

The complaint

Ms W'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') and (2) deciding against paying a claim under section 75 of the CCA.

Background to the complaint

Ms W and her mother ('Mrs W') purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 14 May 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,500 fractional points at a cost of £10,294 (the 'Purchase Agreement').

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

Ms W paid for their Fractional Club membership by taking finance of £10,294 from the Lender¹ (the 'Credit Agreement'). That loan was settled on 28 May 2015.

Ms W – using a professional representative (the 'PR') – wrote to the Lender on 22 July 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 Ms W's concerns as a complaint and issued its final response letter on 23 September 2021, rejecting it on every ground.

Meanwhile, the complaint had been referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Ms W disagreed with the Investigator's assessment and asked for an ombudsman's decision. Shortly afterwards, her mother provided a witness statement about what happened at the Time of Sale and about subsequent events.

I wrote a provisional decision which read as follows.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

¹ At the time this was Hitachi Capital (UK) PLC trading as Hitachi Personal Finance.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.

What I've provisionally 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.

And 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.

Different rules apply to different parts of this complaint, but I am satisfied that much of it has been brought too late under the applicable time limits. I will explain each of them in turn.

1. Ms W'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 Ms W'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 (with her mother's help) settled the loan on 28 May 2015. She therefore had six years from that date to complain about it, but she did not raise the matter with the Lender until 22 July 2021, which was more than six years later. So she missed that deadline.

To decide whether Ms W 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 mother) 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 Ms W 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 Ms W would certainly have known about that at the time.

Two other reasons (among others) why Ms W thought the credit relationship was unfair were that (1) she had been made the debtor under the Credit Agreement instead of (as she had requested) her mother, and (2) the annual maintenance fees kept increasing. I think she would have been aware of the first issue at the Time of Sale, and would have become aware

of the second issue during the first three years after the Time of Sale. And Ms W knew, or ought reasonably to have known, that another party was responsible for each issue.

One of those parties was, quite obviously, the Supplier. But Ms W also knew that the Lender had financed the purchase of their timeshare and that the Supplier had brokered the finance. Given the size of the financial commitment that Ms W 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, the 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 Ms W 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 mother 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 Ms W to discover that the Lender, having 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 Ms W ought reasonably to have been aware that she had cause to complain about the Lender 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 Ms W's complaint about an unfair credit relationship with the Lender.

Another reason why Ms W said that her credit relationship was unfair was that the Lender had paid commission to the Supplier without fully disclosing that fact. I have considered whether that non-disclosure 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 Ms W knew about and could have raised within the six-year deadline. 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. Ms W'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 misrepresentations allegedly made by the Supplier in 2014, but the Lender's failure to respond to Ms W's section 75 claim in 2021. So Ms W had six years from 2021 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. Ms W missed that deadline. That does not

affect our jurisdiction, but it does afford the Lender a defence to her claim. So I cannot say that the Lender was wrong to deny her claim under section 75 for misrepresentation.

There is an exception to that rule. Under section 32 of the Limitation Act, if any fact relevant to Ms W'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.*" I will consider this next.

The alleged misrepresentations are that Ms W was told:

- (1) that Fractional Club membership had a guaranteed end date when that was not true;
- (2) that she was buying an interest in a specific piece of "real property" when that was not true;
- (3) that Fractional Club membership was an "investment" when that was not true.

However, I don't think any relevant facts were deliberately concealed from Ms W.

The first 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 other two alleged misrepresentations are also misconceived, because the timeshare certainly was an investment. Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

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

3. Ms W's complaint about breach of contract under section 75

Ms W says that she could not holiday where and when she wanted to. That was framed, in the Letter of Complaint, as part of her complaint about the fairness or otherwise of her credit relationship with the Lender under section 140A of the CCA. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement. And the effect of section 75 is that if I find that the Supplier is liable for having breached the Purchase Agreement, then the Lender is also liable.

Under the Limitation Act, time begins to run from each breach of contract. So I think that a new six-year limitation period begins with each unsuccessful attempt at booking a holiday. Consequently, I think this part of Ms W's complaint has been brought in time under the Limitation Act.

I also think that this complaint has been brought in time under the FCA's rules, for the same reasons as I gave in the previous section about misrepresentation.

Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Ms W states that the availability of holidays was/is subject to demand. I accept that she may not have been able to take certain holidays. But I have not seen enough

to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Ms W any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

So my provisional decision is that I do not intend to uphold this complaint.

The PR's response to my provisional decision

The PR provided detailed submissions about the merits of Ms W's section 140A complaint, but said nothing about the jurisdiction issue. There is therefore no reason for me to change my mind about my provisional findings as to jurisdiction, and I confirm them here.

The PR said that I had failed to consider Ms W's complaint about the Supplier paying the Lender undisclosed commission, but that fell under the section 140A complaint, so I cannot consider it.

The PR's submissions did not say more about Ms W's section 75 claim, either in the context of the Limitation Act or about the complaint about a shortage of holiday accommodation, so there is no reason for me to depart from my provisional findings about those matters, and I confirm them here also.

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 Ms W to accept or reject my decision before 5 February 2026. But this final decision brings to an end our service's handling of this complaint.

Richard Wood
Ombudsman