

SECTION 2: SUMMARY OF CUSTOMER'S ADDITIONAL SUBMISSION

The Bank wishes to address the following point made by the Customer in her 2nd Additional Submission:

1. If the Bank wishes to assign a meaning to "*then prevailing*" other than its ordinary meaning, as per the Oxford English Dictionary which defines it as "*existing at a particular time, current*", then this should have been done when drafting the contract and not 11 years later.

Para 5 (2) of S.I. No 27/1995 - European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 clearly states "in the case where there is a doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail".

Apart from the Unfair Contract Terms Regulations, under common law principles of interpretation, where a legal document has been produced by one party in a standard form, any ambiguity in the interpretation of the contract is to be interpreted against the interests of the party who has prepared the document.

(Please refer to the Customers' letter dated 21/06/2019 for full details of their Additional Submission)

SECTION 3: BANK RESPONSE TO CUSTOMER'S ADDITIONAL SUBMISSION

The Bank refers to its Case Summary and Bank Response dated 15/04/2019 and the Bank's Response to the Customer's 1st Additional Submission dated 30/05/2019. The Bank responds to the point raised in the 2nd Additional Submission as follows:

1. The Customer refers to Para 5 (2) of S.I. No 27/1995 - European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 which states that "*in the case where there is a doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail*" and the "Common Law principle of Interpretation" which states that "*where a legal document has been produced by one party in a standard form, any ambiguity in the interpretation of the contract is to be interpreted against the interests of the party who has prepared the document*", in this case, the Bank.

The Customer believes that these rule should apply in relation to the definition of "*then prevailing*" as stated in the Customer's Letter of Offer dated 29/08/2008. We would submit that the rules do not apply here. We are of the view that there is no doubt about the meaning of this as per Clause 3.2 of the Customer's Letter of Offer dated 29/08/2019, which clearly states that, "*at the end of any fixed interest rate, the Customer may choose between a Fixed, Variable or Tracker interest rate at the Bank's then prevailing rates appropriate to the Mortgage Loan*".

The meaning of the words "*then prevailing*" is not defined and in those circumstances, it is appropriate to give the words their ordinary meaning, which is to exist or is available at the time (i.e. current). This meaning is consistent with the Bank's previous responses on this matter and there is no suggestion of the Bank seeking to import a meaning that did not already exist. The words in the Terms and Conditions are clear: the Customer could choose one of the rates (Fixed, Variable and Tracker) which were on offer at the time and appropriate to their mortgage loan.

As the meaning of the words "*then prevailing*" is clear, Para 5 (2) of S.I. No 27/1995 - European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 or the common law principles of interpretation do not apply.

Submission Date:

09/07/2019