

## **The complaint**

Mr and Mrs S have complained that Barclays Bank UK Plc declined their request to port (transfer) their mortgage interest rate product onto another mortgage on a different property. To settle the complaint, they would like Barclays to reimburse the early repayment charge (ERC) they incurred when they repaid the mortgage to Barclays.

## **What happened**

Mr and Mrs S had a mortgage with Barclays originally taken out in 2002 on which there was £528,000 outstanding. The mortgage was on a fixed rate that applied until 31 October 2022. If the mortgage was repaid within that period – in whole or in part – an ERC would apply.

In late 2020 Mr and Mrs S wanted to move house and discussed porting the mortgage interest rate product onto a mortgage on their new property. The mortgage offer said that Mr and Mrs S could do this, subject to meeting Barclays' lending criteria.

Mr and Mrs S say that Barclays unfairly declined the application, saying they didn't meet the bank's affordability criteria. They say that Barclays withdrew the mortgage offer, leaving them to apply for a mortgage with another lender, and incurring an ERC of more than £15,000.

However, Barclays says that Mr and Mrs S didn't put in a formal application, because, at the enquiry stage, Mr S refused to provide the information the bank requested about his financial position.

Mr and Mrs S made a complaint to Barclays, which wasn't upheld, so they contacted our service. An investigator noted that Barclays hadn't provided its file of papers, nor any information to support its position, and upheld the complaint, asking Barclays to refund the ERC, as well as broker fees incurred in arranging the new mortgage, and to pay compensation of £300.

Mr and Mrs S accepted the investigator's findings, but Barclays didn't. In response, the bank said that no formal application had been made. Barclays also said that it had come to light that Mr and Mrs S had separated but still wanted the joint mortgage, with only one of them occupying the property, which was against policy.

## **Provisional decision of 10 October 2022 and responses**

I issued a provisional decision in which I asked both parties to provide some further information. Mr and Mrs S provided us with a detailed timeline and confirmed the original basis for their complaint – which is that they'd never been told that the loan-to-value ratio (LTV) would be an issue on a porting application; if they'd known this, they would have adjusted their borrowing to match the LTV on their original mortgage.

Barclays provided some further information, but also said it was interested in trying to resolve the complaint. Barclays was given an extension of time to provide information and to let me know precisely how it wanted to resolve matters on a more informal basis.

However, the bank reiterated that no formal application was made, nor was there any evidence of an appointment with a mortgage adviser that Mr S said had been booked for 7 January 2021. Barclays wanted Mr S to prove that this appointment had taken place.

Barclays also said that the issues were not around LTV, it was around the *“fact”* that Barclays offered to help, but when income and expenditure was discussed, *“the customer was not interested”*. Barclays reiterated its previous points about Mr and Mrs S’s personal lives.

The investigator looked at the complaint again. He found that, given the call recordings, he was satisfied Mr S was told LTV wouldn’t have an impact on whether or not a port would be approved, which was incorrect. The investigator thought that if this had been correctly explained, it was more likely than not that Mr and Mrs S would have been able to go ahead with a like-for-like port of the mortgage without issue.

The investigator explained that, at the point where Mr and Mrs S were moving, they were not separated, and so this didn’t impact on Barclays’ obligation to provide them with a clear explanation of the impact of the LTV on a porting decision. As a result, the investigator was still of the opinion that the ERC should be refunded, with 8% simple interest, as well as any fees incurred in setting up the new mortgage. The investigator also thought Barclays should pay £300 compensation for distress and inconvenience.

Barclays wouldn’t agree to this and so I will now issue a final decision on this complaint.

### **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 have reviewed the complaint again – including the responses to the provisional decision and the investigator’s further comments arising from this. It’s disappointing that Barclays has provided only a single contact note from 18 December 2020, rather than its full contact notes. We have only two call recordings, one of which consists almost entirely of Mrs S being put on hold until, after ten minutes of listening to Barclays’ ‘hold music’, she (understandably) terminated the call. The other call is Mr S’s initial discussion with Barclays where he asked how porting worked.

I am satisfied that Mr S was told by Barclays during that call that he could keep his borrowing at the *“same amount”* (Barclays’ words) as the existing mortgage, notwithstanding that the new property would be cheaper than the property Mr and Mrs S were selling. There was no mention of the impact of the LTV on porting, despite Mr S explaining several times that the new property was significantly cheaper than the existing one.

Barclays said that if Mr and Mrs S were buying a property at £500,000, then they wouldn’t be able to port the full £528,000, because the LTV couldn’t be more than 100%, but clarified that if they wanted to buy a more expensive property, then they could apply for additional borrowing on top of the £528,000 and it would only be on that additional borrowing that LTV would be a factor.

Mr and Mrs S have provided a very clear timeline of their contact with Barclays, including details of a meeting that took place on 7 January 2021 (after Barclays failed to attend a meeting on 24 December 2020). Mr and Mrs S say it was agreed that the £700,000 purchase would be funded by porting £500,000 from the existing mortgage and a cash deposit of £200,000.

The existing property was to be sold for £825,000, leaving sufficient for the deposit and extra funds for stamp duty. Mr and Mrs S say that Barclays confirmed that the £528,000 could be reduced to £500,000 without incurring any penalty.

Mr and Mrs S say that they provided Barclays with details of their income, and were asked if the following year's accounts would show a doubling of income from the £200,000+ per annum Mr and Mrs S had provided evidence of. Mr and Mrs S confirmed that their accounts for 2020-2021 would not show a doubling of income during Covid.

It is unclear why, when Mr and Mrs S only wanted to borrow £500,000, Barclays wanted evidence of income of £400,000. This doesn't seem to be consistent with standard income multipliers (where lenders will usually accept four x or five x income), or with Barclays' income criteria for interest-only mortgages.

Barclays has no details of that January meeting and suggest that Mr and Mrs S are required to "prove" this meeting happened. But, given the paucity of the evidence provided by Barclays, I find Mr and Mrs S's detailed timeline and record of the discussions that took place to be the more accurate and persuasive account of what happened.

Barclays said that the application didn't go ahead due to Mr and Mrs S failing to provide evidence of income. I'm not persuaded that this is, in fact, correct. But even if it is (which I doubt) I don't think Barclays has correctly applied the rules that it was required to do here.

There are regulations in place that have flowed from the FCA's Mortgage Market Review (MMR) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aim at protecting consumers and encouraging 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 had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says 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 change to the terms of the mortgage that is material to affordability

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;

- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

Mr and Mrs S weren't looking to borrow more, they were downsizing and reducing their borrowing. Given this, there was no change to the mortgage material to affordability and so no need for Barclays to carry out an affordability assessment. The only change would be in relation to the LTV, and, as I've already found, Mr S was told this would only be a problem if they wanted to buy a property that cost less than the amount outstanding on the mortgage, or if they wanted to borrow more money (which they did not).

I'm satisfied from what Mr and Mrs S have told us that if Barclays had explained that the LTV for the new mortgage needed to be the same as (or less than) the existing mortgage they would have been in a position to increase their deposit so that the port would be on a like-for-like basis. I don't think it would have been a problem for them to have increased their deposit on the new property in order to keep within the same LTV as their original mortgage, because they would still have had a surplus £100,000 from the proceeds of sale.

I think Barclays' failure properly to apply the transitional provisions (or provide us with any evidence that it in fact gave any consideration to these) resulted in Mr and Mrs S being left with no alternative but to switch their mortgage to another lender. I think that if Barclays had applied the transitional provisions, and explained the position in relation to the LTV, Mr and Mrs S would have avoided incurring the ERC.

I don't think the questions Barclays raised about Mr and Mrs S's personal relationship are of any relevance. Mr and Mrs S have explained that there was no issue in this respect and I accept their testimony about this.

### **Putting things right**

To settle the complaint, I direct Barclays Bank UK Plc to do the following:

- refund the ERC paid by Mr and Mrs S on redemption of their Barclays mortgage; (A)
- reimburse any documented costs incurred by Mr and Mrs S in taking out their new mortgage, such as broker or application fees; (B)
- pay interest at 8% simple per annum on A from the date of redemption to the date of settlement and on B from the date the fees were incurred to the date of settlement;\*
- pay Mr and Mrs S £300 compensation for distress and inconvenience.

\* If Barclays considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Mr and Mrs S how much it has taken off. Barclays should also give Mr and Mrs S a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is that I uphold this complaint. In full and final settlement I order Barclays Bank UK Plc to settle the complaint as set out above. 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 S and Mr S to accept or reject my decision before 11 January 2023.

Jan O'Leary  
**Ombudsman**