

## **The complaint**

Miss 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 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) lending to her irresponsibly by failing to check that she could afford the loan.

## **Background to the complaint**

Miss P and a third party purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 14 February 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,241 fractional points at a cost of £39,099 (the 'Purchase Agreement'). But after trading in their existing timeshare, they ended up paying £7,107.

Miss P paid for their Fractional Club membership by taking finance of £7,107 from the Lender (the 'Credit Agreement') in her sole name. The loan was settled on 30 January 2014.

Miss P – using a professional representative (the 'PR') – wrote to the Lender on 24 August 2021 (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 Miss P's concerns as a complaint and issued its final response letter on 11 May 2022, rejecting it on every ground. One of these was that the section 75 claim was time-barred under the Limitation Act 1980.

By then, the complaint had been referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, decided that our service did not have jurisdiction to consider the complaint about unfairness under section 140A because it had been brought too late under our rules. He rejected the complaint about the section 75 claim on its merits, because he agreed with the Lender that it was time-barred.

Miss 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 currently 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.

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 loan was settled in 2014. So I'm satisfied that Miss P's claim was brought after the deadline had expired.

I don't think the three-year time limit assists her here. Miss P knew that she had cause to complain at the Time of Sale, because that was when she says she was subjected to high pressure sales techniques (one of the things she complained about), for example. And I have not been told about any exceptional circumstances that would explain why she could not have complained earlier.

So I am satisfied that I do not have jurisdiction to consider the unfairness complaint. For the same reasons, I cannot consider the irresponsible lending complaint either.

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 Agreement was entered into or from the alleged misrepresentation, but from when the Lender failed to uphold Miss P's claim under that section, which was in 2022. So I certainly have jurisdiction to consider her complaint about that.

However, under the Limitation Act she had six years from the Time of Sale in which to bring a complaint about misrepresentation, so I agree with the Lender that Miss P's section 75 claim was brought out of time, and that this is a complete defence to her claim.

For a claim about alleged breaches of contract, time runs from each individual breach, so it is *possible* that there may be some breaches which occurred less than six years before Miss P brought her claim. However, I don't think section 75 applies here. Certain conditions must be met for that section to be engaged, and one of these is that the cash price of the purchase does not exceed £30,000. But the cash price of Miss P's fractional points was £39,099.

Section 75A of the CCA applies to purchases with a cash price higher than that. But it does not apply to breaches of contract. And while it does apply to misrepresentation, the limitation period is the same as for section 75.

So I think that the Lender was entitled to decline Miss P's section 75 claim, and that it did not need to consider an alternative claim under section 75A.

### **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 Miss P to accept

or reject my decision before 5 December 2025. But this decision brings this complaint to an end.

Richard Wood  
**Ombudsman**