

## The complaint

Mrs A has complained that Elderbridge Limited has unfairly declined complaints she made in relation to a loan.

## What happened

In June 2005 (“the Time of Sale”), Mrs A, alongside her late husband, took out timeshare membership from a timeshare provider (“the Supplier”). To pay for the membership, they took out a loan with First National Consumer Finance Limited – this loan was later transferred to Elderbridge, so it’s responsible for this complaint. The loan was repaid in full in August 2015.

In April 2022, Mrs A, using a professional representative (“PR”), made a claim about the loan on behalf of herself and her late husband. The claim was sent to the complaints team of the original lender. In short, PR alleged:

- The Supplier misrepresented the nature of the timeshare to Mr and Mrs A.
- There was an unfair debtor-creditor relationship that arose out of the timeshare membership and the interest rate of the loan.
- The timeshare membership was ‘null and void’ due to breaches of an EU Directive and Spanish law.
- The loan is ‘null and void’ due to breaches of the Consumer Credit Act 1974 (“CCA”), the Unfair Terms in Consumer Regulations 1999 (“UTCCR”) and breaches of the Financial Conduct Authority (“FCA”) Handbook.
- Mr and Mrs A’s ability to repay the loan wasn’t properly considered before it was granted.

The lender responded to PR to say the claim needed to be made to Elderbridge, but it would forward a copy of the claim letter. But PR didn’t receive any response from Elderbridge, so in September 2022, it referred the complaint to our service. In addition to what was first said, PR alleged a breach of the Timeshare Act 1992 by the Supplier.<sup>1</sup> PR noted that the claim was brought late under the provisions of the Limitation Act 1980 (“LA”), but it argued that Mrs A first knew of the problems when she took legal advice in January 2022. It said s.14A LA applied to the claim, and so Mrs A had longer to make it.

After the complaint was with our service, Elderbridge responded. Initially it said that Mrs A needed to raise her concerns with the Supplier directly and didn’t answer any of the specific concerns. But then it said that parts of the claim had been made too late, and it didn’t think there was enough to uphold other parts of the complaint.

One of our investigators looked at everything and gave his view on the complaint. He considered the claims available to Mrs A under s.75 and s.140A CCA and thought they had been made too late – he didn’t see any reason to extend the limitation periods. He said our service doesn’t have jurisdiction to consider complaints about the decision to lend to Mr and

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<sup>1</sup> PR also alleged breaches of some 2010 regulations, but as these postdate the sale, I can’t see how they are relevant

Mrs A at the Time of Sale. And he thought the timeshare membership wasn't governed by Spanish law, so it didn't apply to this complaint.

Elderbridge agreed with our investigator, but PR, on Mrs A's behalf, disagreed. It pointed to the judgment in a Judicial Review of two decisions issued by ombudsmen and said this needed to be considered when looking at Mrs A's complaint. PR said it wanted an ombudsman to consider the merits of Mrs A's claim under s.140A CCA that there was an unfair debtor-creditor relationship. PR explained that it thought the things complained of (as set out above) all lead to an unfair relationship. PR also said the claim is based on breaches of the Timeshare Act 1992 by the Supplier which, under s.56 CCA, Elderbridge are responsible for. PR say the original lender (and now Elderbridge) were negligent due to the Supplier's acts and omissions, and so s.14A LA extends the time to bring a claim.

### **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.

Our investigator considered a number of different reasons why PR said Mrs A's complaint should be upheld. In response, PR said it wished an ombudsman to consider the merits of the claim that there was an unfair debtor-creditor relationship under s.140A CCA. As that is now the only issue in dispute, I will only consider the claim under s.140A CCA in this decision.

PR says that there was an unfair debtor-creditor relationship due, amongst other things, to the actions of the Supplier. The LA applies to a claim under s.140A CCA. It was held in *Patel v. Patel* [2009] EWHC 3264 (QB) that when considering s.140A CCA, the time for limitation purposes ran from the date that the credit agreement ended if it was not still running at the time the claim was made. Here the limitation period is six years. That is because the claim Mrs A wishes to make is for repayment of sums she has paid to the loan, which is an action for sums recoverable under statute, to which s.9 LA applies. That means Mrs A would have to have brought an action within six years of August 2015 at the latest. As she did not do that, I think she brought her claim too late.

PR has said that the time to bring a claim can be extended under s.14A LA and that provision applies when a claim is made for damages for negligence. Mrs A is making a claim under s.140A CCA, which is a claim that there is an unfair debtor-creditor relationship. That is not a claim for damages for negligence, so s.14A LA doesn't apply. It follows that I think Mrs A made her claim too late and Elderbridge has a defence to it under the LA.

### **My final decision**

I don't uphold Mrs A's complaint against Elderbridge Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 11 September 2023.

Mark Hutchings  
**Ombudsman**