DRN-5988578

The complaint

Mr R complains Mitsubishi HC Capital PLC UK PLC (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with him under Section 140A of the CCA.

Additionally, Mr R complains the Lender lent to him irresponsibly, his loan was arranged by an unauthorised credit broker, and that a judgment in a Spanish court in his favour means the loan was rescinded.

Mr R is represented in his complaint by a professional representative ("PR").

What happened

I issued a provisional decision on 17 November 2025, in which I set out my provisional findings on both the jurisdiction of the Financial Ombudsman Service to consider Mr R's complaint, and on the merits of the parts of the complaint I considered came within the scope of our jurisdiction.

A copy of that provisional decision is appended to and forms part of this final decision, so it's not necessary for me to go over all the details again. But to summarise very briefly:

- Mr R purchased a timeshare from a timeshare provider (the "Supplier") on 28 November 2012, for £14,989, financed by a loan from the Lender. The loan was repaid on 17 March 2014.

- In February 2022, Mr R complained to the Lender via PR, seeking to find it responsible for having mis-sold the timeshare and the loan. Broadly speaking, his reasons for complaining were:

    - The Lender was liable to him under Section 75 of the CCA for misrepresentations made by the Supplier during the process of selling the timeshare.

    - The Lender had participated in an unfair credit relationship with him within the meaning of Section 140A of the CCA, because the Supplier had improperly sold the timeshare as an investment, and because there were unfair terms within the timeshare contract.

    - The Lender had failed to carry out the checks it should have done before lending to him.

    - The loan had been arranged by a credit broker which didn't hold the regulatory permissions to do so, making it unenforceable.

    - Mr R had succeeded in a court claim in Spain against the Supplier, resulting in his timeshare contract being nullified. This meant that the loan was rescinded also.

In my provisional decision I arrived at the following conclusions:

1. That Mr R's complaint that the credit relationship between him and the Lender was unfair to him, was not one the Financial Ombudsman Service has the jurisdiction to consider, because it had been brought too late.

2. That Mr R's complaint that the Lender didn't carry out the checks it should have before lending to him, was not one the Financial Ombudsman Service has the jurisdiction to consider, because it had been brought too late.

3. That Mr R's complaint that the Credit Agreement was arranged by an unauthorised credit broker, was not one the Financial Ombudsman Service had the jurisdiction to consider, because it had been brought too late.

4. That the rest of the complaint was not brought too late, but the Lender's decision not to uphold it was not unfair or unreasonable.

My reason for concluding as I did on points 1 to 3, related to the time limits within which a complainant must bring their complaint. I noted that the relevant rules meant Mr R:

"…need[ed] to have made his complaint within six years of the event which the complaint relates to or, if this gives him longer, within three years of when he became aware (or ought reasonably to have been aware) of his cause to complain, unless there are exceptional circumstances which prevented him from bringing his complaint earlier or the Lender has consented to the complaint being brought late (which it hasn't in this case)."

All of the complaint events Mr R complained of under points 1 to 3, had taken place or ended more than six years before he'd complained (28 November 2012 for the allegedly deficient creditworthiness checks and credit broking, and 17 March 2014 for the end of the allegedly unfair credit relationship). And it was apparent that he was either aware, or ought to have been aware, by April 2016, of his relevant causes to complain. A full analysis can be found in the appended provisional decision, but Mr R had filed a witness statement that month in relation to his experiences with the Supplier, which showed he was aware of some of his causes to complain, and was engaged in active enquiry regarding others. This meant the three-year limb of our rules did not give him any longer to make his complaint.

Regarding the parts of the complaint which I had found to be within our jurisdiction, I did not think they should be successful because:

- Mr R's Section 75 claim against the Lender was already time-barred under the Limitation Act 1980 ("LA") by the time the claim had been brought to the Lender's attention. While PR had argued the concealment provisions within the LA extended the time Mr R had to bring his claim, I thought arguments were unpersuasive.

- I was unconvinced Mr R's successful judgment against the Supplier in the Spanish courts had the implications for the loan that PR said it did. While I was aware of the case law PR had referred to, I considered there was considerable uncertainty as to whether the same outcome would be reached in a court in England, and that without a successful English court ruling on a timeshare case paid for using a point of sale loan on similar facts to Mr R's complaint, and given the facts and circumstances of his complaint, I was not persuaded that it would be fair or reasonable to uphold it for the reasons PR had given.

I asked the parties to the complaint to let me have any further submissions they wanted me

to consider. Neither party has responded, so the case has been returned to me to decide.

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.

Because I have not heard back from either party to the complaint in response to my provisional decision, and having reviewed the case again, I see no reason to depart from the conclusions I reached, as summarised above and explained in full in the appended document.

It follows that I have only considered the matter of Mr R's Section 75 claim, and his argument that his successful claim in the Spanish courts means his loan agreement with the Lender was rescinded, because the rest of the complaint falls outside our jurisdiction. And it additionally follows that I do not uphold those parts of the complaint for the same reasons set out in my provisional decision.

My final decision

For the reasons explained above, and set out in more detail in the appended provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 December 2025.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've decided to issue this provisional decision to give the parties a further opportunity to comment before I make my decision final.

The deadline for both parties to provide any further comments or evidence for me to consider is **1 December 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mr R, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

The complaint

Mr R complains Mitsubishi HC Capital PLC UK PLC (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with him under Section 140A of the CCA.

Additionally, Mr R complains the Lender lent to him irresponsibly, his loan was arranged by an unauthorised credit broker, and that a judgment in a Spanish court in his favour means the loan was rescinded.

Mr R is represented in his complaint by a professional representative ("PR").

What happened

This complaint relates to a timeshare purchase made by Mr R from a timeshare provider (the "Supplier") on 28 November 2012. There is no evidence on file to suggest Mr R made any other purchases from the Supplier. I've outlined the basic details below:

- The purchase made on 28 November 2012 (the "Time of Sale") was of a membership in the Supplier's "Fractional Club". Mr R bought 1,050 points in the Fractional Club, which could be used to book holiday accommodation annually (the "Purchase Agreement"). This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of a specific timeshare apartment named on Mr R's purchase paperwork (the "Allocated Property"). The purchase cost £14,989.

- The Supplier arranged a loan (the "Credit Agreement") with the Lender for the purchase price. This was repayable over 180 months at £235.33 per month. Mr R repaid the loan early, settling it on 17 March 2014.

- In February 2022, through PR, Mr R complained to the Lender, seeking to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The individual concerns raised by PR can be found below.

<u>Misrepresentations by the Supplier giving rise to a claim against the Lender under Section 75 of the CCA</u>

These included:

- That the Supplier had falsely told Mr R that his purchase was a share in property

which was an investment that would considerably increase in value.
- That the Supplier had falsely told Mr R that he could sell his Fractional Club membership back to the Supplier or to third parties easily at a profit.
- That the Supplier had falsely told Mr R that he would have "access to the holiday apartment" at any time, all year round.

Matters which rendered the credit relationship between Mr R and the Lender unfair to him under Section 140A of the CCA

These included:

- That the Lender had failed to carry out the affordability checks required by industry guidance and/or regulations.

- That the Purchase Agreement contained terms which were unfair to Mr R, such as terms allowing the Supplier to repossess the membership for minor breaches of the agreement.

- That the Supplier had sold and/or marketed the Fractional Club membership to Mr R as an investment, in contravention of the regulations on selling timeshares.

Other complaint issues

On Mr R's behalf, PR also raised another matter which doesn't fit under either of the headings above. This was an allegation that the entity which had arranged the Credit Agreement had not held the relevant permissions from the industry regulator when it had done so, meaning the loan had been unenforceable by the Lender.

PR also noted that in February 2020 the Spanish courts had handed down a judgment in Mr R's favour, nullifying the Purchase Agreement. PR argued that this meant the Credit Agreement should be treated as having been rescinded, in line with the Supreme Court judgment in *Durkin v DSG Retail Ltd [2014] UKSC 21*.

The Lender rejected the complaint, which was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who came to the following findings:

- The Financial Ombudsman Service couldn't look at Mr R's complaint that the Lender had participated in an unfair credit relationship with him, because such a complaint was time-barred under the Limitation Act 1980.

- It had not been unreasonable of the Lender to decline to honour a Section 75 claim, because again the claim had been time-barred under the Limitation Act 1980.

- The Credit Agreement had not been arranged by an unregulated credit broker.

- There was insufficient evidence the Lender had lent to Mr R irresponsibly.

- He hadn't seen anything to persuade him that Spanish law applied directly to the Credit Agreement.

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

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 published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context here.

What I've provisionally decided – and why

I have considered all the available evidence and arguments to decide:

1. Whether the complaint (and to what extent) falls within the jurisdiction of the Financial Ombudsman Service; and (if relevant)

2. What's fair and reasonable in all the circumstances of the complaint, for any parts of the complaint our jurisdiction permits me to consider.

Having considered all the available evidence and arguments, my provisional conclusions are:

1. That Mr R's complaint that the credit relationship between him and the Lender was unfair to him, is not one the Financial Ombudsman Service has the jurisdiction to consider, because it has been brought too late.

2. That Mr R's complaint that the Lender didn't carry out the checks it should have before lending to him, is not one the Financial Ombudsman Service has the jurisdiction to consider, because it has been brought too late.

3. That Mr R's complaint that the Credit Agreement was arranged by an unauthorised credit broker, is not one the Financial Ombudsman Service has the jurisdiction to consider, because it has been brought too late.

4. That the rest of the complaint was not brought too late, but the Lender's decision not to uphold it was not unfair or unreasonable.

I'll now explain why.

<u>My provisional findings on our jurisdiction to consider Mr R's complaint</u>

The rules which outline the complaints the Financial Ombudsman Service has jurisdiction to consider are set out in the Financial Conduct Authority's Handbook, under the chapter named DISP, and these rules are therefore usually known as the "DISP rules".

DISP 2.8.2 R contains rules about how long a complainant has to bring a complaint. The relevant part of the rules says the following:

> *"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*
>
> *…*

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably

to have become aware) that he had cause for complaint;

Unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received; unless

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R…was as a result of exceptional circumstances; or

…

(5) the respondent has consented to the Ombudsman considering the complaint where the time limits…have expired…"

In short, this means that in order for me to be able to consider Mr R's complaint, he needs to have made his complaint within six years of the event which the complaint relates to or, if this gives him longer, within three years of when he became aware (or ought reasonably to have been aware) of his cause to complain, unless there are exceptional circumstances which prevented him from bringing his complaint earlier or the Lender has consented to the complaint being brought late (which it hasn't in this case).

Section 75 Claim

In order to determine whether or not a complaint has been brought inside the relevant time limits, it's necessary to define the "event" the complaint relates to. As far as Mr R's complaint about the Lender's failure to honour his Section 75 claim is concerned, the event is the Lender's decision to decline the claim. This decision was communicated to Mr R (via PR) on 4 April 2022, and the complaint was referred to the Financial Ombudsman Service within a few months of this. So, I'm satisfied that this part of the complaint was made "in time" and, as I've not seen any other reason that it would fall outside of our jurisdiction, I will go on to consider its merits later in this provisional decision.

Unfair Credit Relationship

Mr R's complaint about the Lender's participation in a credit relationship that was unfair to him under Section 140A of the CCA, requires a slightly different analysis. It's now well established in the courts that a determination of whether or not a credit relationship complained of is unfair has to be made *"having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination"* – which is the date of the trial in the case of an existing credit relationship, or otherwise the date the credit relationship ended.

In practical terms, this means the event for the purposes of DISP 2.8.2 R was Mr R's credit relationship with the Lender which was alleged to have been unfair, and this event was a continuous one which came to an end in March 2014 when he settled the loan in question. The six-year time limit would therefore begin to run from that point.

It's not in dispute that Mr R's complaint was first made to the Lender in February 2022. This

was more than six years after March 2014 and so his complaint was made too late under the six-year limb of DISP 2.8.2 R.

That leaves the three-year limb of the rule, which could, in theory, give Mr R more time to make his complaint.

The question which must be answered is whether Mr R complained within three years of when he became aware, or ought reasonably to have been aware, that he had cause to complain about the potential unfairness of his credit relationship with the Lender. I will say here that the matters which could give rise to an unfair credit relationship are potentially very broad, and Mr R only needs to have been aware of one reason for the relationship to have potentially been unfair (or been in a position where he ought reasonably to have been aware of one reason) for the three-year clock to start. He wouldn't get a further three years if he later discovered another reason why the credit relationship may have been unfair.

Mr R also doesn't need to have had actual, exact knowledge of his cause to complain to the Lender, to start the three-year clock running. He just needs to have had constructive knowledge. What this means is that he needs to have had sufficient information to be put on the path of discovering that the Lender had been responsible for something that had, or might have, gone wrong and caused him a loss. Bearing this in mind, to start the three-year clock, I think Mr R should reasonably have been aware, or been put on the path to discovering, that:

1. There was a problem with the lending or the timeshare.
2. The problem had caused him, or was causing him, a loss.
3. Someone else may have been responsible for this loss, through their actions or failure to act.
4. This someone else may have been the Lender.

Having carefully read Mr R's complaint, I think he was aware he had cause to complain to the Lender, or ought reasonably to have been aware, around 13 April 2016.

This is because Mr R completed a notarised witness statement on this date, which appears to have come about as a result of him making enquiries into what he could do about concerns he had about his purchase from the Supplier. The witness statement referred to various issues Mr R had experienced, including being put under pressure and even being threatened by the Supplier into making the purchase, concerns about ongoing maintenance fees, and being given misleading information about the Fractional Club membership being an investment.

It's apparent therefore, that by *latest* 13 April 2016, Mr R was already carrying out relevant enquiries into the potential mis-selling of the Purchase Agreement. I think it was at this point that he was on the path to discovering that the Lender, as the connected lender which had financed his timeshare purchase, may have borne some responsibility for the Supplier's alleged failings. So, the three-year limb of DISP 2.8.2 R would not have given Mr R any more time than the six-year limb – as it would have expired in April 2019. To be "in time", therefore, he'd have needed to make his complaint to the Lender by 17 March 2020. His complaint was not made until February 2022.

In light of the above, I am minded to conclude that that we do not have the power to consider the complaint about the Lender's alleged participation in a credit relationship which was unfair to Mr R, unless there were exceptional circumstances preventing him from bringing the complaint in time. PR hasn't mentioned any such circumstances specifically in its response to our Investigator's assessment, but it did say that Mr R had only found out about the relevant causes of complaint when a lawyer reviewed his case in November 2020. I don't

think this qualifies as exceptional circumstances. I've explained above the importance of the concept of constructive knowledge – Mr R doesn't need to have *known* all of his causes of complaint specifically, he just needs to have been on the path to discovering them. It's apparent that he was in contact with legal or similar professionals in 2016, exploring his ability to bring claims or complaints in relation to his purchase. It's unclear why a complaint was not brought to the Lender until 2022 – possibly it was decided to pursue legal action in Spain against the Supplier first – but that doesn't mean the clock stops, so to speak, for the purpose of any complaint about the Lender.

It follows that I'm minded to decide that Mr R's complaint that his credit relationship with the Lender was unfair to him is not a complaint the Financial Ombudsman Service can consider.

Irresponsible Lending

I've thought about whether Mr R might have enjoyed a longer time to complain about the Lender's decision to lend to him, if that part of complaint was reframed as a complaint not about an unfair credit relationship, but as a complaint that the Lender breached its regulatory obligations in relation to lending. However, I think this was made too late for the same reasons I consider Mr R's complaint about the fairness of his credit relationship with the Lender was unfair to him was made too late.

The date of the witness statement, though that document doesn't specifically refer to concerns about the Lender's *checks*, must, I think, be considered to be the latest date at which Mr R ought reasonably to have been aware he had cause to complain. And that's because his complaint that the Lender had failed to carry out the appropriate checks, has its origins in the enquiries he was making at around this time. He refers to the Lender (albeit by the wrong name) in the statement, apparently expressing surprise that there was no representative from the Lender present at the Time of Sale. And he was clearly already carrying out enquiries into any potential existing causes of complaint by the date of his witness statement. It follows that, because he made his complaint to the Lender more than six years from the date of the lending decision and more than three years from 13 April 2016, that this part of his complaint was made too late for us to consider.

Unauthorised credit broker

I take the same view of Mr R's complaint about the Credit Agreement having been arranged by an unauthorised credit broker, and for the same reasons.

The impact of the Spanish judgment

I think Mr R brought this part of his complaint within the window of time allowed by our rules.

The Purchase Agreement was declared null and void by the Spanish courts in February 2020, and I think it's at least arguable that the complaint event as far as this point is concerned, is the failure of the Lender to accept what PR says are the implications of that judgment for the Credit Agreement. That date would most sensibly taken to be 4 April 2022, when the Lender sent its final response to PR, failing to address the matter of the Spanish judgment at all. Mr R referred his complaint about this to the Financial Ombudsman Service shortly after, well within any applicable time limits.

The extent of our jurisdiction over the complaint thus set out, I will go on to consider the merits of the parts of the complaint I'm minded we have the power to look at.

<u>Mr R's Section 75 Complaint</u>

Section 75 of the CCA gives a borrower who has paid for goods or services with certain kinds of credit (such as the loan with the Lender) the right to make a "like claim" against the creditor in respect of any breach of contract or misrepresentation by the supplier of those goods or services, so long as certain conditions are met.

As a general rule, I think it's reasonable for creditors to reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 ("LA"), as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would have been available in court. So, it is relevant to consider whether Mr R's Section 75 claim was time-barred under the LA before PR put the claim to the Lender on his behalf.

As I mentioned above, a claim under Section 75 is a "like claim". This means it mirrors the claim Mr R could have made against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued. A claim for breach of contract against the Supplier would also be subject to a limitation period of six years from the date on which the cause of action accrued.

Any claim against a lender under Section 75 is also *"an action to recover any sum by virtue of any enactment"* under Section 9 of the LA. Such claims also have a time limit of six years from the date the cause of action accrued.

In claims for misrepresentation, the cause of action accrues at the point a loss is incurred. In Mr R's case, that's when he entered the agreement to purchase the timeshare, and the related Credit Agreement, on 28 November 2012. This would be mirrored in the claim against the Lender.

Mr R first notified the Lender of his Section 75 claim in February 2022, more than six years after the cause of action accrued in relation to their claims for misrepresentation. So I don't think it was unfair or unreasonable of the Lender to decline the part of the claim relating to the Supplier's alleged misrepresentations.

PR has argued that the limitation period can be extended in cases of concealment or fraud, suggesting that the Supplier concealed from Mr R that the Fractional Club membership was an investment, meaning he discovered this fact only later.

There are provisions within the LA to extend limitation periods in such circumstances, however PR's arguments on this point focus on the Section 140A part of the complaint, and this part of the complaint falls outside our jurisdiction for the reasons I explained earlier, which are unrelated to the provisions of the LA. And I don't think PR's arguments assist the claim in relation to misrepresentation, because the concealment of the product being an investment is inconsistent with PR's allegation that the Supplier falsely *told* Mr R, at the Time of Sale, that the product *was* an investment. Further, I would say it's also apparent that Mr R had discovered the alleged misrepresentations within the limitation period, given he refers to them in his witness statement taken around three and a half years after the Time of Sale.

<u>The Supplier's alleged breach of Spanish Law and its implications on the Credit Agreement</u>

PR argues that, because the Purchase Agreement was unlawful under Spanish law in light of certain failings by the Supplier, I should treat that Agreement and the Credit Agreement as rescinded by Mr R and award him compensation accordingly – in keeping with the judgment of the UK's Supreme Court in *Durkin v DSG Retail* [2014] UKSC 21 ("*Durkin*").

However, as the Lender hasn't been party to any court proceedings in Spain, it seems to me that there is an argument for saying that the Purchase Agreement is valid under English law for the purposes of *Durkin*.

I also note that the Purchase Agreement is governed by English law. So, it isn't at all clear that Spanish law would be held relevant if the validity of the Purchase Agreement were litigated between its parties and the Lender in an English court. For example, in *Diamond Resorts Europe and Others* (Case C-632/21), the European Court of Justice ruled that, because the claimant lived in England and the timeshare contract governed by English law, it was English law that applied, not Spanish, even though the latter was more favourable to the claimant in ways that resemble the matters seemingly relied upon by the PR.

Overall, therefore, in the absence of a successful English court ruling on a timeshare case paid for using a point of sale loan on similar facts to this complaint, and given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to uphold it for this reason.

My provisional decision

For the reasons explained above, I am currently minded to decide that:

1. The Financial Ombudsman Service does not have the jurisdiction to consider Mr R's complaint that the credit relationship between him and Mitsubishi HC Capital UK PLC was unfair to him under Section 140A of the CCA.

2. The Financial Ombudsman Service does not have the jurisdiction to consider Mr R's complaint that Mitsubishi HC Capital UK PLC failed to carry out the right checks before lending to him.

3. The Financial Ombudsman Service does not have the jurisdiction to consider Mr R's complaint that the Credit Agreement was arranged by an unauthorised credit broker.

4. Mitsubishi HC Capital UK PLC did not act unfairly or unreasonably in declining to honour a Section 75 claim from Mr R in respect of the Purchase Agreement.

5. Mitsubishi HC Capital UK PLC did not act unfairly or unreasonably in refusing to treat the Credit Agreement as having been rescinded due to the impact of Mr R's judgment in Spain.

Will Culley
Ombudsman