

The complaint

Mr K, Mrs K, Miss A1 and Miss A2 complain that Barclays Bank UK PLC applied an early repayment charge (ERC) when they redeemed their mortgage.

What happened

In 2018, Mr K, Mrs K, Miss A1 and Miss A2 took out a mortgage with Barclays on Property A. The mortgage was for total borrowing of £352,440.30 (including fees of £999) over a term of 21 years and 2 months. The mortgage was on a repayment basis with an initial fixed interest rate of 1.48% until 31 October 2020. It had an ERC applicable if the mortgage was repaid before the fixed rate period ended.

In January 2020, Mr K says he contacted Barclays as they wanted to port their mortgage and take additional borrowing to purchase Property B – the mortgage was also to be transferred into Mr and Mrs K's names only. However, rather than selling Property A to repay the mortgage, Miss A1 took out a buy to let mortgage (also with Barclays) on Property A.

Mr and Mrs K say their purchase of Property B was delayed because the seller was elderly and unable to move due to the Covid-19 pandemic restrictions. Mr and Mrs K decided to proceed with the first part of their plan, so they redeemed the mortgage on Property A on 3 April 2020, with Miss A1 taking out her buy to let mortgage. They say they did this because they were told that if they took out a new mortgage in 90 days – later extended to 180 days because of the Covid-19 pandemic – the ERC would be refunded.

When the mortgage was redeemed, Barclays charged Mr K, Mrs K, Miss A1 and Miss A2 an ERC of £6,617.42. Unhappy they had been charged an ERC, they wrote a complaint email on 16 April 2020 explaining why. Barclays responded to the email explaining this would be passed to its mortgage advisor who was dealing with the new application for a mortgage for Property B.

Barclays completed the initial application for the new mortgage for Property B on 9 April 2020. The application was amended twice on 28 April and 12 May 2020 due to a change in the purchase price and the amount of deposit Mr and Mrs K were paying towards the property. Barclays issued a mortgage offer for Property B on 13 May 2020 and this completed on 29 September 2020 with the funds being released. The mortgage was for total borrowing of £553,186.50 (including fees of £999) over a term of 21 years. All borrowing was to be on an initial fixed interest rate of 1.44% until 31 July 2022.

Barclays responded to the complaint on 1 April 2021 saying it wouldn't be refunding the ERC. It explained its mortgage advisor had explained its porting policy and when an ERC would be charged. But it also felt the mortgage advisor could have been clearer, so offered £450 compensation for any distress and inconvenience caused.

Our Investigator considered the complaint and felt the offer of compensation was fair in the circumstances. They explained the ERC had been charged in line with the terms and conditions of the account and there is no evidence to suggest that Mr K, Mrs K, Miss A1 and Miss A2 had been told the ERC would be refunded when a new mortgage completed.

Mr K, Mrs K, Miss A1 and Miss A2 disagreed and asked for an Ombudsman's decision. In summary, Mr K explained that the mortgage advisor hadn't made him fully aware of the porting process and only told him he would need to take a new mortgage within 90 days – later extended to 180 days – of redeeming the mortgage.

He said if he had been made aware of the porting process, he would have followed it to avoid paying an ERC. He also made reference to a mortgage offer he had received from another bank which gave him approximately the same borrowing but at an interest rate of 1.26% - arguing he would have taken this if he knew he would have to pay the ERC.

I issued a provisional decision for this complaint on 20 July 2022 where I said:

“Barclays has provided a copy of the mortgage offer Mr K, Mrs K, Miss A1 and Miss A2 agreed to in 2018. As they agreed to this mortgage offer, they are bound by the terms and conditions outlined in it. The mortgage offer clearly sets out under Section 10 that an ERC of 2% of the amount repaid will be chargeable until 31 October 2020.

As Mr K, Mrs K, Miss A1 and Miss A2 redeemed the mortgage on 3 April 2020 – during the time period an ERC would be applicable – I think Barclays has fairly applied the ERC of £6,617.42 to the redemption statement and requested payment of it.

Section 10 of the mortgage offer also goes on to explain that if Mr K, Ms K, Miss A1 and Miss A2 buy another property to move to, the mortgage interest rate can be transferred (ported) to a new mortgage for the purchased property in relation to an amount no greater than their outstanding mortgage balance. However, this would be subject to Barclays lending criteria at the time.

Barclays has also explained that due to the Covid-19 pandemic, it updated its porting rules to allow for the ongoing disruptions and uncertainty brought about by the pandemic. It's confirmed that its customers who were intending to port their existing Barclays mortgage were to be given 180 days after redemption to do so, as long as they met the following criteria; the mortgage was redeemed between 1 December 2019 and 1 June 2020, completion of the new application took place on or after 22 May 2020, and all other porting requirements are met.

Barclays has explained that Mr K, Ms K, Miss A1 and Miss A2 are not eligible for the ERC to be refunded because the new mortgage has a different interest rate product to that of the original mortgage. So essentially nothing has been ported. It says that Mr K, Ms K, Miss A1 and Miss A2 made the decision to redeem the mortgage early and not port their existing interest rate. However, I disagree as I think their intention was always to port their mortgage. I'll explain why.

Mr K says he was told that in order to have the ERC refunded he needed to take a new mortgage within 180 days of redemption of the previous mortgage. Unfortunately, there are no correspondence or phone calls I can review to confirm this, but what Barclays has said about changing its porting rules because of the Covid-19 pandemic, confirms the information Mr K has said about being able to port the mortgage in 180 days as correct.

I've also been provided with copies of various emails sent between Mr K and Barclays about the mortgage application and the ERC. Following the ERC being charged Mr K sent an email on 16 April 2020 to Barclays and its mortgage advisor explaining why he thought it unfair he had been charged it. Mr K also sent two further emails to the mortgage advisor on 28 and 29 May 2020 – after the application had been submitted and the mortgage offer sent – asking for details about how to have the ERC refunded. I think this clearly shows that Mr K

had an understanding his ERC would be refunded. I also note that in none of the evidence I've been provided does Barclays or its advisor explain to Mr K that his ERC cannot be refunded unless a portion of the borrowing equal to the original mortgage balance is borrowed on the same terms – something which I would have expected to have seen Barclays explain as a responsible lender and when considering Mr K's persistence about the issue.

Mr K has also provided a copy of a mortgage offer he was sent from another bank with regards to purchasing his new property. This mortgage offer was issued on 30 April 2020 for total borrowing of £582,245 (including fees) – approximately the same as what Barclays lent – but with an initial fixed interest rate of 1.26% until 30 June 2022. Mr K has said that they would have accepted this offer if they had known they wouldn't get the ERC refunded – and I see no reason to doubt this considering it was an offer that would have cost them less than if they were to accept the offer they now have from Barclays.

I think it's clear it was always Mr and Mrs K's intention to port their mortgage – whilst also removing Miss A1 and Miss A2. And I think the correspondence they sent to Barclays and its advisor was enough to inform it of their intentions. Barclays mortgage adviser doesn't appear to have taken this into account when completing the application and has failed to put in place the necessary provisions in the application – instead completing it as a purely new application. So, I think it has made an error. I also think that if Mr and Mrs K hadn't been able to port the mortgage – the process had been correctly completed but declined - they would have chosen the lower interest rate deal from the other lender as it would have been cheaper. With this in mind, I think Mr K, Mrs K, Miss A1 and Miss A2 have lost out financially as they have either incurred an ERC which they could have avoided, or are paying more towards their mortgage until the fixed rate ends on 31 July 2022 – depending on the option they would have chosen.

I also think that finding out the ERC would not be refunded would have caused Mr K, Mrs K, Miss A1 and Miss A2 distress and inconvenience. Barclays have already offered £450 for any distress and inconvenience caused which I think this is fair and reasonable in the circumstances and takes into consideration them finding out the ERC would not be refunded.

As the intention was always to avoid the ERC, and this didn't happen because Barclays didn't complete the application in the way I think it should have, to put things right I think Barclays should refund this to Mr K, Mrs K, Miss A1 and Miss A2. However, any refund needs to take into account that part of the mortgage Mr and Mrs K now have is on a lower interest rate than it would have been if the original mortgage was ported. I also note that only Mr and Mrs K are on the new mortgage, so only they have benefited from the lower interest rate."

I invited both parties to let me have any further comments and evidence they wanted to raise by 3 August 2022.

Both Barclays and Mr K, Mrs K, Miss A1 and Miss A2 responded accepting my provisional 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.

Both parties responded accepting my provisional decision. Therefore, in the circumstances, I see no reason to reach a different conclusion to that which is set out in my provisional decision.

My final decision

My decision is that I uphold this complaint and direct Barclays Bank UK PLC to:

- Consider the ERC of £6,617.42 to be split equally four ways between Mr K, Mrs K, Miss A1 and Miss A2.
- Refund Miss A1 and Miss A2 their quarter portions of the ERC.
- Calculate what Mr and Mrs K have paid towards the mortgage at the lower rate of 1.44% from 29 September 2020 until the fixed term ends on 31 July 2022 (A).
- Calculate what Mr and Mrs K would have paid towards the mortgage if they had ported the original amount at 1.48% and taken additional borrowing to cover the remaining funds needed at 1.44% from 29 September 2020 until the fixed rate deal ends on 31 July 2022 (B).*
- Calculate the difference between A and B and deduct this from Mr and Mrs K's total portion of the ERC.
- Refund Mr and Mrs K their adjusted portion of the ERC.
- Pay £450 for the distress and inconvenience.

*Barclays should treat that the original mortgage amount reverted to the rate of 1.44% after the fixed rate deal of 1.48% ended on 31 October 2020. This is because Mr and Mrs K would have been able to secure a new fixed rate at this point.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K, Mrs K, Miss A1 and Miss A2 to accept or reject my decision before 30 August 2022.

Robert Woodhart
Ombudsman