

## **The complaint**

Mr G complains that Barclays Bank UK PLC refused to allow him to port his mortgage because it said the property he wanted to buy had combustible cladding. This meant that he incurred an early repayment charge (ERC) in moving his mortgage to another lender.

## **What happened**

Mr G had a mortgage with Barclays. He took a ten year fixed rate in 2017, with a 5% ERC if the mortgage ended within that time.

Following a change of employment, Mr G needed to move to a new property so he applied to Barclays to port his mortgage from his previous property – which he would sell – to a new one he wanted to buy.

Mr G sold his existing property without difficulty. Barclays allows a 90 day window between sale and purchase during which it will refund an ERC if a new mortgage completes in time.

Mr G found a property and started the application process. Barclays instructed a valuation of the new property. The valuer said that the property required an EWS1 form before a valuation for lending purposes could be produced.

An EWS1 – external wall system – form is a standard form completed by an accredited fire safety expert to assess the risk to the building from combustible cladding or other fire safety defects. There is guidance from the government and the Royal Institute of Chartered Surveyors (RICS) around the sorts of buildings where an EWS1 may be required. An EWS1 will set out either that the property does not have potentially combustible cladding, that there is a low risk, or that there is a higher risk that requires remediation works. In general, it is multi-storey buildings such as blocks of flats that are affected.

In England, the EWS1 is commissioned by the building owner – either the freeholder or the management company – rather than by the individual flat owner or a prospective purchaser.

In this case, the valuer said an EWS1 was required. But the building owner had not commissioned one, and so no EWS1 was in fact available.

That meant that the valuer felt he was unable to say that the property was an acceptable lending risk to Barclays. And so Barclays refused to offer Mr G a mortgage on the property – meaning that he couldn't go ahead with the purchase, at least not through Barclays.

Mr G didn't agree with this. He said that where – as here – the building was under six storeys an EWS1 wouldn't generally be needed under RICS guidance unless the valuer had a clear rationale for requesting one related to the specific risks presented by the building. Mr G said the flat he wanted to buy was in a four storey brick built building. He doesn't believe there is cladding on the building, apart from on two flats at roof level on one part of the building.

Mr G obtained details of the building's construction, and a fire risk assessment carried out by

the building owner, which he said showed that no EWS1 was required and that the absence of one shouldn't be used to refuse his application.

Barclays put this to the valuer. The valuer said that there remained concerns about the roof-level flats, and in addition that it wasn't clear whether or not adequate cavity wall insulation had been used in the construction of the building. The valuer didn't change his mind that an EWS1 was required before the property could be said to be an acceptable lending risk.

Mr G asked Barclays to either reconsider the valuation and allow him to port to this property, or extend the 90 day window to give him time to find another property. But Barclays refused to do so.

Mr G complained. He said that he'd clearly shown that an EWS1 wasn't necessary. And in any case, Barclays had changed its policy since he took out his mortgage – it was supposed to be portable, but Barclays had introduced a new requirement that prevented him porting. He said that the property he sold was of a similar construction, yet his buyer had obtained a mortgage without problems – showing that Barclays was not applying the EWS1 guidance properly.

Mr G says that this situation cost him an ERC of around £10,500. In addition, he has wasted around £1,000 in legal fees. He also had to pay a fee to a new lender for a new mortgage. He said that the delay in being able to move had also resulted in more expenditure in staying in hotels near his new workplace. And all this has reduced the amount available he has to fund a new purchase.

Barclays said that it had acted reasonably. It had been advised by the valuer that an EWS1 was required to determine whether the building was an acceptable risk. It had to rely on the valuer's opinion. So it wasn't able to offer Mr G a mortgage on this property. However it offered him £50 compensation for delays in dealing with his complaint.

When Mr G brought his complaint to us, Barclays offered a further £200 compensation for delays in dealing with his mortgage application. But it still maintained it had reached a fair outcome. And it didn't agree to refund the ERC or Mr G's other costs.

Our investigator thought that was a fair offer, so Mr G asked for his complaint to be reviewed by an ombudsman. He said that Barclays shouldn't have required an EWS1 for that property – or alternatively should have given him more time to find another.

### **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 can understand Mr G's frustration at what happened and the position he found himself in. I'm pleased to hear he's now been able to find and move to a suitable property.

In reviewing this complaint, I've considered the evidence both he and Barclays have provided. As our investigator explained, it's not for us to decide whether or not the valuation was accurate or whether the surveyor reached the right outcome. Our powers are limited to considering the actions of Barclays.

As all lenders do when considering an application for a mortgage, Barclays appointed an independent qualified surveyor, accredited by RICS, to value the property. The purpose of this is to make sure the property is valued appropriately, and doesn't present any other risks, so that Barclays can be sure it is good security for the loan it's being asked to lend.

This is standard practice. And it's reasonable for a lender to rely on the surveyor's opinion to decide whether or not the property is good security – though where there's a reasonable objection or further comments from the mortgage applicant, I would expect the lender to ask the surveyor to reconsider things to see whether their opinion has changed.

In this case, Mr G had had some difficulties with other properties he had tried to buy while his own sale was proceeding – so time was important to him. He had already exchanged on his own sale; he needed to find a property and complete his new mortgage within the 90 day window that would entitle him to a refund of the ERC.

When he'd decided on this property, Mr G made an application to Barclays and Barclays instructed a surveyor. The surveyor's report said that the property couldn't be adequately valued for lending purposes without an EWS1.

When he was first told an EWS1 was required, Mr G not only contacted the building owner, he also carried out his own research, including making enquiries of the local authority planning department. He said that the plans from the building's construction showed that no flammable material was used.

Barclays relayed Mr G's concerns to the surveyor, who considered what he had said. The surveyor said that although Mr G's researches showed what material was intended to be used when the building was designed, in fact different material had been used in construction. That's not uncommon. But it meant that the surveyor felt they needed an EWS1 form to confirm that the material actually used didn't present a risk. The surveyor also said that in their experience even limited amounts of cladding had led to significant remedial costs being passed on to a building's leaseholders. And without an EWS1 they couldn't confirm that combustible internal material hadn't been used, which wouldn't be visible on an external inspection.

I appreciate Mr G feels strongly about this. He's carried out his own research, and doesn't agree with the surveyor's conclusions. His view is that RICS guidelines say that an EWS1 wouldn't be necessary on this property since there isn't a clear risk of combustible cladding. And he compares the position of this property with the one he was selling – when this wasn't an issue.

I've taken that into account. But ultimately the surveyor was the qualified professional here, and it was reasonable for Barclays to ask the surveyor to comment on Mr G's points – but ultimately to rely on the surveyor's opinion that the property wasn't a suitable lending risk.

Mr G's mortgage offer from 2017 says

*If you buy another property to move to, you can transfer (port) the mortgage interest rate to a new mortgage for the purchased property in relation to an amount no greater than your outstanding mortgage balance provided that you meet the lending criteria in force at the time you ask to transfer the mortgage rate to your new property. Please note that Barclays reserves the right to amend its lending criteria from time to time without notice to you.*

What this means is not that Mr G had the right to port his mortgage to a new property; rather, he had the right to apply to do so – but that any application would be subject to Barclays' lending criteria, which may have changed since the mortgage was first taken out.

Since 2017, when Mr G took this mortgage, the fallout from the Grenfell Tower tragedy had resulted in significant changes in mortgage lending. A new awareness of the risks of

combustible cladding and other fire safety issues led to new procedures – such as the EWS1 process – and to lenders factoring these issues into lending risk assessments. In other words, Barclays' lending criteria had changed since 2017.

Mr G was making two applications to Barclays – firstly, for a new mortgage on a new property. And secondly, if the first was granted, to port his interest rate to the new mortgage and refund the ERC. The second is conditional on the first.

That means that Mr G would only be entitled to a refund of the ERC if Barclays was willing to grant him a new mortgage. It considered his application. But it – reasonably – relied on the advice of a qualified surveyor that the property he wanted to buy presented too much of a risk. It therefore wasn't willing to offer him a new mortgage.

There's always a broad discretion open to a lender when considering an application for a new mortgage. No lender has to lend to any customer. I'm satisfied that the decision Barclays made in this case was within the range of reasonable decisions open to it.

That meant that Mr G had no new mortgage to port his interest rate to – and no prospect of having the ERC refunded.

He asked Barclays to extend the 90 day window. But it wasn't willing to do so. This meant that there was no time for him to find a new property and complete a mortgage application – and meant he lost the ERC.

I understand why he's unhappy about this. But I don't think Barclays acted unfairly. I've said that it was reasonable for it to have refused this application. And it was always clear that Mr G would only have 90 days to complete on a new mortgage; Barclays didn't mislead him about that.

Buying and selling property is a risky business. Sales and purchases fall through all the time, and there are delays for all sorts of reasons. Mr G had already tried to purchase two other properties but had to withdraw when problems with them came to light.

Mr G was very unlucky. But Barclays didn't mislead him about the timescales, and the risk of losing the ERC if he couldn't meet them. It's consistent with all its customers that there's a 90 day window. Unfortunately Mr G couldn't meet that timescale in this case – but that doesn't mean the existence of the window was unfair, or that it was unfair that Barclays didn't make an exception for him and extend the window.

### **Putting things right**

I'm satisfied that Barclays didn't unfairly refuse Mr G's porting application. So it's not responsible for the costs he incurred because it didn't go through. And it's not unfair that it didn't agree to extend the porting window – so I can't fairly ask it to refund the ERC either. It's offered £250 compensation for delays in responding to him about the valuation and in dealing with his complaint, and I'm satisfied that's a fair offer.

### **My final decision**

For the reasons I've given, I'm satisfied that Barclays Bank UK PLC has made a fair and reasonable offer to settle this complaint, and it should pay Mr G £250 compensation if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 April 2022.

Simon Pugh  
**Ombudsman**