

## The complaint

Ms E and Mr G 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 legal adviser.

## What happened

Ms E and Mr G had bought a trial membership of a holiday club for £3,795 in September 2008. They paid a deposit of £380 and entered into a fixed sum loan agreement with GE Money Consumer Lending for a loan of £3,415. They upgraded their trial membership and entered into a membership agreement in November 2008. The cost of the membership was £12,807 from which the trial membership cost of £3,795 was deducted so the balance due from them was £9,012. They also entered into a fixed sum loan agreement with GE Money Consumer Lending for a loan of £12,436.47 (the £9,012 and £3,424 to refinance the credit from their September 2008 loan). They agreed to make 120 monthly repayments of £231.83 to GE Money Consumer Lending. It says that the loan was repaid in October 2013.

Ms E and Mr G asked GE Money Consumer Lending for details of the credit intermediary in June 2020 and it responded to them in August 2020. Ms E and Mr G's representative then made a complaint to this service in January 2022. It said that the credit intermediary wasn't authorised to arrange the loan, the membership had been misrepresented to Ms E and Mr G, they were pressurised into entering into the contract, there was no evidence that a credit check was conducted on them prior to granting the loan and the high interest rate was an indication of an unfair relationship between Ms E and Mrs G and GE Money Consumer Lending. Their representative also referred to a decision from an overseas court which it said had found that the corporate structure of the group of companies that included the holiday company was a fraud – and it says that the credit intermediary has gone into administration.

This service forwarded those claims to GE Money Consumer Lending and it considered the claims under sections 75 and 140A of the Consumer Credit Act 1974. It issued a final response letter to Ms E and Mr G in April 2022 in which it set out the reasons that it rejected the claims.

Our investigator didn't recommend that their complaint should be upheld. He thought that they were outside of the time limit to make a misrepresentation claim under section 75 so it was fair for GE Money Consumer Lending to turn down that claim and he thought that their section 140A claim was raised too late. He said that he hadn't seen any persuasive evidence to support that the loan was unaffordable for them. He also said that the credit intermediary held the appropriate Office of Fair Trading authorisations to broker loans.

Ms E and Mr G's representative has asked for this complaint to be considered by an ombudsman. It has responded in detail and says, in summary and amongst other things, that:

- it's hugely onerous and overly technical to find that their section 140A claim is time-barred when it was only eight months too late and Ms E and Mr G didn't know of the issues being raised until they brought their complaint;
- section 9 of the Limitation Act applies and Ms E and Mr G are entitled to seek a declaration that the arrangements complained of were unlawful;
- GE Money Consumer Lending hasn't provided the details of the intermediary who brokered the loan;
- Ms E and Mr G have been pursued each year by the holiday company for payment of the maintenance fees – which they paid until their complaint – and each enforcement of the agreement creates a new limitation period; and
- the holiday company has deliberately concealed facts relevant to Ms E and Mr G's right of action so the period of limitation is extended until they discovered the concealment or could with reasonable diligence have discovered it under section 32 of the Limitation Act.

I have issued a separate decision in which I described why this service doesn't have the legal power to consider Ms E and Mr G's complaint about GE Money Consumer Lending's response to their section 75 claim. In this decision I've set out my findings on its response to their section 140A claim.

### **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 our investigator that Ms E and Mr G's complaint about GE Money Consumer Lending's response to their section 140A claim shouldn't be upheld for these reasons:

- 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;
- I'm not determining the outcome of Ms E and Mr G's section 140A claim in this decision as only a court would be able to do that, but I'm considering whether or not GE Money Consumer Lending's response to the claim that had been made was fair and reasonable in the circumstances;
- Ms E and Mr G's complaint is that GE Money Consumer Lending turned down the section 140A claim that they'd made to it and I accept that they referred their complaint to this service within six years of that happening - but I need to consider whether the Limitation Act applies to their claim;
- 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;
- GE Money Consumer Lending has provided evidence to show that the loan was repaid in October 2013 - so Ms E and Mr G would have had six years from then to bring a claim against GE Money Consumer Lending about an unfair relationship with them – but they didn't contact GE Money Consumer Lending about their concerns until June 2020 and no claim about an unfair relationship was made until their representative complained to this service in January 2022;

- Ms E and Mr G's June 2020 letter to GE Money Consumer Lending was more than six years after the loan agreement ended so was outside of the time limits set out in the Limitation Act and I consider that their claim under section 140A is now time-barred;
- I'm not persuaded that the holiday company's enforcement of the membership agreement each year for the payment of the maintenance creates a new limitation period for their section 140A claim that there was an unfair relationship between Ms E and Mr G and GE Money Consumer Lending;
- Ms E and Mr G's representative says that section 9 of the Limitation Act applies – that section says: *"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'm not persuaded that section 9 extends the period in which they could make a claim against GE Money Consumer Lending under section 140A beyond the six year period from when the loan was repaid that is referred to above;
- I'm not persuaded that there's enough evidence to show that there's been a deliberate concealment of any relevant information in these circumstances or that the holiday company has acted fraudulently and I'm not persuaded that section 32 is applicable in these circumstances;
- GE Money Consumer Lending said in response to Ms E and Mr G's June 2020 letter that it understood that the credit broker had the requisite authorities in place initially under its Office of Fair Trading licence, which subsequently transferred to an interim permission, and then it was granted full permission to carry out regulated activities by the Financial Conduct Authority – it said that any further questions regarding its permissions or licences should be directed to the credit broker at the address that it provided;
- a name was included on the loan agreement for the credit broker and I accept that the full name of the entity that provided the credit broking wasn't included but the credit broking took place in November 2008 and Ms E and Mr G didn't contact GE Money Consumer Lending about any issues with the credit broker until June 2020 – more than eleven years later;
- I can understand Ms E and Mr G's frustration that they don't know the full name of the credit broker but I've seen no evidence to show that they contacted the credit broker using the information provided by GE Money Consumer Lending and I'm not persuaded that they've provided enough evidence to show that the credit broker for the loan wasn't authorised at that time to arrange the loan;
- Ms E and Mr G's representative says that proper credit checks weren't carried out before the loan was made to Ms E and Mr G – but the application for the loan that was made to them in September 2008 – and which they signed – showed that they were both employed, owned a property and had a joint annual income of £74,000 – so I consider that it would have been reasonable for GE Money Consumer Lending to have concluded that a monthly repayment of £231.81 was affordable for them;
- the loan was repaid in October 2013 and I've seen no evidence to show that the loan wasn't affordable for Ms E and Mr G when it was made to them or that they've experienced any financial difficulties since then;
- I've seen no evidence to show that Ms E or Mr G asked GE Money Consumer Lending for any information about its credit checks before their representative sent their complaint to this service in January 2022 – as the loan was made to them in November 2008 I consider that it would be reasonable to expect them to have raised any concerns about the credit checks before then and I consider it to be more likely

than not that any complaint about the credit checks or the affordability of the loan would now be time-barred;

- Ms E and Mr G's representative says that the high rate of interest for the loan indicates an unfair relationship between Ms E and Mr G and GE Money Consumer Lending but they signed the loan agreement in November 2008 which clearly set out the annual rate of interest (and the APR), the amount of credit, the total charge for credit and the number and amount of the monthly repayments – if the rate of interest wasn't acceptable to them, I consider that it would be reasonable to expect them not to have signed the loan agreement;
- immediately above their signature on the loan agreement it says: *"This is a Credit Agreement regulated by the Consumer Credit Act 1974. Sign it only if you want to be legally bound by its terms"*;
- I understand that a company in the same group of companies as the holiday company has gone into administration but I've seen no evidence to show that the holiday company hasn't provided the services under the membership agreement to which Ms E and Mr G were entitled – but they have stopped paying the management fees;
- I consider that GE Money Consumer Lending's responses to Ms E and Mr G's claims have been fair and reasonable and that it was fair and reasonable in these circumstances for it not to have upheld their section 140A claim; and
- I sympathise with Ms E and Mr G for the issues that they've had with their holiday club membership but I find that it wouldn't be fair or reasonable for me to require GE Money Consumer Lending to refund to them any of the money that they've paid under the loan agreement, 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 Ms E and Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E and Mr G to accept or reject my decision before 27 February 2023.

Jarrold Hastings  
**Ombudsman**