

The complaint

Mr and Mrs W have complained GE Money Consumer Lending Limited didn't fairly or reasonably deal with their claims under the Consumer Credit Act 1974.

Although Mr and Mrs W are represented in their complaint by a third party, I will refer to them throughout for ease.

What happened

Mr and Mrs W bought timeshare points in 2008 from a company I'll call C. The total cost of the timeshare points was £30,711 and they partly paid for it by taking a loan with GE Money, which was set to run for 15 years at nearly £415 a month.

In 2017 Mr and Mrs W submitted a letter of claim under section 75 of the Consumer Credit Act 1974 that the sale had been misrepresented. Alongside that claim, Mr and Mrs W's representatives supplied a longer document setting out wider claims and concerns, including one made under section 140A of the Consumer Credit Act 1974 that they were subject to an unfair relationship. They wanted the cost of their purchase refunded, along with costs.

GE Money reviewed their section 75 claim and told Mr and Mrs W they believed they'd brought their complaint too late. They also highlighted other aspects which they believed meant they didn't need to review the claim at all.

Unhappy with this, Mr and Mrs W brought their complaint to the ombudsman service.

In March 2021 our investigator reviewed the complaint and agreed it was reasonable that GE Money felt they didn't need to look at the claims as a court would be likely to consider these were made out of time under the Limitation Act.

Mr and Mrs W remained unhappy and have asked an ombudsman to consider their complaint. They specifically confirmed, through their representatives that their financial debt remained outstanding until both 2014 and 2017 despite it being noted the finance agreement came to an end in March 2011.

I completed a provisional decision on 24 July 2023 explaining why I wasn't upholding Mr and Mrs W's complaint.

Neither Mr and Mrs W or GE Money provided any further comments. I now have all I need to make my final 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.

Having done so, I've reached the same outcome as I did in my provisional decision. The wording that follows explains this.

Where evidence is incomplete, inconclusive or contradictory, I reach my decision about the merits of this complaint on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I also take account of law and regulations, regulators' rules, guidance and standards, and codes of practice and good industry practice, when I make my decision.

I've considered the claims that were made to GE Money, both explicitly in the letter of claim, but also in the longer document. I've then considered the answers to those claims and, where appropriate, I've considered the Limitation Act 1980.

Section 75/75A claims

Section 75 of the Consumer Credit Act 1974 means that, in certain circumstances, if Mr and Mrs W paid for goods or services using certain types of credit (even in part), and there was a breach of contract or misrepresentation by the supplier of those goods or services, the creditor can also be held responsible.

Financial limits, however, apply to section 75. The purchase price must not exceed £30,000. In Mr and Mrs W's case, there is no dispute that the purchase price was £30,711. So as Mr and Mrs W's representatives accept, section 75 does not apply to their claim for misrepresentation.

In their letter of claim, Mr and Mrs W's representative said the claim was made under section 75 and/or section 75A of the Consumer Credit Act 1974. Section 75A is similar to section 75, in that it makes a creditor jointly liable for certain breaches of contract where the purchase price is above £30,000. But I don't think this section assists Mr and Mrs W. I say this because that provision didn't come into force until 2011, whereas their loan was taken out in 2008, and I can't see it was intended to have retrospective effect. But, even if it did apply, I don't think it would lead to a successful claim. That is because Mr and Mrs W's representatives have pointed to a number of potential breaches of the timeshare agreement, including a number of breaches of implied terms. But all of the alleged breaches were due to the nature of the timeshare itself and related to how the businesses involved in its operation were set up. Those were inherent to the timeshare from its inception, so any breach would have taken place at the time the timeshare was taken out. The limitation period for a breach of contract claim is six years from the date of breach. Any breach would have been in August 2008 so the timescale would have expired in 2014. No claim was made until 2017, so I think it was made too late and GE Money had a defence to this under the Limitation Act 1980.

Section 56 claims

Our investigator considered a claim made under section 56 of the Consumer Credit Act 1974. That provision, in a case like this, imputes an agency relationship between a supplier (C) and a creditor (GE Money), so that things said or done by C were done in its own right, but also on behalf of GE Money. But I don't think that provision creates a cause of action in its own right, nor does it mean GE Money could be liable for a freestanding legal claim for misrepresentation as I don't think C was alleged to make any false representations about the loan agreement. But again, even if a claim could be made under section 56, I think it would have been made too late.

Under the Limitation Act 1980 an action (that is, court action) based on misrepresentation cannot generally be brought after six years from the date on which the cause of action accrued. Any statements which might have induced Mr and Mrs W into the contract for the purchase of the points were made on or before 11 August 2008. They did not however raise

any complaint with GE Money until April 2017 at the earliest, just under nine years later. I think it very likely therefore that a court would conclude that any claim against C for misrepresentation was made outside the time limit in the Limitation Act.

Section 140A claims

GE Money stated we couldn't consider any claim under section 140A of the Act. Whilst I agree Mr and Mrs W's original representatives didn't specifically refer to section 140A in their letter of claim, they did clearly refer to issues arising from an unfair relationship which do fall under section 140A in their longer claim documentation. Whilst a lot of this was generic and didn't apply to Mr and Mrs W directly, there was an allegation that Mr and Mrs W had an unfair debtor-creditor relationship with GE Money. Our service isn't a court and we look into the substance of complaints, not the way they are set out – we don't require complainants to be specific about the law when they refer complaints.

Under section 140A and section 140B of the Consumer Credit Act a court has the power to consider whether a credit agreement creates an unfair relationship and, if it does, to make appropriate orders in respect of it. Those orders can include imposing different terms on the parties and refunding payments. In this case, Mr and Mrs W seeks restitution of sums paid under the loan agreement, as well as damages and costs.

The usual time limit for these types of claims under the Limitation Act is six years from the time the relationship between the parties ended. In this case that was no later than March 2011 when the loan account was closed, and the finance agreement came to an end.

Again, I think that it was reasonable for GE Money to conclude that a court would be unlikely to entertain such a claim and to decline it.

Can the time to bring claims be extended?

Mr and Mrs W's representatives say that limitation periods don't strictly apply here, because the relevant time limit is extended where the claimant did not know they had a cause of action or where fraud is involved.

I do not accept that the general time limit is extended where a claimant does not know they have cause for complaint. That can be the case in negligence claims – for example, where the consequences of negligence do not become apparent for many years – but the claim here is that C misrepresented a contract, not that it was negligent (see *Thomas v. Taylor Wimpey Developments* [2019] EWHC 1134 (TCC)).

I've also been asked to look at section 32 of the Limitation Act 1980. That provision means that in some instances where the action is based on the fraud of the defendant or a fact relevant to the right of action has been deliberately concealed from the claimant by the defendant, the limitation period only starts to run from when a claimant discovers the fraud or concealment (or could have discovered it using reasonable diligence).

It's been said that the timeshare supplier's corporate structure amounts to a fraud for several reasons. But I can't see what the alleged thing was that was hidden from Mr and Mrs W which means they are victims of a fraud. From what I've seen, the timeshare operated in the way intended. Different parts of the corporate structure took payment and supplied services, but that doesn't mean there was some sort of fraud. Similarly, I can't see what the false statements of fact are that it was alleged could give rise to a claim for fraudulent misrepresentation.

I also can't see how the allegations made mean that facts were concealed from Mr and

Mrs W that could be viewed as essential elements of their causes of action. And I can't see what facts, if any, were deliberately concealed from Mr and Mrs W in any event. So I don't think there is any reason a court would extend the time to bring these claims

Having considered all the evidence presented to our service, I won't be asking GE Money to do anything further.

My final decision

For the reasons given, my final decision is not to uphold Mr and Mrs W's complaint against GE Money Consumer Lending Limited.

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 26 September 2023.

Sandra Quinn
Ombudsman