

The complaint

Mr G has complained about the way Barclays Bank UK Plc dealt with a request to port (transfer) his mortgage onto a new property.

Mr G has several complaint points:

- an inability to contact anyone and the unavailability of mortgage advisers in his local branches;
- Barclays' failure to recognise that, under the terms of his previous mortgage, he was allowed to port it *"without fuss"*. Instead, Barclays treated the simple porting request as a full new mortgage application;
- Barclays' requirement that his partner should sign a document giving priority to Barclays' charge over any interest she might have in the property;
- Barclays' use of the *"ridiculously inflexible"* DocuSign system where forms have to be signed online and there is no ability to correct them.

To settle the complaint, Mr G wants a formal written apology and an acceptance from Barclays that its process was inappropriate for him and his porting entitlement. Mr G also wants Barclays to change its processes to recognise different entitlements that have ended up with Barclays through company takeovers.

In addition, Mr G wants Barclays to review and correct 'flaws' in its DocuSign system. Furthermore, Mr G would like Barclays to recognise that it has customers who do not bank with Barclays but who have ended up as customers simply because of company takeovers.

Finally, Mr G wants Barclays to pay him compensation, including loss of the use of £49,600 that he used to pay off the mortgage, as well as the interest at 8% per annum which he earned on that money in a stocks and shares ISA.

What happened

Mr G had a mortgage originally with another lender, which was taken over by Barclays in 2012. Mr G has sent us his original mortgage offer dated 12 April 2007. He had originally borrowed £150,000 over a 16-year term on a capital repayment basis, but later changed this to interest-only whilst the mortgage was still with his original lender. The mortgage was on a lifetime tracker *"which will be less than 0.9% above the Bank of England Base Rate for the period of the loan"*. There was no early repayment charge (ERC) for repaying all or part of the loan at any time during the term.

Mr G has sent us a single page of the terms and conditions which says:

"Transferring the loan

During the mortgage term if the mortgage offer states that your loan is "portable" you may transfer your loan (or any part of the loan which is stated to be

“portable” in the mortgage offer) to another property you want to buy. You can only do this if:

- a. You are eligible for the mortgage under and subject to our prevailing lending policy (including for example, our minimum loan to value requirements) at the time of your application to transfer the loan (or any part of it);*
- b. You have kept to your responsibilities under the agreement; and*
- c. We accept the new property you plan to buy.*

*If the new loan you want is for less than the amount needed to repay the loan in full, you will have to pay an early repayment charge (if it applies) in line with the mortgage offer illustration. **If the mortgage offer states that your loan is portable, you can transfer to another property in this way.**” (my emphasis)*

Due to the passage of time, Barclays no longer has the mortgage documentation. However, the mortgage offer Mr G has sent us makes no mention of the mortgage being portable.

In the special conditions to the mortgage offer it is stated:

“... If any other person living in the property when the loan completes is over 17 years old they must fill in and sign a ‘deed of consent’ and ask for separate legal advice about the deed, if appropriate...”

In the autumn of 2020 Mr G decided to move house. He wanted to port the mortgage onto the new property, but hadn’t yet decided on which property to buy. At the time, he owed just under £50,000 on the mortgage, with interest payments of about £40 per month.

Initially Mr G had difficulty contacting anyone at Barclays to discuss the mortgage, but on 28 October 2020 he spoke to Barclays. Mr G didn’t think it was necessary for there to be a full application, and explained that he had sufficient income and funds to repay it any time he wanted to. Mr G wasn’t happy that Barclays required a full application but decided to proceed in any event.

The application was agreed in principle, and on 2 November 2020 the bank explained to Mr G that there were various documents he’d need to sign, as well as a deed of consent for his partner to sign, as she would also be living in the property.

On 3 November Mr G emailed Barclays, expressing his dissatisfaction with the way things were being dealt with. In particular, Mr G didn’t think it was necessary for him to have to go through a full application process and said he was entitled to port his mortgage, which is what he was promised when the mortgage was taken out.

Mr G was also unhappy with Barclays’ online DocuSign system, which didn’t allow him to make any changes to the documents.

Mr G also objected to his partner having to sign a form giving priority to Barclays’ charge. *“I am buying my house, as I did my present home, in my sole name and whom I choose to invite to come and stay with me is my business and no-one else... [his partner] has no actual or implied rights or interest in my main home and shall never acquire any such right. To state that she shall have to sign a document that waives her ‘squatters rights’ in my new home is an absurd and wrong proposition. In doing so, it recognises her presence in my property and may imply current rights of residence which she certainly does not own...”*

Mr G thought Barclays' enquiries into his financial position were intrusive and unnecessary, and was dissatisfied that mortgage business was centralised, so he couldn't go into a branch and speak to someone.

In his email of 3 November 2020 Mr G said he didn't want the application to proceed until he'd decided on a property to buy. On 28 November 2020 Mr G told Barclays he no longer wanted to proceed with the application. Mr G sold his property on 26 March 2021 and repaid the mortgage to Barclays.

On 9 November 2020 Mr G brought his complaint to the Financial Ombudsman Service. Once Barclays had responded, an investigator looked at what had happened, and noted that in its response to us Barclays had offered compensation of £150 for the inconvenience caused to Mr G as a result of the difficulties he had in contacting the mortgage centre. The investigator thought this was fair and didn't think Barclays needed to do anything further. He was satisfied Barclays was justified in requiring Mr G to make an application to port the mortgage onto his new property.

Mr G disagreed and asked for an ombudsman to review the complaint. He said that he didn't think the £150 offered by the bank reflected the magnitude and content of the complaints he'd made, nor the significant and unfair stress, inconvenience, uncertainty and frustration that he'd suffered. Mr G clarified that he was complaining about being unable to speak to anyone either on the phone or in a branch about porting his mortgage, about the porting application and about Barclays' complaints' procedure.

Mr G reiterated his criticism of Barclays having a centralised mortgage business and also said that his original mortgage conditions "*clearly state an entitlement to port*". He said Barclays should have a process for existing customers' porting applications and not put people through a "*start from scratch*" application process.

Provisional decision

On 3 February 2022 I issued a provisional decision in which I made the following findings.

I'll begin by explaining the role of the Financial Ombudsman Service and the extent of my remit.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

We have no regulatory function; that's the role of the Financial Conduct Authority (FCA); nor are we a consumer protection body. We're an alternative dispute resolution body; an informal alternative to the courts for financial businesses and their customer to resolve their differences.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. That means I don't have to address every individual question or issue that's been raised if I don't think it affects the outcome.

I'll also explain that I can't tell Barclays what processes it should have in place, or what systems it should run to handle documentation. So although I've noted Mr G's

points about what he perceives to be flaws in Barclays' DocuSign system, I don't have any power to tell Barclays to change this.

Similarly, I can't tell Barclays that it should not follow its regulatory obligations under the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB) when considering mortgage applications.

I will also mention that a complaint about Barclays' complaint-handling isn't something that's covered under our rules, as it's not a regulated activity. Barclays is entitled under FCA regulations to eight weeks to respond to a complaint. I note Mr G escalated his complaint to the Financial Ombudsman Service six days after he first raised it with Barclays on 3 November 2020.

Turning now to the issues that I am able to consider, Mr G very recently sent us his mortgage offer from 2007. After considering this, I have departed from the conclusions reached by the investigator and so am issuing a provisional decision.

Porting allows an existing borrower to move to a new house, repay the existing mortgage and apply for a new mortgage, with the existing interest rate being applied to the equivalent amount that was outstanding on the previous mortgage. Any additional borrowing would have to be on one of the lender's current products. So what is being ported is not "the mortgage", or the debt owed under it, but the interest rate product which applies to the mortgage. Most often it applies to fixed-rate products which have an ERC; by porting, the borrower can avoid paying an ERC on the amount of the previous borrowing that's ported onto the new mortgage.

Mr G says that the terms and conditions that applied to his mortgage with the previous lender gave him an entitlement to port his mortgage onto a new property. I set out the specific term on which Mr G relies above. From this it is clear that the mortgage can only be ported if the mortgage offer says it is portable. It also says that any application to port has to meet lending criteria, and so I'm satisfied that it wasn't an "*entitlement*" – it was subject (amongst other things) to (a) the mortgage offer saying the mortgage was portable, (b) to making an application and (c) to meeting lending criteria.

Mr G has also now provided us with a copy of the mortgage offer and says "*It is not, of course, in dispute that my mortgage was fully portable...*".

However, I've read the mortgage offer in detail and there is no mention anywhere of the mortgage being portable. I will explain here that MCOB requires lenders to include a specific clause in a mortgage offer if it is portable. Therefore, if this mortgage had been portable, there would have been a clause in the mortgage offer explicitly stating that this was the case. But after reading the mortgage offer Mr G sent to us, I cannot see any term that states it was portable.

Barclays didn't have a copy of Mr G's mortgage offer, and so took Mr G's word that the mortgage was portable. But I think Barclays should have done more to check whether or not Mr G's mortgage was actually portable before beginning the application – and could have done so by asking Mr G for a copy of any mortgage documents he had retained. If Barclays had done this, the bank would have been able to see that this mortgage wasn't portable. The bank could then have explained to Mr G that it wouldn't be possible to port his existing interest rate product, but that he could apply for a new mortgage product.

A new application would have included an affordability assessment and a requirement that Mr G's partner signed a deed of consent giving priority to Barclays' charge. Although I can see Mr G took great offence to this requirement, it was, as I have set out above, something he had previously agreed to in his original mortgage special conditions. It might well not have applied in 2007 when Mr G purchased his property, but it is, of course, a standard requirement of all mortgage lenders that non-owning occupants of the property aged over 17 give consent to the priority of the mortgage by signing a deed of consent.

In conclusion, I think Barclays could have done better here. If the bank had made further enquiries about the mortgage, Mr G wouldn't have been led to believe he could port. As it turned out, the application didn't proceed because Mr G withdrew it, but that was his choice and not something for which I can hold Barclays responsible.

To settle the complaint, I thought Barclays should pay Mr G a further £150 in addition to the £150 the bank had already offered.

Responses to the provisional decision

Barclays agreed to pay the additional £150.

Mr G made some further points about his dissatisfaction with Barclays' complaints process.

In relation to the mortgage, Mr G thought it was odd that his mortgage offer made no mention to porting his interest rate onto another mortgage. He wondered if this was in the small print of the general terms attached to the mortgage offer.

Mr G was, however, appreciative of the award of an additional £150 compensation.

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.

I've reviewed the file in detail – including the mortgage offer – and revisited my provisional decision. Having done so, I'm not minded to change my conclusions from those reached in my provisional decision.

As I have explained, I can't look at Barclays' complaints-handling process. Whilst I acknowledge Mr G's disappointment at how he felt Barclays handled his complaint, I can make no further comment on this.

In relation to the mortgage, there is no mention in the mortgage conditions of the mortgage being portable. Mr G wonders if this was contained in the "*small print*". However, as I explained in my provisional decision, if a mortgage is portable, it is a regulatory requirement under MCOB for details of the circumstances in which this can happen to be included in the numbered clauses in the main body of the mortgage offer, usually following on from the section relating to any ERC that may apply – and explaining how porting may affect any ERC. But there was no mention of an ERC, and no porting clause in the mortgage offer.

In the circumstances, although I understand this was disappointing for Mr G, the mortgage wasn't portable.

Putting things right

Barclays has acknowledged that Mr G was caused some frustration and inconvenience when he wasn't initially able to contact the bank to discuss his mortgage requirements. I think the £150 offered by Barclays for this is fair.

I also think Barclays should have done more to check if the mortgage was portable before starting the application. If the bank hadn't made that mistake, Mr G would have been told immediately that he couldn't port. Mr G's time was wasted and his expectations that he'd be able to port were raised. I think Barclays should pay a further £150 for this.

My final decision

My final decision is that Barclays Bank UK Plc must pay Mr G total compensation of £300 for distress and inconvenience. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 14 March 2022.

Jan O'Leary
Ombudsman