

The complaint

Mr and Mrs P have complained that Barclays Bank UK Plc would not allow them to transfer (port) their mortgage interest rate product onto a new mortgage, and take out additional borrowing. As a result, they had to go to another lender, and paid an early repayment charge (ERC) to Barclays, which they would like the bank to reimburse.

The complaint has been dealt with throughout by Mrs P, on behalf of both parties.

What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, and in the investigator's letter dated 23 March 2022. All parties have a copy of that letter, so there is no need for me to repeat the details here. Secondly, what happened really isn't in dispute, so I don't need to analyse the events in order to determine why a complaint has been made. Finally, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs P being identified.

In October 2017 Mr and Mrs P took out a mortgage with Barclays. They borrowed approximately £266,000 on a capital repayment basis over a term of 25 years. The mortgage was on a fixed rate until 31 October 2022. If the mortgage was repaid before that date an ERC of 3% of the amount repaid would be charged. The ERC could be waived if the mortgage interest rate product was transferred onto a mortgage on a new property, subject to meeting Barclays' lending criteria.

In September 2020 Mr and Mrs P wanted to move house. They spoke to a premier relationship manager (PRM) at Barclays on 28 September 2020 about a new mortgage. They wanted to borrow a total of £465,000. However, during the initial call, Mr and Mrs P were told that the PRM didn't think they would meet Barclays' affordability criteria. This was because part of Mrs P's salary was paid in shares, and so could not be included as income. After checking this with colleagues who were mortgage specialists, the PRM emailed Mr and Mrs P to say that Barclays wouldn't be able to lend them the amount they needed. Consequently, Mr and Mrs P didn't proceed with a formal application at that time.

In November 2020 Mr and Mrs P spoke to Barclays again. She explained that the amount they wanted to borrow had reduced to £454,000. This time Mrs P was told, mistakenly, that the application should have proceeded so that underwriters could review the share income. After running the figures, the adviser explained that, if the share income was included, the application would have been affordable, but would not if it was excluded.

Mrs P complained to Barclays. She said that, as loyal customers, she and Mr P expected Barclays to assist them with their new mortgage. After she'd spoken to the bank in September 2020 and was told the application wasn't affordable, she'd assumed they would have to find another lender. This has involved additional costs, and she'd now become aware that an ERC was payable. Mrs P wanted Barclays to waive the ERC and pay compensation for the distress she and Mr P had been caused.

Unfortunately, Barclays had a backlog of complaints and so wasn't able to respond to Mrs P's complaint in a timely manner. As a result, Mr and Mrs P brought their complaint to the Financial Ombudsman Service. They were unhappy at Barclays' poor customer service. In addition, they said they had never been made aware of the ERC.

In response to the complaint, Barclays told us that it accepted its customer service could have been better, and offered compensation of £150 for this. But the bank still didn't think the application would have succeeded, even if it had progressed to underwriters.

Initially the investigator thought the complaint should be upheld. On the information he'd been provided with, he thought it more likely than not that if Mr and Mrs P had put in a full application to be considered by underwriters, it would have been accepted. He asked Barclays to refund the ERC and to pay any additional costs Mr and Mrs P incurred in taking out a mortgage with a new lender. He also asked Barclays to pay total compensation (including the £150 Barclays had offered) of £500.

However, Barclays provided further information about its lending criteria. The investigator considered this and, after doing so, he changed his mind. He was satisfied that the application wouldn't have succeeded because Barclays' criteria didn't allow it to take the share income into account.

The investigator was satisfied Mr and Mrs P had been given conflicting information, however, about whether or not they should have proceeded with a full application. He asked Barclays to pay a further £200, increasing the compensation to £350. Barclays agreed to this.

Mrs P, however, was unhappy with the investigator's findings. She's made a number of points, which I summarise below:

- the person who initially turned the application down was a PRM, not a mortgage adviser and so wasn't qualified to reject them.
- they should have been given a fair chance to speak to a mortgage adviser;
- they were never told about the ERC, which a mortgage adviser would have told them about;
- they believe if they hadn't been turned away by an unqualified person they'd have been offered the mortgage;
- they'd been long-standing, loyal customers of Barclays for the last five years and find it impossible to believe they wouldn't have been offered a mortgage;
- if the gap was so narrow between their desired borrowing and what Barclays would lend they could have made this up from their savings;
- Barclays has lied to them throughout and shown consistent dishonesty and negligence;
- their application wasn't given fair consideration, and they are shocked at the investigator's change of opinion.

Because the complaint is unresolved, it falls to me to issue a decision.

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.

First of all, I'm glad to note that Barclays has acknowledged that the service it provided to Mr and Mrs P could have been better. What I now have to determine is what the impact of that has been on Mr and Mrs P and what Barclays should do to put things right.

The mortgage contract provides that there is an ERC of 3% of the amount repayable if the mortgage is repaid before 31 October 2022. Although Mr and Mrs P say they were never told about this, it is set out clearly in their mortgage offer and on every annual mortgage statement they received. I'm therefore not persuaded that Mr and Mrs P didn't know they'd be charged an ERC of more than £7,000 if they repaid the mortgage before 31 October 2022.

I agree with Mr and Mrs P that the PRM isn't a mortgage adviser. However, I note that, before emailing Mr and Mrs P to let them know that they didn't meet lending criteria, he spoke to several mortgage advisers.

The crux of this complaint is whether – if Mr and Mrs P had made a formal application for consideration by underwriters – it would have succeeded.

Mr and Mrs P could have applied to port their existing mortgage interest rate for the amount outstanding on their mortgage (about £238,000 at that point) and borrow the additional amount (a further £216,000) on a new interest rate product.

There are rules in place that cover this type of situation and that I have to consider. These rules followed on from the Financial Conduct Authority's (FCA) Mortgage Market Review (MMR). The MMR led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR rules have brought about requirements for stricter lending assessments, aimed to protect consumers and encourage mortgage lenders to act more responsibly. The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they passed the tests under the old rules, but not under the new rules. So the FCA introduced certain rules to address this.

Mortgage Conduct of Business rules (MCOB) 11.6.3 says that a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing, (other than for product fees) and no changes to the terms of the mortgage that affect affordability.

However, Mr and Mrs P *did* want to take out additional borrowing, almost doubling the amount of their existing mortgage. In the circumstances, I'm satisfied Barclays was entitled to carry out an affordability assessment.

Barclays is entitled to set its own lending criteria. Decisions that Barclays makes in respect of what those criteria are, its attitude to risk involved in this particular lending assessment, and whether it should lend and if so, on what terms are clearly discretionary matters for Barclays's own commercial judgement that I would not interfere with.

Barclays has provided information about its lending criteria. I'm entitled to treat this as confidential, because it is commercially sensitive. But after considering this information, I'm satisfied that Barclays reached its decision fairly, after taking into account all relevant factors, including (but not limited to) affordability, exposure to risk, and Mr and Mrs P's specific circumstances.

I've noted that in September 2020 Barclays would allow loan-to-income multiples (LTI) of 4.49% for a joint application. At that point Mr and Mrs P wanted to borrow £465,000. If the share income was taken into account, this would give a joint income of £100,000 and a maximum loan amount of £449,000.

Taking out the share income, the maximum loan would be £377,160, but this would be affected by any other credit commitments, credit score and other variables.

However, after reviewing the position with mortgage colleagues, the PRM was told that the share income couldn't be taken into account, because the shares were managed by a US bank and were subject to US tax. As such, the share income didn't meet Barclays' lending criteria and so couldn't be included in the LTI.

Barclays has since confirmed to us that it has re-checked the position and that what the PRM was told was correct.

In the circumstances, I'm satisfied that the maximum LTI that Barclays would have allowed was just over £377,000. Even if Mr and Mrs P had used their savings (£30,000), they still wouldn't have had enough to purchase their new property with a mortgage from Barclays. So even if a full application had been made (which would have included a credit check that would show on Mr and Mrs P's credit files), the outcome would not have been any different.

Given this, the only way Mr and Mrs P could have proceeded with their purchase was to go to another lender, which is what they did. In the circumstances, the ERC was correctly charged, and so there is no basis on which I could fairly order Barclays to reimburse this.

As far as customer service is concerned, I'm satisfied Mr and Mrs P were given incorrect and conflicting information by Barclays. They were told, incorrectly, by the adviser Mrs P spoke to in November 2020 that if they paid down loans or credit cards, the maximum borrowing of £377,000 could be increased. However, that amount is based on the maximum LTI, so paying off other debts wouldn't affect it. The adviser also wrongly told Mrs P that the application should have proceeded to underwriting because the underwriters have the discretion to make exceptions to lending policy where customers are porting an existing mortgage.

Barclays also made a mistake in the way the complaint was logged, because it was recorded that, without the shares, the adviser thought the mortgage *would* be affordable, when, in fact, the adviser had told Mrs P that it would not.

I can understand, however, why Mrs P believed she was given the impression that Barclays could have given her and Mr P the mortgage they wanted, and I fully understand that she was confused and upset about what Barclays had told her.

I agree with the investigator that Barclays should compensate Mr and Mrs P for this incorrect information. I'm not persuaded that there was any deliberate dishonesty or negligence, as suggested by Mrs P. I think the PRM and the adviser Mrs P later spoke to were trying their best to help, but, in doing so, the adviser gave Mrs P the wrong information.

Putting things right

I'm satisfied that a payment for distress and inconvenience is appropriate and I agree with the investigator's recommendation of £350. This is, I find, reasonable and proportionate to the mistakes made by Barclays. The bottom line is that this mortgage could never have been approved for the amount Mr and Mrs P needed for their new purchase, but I think Barclays could have made its process much clearer at an earlier stage.

My final decision

My final decision is that in full and final settlement of this complaint, Barclays Bank UK Plc must pay Mr and Mrs P total compensation of £350. 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 Mrs P and Mr P to accept or reject my decision before 4 July 2022.

Jan O'Leary
Ombudsman