

The complaint

Mr H'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 him 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) failing to carry out proper or any creditworthiness checks before lending to him.

Background to the complaint

Mr H and a third party, Mrs W, purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 3 October 2011 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,716 fractional points at a cost of £25,062 (the 'Purchase Agreement'). But after trading in his existing timeshare, they ended up paying £15,299.

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

Mr H paid for their Fractional Club membership by taking finance of £15,299 from the Lender (the 'Credit Agreement') in his sole name. He is therefore the only eligible complainant under our rules. That loan was settled in April 2013, and the loan account was closed in May.

Mr H – using a professional representative (the 'PR') – wrote to the Lender on 22 March 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. It's enough to say here that sections 75 and 140A of the CCA (with section 56) can make the Lender responsible for things done or said by the Supplier.

The Lender dealt with Mr H's concerns as a complaint and issued its final response letter on 5 November 2021, rejecting it on every ground. It said that Mr H had waited too long to complain, and that all of the matters he had raised were time-barred under the Limitation Act 1980.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, said that some of the complaint had been brought too late under our own time limits, and that it therefore fell out of our jurisdiction. He rejected the rest of the complaint on its merits, because he agreed that the Lender had a defence under the Limitation Act.

Mr H 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.

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.

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.

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 closed in May 2013. So I'm satisfied that Mr H's claim under section 140A, and his related complaint, was brought too late under the six-year rule.

As for the three-year rule, I think that Mr H would have realised (or ought to have realised) within three years of the Time of Sale that he had something to complain about, and that the Lender was or potentially was responsible. For example, if he only bought the timeshare because he was put under pressure to buy it, then he knew that at the time. So the three-year rule did not afford him more time to complain than the six-year rule.

For the purposes of a complaint about the Lender failing to carry out creditworthiness checks, time under the six-year rule runs from the Time of Sale. If Mr H thought that the Lender had failed to ask him anything about his finances, then he was certainly aware of that at the Time of Sale, and so the three-year rule does not assist him.

My attention has not been drawn to any exceptional circumstances which would explain the lateness of this complaint, and so I'm satisfied that both of these matters have been brought too late for me to consider them.

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 rejected Mr C's claim under that section, which was on 5 November 2021. He complained to our service in 2021, so I certainly have jurisdiction to consider his complaint about that.

However, for a claim for misrepresentation under section 75, time under the Limitation Act runs from the Time of Sale, so I agree with the Lender that Mr H's section 75 claim was brought out of time, and that this is a complete defence to his claim. So I do not uphold his complaint about how the Lender dealt with his claim about that.

For a claim for breach of contract under section 75, time under that Act runs from the date of the alleged breach. That will often be later than the Time of Sale.

Mr H says that he could not holiday where and when he wanted to. That was framed, in the Letter of Complaint, as part of his complaint about the fairness or otherwise of his 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.

Mr H has not specified, in the Letter of Complaint or in his witness statement, the dates on which he tried and failed to book a holiday. However, I note that he last took a holiday in September 2014, and he has implied that he did not attempt to book any more holidays after that. So it appears that by the time he complained in 2021, it was more than six years since the last alleged breach of contract. So on the balance of probabilities, I think that his section 75 claim for breach of contract was also time-barred under the Limitation Act.

Just in case I am wrong about that though, and there was an attempt by Mr H to book a holiday less than six years before he brought his claim, I will consider whether his claim had merit.

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 Mr H states that the availability of holidays was/is subject to demand. I've seen evidence that he used his fractional points to go on holiday in 2012, twice in 2013, and in 2014. I accept that he may not have been able to take certain other holidays since then. 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 Mr H 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 his section 75 claim.

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

Responses to my provisional decision

The PR replied to my provisional decision to make submissions about the merits of Mr H's complaint, but it did not address the issue of time limits. The Lender did not respond. So there is no reason for me to depart from my provisional findings, and I confirm them here.

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 Mr H to accept or

reject my decision before 30 December 2025. But this final decision brings to an end our service's involvement in this complaint.

Richard Wood
Ombudsman