

The complaint

Mr R and Ms H's complaint is, in essence, that First Holiday Finance Ltd (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

Mr R and Ms H purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 6 March 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 747 fractional points at a cost of £14,074 (the 'Purchase Agreement'). But after trading in their existing timeshare (given a trade-in value of £4,000), they ended up paying £10,074 for membership of the Fractional Club.

Fractional Club membership was asset backed – which meant it gave Mr R and Ms H 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.

Mr R and Ms H paid for their Fractional Club membership by making a card payment of £500 and taking finance of £9,574 from the Lender (the 'Credit Agreement').

Mr R and Ms H – using a professional representative (the 'PR') – wrote to the Lender on 9 August 2022 (the 'Letter of Complaint') to complain about:

- (1) The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
- (2) Misrepresentations by the Supplier at the Time of Sale giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.

The Lender dealt with Mr R and Ms H's concerns as a complaint and issued its final response letter on 23 August 2022. This rejected the complaint and said:

- (1) The claim under Section 75 of the CCA for misrepresentation was rejected because it was made outside the time limits set out in the Limitation Act 1980.
- (2) The credit relationship was not unfair under Section 140 of the CCA.

On 6 January 2023, Mr R and Ms H referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits. Mr R and Ms H disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I issued a jurisdiction decision explaining that the complaint about the Lender (1) being party to an unfair credit relationship with them under Section 140A of the CCA was outside of my jurisdiction, since the complaint was made too late under the rules I must apply and that the

complaint about the Lender (2) deciding against paying a claim under Section 75 of the CCA was in my jurisdiction.

I issued a provisional decision explaining that the complaint about the Lender (2) deciding against paying a claim under Section 75 of the CCA should not be upheld because the provisions of the Limitation Act 1980 mean that the claim for misrepresentation had to be made within six years of Mr R and Mrs H entering into the Purchase Agreement on 6 March 2012, but they did not do so. So, the Lender had a valid defence to the Section 75 claim and was not unreasonable in declining it.

In response to my provisional decision the Lender said it had nothing further to add. The PR made a number of points that I cannot consider, only being relevant to the complaint about the Lender (1) being party to an unfair credit relationship with Mr R and Ms H under Section 140A of the CCA. This included reference to undisclosed commission.

In respect of the complaint about the Lender (2) deciding against paying a claim under Section 75 of the CCA, the PR made some comments with regards the Limitation Act giving additional time to make a claim based on when the misrepresentation was discovered. This final decision deals with the merits of this part of the complaint, which is the only part within my jurisdiction to consider.

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.

For the same reasons which I gave in my provisional decision, I've decided not to uphold this complaint.

Generally, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act. This is because it wouldn't be fair to expect creditors to investigate such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mr R and Ms H's Section 75 claim was time-barred under the Limitation Act before they put it to the Lender.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim the consumer could make against the Supplier. A claim for misrepresentation against the Supplier would ordinarily be made under Section 2 (1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the Limitation Act).

But a claim under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the Limitation Act. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale – 6 March 2012. I say this because Mr R and Ms H entered the purchase of their timeshare at that time based on the alleged misrepresentations of the Supplier – which they say they relied on. And as the loan from the Lender was used to help finance the purchase, it was when they entered into the Credit Agreement that they suffered a loss.

Mr R and Ms H first notified the Lender of their Section 75 claim on 9 August 2022. And as more than six years had passed between the Time of Sale and when they first put their claim

to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr R and Ms H's concerns about the Supplier's alleged misrepresentations.

Section 14A of the Limitation Act can provide more time for negligence claims. And Section 32A can provide more time for claims involving fraudulent misrepresentation. But I am not persuaded that either of those apply to Mr R and Ms H's claims of misrepresentation by the Supplier, which were that they were told:

1. Fractional Club membership would ensure that their holiday accommodation would be secured for the term of the contract, as they could book from the many options available.
2. The purchase was an "investment" and could be sold for a profit at a later date.

In light of this, I am not persuaded that the Lender acted unfairly or unreasonably when it rejected Mr R and Ms H's Section 75 claim.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr R to accept or reject my decision before 4 November 2025.

Phillip Lai-Fang
Ombudsman