

The complaint

Mr and Mrs A say First Holiday Finance Ltd ('FHF') has unfairly declined their claim under section 75 of the Consumer Credit Act 1974 ('CCA'). And they say their creditor-debtor relationship was unfair to them under section 140A of the CCA.

What happened

In April 2006, Mr and Mrs A purchased a timeshare membership from a timeshare supplier (the 'Supplier'). Mr and Mrs A borrowed £14,518 from FHF to pay for it. The loan was repaid in full in December 2015.

In November 2021, Mr and Mrs A wrote to FHF to complain about the purchase and the related loan, and they subsequently used a professional representative ('PR') to refer the complaint to our service.

One of our investigators considered the complaint. She explained that we couldn't consider Mr and Mrs A's complaint that the loan was unaffordable and that FHF had lent to them irresponsibly because we can't look at complaints about acts or omissions that happened before 6 April 2007 for point-of-sale loans. And she rejected their complaint that the broker was unauthorised.

The PR didn't provide a substantive response and the complaint was closed.

In July 2024, Mr and Mrs A's PR wrote to FHF to complain again about the purchase and the related loan.

FHF issued its final response letter on 31 July 2024. It said Mr and Mrs A had waited too long to make a claim/complaint under sections 75 and 140A of the CCA.

Mr and Mrs A's PR referred the complaint to our service.

One of our investigators considered the complaint. He didn't think we could consider the complaint under section 140A of the CCA because it had been more than six years since the loan was repaid. And he didn't think it was unfair for FHF to rely on the Limitation Act 1980 ('LA') to reject the claim under section 75.

Mr and Mrs A's PR has asked for a final decision from an ombudsman.

This decision will deal solely with Mr and Mrs A's complaint that FHF unfairly declined their claim under section 75 of the CCA. I will consider the rest of Mr and Mrs A's complaint in a separate decision.

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.

Section 75(1) of the CCA protects consumers who buy goods and services on credit. It says, in certain circumstances, that the creditor is legally answerable for any misrepresentation or breach of contract by the supplier.

However, FHF says it's too late for Mr and Mrs A to make a claim for misrepresentation. It's specifically referred to the LA, which sets the statutory time limits for bringing civil claims in England and Wales. The LA says Mr and Mrs A had six years from the date on which the 'cause of action accrued' to make their claim, after which FHF has a complete defence.

It is of course for a court to determine whether a respondent can rely on the LA to defend a claim. That said, I wouldn't normally think it was unfair for a firm to rely on the LA to decline a claim that's been made outside the limitation period, and I don't think it's unfair in this instance.

The date on which the cause of action accrued is, in this case, the date of sale. It was then that Mr and Mrs A entered into an agreement based, they allege, on the Supplier's misrepresentation(s). As the loan from FHF was used to finance the purchase, it was also then that they suffered a loss. It follows that Mr and Mrs A had six years from the date of sale to make a claim for misrepresentation. But they didn't make their claim until July 2024, which is outside the time limits set by the LA.

Mr and Mrs A's PR has referred me to section 32 of the LA, which postpones the limitation period in cases of fraud, concealment or mistake. But it hasn't provided persuasive evidence of fraud, concealment or mistake, such that section 32 of the LA would postpone the limitation period in this case. I'd like to reiterate that only a court can decide whether this claim was made out of time. My finding is simply that I don't think it's unfair for FHF to rely on the LA to decline the claim.

For completeness, I'd add that FHF could have simply declined the claim under section 75 because Mr and Mrs A's purchase doesn't meet the relevant criteria.

I haven't seen the purchase agreement in this case, but Mr and Mrs A's PR says the timeshare membership cost £50,000. Section 75(3) says section 75(1) doesn't apply to a claim:

'(b) so far as the claim relates to any single item to which the supplier has attached a cash price...[of] more than £30,000...'

If the cash price of the membership was £50,000, section 75(1) doesn't apply.

My final decision

For the reasons given, I don't think it was unfair for First Holiday Finance Ltd to decline Mr and Mrs A's claim under section 75 of the CCA.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 24 December 2025.

Christopher Reeves
Ombudsman