



Neutral Citation Number: [2026] EWCA Civ 32

Case No: CA-2025-000276

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE, BUSINESS AND PROPERTY
COURTS OF ENGLAND AND WALES, BUSINESS LIST (ChD)
Nicholas Thompsell sitting as a Deputy High Court Judge
[2024] EWHC 2427 (ChD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 January 2026

Before :

LORD JUSTICE NEWEY
LORD JUSTICE BAKER
and
LORD JUSTICE ARNOLD

Between :

DONNA BREEZE AND OTHERS

**Claimants/
Appellants**

- and -

TSB BANK PLC

**Defendant/
Respondent**

Daniel Saoul KC, William Hibbert, Ben Smiley and Benjamin Archer (instructed by **Harcus Parker Ltd**) for the **Appellants**
Sonia Tolaney KC, James Duffy KC and Tim Goldfarb (instructed by **Hogan Lovells International LLP**) for the **Respondent**

Hearing dates : 20-21 January 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 30 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Arnold:

Introduction

1. This is an appeal by the Claimants, brought with permission granted by Holgate LJ, against an order made by Thompsell J (as he had then become) on 21 January 2025 determining two preliminary issues in favour of the Defendant (“TSB”) for the reasons he gave when sitting as a Deputy High Court Judge in a judgment dated 25 September 2024 [2024] EWHC 2427 (Ch).

Background

2. The Claimants are 392 individuals who entered into residential mortgage contracts with Northern Rock plc. Northern Rock proved to be one of the early casualties of the global financial crisis of 2008. In February 2008 Northern Rock was nationalised, with its entire issued share capital being transferred to HM Treasury. Following the implementation of a restructuring plan in 2010, Northern Rock was transferred to UK Asset Resolution Ltd, a wholly owned subsidiary of HM Treasury, and ceased to operate as an active lender. Northern Rock was subsequently transferred to an affiliate of Cerberus Capital Management. In July 2016 a portfolio of the mortgages still held by Northern Rock was transferred to TSB (this statement is a simplification of what actually happened, but it will suffice for present purposes). TSB operates these mortgages under its Whistletree brand name, and therefore they have been referred to in these proceedings as “Whistletree Mortgages”. Similarly, the Claimants are referred to as “Whistletree Borrowers”.
3. At the time when TSB acquired the Whistletree Mortgages in July 2016, the standard variable rate (“SVR”) that applied to the Whistletree Mortgages was 4.79%, which was 4.29% above the Bank of England’s base rate (“the BoE Base Rate”) at that time. Following its acquisition of the mortgages, TSB has subsequently varied this SVR (“the Whistletree SVR”) from time to time, both up and down, and in each case consistently with changes to the BoE Base Rate. Thus it has remained 4.29% above the BoE Base Rate.
4. TSB also maintains and applies other SVRs to different categories of variable-rate mortgages. These other SVRs include:
 - i) its Homeowner Variable Rate, which is the rate being advertised and used for new mortgage loans;
 - ii) its Standard Variable Mortgage Rate (“the TSB SVMR”), which is a rate that is applied to a portfolio of variable rate residential mortgages applied for before 1 June 2010 (which TSB subsequently acquired from Lloyds Bank); and
 - iii) a Buy to Let Variable Rate.
5. The Claimants contend that they are so-called “mortgage prisoners” who have been trapped into paying unduly high variable rates on their mortgages, and they have brought various claims against TSB. These include claims for damages for breach of their mortgage contracts by charging the Whistletree SVR rather than the TSB SVMR, which has been 2% above the BoE Base Rate over the period in question.

6. Most of the Claimants' mortgages are regulated under the Financial Services and Markets Act 2000 ("FSMA"), and are thereby subject to the rules in the Mortgages and Home Finance: Conduct of Business Sourcebook ("MCOB"). Those Claimants with regulated mortgages also claim damages for breach of statutory duty in relation to alleged contraventions of MCOB.
7. In addition, some of the Claimants were offered a package by Northern Rock comprising a mortgage loan (a "Together Mortgage") and an unsecured loan (a "Together Loan"). The Together Loan was linked to the Together Mortgage in that the interest rate under the unsecured loan was set to match that applicable from time to time to the Together Mortgage, but would increase to a substantially higher rate if the Together Mortgage was repaid. Through these arrangements borrowers could borrow on a mortgage up to 95% of the value of their residential property, and at the same time obtain an unsecured loan up to a further 30% of the value of the property (capped at £30,000). By taking both loans, some borrowers were able to borrow well over 100% of the value of the property that was mortgaged. These Claimants ("the Together Claimants") claim a declaration that the relationship between each of such Claimants on the one hand and Northern Rock and/or TSB on the other hand was and/or is unfair within the meaning of section 140A of the Consumer Credit Act 1974 ("CCA 1974") and an order for TSB to repay such sums as would redress that unfairness. More specifically, they claim an order that TSB repay payments made under their Together Mortgages such as would redress the unfairness, including a sum to reflect interest on such payments.

The preliminary issues

8. On 19 October 2023 Deputy Master Hansen made an order for the trial of three preliminary issues. The parties subsequently reached agreement as to the second of the preliminary issues, which concerns an implied term in the Claimants' mortgage contracts, and therefore the judge only had to determine the first and third issues.
9. Issue 1 is: "Has [TSB] breached the express terms of the Claimants' mortgage contracts by charging the Claimants interest rates based on the Whistletree SVR and not on the TSB SV[M]R ... ?" This issue depends on the correct interpretation of the relevant terms of the contracts, and in particular the General Conditions incorporated in them.
10. Issue 3 is: "Does section 140A(5) [CCA 1974] preclude an order [being made] under section 140B(1) in relation to a regulated mortgage contract, or quantified by reference to sums payable under a regulated mortgage contract, irrespective of whether that regulated mortgage contract is the 'credit agreement' or a 'related agreement'?" This issue depends on the correct interpretation of section 140A(5).
11. The parties sensibly agreed a statement of agreed facts and issues for the purposes of the trial of the preliminary issues, and therefore the judge heard no evidence. The judge determined both issues in favour of TSB.

Issue 1

Applicable principles

12. There is no significant dispute as to the applicable principles of contractual interpretation. TSB relied, both before the judge and in this Court, on a convenient summary of the general principles given by HHJ Pelling QC at first instance and adopted by Sir Geoffrey Vos C in *Lamesa Investments Ltd v Cynergy Bank Ltd* [2020] EWCA Civ 821 at [18]:

- “i) The court construes the relevant words of a contract in their documentary, factual and commercial context, assessed in the light of (i) the natural and ordinary meaning of the provision being construed, (ii) any other relevant provisions of the contract being construed, (iii) the overall purpose of the provision being construed and the contract or order in which it is contained, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party’s intentions – see *Arnold v. Britton* [2015] UKSC 36, [2015] AC 1619 per Lord Neuberger PSC at paragraph 15 and the earlier cases he refers to in that paragraph;
- ii) A court can only consider facts or circumstances known or reasonably available to both parties that existed at the time that the contract or order was made - see *Arnold v. Britton* (ibid.) per Lord Neuberger PSC at paragraph 20;
- iii) In arriving at the true meaning and effect of a contract or order, the departure point in most cases will be the language used by the parties because (a) the parties have control over the language they use in a contract or consent order and (b) the parties must have been specifically focussing on the issue covered by the disputed clause or clauses when agreeing the wording of that provision – see *Arnold v. Britton* (ibid.) per Lord Neuberger PSC at paragraph 17;
- iv) Where the parties have used unambiguous language, the court must apply it – see *Rainy Sky SA v. Kookmin Bank* [2011] UKSC 50 [2011] 1 WLR 2900 per Lord Clarke JSC at paragraph 23;
- v) Where the language used by the parties is unclear the court can properly depart from its natural meaning where the context suggests that an alternative meaning more accurately reflects what a reasonable person with the parties’ actual and presumed knowledge would conclude the parties had meant by the language they used but that does not justify the court searching for drafting infelicities in order to facilitate a departure from the natural meaning of the language used – see *Arnold v. Britton* (ibid.) per Lord Neuberger PSC at paragraph 18;

- vi) If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other – see *Rainy Sky SA v. Kookmin Bank* (ibid.) per Lord Clarke JSC at paragraph 2 - but commercial common sense is relevant only to the extent of how matters would have been perceived by reasonable people in the position of the parties, as at the date that the contract was made – see *Arnold v. Britton* (ibid.) per Lord Neuberger PSC at paragraph 19;
 - vii) In striking a balance between the indications given by the language and those arising contextually, the court must consider the quality of drafting of the clause and the agreement in which it appears – see *Wood v. Capita Insurance Services Limited* [2017] UKSC 24 per Lord Hodge JSC at paragraph 11. Sophisticated, complex agreements drafted by skilled professionals are likely to be interpreted principally by textual analysis unless a provision lacks clarity or is apparently illogical or incoherent– see *Wood v. Capita Insurance Services Limited* (ibid.) per Lord Hodge JSC at paragraph 13; and
 - viii) A court should not reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight, because it is not the function of a court when interpreting an agreement to relieve a party from a bad bargain - see *Arnold v. Britton* (ibid.) per Lord Neuberger PSC at paragraph 20 and *Wood v. Capita Insurance Services Limited* (ibid.) per Lord Hodge JSC at paragraph 11.”
13. TSB also relied upon the principle that, when dealing with standard form agreements that are used for multiple different parties or counterparties, as is the case with the General Conditions, the words used in the contract have particular primacy. As Lord Millett said in his dissenting speech in *AIB Group (UK) Plc v Martin* [2001] UKHL 63, [2002] 1 WLR 94 in a passage which has repeatedly been cited with approval:
- “A standard form is designed for use in a wide variety of different circumstances. It is not context-specific. Its value would be much diminished if it could not be relied upon as having the same meaning on all occasions. Accordingly the relevance of the factual background of a particular case to its interpretation is necessarily limited. The danger, of course, is that a standard form may be employed in circumstances for which it was not designed. Unless the context in a particular case shows that this has happened, however, the interpretation of the form ought not to be affected by the factual background.”
14. In my view this principle is of limited relevance to the present case. Although the Claimants’ mortgage contracts do, as discussed below, incorporate standard conditions, the Claimants do not rely upon the factual background to the making of any particular

contracts. The Claimants' case is based upon standardised wording in their mortgage offer letters and the standard conditions.

15. Leading counsel for the Claimants, who did not appear below, relied upon passages from the judgments of Neuberger J in *Re Drake Insurance plc* [2001] Lloyd's Rep IR 643 and of Lord Neuberger of Abbotsbury sitting as a member of this Court in *Foxtons v Bicknell* [2008] EWCA Civ 419, [2008] 2 EGLR 23 which were not cited below, or even in the Claimants' skeleton argument for the appeal (which was drafted by a team of four counsel including two other leading counsel).
16. In *Re Drake* Neuberger J said at 649:

“... the *contra proferentem* rule, if standing purely on its own, is often pretty weak, but it is of some force when it is part of the overall picture. That is particularly so in a case of an insurance contract, where the insurer is a large organisation with a knowledge of the market and financial ability to employ and obtain the best legal and other advice, whereas the policyholder will almost always be a small individual with very limited funds and knowledge.”

The *contra proferentem* rule is that, where there is doubt about the meaning of a contract, the words will be construed against the person who put them forward.

17. In *Foxtons v Bicknell* Lord Neuberger said at [31]:

“... this case is concerned with Foxtons' standard terms. Accordingly, one should lean in favour of a construction which favours their client, particularly in the field of domestic estate agency contracts, where the agent is an expert, often professionally qualified, and normally legally advised, and the client will normally be a lay person who will not seek legal advice on those terms. ...”

18. I am content to assume that these statements accurately state the law even though: (i) Lord Neuberger MR himself subsequently stated when giving the judgment of this Court in *K/S Victoria Street v House of Fraser Stores Management Ltd* [2011] EWCA Civ 904, [2012] Ch 497 at [68] that “‘rules’ of interpretation such as *contra proferentem* are rarely decisive as to the meaning of any provisions of a commercial contract” and scepticism about the independent authority of the *contra proferentem* rule has been expressed by, among others, Lord Leggatt in *Triple Point Technology Inc v PTT Public Co Ltd* [2021] UKSC 29, [2021] AC 1148 at [111]; and (ii) the need for consumer protection is addressed by the statutory provisions discussed next.
19. Perhaps more importantly, the Claimants relied, both before the judge and in this Court, upon regulation 7(2) of the Unfair Terms in Consumer Contracts Regulations 1999, SI 1999/2083. This provides, so far as relevant:

“If there is doubt about the meaning of a written term, the interpretation which is most favourable to the consumer shall prevail ... ”

20. This provision has been superseded by section 69 of the Consumer Rights Act 2015, but it remains applicable to the Whistletree Mortgages. We were not referred to any authorities on these provisions, but they are discussed in Lewison, *The Interpretation of Contracts* (8th ed) at 7.102-7.107.

The terms of the mortgage contracts

21. The terms of each of the Claimants' mortgage contracts are contained in a mortgage offer letter ("the Offer"), which incorporated the version of Northern Rock's Mortgage Offer General Conditions in force at that time ("the General Conditions"). The Offers were made over a period stretching from 2001 to 2008, although we were told that the majority date from 2005 to 2007. The terms of the Offers contained standardised wording which varied over time, and we were shown three different examples. It is sufficient, however, to refer to the first example quoted by the judge, an Offer dated 14 April 2004.
22. The Offer begins with the following passage:

"We are pleased to offer you a loan on the terms set out in Section A below. The special conditions that apply to your loan are set out in Section B. The Mortgage Offer General Conditions set out in the enclosed booklet (Edition 1) also apply to your loan and form part of this Offer of Loan. Many of the terms used in this document are defined or explained in that booklet. ..."

23. Section A of the Offer is in the following terms (omitting insurance details):

SECTION A

Loan Details

Type of Loan	Loan Amount (£)	Term (Years)	Interest Method	Initial Interest Rate (%)	Standard Variable Mortgage Base Rate (%)	Initial Monthly Payment (£)	Repayment Type
New Loan	68,400	25	Daily rest	5.24	5.99	443.54	Repayment

Property Details

	Purchase Price (£)	Tenure of Property	Unexpired Term of Lease (Years)
	72,500	Freehold	

24. Section B of the Offer sets out Special Conditions. Condition 10 provides, so far as relevant:

"RATES AND RATE PERIODS

Whilst your Mortgage Payments are not in arrears by two or more months, the Initial Rate of Interest charged will be guaranteed to be no more than the Bank of England Base Rate plus 1.24% until 01/05/2006 and then guaranteed to be no more than Bank of England Base Rate plus 1.85% until 01/05/2009 (the Special Rate Period).

We will review the Special Rate on the 1st of each month following any change in the Bank of England Base Rate. ...

On expiry of the Special Rate Period the rate will be set at a rate guaranteed to be below our prevailing Standard Variable

Mortgage Base Rate set by us from time to time for existing Northern Rock borrowers (the Guaranteed Rate). We will review the Guaranteed Rate on the 1st of each month following any change in the Standard Variable Rate. ...”

25. There are at least three relevant sets of General Conditions, dating from 2001, 2004 and 2005, but neither side suggests there is any material difference between them. The judge discussed edition 1 of the General Conditions dated July 2001, and I will follow his example.

26. Condition 1.1 reads, so far as relevant, as follows:

“In these General Conditions and in the Offer:

(a) ‘we’, ‘us’ and ‘our’ refer to Northern Rock plc and anyone who becomes entitled at law or in equity to any of our rights under the Offer (this will include any person to whom we transfer the Offer under condition 19);

...”

27. Condition 1.2 includes the following definitions:

- i) “**Interest**’ means interest at the Interest Rate.”
- ii) “**Interest Rate**’ means the rate or rates of interest we charge under Condition 6.”
- iii) “**Special Rate**’ means the rate of Interest which is payable on a Special Rate Loan during the Special Rate Period for that Special Rate Loan.”
- iv) “**Special Rate Loan**’ means a Loan which is stated in the Special Conditions to be a Special Rate Loan...”
- v) “**Special Rate Period**’ means, in relation to any Special Rate Loan, the period stated in the Special Conditions to be the Special Rate Period for that Special Rate Loan...”
- vi) “**Standard Variable Mortgage Base Rate**’ means such rate as we from time to time decide to set as the base from which to calculate Interest on our variable rate mortgage loans (disregarding the restrictions on what we can charge under condition 7 or Section B of the Offer). The current Standard Variable Mortgage Base Rate which applies to your Loan is set out in Section A of the Offer. We may change this rate from time to time under condition 7 or Section B of the Offer. If we transfer or dispose of the Offer, the person to whom we make the transfer may change the rate to its own base rate which it applies to its variable rate mortgage loans. That rate will then be the Standard Variable Mortgage Base Rate under the Offer and the person to whom we make the transfer may make further changes to that rate under condition 7 or Section B of the Offer.”

28. Condition 6 primarily addresses the mechanics of calculation of the Interest Rate, although it also includes an obligation for the borrower to pay Interest. The judge referred to Condition 6.6, which provides as follows:

“If a Loan is a Special Rate Loan (the Special Conditions will indicate if a Loan is a Special Rate Loan), we are not obliged to renew or extend the Special Rate Period unless the Special Conditions makes it a term of that Loan that the Special Rate Period will be renewed or extended.”

29. Condition 7 provides, so far as relevant, as follows:

“7.1 We may reduce the Standard Variable Mortgage Base Rate at any time.

7.2 We may increase the Standard Variable Mortgage Base Rate at any time if one or more of the following reasons applies:

- (a) there has been, or we reasonably expect there to be in the near future, a general trend to increase interest rates on mortgages generally or mortgages similar to yours;
- (b) for good commercial reasons, we need to fund an increase in the interest rates we pay to our own funders;
- (c) we wish to adjust our interest rate structure to maintain a prudent level of profitability;
- (d) there has been, or we reasonably expect there to be in the near future, a general increase in the risk of shortfalls on the accounts of mortgage borrowers (whether generally or our mortgage borrowers only), or mortgage borrowers (whether generally or our mortgage borrowers only) whose accounts are similar to yours;
- (e) our administrative costs have increased or are likely to do so in the near future.”

30. Condition 19.1 provides:

“We may transfer or charge or otherwise dispose of the Offer or any of our rights under the Offer (including the right to set the Interest Rate) to any person at any time at law or in equity without your consent. Where we transfer to any person the right to set the Interest Rate and we have set the Interest Rate by reference to the Standard Variable Mortgage Base Rate, that person may set the interest charged under the Offer by reference to that person's own (or one of its own) standard variable mortgage base rates.”

31. Condition 22 provides:

“If their terms are in conflict, the Special Conditions prevail over the General Conditions.”

The Claimants’ case

32. The Claimants’ case is summarised in their skeleton argument for the appeal as follows:

- i) Save in one limited circumstance, TSB was required to charge Whistletree Borrowers its own SVR (i.e. the TSB SVMR). That is because:
 - a) The definition of Standard Variable Mortgage Base Rate in Condition 1.2 entailed that TSB was required to charge the SVR which it applies to “[its] variable rate mortgage loans”. “[Its] variable rate mortgage loans” must mean its pre-existing portfolio of loans at the time of transfer. A transferee was not entitled arbitrarily to salami-slice its loan portfolio and charge different rates to different portfolios of loans.
 - b) Once TSB made a change in the rate it charged, it was bound under Condition 19.1 to charge its “own (or one of its own) standard variable mortgage base rates”. There is no sensible way to construe that provision as requiring anything other than TSB’s SVR applicable to similarly-situated mortgagors.
- ii) The limited circumstance where that position did not apply was when, in the immediate aftermath of a transfer, the transferee decided to continue to charge precisely the same rate as had been charged pre-transfer i.e. the same numerical percentage. If the transferee wished to change the inherited SVR, it could only do so by first changing the applicable rate to its own SVR. Only thereafter was the transferee entitled to make further changes to the rate under Condition 7.
- iii) The effect of Conditions 1.2, 7 and 19.1 was therefore that TSB had to charge its own standard variable rate (i.e., the rate it charged on “[its] variable rate mortgage loans”) as soon as it sought to vary the Interest Rate.

TSB’s case

33. TSB’s case is, in summary, that it was entitled to vary the SVR charged to Whistletree Borrowers from the rate it inherited from Northern Rock pursuant to Condition 7. It could reduce the SVR pursuant to Condition 7.1 for any reason, and it could increase the SVR pursuant to Condition 7.2 for any of the reasons specified in that Condition. TSB could do so since it stepped into Northern Rock’s shoes as transferee, and thus became “we” pursuant to the definition in Clause 1.1(a). TSB could have charged its own SVR (or one of its own SVRs) pursuant to Condition 19.1, but it was not obliged to do so, and it did not.

Analysis

34. I agree with the judge that TSB’s interpretation of the General Conditions is the correct one. As counsel for TSB submitted, the logical approach to the issue is to begin by considering the position prior to any transfer of the mortgage before considering what, if anything, changes upon transfer. Having done so, I will consider the Claimants’ arguments to the contrary.

35. *Prior to transfer.* The definition of “Standard Variable Mortgage Base Rate” in Condition 1.2 begins “...such rate as we from time to time decide to set as the base from which to calculate Interest on our variable rate mortgage loans...”. There are four points to note about this part of the definition.
36. First, the Standard Variable Mortgage Base Rate is a “rate” of interest that at any given time has a specific numerical value. As noted above, at the time TSB acquired the Whistletree Mortgages, the rate being charged was 4.79%.
37. Secondly, the Standard Variable Mortgage Base Rate is determined from time to time by the person referred to by the words “we” and “our”. These words are defined in Condition 1.1 to mean “Northern Rock plc and ... any person to whom we transfer the Offer under condition 19”. As the judge noted, it is common ground that the word “and” should be read disjunctively, and thus to refer to either Northern Rock or the transferee as the sense requires. It is convenient to refer to this person as “the lender”.
38. Thirdly, the Standard Variable Mortgage Base Rate is the rate “set as the base from which to calculate Interest”. Since “Interest” is a defined term meaning “the rate or rates of interest we charge under Condition 6” of the General Conditions, it follows that the Standard Variable Mortgage Base Rate is the rate used to calculate interest for the portfolio of mortgages subject to the General Conditions. It is plainly not referring to any other interest rate set by the lender in the course of its banking business.
39. Fourthly, the Standard Variable Mortgage Base Rate is nevertheless a standard rate in the sense that it applies to all of the “variable rate mortgage loans” governed by the General Conditions. The second sentence of the definition states that the “current Standard Variable Mortgage Base Rate which applies to your Loan is set out in Section A of the Offer”. This can be seen in the example quoted in paragraph 23 above.
40. The third sentence of the definition of “Standard Variable Mortgage Base Rate” states: “We may change this rate from time to time under condition 7 ...”. This part of the definition is self-explanatory: the lender is entitled to vary the Standard Variable Mortgage Base Rate in accordance with Condition 7.
41. Condition 7.1 provides: “We may reduce the Standard Variable Mortgage Base Rate at any time”. Condition 7.2 provides: “We may increase the Standard Variable Mortgage Base Rate at any time if one or more of the following reasons applies”. This too is self-explanatory. Notably, there are no words qualifying the lender’s right to vary the Standard Variable Mortgage Base Rate, other than that increases must be for one of the reasons stated in the sub-paragraphs of Condition 7.2.
42. In summary, the Standard Variable Mortgage Base Rate is a numerical rate of interest that the lender sets from time to time for charging interest on those mortgages which are subject to the General Conditions. The Standard Variable Mortgage Base Rate may be varied by the lender under Condition 7.
43. It is common ground that Northern Rock’s right of transfer under the first sentence of Condition 19.1 is unrestricted. Northern Rock may transfer the mortgage contract “to any person at any time”, and for any reason. It follows that Northern Rock might transfer the mortgage contract because it was leaving the residential mortgage market, whether through insolvency or for commercial reasons, and thus would no longer be

setting an SVR. Equally, the transferee could be a person with no pre-existing SVR (such as a new entrant to the market), or a person whose SVR at the date of transfer was higher than that then being charged by Northern Rock. It follows that the General Conditions must be interpreted with all of these possibilities in mind.

44. On the other hand, as is also common ground, the General Conditions must be interpreted as at the dates when the mortgage contracts were entered into, that is to say, without the hindsight knowledge of what transpired after the transfers to TSB.
45. *After transfer.* The first sentence of Condition 19.1 provides: “We may transfer or charge or otherwise dispose of the Offer or any of our rights under the Offer (*including the right to set the Interest Rate*) to any person at any time at law or in equity without your consent” (emphasis added). It is not in dispute that TSB acquired all of Northern Rock’s rights under the Offer in each case, including the right to set the Interest Rate charged under the Offer. The right to set the Interest Rate must include the right to vary the Standard Variable Mortgage Base Rate under Condition 7.
46. This is reflected in the fact that, as noted above, from the point of transfer, the new lender is included in the definition of “we”, “us” and “our”. Thus, upon transfer to TSB:
 - i) The definition of Standard Variable Mortgage Base Rate can be read as: “...such rate as we [TSB] from time to time decide to set as the base from which to calculate Interest on our [TSB’s] variable rate mortgage loans ...”; and
 - ii) Conditions 7.1 and 7.2 can be read as “We [TSB] may reduce the Standard Variable Mortgage Base Rate at any time” and “We [TSB] may increase the Standard Variable Mortgage Base Rate at any time if one or more of the following reasons applies”.
47. There is nothing in the definition of Standard Variable Mortgage Base Rate or, crucially, Condition 7, which imposes any additional restriction on any transferee’s right to exercise the powers under Condition 7. The new lender simply steps into the old lender’s shoes, and enjoys the same rights as the original lender described above.
48. Condition 19.1 goes on in its second sentence to provide the transferee with an additional right: “Where we transfer to any person the right to set the Interest Rate and we have set the Interest Rate by reference to the Standard Variable Mortgage Base Rate, that person *may* set the interest charged under the Offer by reference to that person’s own (or one of its own) standard variable mortgage base rates” (emphasis added).
49. It is common ground that the second sentence of Condition 19.1 permits, but does not oblige, the new lender to set the Interest Rate by reference to “its own (or one of its own) standard variable mortgage base rates”. The obvious rationale for this is to enable a new lender whose pre-existing SVR is higher than Northern Rock’s Standard Variable Mortgage Base Rate at the date of transfer to charge that higher rate even if that would not be permitted by Condition 7.2.
50. The reference to “its own (or one of its own) standard variable mortgage base rates” uses the lower-case term, and not the capitalised defined term “Standard Variable Mortgage Base Rate”. This distinguishes other pre-existing rates maintained by the

transferee from the specific “Standard Variable Mortgage Base Rate” used to set interest for the mortgages being transferred.

51. It can be seen that the second sentence refers to “the interest charged under the Offer”, rather than “the Interest” (the defined term). This is possibly explained by the temporal consideration that it is only once the rate has been set by the new lender that the interest charged under the Offer will become the Interest. In any event, it does not affect the meaning of this part of Condition 19.1.
52. The effect of Condition 19.1, which is the relevant operative clause, is accounted for in the second half of the definition of Standard Variable Mortgage Base Rate, which is not an operative clause: “*If we transfer or dispose of the Offer, the person to whom we make the transfer may change the rate to its own base rate which it applies to its variable rate mortgage loans. That rate will then be the Standard Variable Mortgage Base Rate under the Offer and the person to whom we make the transfer may make further changes to that rate under condition 7 or Section B of the Offer*” (emphases added).
53. As the judge recognised, there are therefore two separate mechanisms for varying the Standard Variable Mortgage Base Rate. First, there is the mechanism under Condition 7, which permits the lender, including a transferee, “at any time” to reduce the rate or increase the rate, but in the case of an increase only for specified reasons. Secondly, there is the mechanism under Condition 19.1, which arises where the right to set interest is transferred to another person, when the transferee “may set the interest ... by reference to that person’s own (or one of its own) standard variable mortgage base rates”. If a transferee lender exercises the right under Condition 19.1 to adopt “its own (or one of its own) standard variable mortgage base rates”, then the rate it elects to adopt becomes the Standard Variable Mortgage Base Rate, and thereafter can be varied only in accordance with Condition 7.
54. In short, there is nothing in the General Conditions that supports the proposition that, unless the new lender exercises its option to adopt the second mechanism, it cannot exercise its rights under the first mechanism. Instead, the General Conditions make clear that a transferee can exercise the same rights as the original lender under Condition 7, which is apparent both from the first sentence of Condition 19.1 (which gives the original lender the express right to transfer all of its rights under the contract to the transferee, including the right to set interest) and from the definition of “we”, “us” and “our” (which includes a transferee).
55. Before turning to consider the Claimants’ arguments, it is worth emphasising two points discussed above which the Claimants do not dispute. The first is that the second sentence of Condition 19.1, which is reflected in the second half of the definition Standard Variable Mortgage Base Rate, is permissive, not mandatory. It inevitably follows that the new lender, here TSB, is not obliged to use its own (pre-existing) SVR (or one of its own SVRs). Indeed, the new lender may not have a pre-existing SVR. The second is that the new lender is entitled to use the Standard Variable Mortgage Base Rate which it has inherited from the old lender. Thus the Claimants accept that TSB could have continued to charge Whistletree Borrowers the 4.79% rate it inherited from Northern Rock. Given these concessions, it is very difficult to see how it can be contended that TSB acted in breach of the General Conditions by failing to apply one of its own SVRs. Furthermore, on the Claimants’ case, unless it applied one of its own SVRs, TSB had no power to change the Standard Variable Mortgage Base Rate it

inherited from Northern Rock. Thus it would be a fixed rate, not a variable rate. That would be a very surprising result, and one that finds no support in the contractual language.

56. *The Claimants' arguments.* The Claimants' principal argument is based upon the common ground noted above that "we" and "our" in the General Conditions refer to Northern Rock or a transferee, here TSB, as the sense requires. The Claimants argue that, in the definition of Standard Variable Mortgage Base Rate, "we" refers to Northern Rock and "our variable rate mortgage loans" refers to Northern Rock's loans, and therefore it is only Northern Rock which can change the Standard Variable Mortgage Base Rate under Condition 7. "We" does not refer to the transferee because the transferee is referred to in the definition as "the person to whom we make the transfer".
57. There are a number of problems with this argument. First, it depends on interpreting the definition exclusively from the pre-transfer perspective. After transfer, it makes no sense to interpret "we" as continuing to refer to Northern Rock and not the transferee. Secondly, although it is correct that the definition of Standard Variable Mortgage Base Rate differentiates linguistically between "we" and "the person to whom we make the transfer", no such distinction is made in Condition 7, which is the operative clause when it comes to changing the Interest Rate. Condition 7 only refers to "we", and after transfer this must be the transferee. Thirdly, the argument would lead to the consequence that Northern Rock would continue to set the Standard Variable Mortgage Base Rate for these mortgages after transfer unless and until the transferee exercised the option of applying its own rate (or one of its own rates). As discussed above, however, Northern Rock might not continue to set an SVR. Indeed, it appears to be common ground that it did not do so after transferring the Whistletree Mortgages to TSB (I say "appears to be", because although this was stated to be a fact in the Claimants' skeleton argument and accepted by TSB, some doubt emerged during the hearing which was not fully resolved). I would add that, in my view, it would in any event be very odd for a transferee such as TSB to have to apply an SVR set by the transferor. The transferor might then be left with a cohort of borrowers with different characteristics for whom a different rate would be appropriate. Fourthly, the argument is inconsistent with the Claimants' acceptance that TSB could continue to charge the Standard Variable Mortgage Base Rate it inherited from Northern Rock (i.e. regardless of any changes that Northern Rock might make if Northern Rock continued to set an SVR).
58. The Claimants seek to support their main argument with a disparate collection of subsidiary points. First, they argue that the word "standard" connotes a rate that applies across the board, and not a rate specifically devised for transferred borrowers and only because they have been transferred. The problem with this argument is that the Whistletree SVR is a standard rate for all the Whistletree Borrowers. Furthermore, it is not the Claimants' case that they should have been charged the SVR set by Northern Rock after transfer (not least because, as noted above, it seems to be common ground that there was no such rate).
59. Secondly, the Claimants rely upon the reference to "our prevailing Standard Variable Mortgage Base Rate" in Special Condition 10 of the Offer quoted above (and similar language in other Offers). Although the Claimants point out General Condition 22 provides that Special Conditions prevail over General Conditions if they are in conflict, the Claimants do not suggest that there is any conflict. Rather, they rely upon the

language of Special Condition 10 as supporting their interpretation of the General Conditions. Special Condition 10 is perfectly consistent with TSB's interpretation of the General Conditions, however.

60. Thirdly, the Claimants rely upon an argument about "herd protection". This is that Northern Rock borrowers would expect that, if their mortgages were transferred to another lender, they would be charged the same rate as the lender's other borrowers, so that they would be protected by the new lender's commercial imperative to set that rate fairly in order to avoid borrowers remortgaging elsewhere. There are four problems with this argument. First, it is not founded upon the language either of the Offers or of the General Conditions. Secondly, it is again inconsistent with the Claimants' concession that TSB could have charged Whistletree Borrowers the rate it inherited from Northern Rock. Thirdly, it is inconsistent with Condition 19.1, which expressly gives the transferee a choice as to what rate to apply. Lastly, there is nothing in the Whistletree Mortgages that prevents the Claimants from remortgaging elsewhere if that would be more advantageous to them.
61. Fourthly, the Claimants contend that the General Conditions should be interpreted *contra proferentem*. This does not assist the Claimants because there is no real doubt about the meaning of the relevant General Conditions.
62. Fifthly, the Claimants rely upon regulation 7(2) of the 1999 Regulations. This does not assist the Claimants for the same reason that the *contra proferentem* rule does not assist them. Furthermore, the Claimants' interpretation is not necessarily the one that is most favourable to consumers. In some circumstances it could work to the disadvantage of consumers after transfer by leaving them stranded on a high inherited rate which could not be changed.
63. Lastly, reference was made at various points to the implied term which the parties have agreed formed part of these mortgage contracts. It is unnecessary to go into this for the simple reason that issue 1 is solely concerned with the express terms of the contracts.
64. Before leaving this issue it is pertinent to note that, as counsel for TSB pointed out, the Claimants are no worse off as a result of what has happened since their mortgages were transferred to TSB in the sense that the Whistletree SVR has continued to be 4.29% above the BoE Base Rate, as it was before the transfer. The Claimants' real complaint is that they have not received the advantage of being moved onto a lower rate which another cohort of TSB borrowers benefits from.

Issue 3

Applicable principles

65. There is no dispute as to the applicable principles of statutory interpretation. It is well established that the modern approach to statutory interpretation is to ascertain the meaning of the words used, in the light of their context and the purpose of the provision: see *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255 at [29] (Lord Hodge); *News Corp UK & Ireland Ltd v Commissioners for His Majesty's Revenue and Customs* [2023] UKSC 7, [2024] AC 89 at [27] (Lord Hamblen and Lord Burrows); *R (N3) v Secretary of State for the Home Department* [2025] UKSC 6, [2025] 2 WLR 386

at [62] (Lord Sales and Lord Stephens); *Darwall v Dartmoor National Park Authority* [2025] UKSC 20, [2025] AC 1292 at [15] (Lord Sales and Lord Stephens).

66. It is common ground that it is to be presumed that, where the same words are used in different places in an enactment, particularly in a related group of provisions, then they should be given the same meaning on each occasion.
67. It is also common ground that previous legislative history may in some circumstances shed light on the interpretation of current legislation.

The relevant statutory provisions

68. Sections 140A-140C were inserted into CCA 1974 by the Consumer Credit Act 2006 to replace the extortionate credit bargain regime under sections 137-140 CCA 1974 as originally enacted following a White Paper in 2003 entitled *Fair, Clear and Competitive: The Consumer Credit Market in the 21st Century*.
69. Sections 140A and 140B provide, so far as relevant, as follows:

“140A Unfair relationships between creditors and debtors

- (1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following -
 - (a) any of the terms of the agreement or of any related agreement;
 - (b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;
 - (c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).
- (2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).
- ...
- (5) An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans).

....

140B Powers of court in relation to unfair relationships

- (1) An order under this section in connection with a credit agreement may do one or more of the following -
- (a) require the creditor ... to repay (in whole or in part) any sum paid by the debtor ... by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);
 - (b) require the creditor ... to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;
 - (c) reduce or discharge any sum payable by the debtor ... by virtue of the agreement or any related agreement;
 - ...
 - (e) otherwise set aside (in whole or in part) any duty imposed on the debtor ... by virtue of the agreement or any related agreement;
 - (f) alter the terms of the agreement or of any related agreement;
 - ...”

70. Section 140C(4) defines “related agreement” to include a “linked transaction in relation to the main agreement”. A “linked transaction” is in turn defined in section 19 CCA 1974, but it is not necessary to set this out.
71. The Regulated Activities Order referred to in section 140A(5) is the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, as amended (“RAO”). Article 60C(2) RAO exempts certain agreements from regulation under CCA 1974, and in particular provides that a credit agreement is an exempt agreement if “(a) by entering into the agreement as lender, a person is or was carrying on an activity of a kind specified by article 61(1) (entering into regulated mortgage contracts)...”.

How the issue arises

72. It is common ground that the Together Loans and the regulated Together Mortgages are both “credit agreements” for the purposes of the unfair relationships provisions of CCA 1974. It is also common ground that the relationship to be assessed for fairness under section 140A(1) is the relationship under the “credit agreement” taken together with any “related agreement”. Finally, it is common ground that, if a regulated Together Mortgage is taken as the “credit agreement”, then even if the Together Loan is a “related agreement”, no order under section 140B CCA 1974 can be made, e.g. for repayment of sums paid under the Together Mortgage, by virtue of section 140A(5).
73. The Claimants’ case is based on the Together Loans being taken as the credit agreements. The Claimants contend that the Together Mortgages are linked

transactions, and therefore related agreements, to the Together Loans, such that it is legitimate to have regard to the terms of the Together Mortgages when considering the fairness of the relationship between the Together Claimants and TSB. TSB disputes this, but that issue is not one of the preliminary issues. For present purposes, therefore, it must be assumed that the Claimants are right about this.

74. Issue 3 is concerned with the remedy that the court can order if it determines that the relationship is unfair. It is common ground that the court may make an order for repayment of sums paid under the Together Loan (or any other remedy permitted by section 140B(1) that is related to the Together Loan) in order to remedy the unfairness, and can have regard to the terms of the Together Mortgage when making such an order. The question is whether the court may make an order related to the Together Mortgage, and in particular an order for repayment of sums paid under the Together Mortgage.

The Claimants' case

75. The Claimants' case is that, when deciding what order under section 140B to make "in connection with" the Together Loan, the court can not only have regard to the terms of the Together Mortgage in making an order, it can make an order affecting the Together Mortgage as a related agreement in order to redress unfairness in the relationship arising out of the loan agreement taken with the mortgage. For example, it can order repayment of monies paid not only under the Together Loan, but also under the Together Mortgage as a related agreement, in order to redress unfairness in the relationship arising out of the Together Loan agreement taken with the Together Mortgage. Such an order is, the Claimants say, an order "in connection with" the Together Loan.

TSB's case

76. TSB's case is that section 140A(5) precludes the court from making any of the orders specified in section 140B(1) "in connection with" Together Mortgages that are regulated mortgage contracts. Thus, if the court finds that the relationship between the Together Claimants and Northern Rock/TSB is unfair, then the court may order repayment of monies paid under Together Loans, but not repayment of monies paid under regulated Together Mortgages.

Guidance as to the interpretation of sections 140A-140C

77. The leading case on the interpretation of sections 140A-140C is *Smith v Royal Bank of Scotland* [2023] UKSC 34, [2024] AC 955. The judge extracted five general points about how these sections operate from the judgment of Lord Leggatt, with whom the other members of the Supreme Court agreed.
78. First, at [12], Lord Leggatt explained that these sections were introduced to be less technical than the previous legislation, and to afford consumers with greater protection based on the concept of an "unfair relationship".
79. Secondly, at [18], he explained that section 140A(1) does not require a determination of the fairness (or otherwise) of the credit agreement itself, but rather whether the *relationship* arising out of the credit agreement is unfair.

80. Thirdly, at [16], he explained that dealing with a claim under these sections is a two-stage process:

“The first stage is to determine whether the relationship between the creditor and the debtor arising out of the credit agreement is unfair to the debtor because of one or more of the matters specified in section 140A(1). If the court finds that the relationship is unfair for that reason, the court must then proceed to the second stage and decide what, if any, order to make, selecting from the list of options in section 140B(1).”

81. Fourthly, at [22], he explained that section 140A is deliberately open-ended and “extremely broad” (a point also made by Lord Sumption in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61, [2014] 1 WLR 4222 at [10]).
82. Fifthly, at [25], he noted that the set of orders which may be made under section 140B is also deliberately wide:

“... as well as requiring the court to make a very broad and holistic assessment to decide whether the relationship between the creditor and the debtor is unfair to the debtor, the legislation also gives the court, where a determination of unfairness is made, the broadest possible remedial discretion in deciding what order, if any, to make under section 140B. Section 140B gives the court an extensive menu of options from which to select but says nothing at all about how this selection may or should be made. On the face of the legislation the court’s discretion is entirely unfettered. It is, I think, clear that the court is not in these circumstances required to engage in the kind of strict analysis of causation, loss and so forth that would be required, for example, in deciding what remedy to award in a claim founded on the law of contract or tort....”

Analysis

83. I agree with the judge that TSB’s interpretation of section 140A(5) is the correct one. The court cannot make an order for relief affecting a regulated mortgage contract, such as for repayment of sums paid under that contract or to vary the terms of that contract. Such an order is precluded because it would be “in connection with” the regulated mortgage contract. The Claimants’ case is a transparent attempt to avoid the consequences of the statutory scheme by using their unsecured loans as a back door to obtain relief in respect of their regulated mortgage contracts which they accept they cannot obtain by the front door.
84. The phrase “in connection with” has often been said to be of broad scope (see e.g. Rix LJ in *Campbell v Conoco (UK) Ltd* [2002] EWCA Civ 704, [2003] 1 All ER (Comm) 35, who said at [19] that it was “widely regarded as being as wide a connecting link as one can commonly come across”), but as Hamblen LJ pointed out in *Lessees and Management Company of Herons Court v Heronslea Ltd* [2019] EWCA Civ 1423, [2019] 1 WLR 5849 at [37] “they are words that necessarily take their colour from the context in which they are used”.

85. The words “an order under section 140B” - or “this section” – “in connection with a credit agreement” appear in each of section 140A(1), section 140A(5) and section 140B(1). It is common ground that they should be interpreted in the same manner in each case.
86. It is convenient to begin with section 140B(1). It is clear from this that “an order in connection with a credit agreement” means an order that has some connection with, or link to, the credit agreement in question. The list of options in section 140B(1) makes it clear that the “connection” need not be a particularly close one: for example, it embraces sums paid by the debtor or a surety under the credit agreement or a related agreement. The same broad meaning must apply to both section 140A(1) and to section 140A(5).
87. The Claimants do not really contest this interpretation of “in connection with”. Rather, the Claimants’ argument is that these words are being used in section 140A(1) and (5) as a jurisdictional gateway: the court has jurisdiction to make an order under section 140B if there is a credit agreement and an unfair relationship unless the credit agreement is an exempt agreement. If the claim passes through the jurisdictional gateway, the Claimants contend, there is no restriction on the relief that can be granted under section 140B(1). The claim does pass through the jurisdictional gateway because a Together Loan is a credit agreement, and the relationship is unfair taking into account the Together Mortgage as a related agreement.
88. I do not accept this argument. Section 140A(1) specifies that the court’s jurisdiction to make an order under section 140B in connection with a credit agreement arises if it determines that the relationship between the creditor and the debtor is unfair. That is the jurisdictional gateway. Section 140A(5) is a restriction upon the court’s jurisdiction to make such an order: it cannot make an order in connection with a credit agreement that is an exempt agreement. Thus it cannot make any of the orders listed in section 140B(1) in connection with a regulated mortgage contract. This means it cannot make such an order in relation to a Together Mortgage. The Claimants cannot circumvent this limit on the court’s jurisdiction simply by characterising the Together Loan as the “credit agreement” and the Together Mortgage as a “related agreement”, rather than vice-versa.
89. This interpretation of section 140A(5) is consistent with the legislative policy which lies behind it. There is no serious dispute that, in broad terms, this was to exclude regulated mortgage contracts from the scope of the CCA 1974 unfair relationship provisions, on the basis that these are subject to their own regulatory framework under FSMA and MCOB. The Claimants argue that this policy does not dictate that there should be no overlap between the two regimes, but the restriction upon the court’s jurisdiction in section 140A(5) is categorical.
90. The Claimants seek to avoid this conclusion as to the correct interpretation of section 140A(5) by relying upon the previous legislative history. The short answer to this argument is that it is common ground that sections 140A-140B is a new regime which is deliberately quite differently drafted to the earlier legislation. It follows that it must be interpreted in accordance with the wording, context and purpose of the new provisions. Nevertheless I shall set out the legislative history the Claimants rely upon, adopting for this purpose the helpful summary provided by counsel for the Claimants (the full details are even more complicated).

91. As originally enacted, section 16 CCA 1974 provided that certain credit agreements were exempt from regulation by CCA 1974. This included certain credit agreements secured by mortgages on land where the creditor fell within particular categories of lender, which included building societies. Thus, for example, a building society mortgage to an individual to buy a property where the loan was within the financial limits of CCA 1974, and where it was secured on the property being bought, was exempt.
92. Section 16(7) provided that nothing in section 16 affected the application of sections 137 to 140 CCA 1974 (extortionate credit bargains). The definition of “credit agreement” in section 137(2)(a) included mortgages that were otherwise exempt from regulation under the CCA and such mortgages (where they were to be taken into account in computing the total charge for credit) were included in “other transactions” within the “credit bargain” defined in section 137(2)(b). Accordingly, the extortionate credit bargain provisions applied to mortgage contracts that were “other transactions” whether or not the mortgage was otherwise exempt from regulation under section 16.
93. With effect from 31 October 2004, entering as lender into first legal mortgages secured on land at least 40% of which was used or intended to be used as or in connection with a dwelling by the borrower or a related person became a regulated activity under FSMA. Section 16 was amended to introduce a new subsection, section 16(6C), to exempt such regulated mortgage contracts from CCA 1974. The section 16(1) exemptions continued, but mortgages that satisfied the definition of a regulated mortgage contract were now exempt under section 16(6C).
94. At the same time, section 137(2)(a) was amended to remove agreements which were exempt agreements as a result of section 16(6C) from the definition of “credit agreement” for the purposes of sections 137-140. However, although regulated mortgage contracts were now excluded from the definition of “credit agreement” in the extortionate credit bargain provisions, there was no equivalent amendment to exclude them from being “other transactions” forming part of the “credit bargain”. Nor was section 16(7) amended (i.e. it remained the case that nothing in section 16 affected the application of sections 137 to 140).
95. The Consumer Credit Bill was introduced in December 2004 and contained equivalent provisions to sections 140A-140C. The Consumer Credit Bill became the Consumer Credit Act 2006, which replaced the extortionate credit bargain regime in sections 137-140 with the unfair relationship regime in sections 140A-140C with effect from 6 April 2007.
96. The exemption of regulated mortgage contracts in section 16(6C) continued, but reflecting the change from the extortionate credit bargain regime to the unfair relationships regime, section 16(7) was repealed (subject to savings and transitional provisions) and replaced by subsection (7A): “Nothing in this section affects the application of sections 140A to 140C”.
97. Section 16 was repealed with effect from 31 March 2014, when entering into regulated credit agreements became a regulated activity under FSMA and the exemptions from regulated credit agreements became incorporated in RAO.

98. The Claimants' argument is that Parliament cannot have intended to remove a remedy that was available under the earlier legislation when there is no hint of any such intention in any of the admissible aids to construction and when the overall purpose of the new regime was to make it easier for consumers to obtain relief.
99. In my judgment the position prior to 31 October 2004 is not relevant because mortgages were not regulated under FSMA prior to that point. The high-water mark of this argument concerns the period from 31 October 2004 to 6 April 2007. I shall assume that the Claimants are correct that, during that period, an order could be made under the extortionate credit bargain provisions which affected a regulated mortgage contract. Even so, this was clearly something of a transitional period, because it can be seen from the 2003 White Paper that the Government was intending to bring forward the legislation that became the Consumer Credit Bill and then the 2006 Act. Thus the current legislative scheme was not complete until the 2006 Act came into force (the changes in 2014 do not affect this). That being so, sections 140A-140C CCA 1974 should be interpreted in accordance with their own wording, context and purpose, and not by reference to the legislation that applied during the transitional period.

Conclusion

100. For the reasons given above I would dismiss the appeal.

Lord Justice Baker:

101. I agree.

Lord Justice Newey:

102. I also agree.