

## **The complaint**

Mr and Mrs D complain that Barclays Bank UK PLC wouldn't allow them to port their mortgage and wouldn't refund the early repayment charge (ERC) they paid.

## **What happened**

Mr and Mrs D had a mortgage with Barclays. On 23 October 2020, they sold their property and repaid the mortgage. As they were still in a fixed rate period, they paid an ERC. Their ERC was due to expire on 31 January 2021.

Mr and Mrs D said that they did this on the understanding that provided they completed a new mortgage with Barclays within 90 days, they would be able to port their interest rate across to the new mortgage and have the ERC refunded – in part, since they were intending to borrow less on the new mortgage than the old. The 90 day period would expire on 21 January 2021.

At the end of November 2020, Mr and Mrs D submitted an application for a new mortgage through a broker. Their broker sent the application and supporting documents through Barclays' online portal.

Mr and Mrs D say that a valuation was then booked for 16 December, but didn't go ahead because Barclays needed a signed declaration – which they say had already been submitted.

Mr and Mrs D then decided to increase the amount they were applying for, so their broker tried to amend the application. They say there was a series of technical problems with the online portal, and the application was re-submitted on 5 January 2021 once these were resolved. Their broker then chased Barclays for a decision as the 90 day window would end soon. They say Barclays required Mr and Mrs D's identity documents to be re-submitted – even though they had provided them with the earlier application, and even though they were existing customers.

On 20 January 2021, the application had still not been decided. Mr and Mrs D's broker asked Barclays to extend the 90 day porting window, but it would not agree to do so.

On 26 January 2021, Barclays issued a mortgage offer. The offer was not for the interest rate Mr and Mrs D wanted to port, but for a new rate with an £899 product fee. Barclays did not refund the ERC.

Mr and Mrs D complained. They said they were unable to complete within 90 days because of Barclays' errors and it wasn't fair it wouldn't extend the window. They said that when they realised they wouldn't get the ERC back, they went to another lender which processed their application within 10 days – showing that the time Barclays took was unreasonable. They want Barclays to refund the ERC they paid.

Barclays accepted that it was responsible for some delay. But it said Mr and Mrs D didn't start the application process until a significant part of the window had already passed. It said that had they applied earlier, it's likely they would have been able to complete on time.

Barclays also said that while there were technical issues, there were also inaccuracies in the application their broker submitted, which took time to clarify. And Mr and Mrs D changed the amount they wanted to borrow, which caused further delay.

Barclays therefore didn't agree to refund the ERC. But it offered them £400 compensation for the upset its delays caused. Our investigator thought it should also refund the ERC, so Barclays asked for the complaint to be considered by an ombudsman.

### **My provisional decision**

I took a different view of the complaint and issued a provisional decision to allow the parties to comment on my thinking before I make a final decision. I said:

It's not in dispute here that there were technical issues, and errors, with how the application was processed through Barclays' portal, which meant that Mr and Mrs D's mortgage application took longer than it should. What I have to decide is what Barclays needs to do to put things right – including whether it needs to refund the ERC Mr and Mrs D paid.

I understand Mr and Mrs D were not buying a property on the open market – they were buying it from a relative. They say this means that all the required paperwork was in place, and that their solicitors were ready to go – and it was only Barclays that caused the delays.

But if that's the case, it's not clear to me why Mr and Mrs D did not submit their mortgage application sooner. They clearly understood they had 90 days – and not 90 days to get a new mortgage offer, but 90 days to complete. But they did not submit a mortgage application until the end of November, and then amended the application to increase the borrowing on 23 December 2021.

This means that Mr and Mrs D did not finalise their mortgage application until 23 December 2021 – with less than a month of the porting window left, and just before the Christmas break. At this stage, the broker was having difficulties processing the application and asked Barclays for support. Barclays provided technical advice on 23 December, but the broker did not follow up until 31 December and the application was finally correctly submitted on 4 January.

I've looked at what happened once Mr and Mrs D finally decided on the mortgage they wanted, on 23 December. And I'm satisfied that it was processed within a reasonable timescale from then on. There was a gap between 23 December and 4 January, but that appears to relate to the broker not following up on instructions sent by Barclays' technical support team – which may be related to the time of year. The application was passed to an underwriter on 7 January, and a mortgage offer was issued on 26 January.

I think this was a reasonable timescale. I appreciate time was of the essence for Mr and Mrs D if they wanted to complete within the porting window. But doing so was always subject to whether Barclays would be able to issue a mortgage offer – and then whether there would be enough time after that for the purchase to complete.

Barclays didn't offer any guarantee that it would be able to process an application and issue an offer within any particular timescale. I think Mr and Mrs D were always aware that there was a limited time for them to complete their new mortgage, and that as a result there was

little margin for error. And in those circumstances, not finalising their mortgage application until 23 December was a considerable risk for them to take.

Once Mr and Mrs D finally decided what they wanted, on 23 December, I've not seen any evidence that Barclays took an unreasonable time, or that it caused error or delay in the process.

I note they found a new lender able to go from application to offer in 10 days. And I can understand why they think Barclays should have been able to do the same. But I don't think that's a reasonable expectation – I think that is, realistically, as fast as it's possible to go. It's not a benchmark, longer than which is unreasonable. In other words, just because the other lender managed to issue an offer that quickly, it doesn't mean that it was unfair Barclays didn't.

Mr and Mrs D sold their existing property before they were ready to buy the new one – knowing the ERC would expire in a few months, and knowing they had to complete on a new mortgage within 90 days to have it refunded. But it wasn't until half that time had passed that they finally decided on the new mortgage they wanted, just before the Christmas break.

I'm afraid the reality is that Mr and Mrs D simply left it too late to be sure they would be able to complete their application in time. And in those circumstances, I don't think I can fairly find that Barclays should refund the ERC. It's offered £400 compensation, and I'm satisfied that's fair and reasonable in all the circumstances.

### **The responses to my provisional decision**

Barclays accepted my provisional decision. But Mr and Mrs D did not.

Mr and Mrs D said:

- The investigator had found that Barclays' errors had resulted in 13 working days being lost – as the offer was issued on 26 January, only five days after the deadline, that means that but for Barclays' errors things would have completed on time;
- It's not fair that the 90 day window included the Christmas break – it should have referred only to working days;
- Mr and Mrs D acted as soon as they had decided what to do. Prior to that, they had been considering buying other properties. Once they had decided on the property to buy, they submitted their application – within the 90 day window;
- The other lender processed their application and issued an offer within 10 days. Barclays should have been able to do the same, especially as Mr and Mrs D were already Barclays customers;
- The application wasn't submitted until the sale price had been agreed and they were ready to proceed;
- Barclays had delayed in responding to the investigator's original opinion on the complaint. This shows that it is not able to keep to deadlines, and means it's unfair that I took what it said into account;
- As I had reached a different outcome to the investigator, there were two opposing

outcomes. The complaint should be passed to a third party for a “casting vote”.

### **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 also considered again all the arguments made in response to my provisional decision. But having done so, I haven’t changed my mind.

I’ll deal with the procedural points first. To ensure the timely progression of complaints, we issue deadlines for the various stages of our process. But we are able to consider and grant requests for extensions to deadlines from either party in the interests of allowing them a fair opportunity to make their case. And in any case, it wasn’t simply Barclays’ response to the investigator’s view that led me to reach a different conclusion – I reached my provisional decision having considered *all* the evidence and arguments.

Under the rules of the Financial Ombudsman Service, an ombudsman’s decision is final and – if accepted by the complainant – legally binding. We provide a two stage investigation process, to allow the parties to comment on a proposed outcome before a final decision is reached.

That first stage is generally delegated to an investigator. Where either party disagrees with an investigator, they have the right to ask an ombudsman to make a final decision – as Barclays did in this case (and as Mr and Mrs D could have done had they disagreed with the investigator). An ombudsman’s decision is in that sense an appeal against the investigator’s proposed outcome. Where an ombudsman disagrees with an investigator, the ombudsman’s decision is final – it does not represent a score draw needing a decider or casting vote.

I appreciate Mr and Mrs D are concerned that the investigator recommended upholding their complaint and I provisionally decided not to – a wholly different outcome. It’s unfortunate that this happened. But where either party disagrees with the investigator – as Barclays did here – it’s my role to look at all the evidence afresh and to reach my own, independent, outcome. That’s what I did, and I gave my reasons for doing so in my provisional decision.

Turning to the substantive arguments Mr and Mrs D have made, they haven’t changed my mind about the outcome.

Mr and Mrs D have explained that they made their mortgage application once they’d decided what property to buy, agreed the purchase price, and decided how much to borrow. And I don’t doubt that’s what they did.

But the fact is that their mortgage application was not finalised until 23 December, two months into the three month porting window – a window Mr and Mrs D were aware of from the start.

It’s also not the case that the porting window was only missed by five days. The mortgage offer might have been issued on 26 January, but that was not the requirement – what was required was that the mortgage complete, not reach offer, by 21 January. Once a mortgage offer is issued there are further formalities to go through and then a completion date and draw down of the funds needs to be arranged.

And as I’ve explained, I don’t think the fact that another lender was able to issue an offer in ten days means that it was unreasonable that Barclays took longer. In any case, as I’ve said, the mortgage has to complete, not just reach offer, within the 90 day window.

I think it was clear that the window was 90 days – not working days, but calendar days – and while that included the Christmas break, that was always clear to Mr and Mrs D.

Ultimately the reason Mr and Mrs D's mortgage didn't complete by 21 January, allowing them to be refunded the ERC, was not because of anything Barclays did or didn't do, or because of the Christmas bank holidays. It was because they didn't finalise their mortgage application until 23 December. And that meant there was always going to be a significant risk they wouldn't be able to complete by 21 January – and I don't think Barclays is responsible for that.

### **Putting things right**

As I noted in my provisional decision, Barclays has offered £400 compensation to settle this complaint, and I think 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. It should pay Mr and Mrs D £400 compensation, if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 20 September 2022.

Simon Pugh  
**Ombudsman**