

## **The complaint**

Mr and Mrs H complain that Barclays Bank UK PLC applied an early repayment charge (ERC) when they redeemed their mortgage. They say that Barclays should have allowed them to transfer a smaller portion of their mortgage to another property which would have meant them paying a reduced ERC.

## **What happened**

In 2017, Mr and Mrs H took out a mortgage with Barclays for around £800,000 with a term of 31 years. They took out a five-year fixed rate which was due to expire in October 2022.

Mr H said that just before the coronavirus pandemic, he was made redundant and started self-employment around November 2019. He said he was concerned about the impact this would have on his finances and how it would affect his mortgage, so he asked Barclays about porting the mortgage (transferring the mortgage to a new property). He said his intention was to downsize to a smaller property in another location and save on school fees which would have helped them.

Mr and Mrs H said that Barclays told them they couldn't lend them a reduced amount as Mr H didn't meet their lending criteria since becoming self-employed. Barclays did however agree a 12-month interest only mortgage in order to help them. However, Mr and Mrs H still felt they were struggling to meet their contractual monthly payments and felt it would be better for them to downsize so they told Barclays they were going to sell their property.

Mr and Mrs H sold their property and redeemed their mortgage in September 2020, paying an ERC of approximately £24,000. Mr and Mrs H said that the ERC that has been applied isn't a reasonable reflection of the costs they incurred, and they feel that Barclays were unreasonable in not allowing them to port to a smaller property. Barclays didn't think they had done anything wrong.

Mr and Mrs H were unhappy with this, so they brought the complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. Our investigator upheld the complaint on the basis that Barclays should have allowed Mr and Mrs H to port their mortgage to a smaller property, which would have resulted in a lower ERC. The investigator recognised that Mr and Mrs H would have moved to a smaller property and paid some of the ERC so he thought that Barclays should refund 50% of the ERC Barclays charged Mr and Mrs H.

Mr and Mrs H agreed with this outcome, but Barclays said that Mr and Mrs H didn't meet their lending criteria. Our investigator explained to Barclays again that they should have allowed Mr and Mrs H to port, but Barclays didn't respond at that time.

The complaint was passed to me to decide on the matter.

## **My provisional decision**

I issued a provisional decision on 27 October 2022. I said:

I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr and Mrs H are unhappy that Barclays wouldn't allow them to port their mortgage to a smaller property which resulted in them incurring a significant ERC.

Mr and Mrs H already held a mortgage with Barclays and they were not looking to borrow any additional money. They did however want to reduce their mortgage in order to downsize which they thought would have meant they still would have paid a portion of the ERC, but not as much as they paid.

Mr H told us he spoke to his Barclays Premier Relationship Manager (BPRM) and explained what he wanted to do. But Mr H said he was told by the BPRM that it was unlikely that an application for a smaller mortgage would be approved due to Mr H recently becoming self-employed. Barclays also stated in their final response letter that Mr and Mrs H didn't meet their lending criteria because Mr H wasn't able to provide the income proofs that Barclays needed at the time.

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.

As I've already mentioned, Mr and Mrs H already held their mortgage with Barclays so there was no additional risk to Barclays if they let Mr and Mrs H port their mortgage. I appreciate that if Mr and Mrs H would have increased their loan to value (LTV) there would have been an increased risk to Barclays, but Mr and Mrs H wanted to keep this the same or reduce it.

Mr and Mrs H found themselves in a difficult position and were trying hard to ensure that their mortgage wasn't affected. Although they struggled to keep up with their monthly payments, I can see that they didn't fall behind at any point and were not in arrears but were trying to mitigate any further issues that they might have encountered. I think that based on the rules above, Barclays should have allowed Mr and Mrs H to port their mortgage to a new property.

Mr and Mrs H have provided us with detailed information showing that they were actively looking for smaller properties. They wanted to restructure their finances to reduce existing debt and school fees to ensure that the mortgage was still affordable for them.

According to my understanding of Barclays lending criteria a reduction in borrowing of up to 25% is allowed without incurring an ERC. Where a reduction in borrowing is above 25%, an ERC will be payable on the amount above 25%.

At the time of redemption, Mr and Mrs H had a mortgage of £840,133 on their property which was sold at £1.4 million in September 2020. They purchased another property at £1.25 million and took out a new mortgage with another lender for £938,749 around September 2021. So the mortgage with Barclays was at 60% LTV and the mortgage with the new lender was at 75% LTV.

Based on this, I think Barclays should have allowed Mr and Mrs H to port their mortgage at the same LTV that they had with Barclays at 60% LTV (on the new property value) which would have given them a new mortgage of £750,000. This

amount would have been within the 25% reduction as stated in their lending criteria so Mr and Mrs H wouldn't have paid any ERC if Barclays had approved this mortgage.

So Barclays should refund the entire ERC that Mr and Mrs H have paid because this wouldn't have applied. In addition to that, Mr and Mrs H paid a product fee with their new lender which should also be refunded.

Mr and Mrs H had an interest rate with Barclays of 1.94% which was due to expire in October 2022. The new rate with the new lender was set at 1.24% until September 2023. This means there is a cost saving made on the new interest rate. Barclays should also deduct the difference in interest on this rate from the date the ERC was paid until October 2022.

This is what I am intending on asking Barclays to do so I will welcome their thoughts on this before I issue my final decision.

### **My provisional findings**

For the reasons given above, I'm intending to uphold this complaint and require Barclays Bank UK PLC to:

- Refund the entire ERC that Mr and Mrs H have paid along with 1.24% simple interest for the mortgage rate applied - from the date it was paid until the date of settlement
- Calculate the difference in interest between Mr and Mrs H's mortgage of 1.94% against the new interest rate with the new lender at 1.24% from the date the mortgage was redeemed, until October 2022 which is when the interest rate with Barclays would have expired. This calculation should be based on a mortgage of £750,000 for both interest rates so it is like-for-like. The resulting sum should be deducted from the ERC refund. This should be done before the interest is added on to the ERC refund
- Refund the £1,249 product fee that Mr and Mrs H have paid with the new lender along with 1.24% simple interest for the mortgage rate that was applied

If Barclays Bank UK PLC deducts any tax from any interest it pays to Mr and Mrs H as above, they should provide Mr and Mrs H with a tax deduction certificate, so they can reclaim the tax from the tax authorities if appropriate.

### **Developments**

Mr and Mrs H responded to the provisional decision. They said they felt it was positive that the entire ERC should be refunded and understood why the difference in mortgage interest rates were being included.

Barclays also responded but didn't agree with the provisional decision. They made the following points:

- Mr and Mrs H wanted to port their mortgage and Mr H had recently gone into self employment at the time they were looking to port. Mr and Mrs H were in conversations with the PRM (Premier Relationship Manager) and they were assessing options. The PRM discussed this with a specialist mortgage adviser during the time Mr and Mrs H were looking to port their mortgage
- It was explained that, if Mr H had one year's worth of accounts, the application could be considered by the underwriters – but Mr H didn't have this. So Barclays were unable to agree to the porting application. They said that it was imperative

that an income assessment was completed – even with a porting application – to ensure the mortgage is affordable

- Barclays standard policy for two years self employment is to be supported by two years worth of accounts and two years tax calculations. On this occasion, they agreed to consider the application on one year self employment but Mr H could not provide the evidence they required
- Barclays said they didn't stop Mr and Mrs H from porting and they can't see an application was completed. They also hadn't seen any evidence to suggest that Mr and Mrs H had a property lined up at the time they were selling during the 90 day port window. They also said things could have taken longer during the pandemic
- Barclays provided contact notes which shows Mr and Mrs H were told about the 90 day porting window ( which means if they transferred the mortgage to a new property within 90 days of redemption – they would get the ERC refunded). Barclays said this shows Mr H intended to purchase another property at a later date. And because Mr and Mrs H decided to rent, they took themselves out of the transitional rules as this new rental agreement took them outside of the 90 day window
- Barclays said they were aware that Mr and Mrs H wanted to move to secure schooling for their children and that the contact notes show that Mr and Mrs H said they would have the money in the bank after selling and would raise a mortgage ' at some point'. Barclays said they explained the 90 day porting window to Mr and Mrs H again
- Barclays said Mr and Mrs H were not going to port the mortgage and would have taken a mortgage at a later date. And at that point Mr and Mrs H would have been subject to Barclays lending criteria and because Mr H just became self employed – this could make lending problematic

To conclude, Barclays said Mr and Mrs H chose to sell and rent elsewhere and Barclays didn't see any evidence that Mr and Mrs H had a property lined up. Their goal was to move for their children which is what they did.

Mr and Mrs H didn't provide Barclays with any properties they had lined up and didn't reach out to them again so they do not agree with the 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.

Barclays have made various comments as to why they disagree with the provisional decision. Having considered what they have said, I still believe that they should have allowed Mr and Mrs H to port their mortgage.

Mr H has told us that he changed his employment status in 2019 and became self-employed. Mr and Mrs H were keen to reduce their monthly outgoings by moving area and changing schools for their children. This isn't in dispute as it's what Mr and Mrs H wanted to do at the time.

I have seen an email that Mr H sent to the PRM dated 26 November 2019. In summary, Mr H explains that he is now self-employed and thinking about different factors for how they can set themselves up for the future. Mr H explained that they may want to downsize their property and he wanted to know how he could prove his income and affordability instead of having to wait.

Mr H then arranged a telephone call with the adviser the following week on the 23 November 2019 to discuss this. Mr H has given us detailed information about what he was told by the PRM.

Mr H said that the PRM discouraged him from making an application and said that Barclays is a conservative and risk-averse lender. He said he was told that the PRM would speak to an underwriter to double check what could be done. Mr H said the PRM then contacted him and explained that it would be difficult to prove Mr H's employment track record as he had become self-employed. And in the PRM's view, Barclays wouldn't contemplate an application outside of the standard policy and if Mr H was to put in an application and it was declined, it would mark Mr and Mrs H's credit file which could impact them later down the line. So Mr and Mrs H didn't go ahead with a porting application. I don't have this telephone call but the final response letter from Barclays does confirm that Mr and Mrs H were not able to be offered a smaller mortgage due to the fact that they didn't meet Barclays lending criteria. So there is no contradiction in the information that Mr and Mrs H were given. I'm persuaded that they didn't make an application because they were dissuaded from doing so. And even so, Barclays said they wouldn't be able to because of Mr H's change in circumstances.

But this now brings me back to the fact that Mr and Mrs H wanted to port their mortgage from one property to another. They didn't want to borrow any additional funds so the mortgage would have been transferred on a like for like basis. Barclays were entitled to carry out an affordability assessment but it would be unfair to then say that Mr and Mrs H wouldn't be able to port because of concerns over their affordability – which is what happened here because Mr H couldn't provide the income proofs that Barclays required.

I've seen an email from an estate agent which confirms that Mr and Mrs H had a viewing on a property on 23 November 2019 and after looking at this property – Mr H sent the email to the PRM dated 26 November 2019. I therefore don't agree that Mr and Mrs H were not active in looking at properties to purchase and it's likely that they viewed the property on 23 November 2019 and then spoke to the PRM on the same day who told Mr H that it didn't seem likely an application would be approved. Mr H then sent another email on 26 November (as mentioned above) still saying that he wanted to look at options for downsizing. So based on what I have seen, I think that Mr and Mrs H did what they could based on their circumstances and because they were told they may not meet Barclays lending criteria – they had no choice but to redeem their mortgage. Mr and Mrs H then proceeded to move and rent a property until they were able to purchase one.

While I accept that Mr and Mrs H were told about the 90 day porting window when they wanted to redeem the mortgage, I don't think this would have made a difference to them. It's likely that because Barclays told Mr and Mrs H they didn't meet their lending criteria – it didn't seem an option to apply to another brand new lender for a mortgage because Mr H had been self-employed for less than one year. And because Barclays, who was their lender at the time told them it wasn't possible, it's likely that going to a new lender would have also been difficult.

I think this explains why Mr and Mrs H ended up renting a property at the location they wanted to live in because of their children, instead of purchasing another property. As Barclays told Mr and Mrs H that they wouldn't agree to any lending because Mr H didn't meet their lending criteria, it's more than likely, that Mr and Mrs H didn't think they would be able to borrow money from any lender which is why they decided to move and rent a property instead.

Mr and Mrs H have always maintained the fact they wanted to save money on school fees which is why they needed to move. Based on the information they were given by Barclays, I'm persuaded that Mr and Mrs H felt they had no choice but to do what they needed to do for their family in order to move location and save on school fees.

I think what this comes down to is that under the Mortgage Conduct of Business rules (MCOB) 11.6.3, Barclays should have allowed Mr and Mrs H to port their existing mortgage to a new property. Barclays didn't allow Mr and Mrs H to do so which prevented them from being able to purchase another property at the time that they wanted to. Mr and Mrs H agreed to rent a property and entered into a tenancy agreement for 12 months in September 2020. It was after this that they were able to secure a mortgage with another lender and purchase a property. Under the rules mentioned above, Barclays should have allowed Mr and Mrs H to port their mortgage, so I see no reason to depart from my provisional decision.

### **My final decision**

For the reasons given above and in my provisional decision, I direct Barclays Bank UK PLC to:

- Refund the entire ERC that Mr and Mrs H have paid along with 1.24% simple interest for the mortgage rate applied - from the date it was paid until the date of settlement
- Calculate the difference in interest between Mr and Mrs H's mortgage of 1.94% against the new interest rate with the new lender at 1.24% from the date the mortgage was redeemed, until October 2022 which is when the interest rate with Barclays would have expired. This calculation should be based on a mortgage of £750,000 for both interest rates so it is like-for like. The resulting sum should be deducted from the ERC refund. This should be done before the interest is added on to the ERC refund
- Refund the £1,249 product fee that Mr and Mrs H have paid with the new lender along with 1.24% simple interest for the mortgage rate that was applied

If Barclays Bank UK PLC deducts any tax from any interest it pays to Mr and Mrs H as above, they should provide Mr and Mrs H with a tax deduction certificate, so they can reclaim the tax from the tax authorities if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 16 January 2023.

Maria Drury  
**Ombudsman**