business C not having had the necessary permissions to arrange the loan.
- Section 8 (s.8) of the LA is relevant and imposes a twelve-year limitation period.

Since the matter remained unresolved, it was passed to me to decide. I issued a provisional decision in May 2022. In it, I said:

"GE Money has said that Mr and Mrs O would need to approach Business C about the allegations to do with information provided by Business C at the point of sale. However, I disagree. Under s.75 CCA, GE Money is required to consider claims for misrepresentation and/or breach of contract. And clearly allegations of misrepresentation are to do with information provided by the supplier of a product or service at the point of sale. S.140A is also relevant here.

However, for reasons that I'll go on to explain, I don't think this ultimately makes a difference to the outcome of this complaint.

Was the timeshare supplier authorised to arrange the loan?

I've first considered Mr and Mrs O's concern that Business C wasn't authorised to arrange the loan. They say this means the loan was unlawful and that they lost out as a result.

At the date of sale the regulation of consumer credit was handled by the Office of Fair Trading ("OFT"). Having looked, I can see that the timeshare supplier did have the right OFT authorisations at the relevant time.

Mr and Mrs O's representative has also referred to a number of parts of the Financial Conduct Authority ("FCA") Handbook that they say Business C didn't properly adhere to when it arranged the loan. But the FCA didn't regulate the sale of this particular loan, so I don't think they are relevant to this complaint.

I've seen that Mr and Mrs O's representative has framed much of their complaint in the terms that Business C breached its authorisations by mis-selling the timeshare to them, so therefore the loan was granted contrary to the Financial Services and Markets Act 2000. But I think the concerns about that are dealt with in the claims made under the CCA. I don't think it follows that as Business C may have acted in a way that leads to a legal claim, they will have acted without authorisation in arranging the loan.

Was the claim under s.75 CCA brought in time?

Mr and Mrs O say that Business C misrepresented to them the nature and benefits of the timeshare agreement, so they say GE Money is jointly liable under s.75 CCA and as such they have brought a 'like' claim. GE Money has said Mr and Mrs O's claim has been brought out of time, by reference to the LA. If GE Money could show the claim was brought outside of the time limits set out in the LA, it would be entitled to rely on the LA as a defence to answering the claim. I should make it clear however that I'm not deciding if any right that Mr and Mrs O may have to bring these claims has expired under the LA - that's a matter for the courts. In this decision I'm considering if GE Money acted fairly and reasonably in turning down Mr and Mrs O's claims.

A claim for misrepresentation against the supplier would be ordinarily brought under s.2(1) of the Misrepresentation Act 1967. And it was held in Laws v. The Society of Lloyds [2003] EWCA 1887 that this type of claim is an action founded in tort covered by s.2 LA or an action brought for a sum recoverable by statute within s.9 LA. Under both of those provisions, a claimant has a period of six years to bring a claim from the date on which the cause of action accrued.

The date on which a cause of action accrued is the point in time that everything needed to make a legal claim occurred. So, in Mr and Mrs O's case, that's when they could have brought a claim for misrepresentation against Business C or a like claim against GE Money. I think that was the date they entered into the agreement to buy the timeshare - which was in September 2007. It was at that time that they entered into an agreement based, they say, on the misrepresentations of Business C. And they say, had the misrepresentations not been made, they wouldn't have bought the timeshare. So, it was on that day that they suffered a loss, as they took out the loan from GE Money.

It follows, therefore, that I think the cause of action accrued in September 2007. Mr and Mrs O had six years from then to make a claim. But they didn't try to contact GE Money about their claim until February 2020, which was outside of the time limits set out in the LA. So, I think GE Money acted fairly in turning down this misrepresentation claim.

The claim under s.140A CCA

Under this section a court may make an order under section 140B in connection with a credit agreement if it decides that the relationship between the debtor and the creditor arising out of the agreement is unfair. Only a court has the power to make such a determination but I think this is relevant law and I have taken it into account.

GE Money has provided evidence to show that Mr and Mrs O's loan agreement was paid off in February 2011 and this isn't disputed.

The LA applies to a claim under s.140A CCA too. It was held in Patel v. Patel [2009] EWHC 3264 (QB) that when considering s.140A CCA, the time for limitation purposes ran from the date that the credit agreement ended if it was not still running at the time the claim was made. And as the limitation period is six years, Mr and Mrs O had to make their claim within six years of February 2011. As they didn't do that, I think they're likely to have made their claim too late.

Is there anything that extends the time limits?

I've thought about whether there is anything else that extends the time period under the LA. But having done this, I don't think there is. Mr and Mrs O's representative says that s.32 LA applies, because issues with the timeshare agreement were deliberately concealed by the supplier. They also say that the supplier's structure has been found to be akin to fraud.

S.32 LA states that in cases of fraud, deliberate concealment or mistake, the limitation period only starts to run from when a claimant discovers the fraud, concealment or mistake (or could have discovered it using reasonable diligence). But Mr and Mrs O's representative hasn't provided much in the way of detail about why it considers there was any deliberate concealment on Business C's part. I'm not currently persuaded by this argument. I have not been pointed toward any fact that Mr and Mrs O say was deliberately concealed from them that meant they were unable to realise they had a cause of action against Business C or GE Money.

In terms of the suggestion of fraud, again Mr and Mrs O's representative hasn't provided any real detail about what this was. They've referenced a court case which they say comments on the structure of Business C – saying that it was “akin to fraud”. But that is not an argument for specifically what it was about this case, that amounts to fraud committed against Mr and Mrs O.

Mr and Mrs O's representative has also suggested that section 8 (s.8) LA applies and that this means the limitations period is in fact twelve years. However, I think that it is section 9 that applies here. S.8 is about actions on a speciality, but here Mr and Mrs O are attempting to recover monies paid using the CCA. That is plainly an action for sums recoverable by statute, so s.9 LA applies.

As I've already said, it's ultimately for the courts to decide whether or not any claim that Mr and Mrs O may have against the supplier or GE Money has expired under the LA. But, as far as I can see from the information available, any claim that Mr and Mrs O might have against the supplier and/or GE Money most likely exceeded the time limits set out in the LA. I think it is reasonable to take that into account. And as a result, I am not persuaded that GE Money acted unfairly in declining the claims.

I've considered Mr and Mrs O's representative's comments about the basis upon which this service makes decisions and how it thinks that the investigator's view about the relevance and application of the LA is 'overly technical'. But Mr and Mrs O are making a legal claim against GE Money and I must take into account any defence it may have against those claims. I'm satisfied that my provisional findings are in keeping with my remit and that GE Money acted fairly in turning down the claim.

Unaffordable lending

Mr and Mrs O say that GE Money didn't carry out the necessary checks to establish that the loan was affordable for them. However, Mr and Mrs O have provided very little detail about this particular allegation. And even if I were to find GE Money didn't do everything that it should have when it agreed to lend (and I make no such finding), in order to uphold this complaint on that basis, I'd have to be satisfied that the lending was unaffordable for Mr and Mrs O and that they lost out as a result.

I haven't seen any evidence to show that Mr and Mrs O had any affordability issues during the life of this loan. There's nothing to suggest that they struggled to meet the loan repayments - for example - or otherwise had financial problems during the relevant time.

So, I find there is insufficient evidence for me to uphold this complaint for this reason.”

I asked for any further evidence or arguments to be provided by 17 June 2022 at the latest. GE Money didn't respond. Mr and Mrs O's representative did. They said, in summary:

- As regards the issue of whether the timeshare supplier had the correct permissions to broker the loan, I didn't specify which entity arranged the loan. When originally challenged on this point, GE Money didn't provide evidence of this and negative inferences should continue to be drawn from this.
- My provisional decision said that this issue could be dealt with under section 75 CCA when that isn't the case.
- They did not follow nor agree with my findings in relation to the timescales for Mr and Mrs O to bring a complaint under s.75 CCA. Mr and Mrs O did not know about the issues giving rise to a claim at the point of sale – in fact until they brought their complaint, nor could they have known using 'reasonable diligence'. Therefore, time was not running for the purpose of limitations.
- As regards concealment, Mr and Mrs O were not informed that holiday availability would be on a 'first come first served' basis, nor that members of the public had access to the same resorts. The timeshare supplier's lack of authorisation to arrange the loan was also concealed from Mr and Mrs O.
- The act of the timeshare supplier requesting maintenance fees after the finance agreement ended, created a new limitation period.
- I should consider matters in the round. It cannot be fair or reasonable for GE Money to deploy a limitations defence when Mr and Mrs O have paid the timeshare supplier a lot of money and bearing in mind the findings of another ombudsman on another case, about the marketing practices of the timeshare supplier.

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 still do not uphold this complaint. I'll explain why.

Before I do, I again want to assure Mr and Mrs O that, if I don't address every point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. But, I'm going to concentrate in this decision on what I think is relevant and material to reaching a fair and reasonable outcome.

When evidence is incomplete, inconclusive, incongruent or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is most likely to have happened given the available evidence and the wider circumstances.

Mr and Mrs O say that it isn't fair or reasonable for GE Money to deploy a limitations defence and that I should consider matters in the round. They also reference a decision reached by another ombudsman on a different case involving the same supplier and argue that, given the findings in that case, I should reach a different outcome on this one.

Claims under s.75 and s.140a are legal claims and so I still consider that I must take into account any defence GE Money may have against those claims. On the other point, each case is individual with different facts, issues and evidence and must be considered on its own merits.

GE Money has said that Mr and Mrs O would need to approach Business C about the allegations to do with information provided by Business C at the point of sale. However, I still disagree. Under s.75 CCA, GE Money is required to consider claims for misrepresentation and/or breach of contract. And clearly allegations of misrepresentation are to do with information provided by the supplier of a product or service at the point of sale. S.140A is also relevant here.

However, for reasons that I'll go on to explain, I still don't think this ultimately makes a difference to the outcome of this complaint.

Was the timeshare supplier authorised to arrange the loan?

In response to my provisional findings (which form part of this decision), Mr and Mrs O have said that I haven't said specifically which entity brokered the loan. They've said that negative inferences should be drawn from the fact that GE Money hasn't provided any evidence on this point.

The legal entity that brokered the loan had different trading names at the time, one of which appears on the loan agreement. The legal entity had OFT registration. As such, I'm satisfied the timeshare supplier had the necessary permissions to arrange the loan.

Was the claim under s.75 CCA brought in time?

In response to my provisional findings, Mr and Mrs O have said that disagree with my analysis for when the time starts for the purpose of limitation. They say they didn't know of the issues giving rise to a claim under s.75 until they made their claim. And that, as such, the claim hasn't been brought too late.

I'm not persuaded by Mr and Mrs O's arguments. As set out in my provisional findings, the date on which a cause of action accrued is the point in time that everything needed to make a legal claim occurred. So, in Mr and Mrs O's case, that's when they could have brought a claim for misrepresentation against Business C or a like claim against GE Money. I still think that was the date they entered into the agreement to buy the timeshare – which was in September 2007.

Notwithstanding this, I note that Mr and Mrs O's misrepresentation claim incorporates them saying they were misled as to the availability and exclusivity of holidays arranged through Business C. This is something that in all likelihood would have come to light not long after the time of sale. Mr and Mrs O's representative's claim that Mr and Mrs O didn't know about these misrepresentations until they made their claim in 2020 isn't persuasive.

I continue to find that the claim under s.75 was brought too late.

Was the claim under s.140A CCA brought in time?

Mr and Mrs O have said that the time limit for a claim under s.140A is extended by virtue of the fact that Business C continued to demand maintenance fees from them under the agreement, as late as 2018. They say the demand of fees created new limitation periods.

I disagree. S.140A CCA looks at the fairness of the relationship between a debtor and creditor arising out of the credit agreement (taken together with any related agreement). But once Mr and Mrs O repaid the loan in full, the agreement between them and GE Money ended. As it was only the relationship between Mr and Mrs O and GE Money that could be found unfair, I still find that limitation started to run when the credit agreement ended.

Is there anything else that extends the time limits?

Mr and Mrs O have also referenced concealment by Business C. They say that Business C's lack of permissions to arrange the loan and the limited availability and non-exclusivity of holidays were all concealed from them and that this extends the time available to bring claims.

I have already found that Business C did have the necessary permissions to arrange the loan, so it follows there was nothing to conceal in this regard.

Regarding the limited availability and non-exclusivity of holidays point, these are fundamentally misrepresentation arguments (framed as such by Mr and Mrs O's representative in the original letter of complaint to this Service) i.e. that Mr and Mrs O were led to believe they would enjoy unlimited availability and complete exclusivity. Therefore, my earlier findings about any claim under s.75 for misrepresentation apply. I also repeat the point I made earlier – it is highly unlikely that Mr and Mrs O weren't aware of these issues shortly after buying the timeshare and taking out the associated loan.

To conclude, I've seen no evidence of any deliberate concealment on Business C's part that would extend the time limits to bring claims under either s.75 or s.140 CCA.

Unaffordable lending

Neither party have provided any further evidence or arguments on this point. As such, I see no reason to depart from my provisional findings. I still therefore find that there is insufficient evidence for me to uphold this complaint for this reason.

My final decision

My final decision is that I don't uphold Mr and Mrs O's complaint against GE Money Consumer Lending Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 21 July 2022.

Ben Brewer
Ombudsman