

## **The complaint**

Mr P's complaint is, in essence, that Mitsubishi HC Capital UK Plc (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'), (2) deciding against paying claims under section 75 of the CCA, and (3) lending to him irresponsibly by failing to check that he could afford the loan.

## **Background to the complaint**

Mr and Mrs P purchased membership of a timeshare from a timeshare provider (the 'Supplier') – making the following purchases on the dates below:

- A trial membership on 27 September 2009 for £3,995 ('Purchase Agreement 1');
- 3,105 fractional points on 16 May 2012 for £7,743 – having traded in some fractional points they had purchased in 2010 and 2011 ('Purchase Agreement 2');

(which, when appropriate, I'll simply refer to as the 'Purchase Agreements').

As this complaint is only concerned with those two purchases, those dates are the 'Times of Sale' for the purposes of my decision.

Mr P paid for each purchase by taking the following amounts of finance from the Lender (which was then trading as Hitachi ) in his sole name:

- £3,900 on 27 September 2009 ('Credit Agreement 1') (after paying a £95 deposit);
- £7,743 on 16 May 2012 ('Credit Agreement 2');

which, when appropriate, I'll simply refer to as the 'Credit Agreements'.

Mr P – using a professional representative (the 'PR') – wrote to the Lender on 20 April 2020 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr P's concerns as a complaint and issued its final response letter on 22 January 2021, rejecting it on every ground.

By then the complaint had already been referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, decided that it had been brought too late. She said that the complaints about unfairness and about irresponsible lending was out of our jurisdiction, and she rejected the complaint about the section 75 claim on its merits, on the ground that it had been time-barred under the Limitation Act 1980.

Mr P disagreed with the Investigator's assessment and asked for an ombudsman's decision – which is why it was passed to me.

## 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 that, I do not think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

I will begin with my jurisdiction to consider this complaint.

Our jurisdiction is set out in rules made by the Financial Conduct Authority. 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 he had cause for complaint. We can still consider a late complaint if it was late as a result of exceptional circumstances.

That means that Mr P's complaint about irresponsible lending needed to be made by 16 May 2018. He missed that deadline by two years, and it has not been suggested that this was the result of exceptional circumstances. I don't think the three-year deadline assists him here, because if the loan wasn't affordable for him, and if nobody asked him questions about his means at the Time of Sale, then he definitely knew about both of those things within the first three years after the Time of Sale. So I agree with the Investigator that I don't have power to consider this complaint point.

For the purposes of a claim under section 140A of the CCA, the time under the six-year time limit begins to run when the credit relationship between the debtor and the creditor ends. In this instance, that was when the second loan was settled on 3 September 2012. The PR does not accept that date, so I will explain why I think it is correct.

The account statement shows that on 3 September 2012 Mr P made a payment of £7,827:60. That payment resulted in an interest rebate, which in turn resulted in the loan account balance being reduced to nil that same day. I think that the date on which Mr P's debt was discharged is also the date on which the credit relationship between him and the Lender ended, since the nature of that relationship was that of debtor and creditor respectively, and there was no longer a debt.

The PR's argument is that the account statement is dated 16 October 2023, and it shows a nil account balance on that date. The PR argues that the credit relationship must therefore have subsisted until that date, so that the complaint has not been brought out of time. But I think there is no merit to that argument at all. That is just the date on which this statement was generated by the Lender so that it could be submitted as evidence; it is not evidence of a loan account remaining open for all of that time, and then closing on that date. For the reason I gave above, I don't think it makes sense to speak of a loan remaining open after it has been settled and the balance has been cleared. So I'm satisfied that Mr P had until 3 September 2018 to complain about an unfair credit relationship.

I also think that within the first three years after the Time of Sale, Mr P knew enough to know that he had cause for complaint. He knew, for example, that he had been subjected to high-pressure sales tactics, and that the annual management fees had increased unexpectedly. So I'm satisfied that this complaint issue is also out of my jurisdiction.

The position is different when it comes to a claim under section 75. For the purposes of my jurisdiction, time runs not from when the Credit Agreements were entered into or from the alleged misrepresentations, but from when the Lender rejected Mr P's claim under that section, which was in 2021. So I certainly have jurisdiction to consider his complaint about that.

However, time under the Limitation Act runs from the Time of Sale, so I agree with the Lender that Mr P's section 75 claim was brought out of time, and that this gave the Lender a complete defence to his claim. The Lender was therefore perfectly entitled to decline his claim on that basis, and so I can't fairly say that the Lender should have upheld it.

### **My final decision**

My decision is that part of this complaint has been brought too late for me to consider it, and the part I can consider is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 December 2025. But this decision brings our involvement in this matter to an end.

Richard Wood  
**Ombudsman**