

The complaint

Mr and Mrs W's complaint is, in essence, that First Holiday Finance Ltd (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them 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.

What happened

Mr and Mrs W purchased a membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 13 October 2014 (the 'Time of Sale'). They entered into an agreement to purchase 1200 fractional points for £10,194 (the 'Purchase Agreement'). To pay for this purchase, they paid a £500 deposit and took a loan of £9,694 from the Lender. The loan was settled in full on 27 July 2015.

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

This complaint relates to the loan used to finance the purchase of the Fractional Club membership on 13 October 2014.

Mr and Mrs W – using a professional representative (the 'PR') – wrote to the Lender on 31 October 2022 (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 responded to their complaint on 23 November 2022 rejecting it on the basis that there was a defence to the complaint under the Limitation Act 1980 (the 'LA'). It said that as the complaint had been made more than six years after the date of the transaction had taken place, it believed that Mr and Mrs W had complained too late to bring a complaint relating to the representations the Supplier had made during the sales process.

It also said that as Mr and Mrs W had settled the loan in July 2015, any complaint about an unfair debtor-creditor relationship had also been raised too late to be valid. Unhappy with this response, Mr and Mrs W brought their complaint to this service.

The complaint was then assessed by an Investigator who, having considered the information on file, agreed with the Lender that Mr and Mrs W's complaints had been made too late to be considered.

The PR disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I have reviewed and considered all the arguments and submissions made by PR and the Lender, including those made in response to our Investigator's view before issuing my provisional decision on 21 January 2026.

In my provisional decision, I said that I agreed with our Investigator that I didn't think the Financial Ombudsman Service has the jurisdiction to consider Mr and Mrs W's complaint

about the Lender's participation in and/or perpetuation of an unfair credit relationship under Section 140A of the CCA. I have dealt with whether our Service has jurisdiction to consider Mr and Mrs W's complaint that the credit relationship between them and the Lender was unfair to them under Section 140A of the CCA, in a separate decision.

This decision only considers the merits of Mr and Mrs W's complaint about the way the Lender handled their claim under Section 75 of the CCA. In my provisional decision, I said in relation to this:

“Section 75 of the CCA operates quite differently to Section 140A and, when it applies, it can give borrowers a very different ground for complaint against their lender. Whereas, as I've explained, Section 140A imposes responsibilities on creditors in relation to the fairness of their credit relationships, Section 75 simply creates a financial liability that the creditor is bound to pay. Liability under Section 75 isn't based on anything the lender does wrong, but upon the misrepresentations and breaches of contract by the Supplier, for which Section 75 imposes on the lender a “like claim” to that which the borrower enjoys against the Supplier. If the lender is notified of a valid Section 75 claim, it should pay its liability. And if it fails or refuses to do so, that failure or refusal can give rise to a complaint to the Financial Ombudsman Service.

So, when a complaint is referred to the Financial Ombudsman Service on the back of an unsuccessful attempt to advance a Section 75 claim, the act or omission that engages the Service's jurisdiction is the creditor's refusal to accept and pay the debtor's claim – rather than anything that occurs before the claim was put to the creditor, such as the Supplier's alleged misrepresentation(s) and/or breach(es) of contract.

As a result, the 6 and 3 year time limit (under DISP 2.8.2 (2) R) to complain about an unsuccessful attempt to initiate a Section 75 claim doesn't usually start until the respondent firm answers and refuses the claim.

In this case, as the Lender refused to accept and pay Mr and Mrs W's claims on 23 November 2022, their primary time limit (of 6 years) only started at that time. And as these complaints about the Lender's handling of those claims were referred to the Financial Ombudsman Service on 15 December 2022, it was made in time for the purpose of the rules on our jurisdiction.

However, as I've already indicated, I don't think it would be fair or reasonable to uphold this complaint for reasons relating to Mr and Mrs W's Section 75 claim. As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the 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 be available in court. So, it is relevant to consider whether Mr and Mrs W's Section 75 claim was time-barred under the LA before they put it to the Lender.

A claim under Section 75 is a “like” claim against the creditor. It essentially mirrors the claim the consumer could make 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 (see Section 2 of the LA).

But a claim, like the one in question here, under Section 75 is also “an action to recover any sum by virtue of any enactment” under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the causes of action accrued was the Time of Sale. I say this because Mr and Mrs W entered into the purchase of their timeshare at that time based on the alleged misrepresentations of the Supplier – which they say they relied on. And as the loan from the Lender was used to help finance the purchase, it was when they entered into the Credit Agreement that they suffered a loss.

Mr and Mrs W first notified the Lender of their Section 75 claim on 31 October 2022. And as more than six years had passed between the Time of Sale and when they first put their claims to the Lender, I don't think it was unfair or unreasonable of the Lender to reject their concerns about the Supplier's alleged misrepresentations."

In conclusion, in my provisional decision I stated that I was minded to conclude:

1. Mr and Mrs W's complaint about a credit relationship with the Lender that was unfair to them is not within the jurisdiction of this Service to consider because it wasn't made within the time limits set out in DISP 2.8.2 R (2).
2. Mr and Mrs W's complaint about the Lender's decision to reject their concerns about the Supplier's alleged misrepresentations under Section 75 of the CCA was made in time under DISP 2.8.2 R (2). But the Lender didn't act unfairly or unreasonably by coming to the decision it did.

I asked both Mr and Mrs W and the Lender to provide any further evidence they wished to be considered. The Lender responded to my provisional decision, accepting it but not providing any further evidence. Neither Mr and Mrs W nor the PR responded. So, I'm now finalising my decision.

As set out above, this decision only addresses the merits of Mr and Mrs W's complaint about the Lender's handling of their Section 75 claim.

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 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 still do not find that this complaint should be upheld.

I have considered all the evidence in this case afresh. However, as neither Mr and Mrs W nor the Lender responded to my provisional decision, I can see no reason to alter my view.

As I said in my provisional decision, as a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the 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 be available in court. So, it is relevant to consider whether Mr and Mrs W's Section 75 claim was likely to be time-barred under the LA by a court when they put it to the Lender.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim the consumer could make 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 (see Section 2 of the LA).

But a claim, like the one in question here, under Section 75 is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale. I say this because Mr and Mrs W entered into the purchase of their timeshare at that time based on the alleged misrepresentations of the Supplier – which they say they relied on. And as the loan from the Lender was used to help finance the purchase, it was when they entered into the Credit Agreement that they suffered a loss.

Mr and Mrs W first notified the Lender of their Section 75 claim on 31 October 2022. And as more than six years had passed between the Time of Sale and when they first put their claim to the Lender, I still don't think it was unfair or unreasonable of the Lender to reject Mr and Mrs W's concerns about the Supplier's alleged misrepresentations.

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs W's Section 75 claim. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

I do not uphold this decision, for the reasons given above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 23 March 2026.

Bill Catchpole
Ombudsman