

The complaint

Mr M complains that GE Money Home Finance Limited won't refund to him the money that he paid for some holiday club membership points. He's being represented in his complaint by a legal adviser.

What happened

I issued a provisional decision on this complaint last month in which I described what had happened as follows:

"Mr M and his wife entered into a purchase agreement to buy some holiday club membership points in February 1997. The purchase price of the membership points was £5,950 and Mr M entered into a loan agreement with a finance provider for a loan of £6,600.81 and he agreed to make monthly payments of £118.29 to the finance provider. He also entered into a credit agreement with the finance provider for life cover in connection with the loan at a cost of £496.82 which he agreed to pay by 118 monthly payments of £8.97. Part of the finance provider's business, including the loan agreement, was transferred to GE Money Home Finance in 2003. Mr M's wife sadly passed away in 2007.

Mr M's then representative made claims to GE Money Home Finance in August 2019 under sections 75 and 140A of the Consumer Credit Act 1974. It said that misrepresentations were made during the sales process which induced Mr M and his wife into the purchase agreement and that unfair initial contract negotiations and sales tactics were used. It also said that Mr M wished for there to be a full investigation into any payment protection insurance on the loan. Mr M's representative didn't receive a response to those claims so Mr M complained to this service in October 2019. Mr M's representative has changed since then.

GE Money Home Finance responded to those claims in March 2022. It apologised for the time taken to reply to the claims and said that, due to an administrative error, the claim wasn't correctly logged on its systems and it offered to pay £50 to Mr M to compensate him for its error. It said that any claim that Mr M may have had under section 75 would be statute barred under the Limitation Act 1980. It also said that it had been unable to locate Mr M's loan account and the term of the loan agreement shows that his account would have redeemed before 6 April 2008, which was prior to the implementation of section 140A, so he was unable to bring a claim under section 140A.

Our investigator didn't recommend that Mr M's complaint should be upheld. He said that Mr M had purchased the membership in March 1997 but didn't contact GE Money Home Finance about it until August 2019 so he thought that his section 75 claim was made outside of the time limits in the Limitation Act. He also said that the loan agreement was due to last for 118 months and, as it was taken out in March 1997, it was due to run until January 2007, so he thought that it was likely that the account had been closed for more than six years before Mr M's section 140A claim was raised.

Mr M's representative, on his behalf, has asked for this complaint to be considered by an ombudsman. It said that a full substantive response would follow upon receipt of instructions from Mr M – but no such response has been received.

GE Money Home Finance says that this complaint falls outside of this service's jurisdiction because the loan was made prior to it having jurisdiction over Consumer Credit Act regulated loans, which commenced on 6 April 2007. It also says that the finance provider became GE Money Home Finance on 31 October 2003 and GE Money Home Finance is no longer regulated by the Financial Conduct Authority from 29 March 2016 so this service doesn't have jurisdiction to investigate Mr M's complaint".

I set out my provisional findings in that provisional decision which were as follows:

"We don't have a free hand to consider every complaint that's referred to us. Our rules for considering complaints are set out in the Dispute Resolution section of the Financial Conduct Authority's handbook of rules and guidance.

Mr M's complaint is that his claims under sections 75 and 140A have been turned down. Section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met).

The activity about which Mr M is complaining is GE Money Home Finance's decision to turn down his section 75 claim – and, for this service to be able to consider a complaint about that activity, it must have been a regulated activity at the time that it took place.

GE Money Home Finance says that the loan was made to Mr M by the finance provider in March 1997 and that the finance provider became GE Money Home Finance on 31 October 2003. GE Money Home Finance stopped being regulated by the Financial Conduct Authority on 29 March 2016. Mr M's then representative didn't make a section 75 claim to GE Money Home Finance about its liability for the holiday company's alleged misrepresentations until August 2019. Mr M's complaint was made to this service in October 2019 and GE Money Home Finance responded to Mr M's claim in March 2022.

Mr M's representative's claims were made to GE Money Home Finance after GE Money Home Finance stopped being regulated by the Financial Conduct Authority so its consideration of Mr M's section 75 claim at that time wasn't a regulated activity. I find that this service doesn't have jurisdiction to consider Mr M's complaint about GE Money Home Finance's response to his section 75 claim.

Mr M's representative's letter also referred to claims under section 140A. Section 140A gives a court the power, amongst other things, to require a creditor to repay any sum paid by the debtor under a credit agreement if it determines that there's an unfair relationship between the debtor and the creditor – but it didn't come into force until April 2007 and applies to credit agreements covered by the Consumer Credit Act (including those taken out before 6 April 2007, as long as they were still in force on 6 April 2008).

I haven't been provided with a copy of the loan agreement that Mr M would have signed for the loan that the finance provider made to him in March 1997. But I have been provided with a copy of the credit agreement that Mr M signed in March 1997

for life cover in connection with the loan at a cost of £496.82 which he agreed to pay by 118 monthly payments of £8.97. I've also been provided with a copy of a letter from the finance provider to Mr M in March 1997 about the loan which says that the monthly payments would start in April 1997.

I consider it to be more likely than not that the loan agreement was taken out in March 1997 and that it would have had the same term of 118 months as the credit agreement. If the first payment under the loan agreement was made in April 1997, the 118th payment would have been payable in January 2007. GE Money Home Finance says that it's been unable to trace a record for the loan to Mr M and he hasn't provided any evidence about his payments under the loan.

In the absence of any persuasive evidence to suggest otherwise, I don't consider that it's unreasonable to conclude that it's more likely that not that the loan would have been repaid by Mr M before 6 April 2008 and, on that basis, I don't consider that section 140A applied to his loan so he wouldn't be able to make a claim that his relationship with the finance provider was unfair.

Even if Mr M's loan did continue after 6 April 2008 so that he was able to make a claim under section 140A, the courts have said, when considering such claims, that the time for limitation purposes runs from the date that the credit agreement ended (if it was not still running at the time the claim was made) and the limitation period for a claim under section 140A is six years.

Mr M's representative's claim under section 140A was made to GE Money Home Finance in August 2019 so the loan agreement would need to have ended in August 2013 (or later) for Mr M to be able to make a claim under section 140A. The loan would need to have continued for more than 16 years from March 1997 for Mr M to be able to make such a claim. I've seen no evidence to show that the loan continued after August 2013 and I don't consider it to be likely that it did so. I consider it be more likely that GE Money Home Finance would have a defence to any such claim and I find that it wouldn't have been unreasonable for it to have rejected the claim.

Mr M's representative said that Mr M wished for there to be a full investigation into any payment protection insurance on the loan. He's provided a copy of the credit agreement for life cover in connection with the loan but not any other information about the life cover. I don't consider that the life cover was payment protection insurance, I've seen no evidence to show that any payment protection insurance was sold to Mr M by the finance provider in connection with the loan and I'm not persuaded that there's any evidence to show that the life cover was mis-sold to Mr M.

GE Money Home Finance apologised for the time taken to reply to Mr M's claims and said that, due to an administrative error, the claim wasn't correctly logged on its systems and it offered to pay him £50 to compensate him for its error. If Mr M hasn't received that compensation and now wishes to accept it, I suggest that he contacts GE Money Home Finance about it. I sympathise with Mr M for the loss of his wife and the issues that he's had with his membership points, but I find that it wouldn't be fair or reasonable in these circumstances for me to require GE Money Home Finance to refund him any of the money that he paid under the loan agreement, to pay him any other compensation or to take any other action in response to his complaint".

Subject to any further comments or evidence that I received from any of Mr M, his representative and GE Money Home Finance, my provisional decision was that: this service isn't able to consider Mr M's complaint about GE Money Home Finance's response to his claim under section 75; Mr M isn't able to make a claim to GE Money Home Finance under

section 140A in these circumstances; and I don't intend to uphold his complaint about payment protection insurance.

Both GE Money Home Finance and Mr M's representative have acknowledged receipt of my provisional decision, GE Money Home Finance says that it has nothing further to add and I've received no further comments or evidence from Mr M or his representative.

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.

In this decision I'm only considering whether or not Mr M is able to make a claim to GE Money Home Finance under section 140A and his complaint about payment protection insurance. I've issued a separate decision as to whether or not this service is able to consider Mr M's complaint about GE Money Home Finance's response to his claim under section 75.

For the reasons set out in my provisional decision, I find that Mr M isn't able to make a claim to GE Money Home Finance under section 140A in these circumstances and I don't uphold his complaint about payment protection insurance.

My final decision

My decision is that Mr M isn't able to make a claim to GE Money Home Finance under section 140A in these circumstances and I don't uphold his complaint about payment protection insurance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 October 2023.

Jarrold Hastings
Ombudsman