

## **The complaint**

Mr and Mrs L's complaint is, in essence, that Vacation Finance Limited (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'), (2) deciding against paying claims under Section 75 of the CCA and (3) that the Lender lent to them irresponsibly.

## **What happened**

Mr and Mrs L purchased membership of a timeshare from a timeshare provider (the 'Supplier') on 12 May 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 49,500 'credits' at a cost of £63,040 (the 'Purchase Agreement').

Mr and Mrs L paid for their membership by paying £9,000 by bank transfer and the remaining amount was paid by taking finance of £54,040 from the Lender in both of their names (the 'Credit Agreement').

Mr and Mrs L – using a professional representative (the 'PR') – wrote to the Lender on 1 August 2022 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. A breach of contract by the Supplier giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
3. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
4. The Credit Agreement being unenforceable because it was not arranged by a credit broker authorised by the Financial Conduct Authority (the 'FCA') to carry out such an activity.

### **(1) Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale**

Mr and Mrs L say that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. Told them that they had purchased an investment and that the timeshare would considerably appreciate in value and they would receive a considerable return on investment.
2. Told them that, in the short term, the timeshare would be listed for re-sale and sold at a profit.
3. Told them the timeshare would be sold for an amount which would not only pay off the loan but also generate profit – such that the term of the Credit Agreement would only last until the timeshare was sold.

Mr and Mrs L says that they have a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs L.

(2) Section 75 of the CCA: the Supplier's breach of contract

Mr and Mrs L say that the Supplier breached the Purchase Agreement because it went into liquidation in 2020. That means that their membership will end before it was due to, thus depriving them of its sale in the future. What's more, under the Purchase Agreement, it states that Mr and Mrs L are entitled to exchange their credit for use of a yacht, but the two yachts the Supplier owned are now part of the liquidation proceedings and cannot be used by members.

As a result of the above, Mr and Mrs L says that they have a breach of contract claim against the Supplier, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs L.

(3) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mr and Mrs L say that the credit relationship between them and the Lender was unfair to them under Section 140A of the CCA. In summary, they include the following:

1. The particular contractual term which set out that, if Mr and Mrs L failed to pay their annual management fees the Supplier would be able to revoke their membership, was an unfair contract term under the Consumer Rights Act 2015 ('CRA').
2. The Supplier didn't explain the terms and conditions of the loan in detail.
3. The Supplier rushed them through the signing process and they weren't allowed to give the documentation due consideration.

Points 2 and 3 above were actually raised in the 'misrepresentations' section of the Letter of Complaint, but that isn't what they appear to be and seem to me to be reasons why Mr and Mrs L's credit relationship with the Lender was unfair to them.

The Lender dealt with Mr and Mrs L's concerns as a complaint and issued its final response letter on 15 October 2022, rejecting it on every ground.

Mr and Mrs L then referred the complaint to the Financial Ombudsman Service. At this stage, the PR added the following points to the complaint:

1. The decision to lend being irresponsible because (1) the Lender did not carry out the right creditworthiness assessment and (2) the money lent to them under the Credit Agreement was unaffordable for them.
2. Commission was paid to the Supplier by the Lender which was not disclosed to Mr and Mrs L prior to entering into the Credit Agreement.

It was assessed by an Investigator who, having considered the information on file, initially rejected the complaint on its merits. But, having received further information from the PR, then upheld the complaint on the basis that Mr and Mrs L had been lent to when it wasn't affordable for them.

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

I considered the matter and issued a provisional decision on 21 October 2024. I provisionally decided to uphold the complaint as I thought the Lender wrongfully entered into the Credit Agreement contrary to CONC and I thought that had a significant effect on Mr and Mrs L. And, had the Lender carried out its affordability assessment in line with CONC, I thought Mr and Mrs L would have been prevented from the financial burdens of both the Credit Agreement and the associated Purchase Agreement. So, I outlined how I thought the Lender should compensate Mr and Mrs L.

In that decision I said:

***“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.*

*I will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I am satisfied that of particular relevance to this complaint is:*

- *The CCA (including Section 75 and Sections 140A-140C).*
- *The law on misrepresentation.*
- *The Timeshare Regulations.*
- *The CRA.*
- *The FCA's Consumer Credit Sourcebook (CONC) – in particular, CONC 5 – which set out the rules and guidance that an authorised firm had to consider and follow when lending responsibly.*
- *Case law on Section 140A of the CCA – including, in particular:*
  - *The Supreme Court's judgment in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') (which remains the leading case in this area).*
  - *Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')*
  - *Patel v Patel [2009] EWHC 3264 (QB) ('Patel').*
  - *The Supreme Court's judgment in Smith v Royal Bank of Scotland Plc [2023] UKSC 34 ('Smith').*
  - *Carney v NM Rothschild & Sons Ltd [2018] EWHC 958 ('Carney').*
  - *Kerrigan v Elevate Credit International Ltd [2020] EWHC 2169 (Comm) ('Kerrigan').*
  - *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').*

## **Good industry practice – the RDO Code**

*The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation’s Code of Conduct dated 1 January 2010 (the ‘RDO Code’).*

## **What I’ve provisionally decided – and why**

*I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.*

*And having done that, I’m intending to reach the same overall outcome as the Investigator, and for broadly the same reasons.*

*However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to Mr and Mrs L’s complaint, it isn’t necessary to make formal findings on all of them. This includes the allegation that the Lender ought to have accepted and paid their claims under Section 75 of the CCA for misrepresentations and a breach of contract by the Supplier. It also includes the allegation that the credit relationship between Mr and Mrs L and the Lender was unfair to them under Section 140A of the CCA.*

*This is because, even if those aspects of the complaint ought to succeed, the redress I’m currently proposing puts Mr and Mrs L in the same or a better position than they would be if I were upholding those other aspects of the complaint.*

*What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.*

### **The Lender’s responsibilities**

*Under CONC 5, the Lender was obliged to lend to Mr and Mrs L responsibly.*

*At the Time of Sale, CONC 5.2.1[R] (1) said that the Lender had to assess Mr and Mrs L’s creditworthiness before entering into the Credit Agreement. When carrying out that assessment, CONC 5.1.1[R] (2) said they had to consider:*

- (a) The potential for commitments under the Credit Agreement to adversely impact Mr and Mrs L’s financial situation, taking into account the information it was aware of at the Time of Sale; and*
- (b) Mr and Mrs L’s ability to make the repayments as they were going to fall due over the life of the Credit Agreement.*

*CONC 5.2.1[R] (2)(a) also referred to paragraph 4.1 of the Office of Fair Trading’s (OFT) Irresponsible Lending Guidance, which says amongst other things that:*

*“Assessing affordability’, in the context of this guidance, is a ‘borrower-focused’ test which involves a creditor assessing a borrower’s ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner,*

*without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences.”*

*The FCA sets out in CONC 5.3.1[G] (6) what it means by ‘sustainable’:*

*“For the purposes of CONC ‘sustainable’ means the repayments under the regulated credit agreement can be made by the customer:*

*(a) Without undue difficulties, in particular:*

*i. The customer should be able to make repayments on time, while meeting other reasonable commitments; and*

*ii. Without having to borrow to meet the repayments*

*(b) Over the life of the agreement [...]*

*(c) Out of income and savings without having to realise security or assets”*

*CONC 5.2.3[G] said that the extent and scope of a creditworthiness assessment under 5.2.1[R] should be dependent on and proportionate to a number of different factors.*

*CONC 5.2.4[G] (2) went on to say:*

*“A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer’s financial situation.”*

*I acknowledge that the FCA didn’t specify what level of detail such an assessment might require, nor did it set out how such an assessment needed to be carried out in practice. But, as per the above in CONC 5.2.4[G], it did say that the necessary level of detail depended on the risk to the borrower relative to their financial situation.*

*So, there are a number of questions I need to consider in this case:*

- Did the Lender carry out reasonable and proportionate checks to satisfy itself that Mr and Mrs L were likely to have been able to repay the borrowing in a sustainable way?*
- If the Lender didn’t carry out such checks, would the requisite checks have revealed that Mr and Mrs L were unlikely to have been able to repay the borrowing in a sustainable way?*
- Did Mr and Mrs L lose out as a result of the Lender’s decision to lend to them?*

*I’ve considered each of these questions in turn.*

*Did the Lender carry out reasonable and proportionate checks?*

*The first question I need to consider here was whether the Lender carried out reasonable and proportionate checks, as it was required to under its aforementioned regulatory responsibilities.*

*However, despite having asked the Lender for information on its creditworthiness assessment, the Lender has not explained what checks it undertook at the Time of Sale in order to assess whether the loan was affordable for Mr and Mrs L. The lender did say in its*

*final response letter that it followed its usual process and conducted an appropriate affordability assessment that concluded Mr and Mrs L were capable of affording the loan. But that doesn't help in determining this point.*

*So, as things currently stand, there isn't any evidence from the Lender to persuade me that reasonable and proportionate checks were carried out by it at the Time of Sale. And as Mr and Mrs L both purchased the product in question and entered into the Credit Agreement at the Time of Sale, which indicates that the Lender agreed to lend to them almost as soon as they submitted their loan application, it seems unlikely to me that the Lender had the time and space to (1) consider more information than what might have been provided on an application form, and (2) carry out more than a credit search.*

*With that being the case, I'm not persuaded that the Lender is likely to have carried out reasonable and proportionate checks before agreeing to lend to Mr and Mrs L. And I say that because the loan was for a larger amount – just over £54,000 and was for a lengthy period of ten years. And, the monthly repayment was also relatively high at £702.23 per month. So, as outlined in the regulatory guidance above, I'd expect more detailed and robust checks to have been carried out accordingly, which in turn would have revealed more information about Mr and Mrs L's financial circumstances at the Time of Sale.*

*Given this, I need to consider what such checks would likely have shown. So, this is what I've considered next.*

*What would reasonable and proportionate checks have demonstrated?*

*I acknowledge here that it isn't possible to determine with certainty what such checks would have shown the Lender. This is because I don't know what checks it would have decided to carry out and what information from those checks it would have relied on.*

*But that doesn't matter because what I am deciding here is the likelihood of reasonable and proportionate checks showing the Lender that Mr and Mrs L either would or would not have been able to sustainably repay their loan.*

*To be clear, I'm not saying or suggesting that the Lender had to rely on the same amount or type of information that I've relied on below in order to have carried out reasonable and proportionate checks before lending to Mr and Mrs L. It's now over six years since the Time of Sale and this means it's difficult to paint a reliable picture of their circumstances at that time. So, it's necessary to consider more information than the Lender might otherwise have done at the relevant time in order to determine what reasonable and proportionate checks would likely have shown it.*

*The guidance I've outlined above said that the Lender could have used a variety of types and sources of information to assess affordability at the Time of Sale, including bank statements.*

*In the course of this complaint, Mr and Mrs L have provided both their individual and joint bank statements covering the three-month period leading up to the decision to lend. They also provided some comments in relation to those statements as well as information about their credit scores and reports at the time. They also provided 'point in time' screenshots from their chosen credit reference agency, evidencing what their score was at the Time of Sale and more importantly, how much existing debt they each had at that time.*

*The Investigator upheld the complaint largely on the basis of the aforementioned bank statements as they couldn't see that Mr and Mrs L had the monthly income required to make*

*their loan repayments once all of their existing commitments were factored in. Having reviewed the statements, I agree, and I'll explain why.*

*Since the lending was in joint names, both Mr and Mrs L's incomes are relevant here.*

*Mrs L's average income over the three months fluctuated slightly from month to month. But she says that was due to the reimbursement of expenses from her employer. So, her average monthly income over that time was, in reality, something like £2,402.95.*

*Mr L's income over the three months came from his two pensions and it amounted to an average monthly amount of £997.73.*

*So, Mr and Mrs L's average joint monthly income over the three-month period prior to the Time of Sale was £3,400.68.*

*Mr and Mrs L's household bills and other credit commitments, on the other hand, amounted to approximately £2,611.19, which left them with £789.49.*

*However, Mr and Mrs L's new loan repayments under the Credit Agreement were £702.23, leaving them with £87.26 of disposable income per month. I don't think, therefore, that they could sustainably repay the loan over its term because it left them with very little disposable income per month which isn't likely to be sufficient over the coming years for various reasons. For example, household bills and the cost of essentials usually increase over time with inflation and yet Mr L was on a relatively fixed income. And, given this, I doubt Mr and Mrs L could use their timeshare at all if all they had left each month was just under £90.*

*Furthermore, the above figures don't include other essential spending such as food (it is difficult to see a regular figure for this from the statements). For example, their spending on food alone would have been more than £87.26 per month. So, with household bills, and other credit commitments as well as other likely essential spending, this left no room to make the repayments.*

*So, the Lender ought to have realised that Mr and Mrs L's existing outgoings either already exceeded their joint income or were close enough to exceeding it to leave no room for monthly repayments of £702.23.*

*I therefore think increasing Mr and Mrs L's indebtedness to facilitate their timeshare purchase put them at real risk of undue difficulty or further borrowing given their circumstances.*

#### *Did Mr and Mrs L lose out financially?*

*In response to our Investigator's findings, the Lender raised a few points as to why it felt that Mr and Mrs L haven't lost out financially as a result of the decision to lend to them at the Time of Sale.*

*The Lender explained that a 'finance calculator' had been completed at the Time of Sale for both Mr and Mrs L. It says that Mr and Mrs L declared that their incomes, which they had signed to say were correct, were higher than they actually were. And, that Mr and Mrs L had told the Supplier at the Time of Sale that they intended to make 'lump sum' payments towards the loan. So, any detriment suffered by Mr and Mrs L following its decision to lend to them was as a result of that misinformation.*

*I can see that Mr and Mrs L stated that their gross monthly incomes were £4,000 and £2,500 per month respectively.*

*I acknowledge that lenders are entitled to expect prospective borrowers to answer questions about their financial circumstances in good faith. So, I asked Mr and Mrs L to explain why the income figures on this documentation appear to be incorrect and in summary, they say that the Supplier's sales agent filled in some of the information, including their incomes, for them, after they'd completed their basic details on the documentation such as names etc. So, when they signed the relevant document, they were only confirming the details they had entered up to that point were correct, not the income figures the Supplier added later. They also point out that some of the information recorded at the Time of Sale appears to be in different handwriting to theirs.*

*Ultimately, the information declared about their income in this finance calculator was provided before the Lender's creditworthiness assessment. And, as I haven't seen enough to persuade me that the steps taken by the Lender during that assessment can be said to have reliably and reasonably reassured it that the information in question was accurate, or at least appeared to be even though it wasn't, the inaccuracy of the information purportedly provided by Mr and Mrs L can't be said to be something which nullifies the Lender's failings in relation to CONC and Mr and Mrs L's associated loss.*

*The regulatory expectations outlined above in CONC imposed on the Lender a responsibility to verify the income and expenditure declared by Mr and Mrs L should the circumstances warrant it. CONC also anticipated that consumers may not always provide entirely accurate information. Therefore, the rules and guidance in place at the Time of Sale required lenders to ensure that they had clear and effective processes and procedures in place to assess affordability (CONC 5.3.2[R]), which included taking adequate steps to ensure that the information provided by consumers was complete and correct (CONC 5.3.3[G]).*

*So, while I acknowledge that there is some variance between the figures purportedly provided by Mr and Mrs L in relation to their income at the Time of Sale and what the evidence available now shows was the case, the Lender still had a responsibility under CONC to properly scrutinise the information Mr and Mrs L had provided. And given this, had the Lender known more about Mr and Mrs L's circumstances before lending to them, as I think they ought to have, I can't see how it would have justified a decision to lend to them that would have been consistent with the regulatory rules and guidance it had to follow.*

*The Lender has also highlighted that Mr and Mrs L made their repayments on time and made lump sum payments towards the loan in addition to their regular monthly payments. It suggests, therefore, that Mr and Mrs L had access to significant savings in order to make these payments towards their loan.*

*I asked Mr and Mrs L to explain how they funded the £9,000 deposit towards their purchase as well as the lump sum payments they made towards the loan in addition to their monthly repayments. They explained that, in October 2018, a few months after the Time of Sale, Mrs L retired and received a pension lump sum payment of £60,000. They then used that to pay the £9,000 deposit they'd previously agreed with the Supplier, and also to pay off various other debts at that time and have provided a bank statement from October 2018 to support this. This was also how they funded further lump sum payments towards the loan, which they wanted to do as "these annual lump sums saved us from need [sic] to make large monthly payments and bought us time to see what else we could do".*

*Further, Mr and Mrs L have acknowledged they had a savings account and explained that the funds in question were so that Mrs L had some money of her own for individual spending (given most if not all of her salary was being spent on bills and existing credit commitments) and the total amount never exceeded £800 at any one time and was usually a lot less.*



*They've now provided a copy of the statement for this account for the period of February to April 2018 and I can see this supports what they've said here.*

*I can also see from the bank statements provided for their main accounts, that Mr and Mrs L were often using further borrowing to pay off existing borrowing. For example, on Mr L's bank statement for April 2018 (a month before the sale), I can see that they took out a loan with another lender for £15,000 and used this to pay off various other lending, including credit cards.*

*Given the above, I don't think it's accurate to say Mr and Mrs L had access to significant sums of savings they had not disclosed. I acknowledge that pension funds are a form of savings, and savings can be taken into account when making a decision to lend<sup>1</sup>.*

*However, the pension savings Mr and Mrs L ultimately used were not available to them at the Time of Sale, which is when the decision to lend was assessed and made and is what I'm looking at here. And, I think this also shows that Mr and Mrs L experienced financial detriment as a result of the decision to lend – Mrs L ultimately had to return to work at least in part as a result of that decision.*

*The Lender also suggests that Mr and Mrs L did not lose out financially for the following reasons:*

- In February 2021, when travel restrictions relating to the COVID-19 pandemic were still in place, the Lender was able to agree a part-relinquishment arrangement where the Supplier would reduce Mr and Mrs L's points balance and their outstanding loan would reduce to zero accordingly from the £37,376 balance outstanding at that time.*
- Mr and Mrs L are 'avid timeshare users' and would have completed the purchase anyway, likely purchasing a lower number of points for a lower sum if a different lending decision had been made.*
- They have continued to regularly use their timeshare product.*

*Firstly, I don't see any particular relevance of the timeshare product being used subsequently to whether Mr and Mrs L lost out financially as a result of the decision to lend. But in any event, the redress I've outlined below takes into account any holidays Mr and Mrs L took using their membership.*

*Secondly, I acknowledge that Mr and Mrs L part-relinquished their timeshare. However, they still made payments under the Credit Agreement up to that point. So, I don't see that this would impact whether they lost out financially or not. And again, in any event, the redress outlined below also takes that into account, as I'm only asking the Lender to refund repayments that have actually been paid towards the loan.*

*Lastly, even if Mr and Mrs L's application had been rejected (as I think it ought to have been), I'm still not persuaded that they could and/or would have pressed ahead with the purchase anyway.*

*The Lender hasn't suggested an alternative way Mr and Mrs L would have funded their purchase had their application for finance been turned down. Given their circumstances, I don't think it's likely Mr and Mrs L would have been approved for finance by another Lender, undertaking reasonable and proportionate checks at the Time of Sale. And, as I've already*

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<sup>1</sup> See CONC 5.3.1[G] (6)

said, it did not seem that they had sufficient appropriate savings or further credit utilisation to fund the purchase either.

*I acknowledge that Mr and Mrs L's decision to purchase membership was likely to have been motivated by the potential benefits of it. But it was, nonetheless, a large discretionary purchase. And, there isn't any persuasive evidence to suggest that Mr and Mrs L were sufficiently enamoured with the membership to go to additional lengths for a discretionary purchase given their circumstances.*

*So, while I acknowledge that it's possible they may have used other means to fund their purchase, I don't think it's probable based on the evidence I've seen.*

*The Lender has also said Mr and Mrs L could have purchased a lower number of points, at a lower price. They say the emails exchanged between Mr and Mrs L and the Supplier in February 2021 relating to part-relinquishment evidences that they would have done this, but I don't see how this is the case. There isn't any evidence that this is something the Supplier could or would have offered at the time. Or, any evidence that Mr and Mrs L would still have purchased under those circumstances and if so, how many points and exactly how much they would have borrowed to fund it and whether this also would have been approved.*

*With all of the above being the case, I'm not persuaded that they would have pressed on with their purchase regardless – particularly when a decision by the Lender to reject their loan application on the basis that the repayments weren't sustainable would have highlighted such concerns to them.*

## **Conclusion**

*For the above reasons, I think the Lender wrongfully entered into the Credit Agreement contrary to CONC. And I think that had a significant effect on Mr and Mrs L. They ended up borrowing and trying to repay a substantial sum of money while also being subjected to another long term financial commitment in the form of the timeshare membership. And, had the Lender carried out its affordability assessment in line with CONC, I think Mr and Mrs L would have been prevented from the financial burdens of both the Credit Agreement and the associated Purchase Agreement.*

## **Fair Compensation**

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*Where I've found that a business has done something wrong, I would normally direct them to – as far as it's reasonably practicable – put the consumer in the position they would be in now if their error hadn't happened.*

*As explained above, I've found that Mr and Mrs L are unlikely to have entered into the Credit Agreement or the Purchase Agreement. So, I think it's fair and reasonable to put them in the position they would be in now had they not entered into either agreement at the Time of Sale.*

*Here's what I think the Lender needs to do to compensate Mr and Mrs L with that being the case:*

- (1) *The Lender should refund Mr and Mrs L's repayments made to it under the Credit Agreement, and the deposit they paid towards the purchase. I don't believe there is an outstanding balance on the loan, but the Lender should cancel it if there is one.*
- (2) *In addition to (1), the Lender should also refund the annual management charges Mr and Mrs L paid as a result of their membership.*
- (3) *The Lender can deduct*
  - i. *The value of any promotional giveaways that Mr and Mrs L used or took advantage of; and*
  - ii. *The market value of the holidays\* Mr and Mrs L took using their membership credits.*

*(the 'Net Repayments')*

*\*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr and Mrs L took using their membership credits, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage.*

- (4) *Simple interest\*\* at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.*
- (5) *The Lender should remove any adverse information recorded on Mr and Mrs L's credit files in connection with the Credit Agreement.*
- (6) *Arrange for the cancellation of Mr and Mrs L's timeshare membership so that there are no ongoing liabilities and if that isn't possible, indemnify Mr and Mrs L against any ongoing liabilities arising from the timeshare membership on the basis that Mr and Mrs L assign any rights they have under the agreement to the Lender.*

*\*\*HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one."*

The PR responded to my provisional decision and accepted it. The Lender did not respond, nor did they provide any further evidence or arguments they wished to be considered.

### **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.

As neither party has provided any new evidence or arguments, I don't believe there is any reason for me to reach a different conclusion from that which I reached in my provisional decision (outlined above). I do wish to stress that I have considered all the evidence and arguments afresh before reaching that conclusion.

### **My final decision**

For the reasons set out above, I uphold this complaint and direct Vacation Finance Limited to compensate Mr and Mrs L in line with what I've set out above under the heading "*Fair Compensation*".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 4 December 2024.

Fiona Mallinson  
**Ombudsman**