

The complaint

Mr J's complaint is, in essence, that Mitsubishi HC Capital UK PLC, trading as Hitachi Capital (the 'Lender'), acted unfairly and unreasonably by (1) being party to an unfair credit relationship with her under section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA'), (2) deciding against paying a claim under section 75 of the CCA, and (3) being responsible, under section 56 of the CCA, for a breach of a fiduciary duty by a third party.

Background to the complaint

Mrs J and her husband purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 30 November 2011 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,580 fractional points at a cost of £14,715 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs J more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mrs J paid for their Fractional Club membership by taking finance of £14,715 from the Lender in her sole name (the 'Credit Agreement'). This loan was settled on 28 February 2012.

Mrs J – using a professional representative (the 'PR') – wrote to the Lender on 1 May 2019 (the 'Letter of Claim') to complain about:

1. The Lender being party to an unfair credit relationship under the Credit Agreement and the related Purchase Agreement for the purposes of section 140A of the CCA.
2. Misrepresentations made by the Supplier at the Time of Sale which gave her a claim against the Lender under section 75 of the CCA, which the Lender failed to accept and pay.
3. A breach of fiduciary duty by the Supplier, which the Lender was liable for under section 56 of the CCA.

There was then a long delay before the Lender responded, during which the PR sent further letters chasing the lender. Eventually, the Lender dealt with Mrs J's concerns as a complaint and issued its final response letter on 12 February 2021, rejecting it on every ground.

By that time, in October 2019 Mrs J had already referred the complaint to the Financial Ombudsman Service. It was assessed by an investigator who, having considered the information on file, rejected it on the ground that Mrs J had waited too long to raise her claims with the Lender under the CCA.

Mrs J disagreed with the investigator's assessment and asked for an ombudsman's decision – which is why it was passed to me. I wrote a provisional decision which read as follows.

My provisional findings

I do not uphold this complaint. Different rules apply to different parts of this complaint, but I am satisfied that each part has been brought too late under the applicable time limits. I will explain each of them in turn.

1. Mrs J's complaint about an unfair credit relationship under section 140A

The jurisdiction of the Financial Ombudsman Service is set out in rules made by the Financial Conduct Authority ('FCA'). These rules include time limits on bringing a complaint to our Service. These say we can normally only consider a complaint if it was made within six years of the event complained of, or (if later) within three years from the date on which the complainant became aware "*or ought reasonably to have become aware*" that she had cause for complaint. We can still consider a late complaint if it was late as a result of exceptional circumstances.

This part of Mrs J's complaint is that the relationship between her and the Lender was unfair. That relationship started when she entered into the credit agreement, and ended when she settled the loan on 28 February 2012. She therefore had six years from that date to complain about it, but she did not raise the matter with the Lender until 1 May 2019, which was more than seven years later. So she missed that deadline.

To decide whether Mrs J complained within the alternative deadline, I need to consider whether and when she was aware or ought reasonably to have been aware of the following matters:

1. There was a problem with the lending or with the timeshare;
2. The problem(s) caused her (or her husband) a loss;
3. Another party's actions (or its failure to act) may have caused the loss; and
4. That other party may have been the Lender.

One of the reasons why Mrs J thought that the relationship between her and the Lender was unfair was because the loan and the timeshare had been sold to her in a high-pressure sales presentation which had lasted a long time and which was difficult to get away from. But Mrs J would certainly have known about that at the time.

Two other reasons why Mrs J thought the credit relationship was unfair were that (1) the annual maintenance fees kept increasing, and (2) as time went by there were fewer and fewer choices of holiday location available. I think she would have noticed both of those things during the first three years after the Time of Sale. So, when the maintenance fee increased, and when it appeared that the range of holiday resorts was reducing, Mrs J knew or ought reasonably to have known that another party was responsible for the losses that followed.

One of those parties was, quite obviously, the Supplier. But Mrs J also knew that Hitachi had financed the purchase of their timeshare and that the Supplier had brokered the finance. Given the size of the financial commitment that Mrs J found herself with because of the timeshare and the associated loan, and the long-term financial consequences of both of those commitments for her, I think it's reasonable to have expected her to carry out enquiries when her concerns about her loan and timeshare first arose in order to establish what her rights were.

What's more, Mr and Mrs J's timeshare was a complicated contract that included (amongst other things) an interest in overseas property. As such, it was, by its very

nature, fraught with complexities. And with that being the case, if Mrs J wasn't already aware of the implications of her concerns and the possible complaints that she might make in light of them, the obvious course for her to take was to make further enquiries and seek advice. Such enquiries seem to me to have been a step she ought reasonably to have taken shortly after she and her husband acquired the timeshare when they began to have concerns about how it had been sold to them and how it was working in practice. And had she carried out such enquiries, I think they would have led Mrs J to discover that Hitachi, as the connected lender that financed the transaction, may well have borne responsibility for the problems she says they had with their timeshare.

With all of that being the case, I think that Mrs J ought reasonably to have been aware that she had cause to complain about Hitachi holding her in an unfair credit relationship at least by the time the Credit Agreement had ended. So, I'm not persuaded that the three-year part of the relevant time limit extends the six-year part of it for the purpose of this complaint about an unfair credit relationship under section 140A of the CCA.

I can still consider the merits of a complaint referred to the Financial Ombudsman Service after the expiry of the relevant time limit if there are exceptional circumstances that justify why it was late. But based on what I've seen, I can't say that there are any other exceptional circumstances that apply to Mrs J's complaint about an unfair credit relationship with Hitachi.

Another reason why Mrs J said that her credit relationship was unfair was that the Lender had secretly paid commission to the Supplier. I have considered whether that secrecy could amount to an exceptional circumstance which resulted in this complaint being brought late. But I do not think it does, because there were a number of other complaint issues which Mrs J knew about and could have raised within the six-year deadline (such as the high pressure sales tactics). She was not prevented from complaining about those. So I have concluded that the entire section 140A claim is out of our Service's jurisdiction.

2. Mrs J's complaint about misrepresentation under section 75

Complaints about a section 75 claim operate differently. The same rule applies, but the event complained of is not the misrepresentation allegedly made by the Supplier in 2011, but the Lender's failure to respond to Mrs J's section 75 claim in 2019. So Mrs J had six years from 2019 to bring her complaint about how the Lender dealt with that matter, and she did that well in time. So our Service does have jurisdiction to consider this part of her complaint.

However, under the Limitation Act 1980, a section 75 claim has to be brought to the Lender within six years of the alleged misrepresentation. Mrs J missed that deadline. That does not affect our jurisdiction, but it does afford the Lender a defence to her claim. So although the Lender should not have taken as long as it did to decline her claim, it was entitled to decline it, and the delay did not affect the ultimate outcome.

There is an exception to that rule. Under section 32 of the Limitation Act, if any fact relevant to Mrs J's right of action has been deliberately concealed from her by the Lender or by the Supplier, then the limitation period does not begin to run until she has discovered it, "*or could with reasonable diligence have discovered it.*" In response to our investigator's decision, the PR argued that this exception applies to Mrs J's claim. I have therefore issued a provisional decision because this argument was not raised previously.

The alleged misrepresentations are:

- That Mr and Mrs J would make a profit on their investment at the end of the term of their Fractional Club membership;
- That they could sell their membership earlier for a profit, but this was not true because every fractional owner – including the Supplier – had to agree to sell; and
- Their children would inherit a useful benefit, but instead it was a burden.

However, I don't think any of these matters were deliberately concealed from Mrs J.

Mrs J initialled each paragraph of the Member's Declaration at the Time of Sale. One of those paragraphs says that the Supplier "*makes no representation as to the future price or value of the Fraction.*" So far from being deliberately concealed, the Supplier had told her about it.

The second alleged misrepresentation is based on a misconception. Under the Fractional Club's Rules, unanimous agreement was needed to delay a sale by more than two years after the end of the 19-year membership of the Fractional Club – not to sell.

The third alleged misrepresentation is also misconceived, because Mr and Mrs J's children could not be forced to take on their membership if they didn't want it. A personal contract ends with the death of either party.¹

So I am satisfied that section 32 does not assist Mrs J in her section 75 claim, and that the Lender did not treat her unfairly by rejecting it.

My provisional decision

I am currently of the view that Mrs J's complaint about section 140A has been brought too late for me to consider it, and that while I can still consider her section 75 claim, Mitsubishi HC Capital UK Plc did not treat her unfairly by rejecting it.

My addendum provisional decision

I reserved for later my thoughts about the allegation of a breach of fiduciary duty by the Supplier (for which the Lender would potentially be liable under section 56 of the CCA). In a later decision, I said that the Supplier had not owed Mrs J a fiduciary duty, having regard to the Supreme Court's judgement in *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').

The PR's responses to my provisional decisions

The PR did not accept my main decision. It said that I had introduced additional reasoning about section 32 of the Limitation Act at a very late stage, which had made it necessary for the PR to make further representations. But actually it was the PR which had first raised the matter of section 32, in a letter it wrote to the Lender on 3 February 2025 (which the PR shared with our service on 4 April 2025), *after* our investigator had ruled that Mrs J's section 75 claim was time-barred. So it was necessary for me to deal with that point.

¹ See *Chitty on Contracts* (35th edition), paragraph 29-030; and see also paragraph 24-009.

The PR argued that neither the section 75 claim nor the section 140A complaint had been brought out of time. It also made some further points about the merits of this complaint. But before I can consider the merits, I first have to be satisfied that (1) the section 75 claim was brought to the Lender in time, and (2) I have jurisdiction to consider the section 140A complaint and the complaint about a breach of fiduciary duty.

The PR withdrew the complaint about a breach of fiduciary duty in light of the Supreme Court's judgement in *Hopcraft, Johnson and Wrench*. But it reiterated that the commission payment had made Mrs J's relationship with the Lender unfair under section 140A.

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.

Section 75 of the CCA and section 32 of the Limitation Act

The PR argued that section 32 applies because there had been concealment of important facts about the Allocated Property and the nature of Mrs J's title to it. It argued that she should have been provided with the title deeds to the property, an independent and contemporaneous valuation of the property, information about how many other fractional shares of the property had already been sold, and other information. And it argued that Mrs J could not "*with reasonable diligence*" have discovered all of these things by herself.

I set out in my provisional findings the three alleged misrepresentations that were the basis of the section 75 claim. I can't see how any of them would need Mrs J to see the title deeds for the Allocated Property before she could realise that she could bring a claim about them. I don't agree that not giving her a valuation of the property amounts to concealing whether its eventual sale would be profitable or not when the Supplier had told her in writing that it made no representation about that; she could with reasonable diligence have read that clause at any time within the following six years and discovered that it contradicted what she says the salesman had told her orally. And I can't see how the other evidence the PR says should have been provided would assist Mrs J under section 32 either.

One of the specific arguments made by the PR on this subject was that the declaration that the Supplier makes no representations as to the future price or value of the Fraction "*does not absolve the Supplier of misrepresentations*". I agree with that, but that is an argument about the merits of the section 75 claim, whereas I was citing that declaration only to show why I thought the claim was still time-barred. The material fact which the Supplier was accused of deliberately concealing was that Mr and Mrs J would not make a profit on their investment (contrary to what they say they were told in the sales presentation) – but far from concealing that, this clause draws attention to it. That doesn't absolve the Supplier of any misrepresentation that was made at the Time of Sale, but it does disapply section 32, because Mrs J could with reasonable diligence have discovered it by reading the Members Declaration in the sales paperwork.

For similar reasons, I think that the PR's arguments about other concealed facts have more to do with the merits of the section 75 claim than with the limitation period. I remain of the view that the claim is time-barred, and that for that reason the Lender did not have to uphold it.

Section 140A of the CCA and my jurisdiction

The PR submitted that Mrs J's complaint about an unfair relationship with the Lender under section 140A is not out of my jurisdiction, because she didn't know about the commission

payment until after the normal six-year deadline had expired. However, I have already explained in my provisional findings why I think she did know about several other grounds for bringing a complaint about an unfair credit relationship, and the relevant time limit is not extended just because a new ground to argue that a credit relationship is unfair comes to light later on. To be clear, the FCA's time limit applies generally to "*the event complained of*", which here is the entire credit relationship which subsisted from 30 November 2011 to 28 February 2012 – not individually to each separate argument about why the relationship is alleged to have been unfair. So I remain of the view that I have no power to consider this part of Mrs J's complaint.

Conclusion

Because I think that Mrs J's complaint under section 140A is out of the jurisdiction of this service, and her section 75 claim was time-barred under the Limitation Act notwithstanding section 32 of that Act, I have not addressed the merits of either part of this complaint.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 11 May 2026.

Richard Wood
Ombudsman