

The complaint

Mrs J is unhappy with how Barclays Bank UK PLC (Barclays) has treated her in relation to the application of an Early Repayment Charge (ERC).

What happened

Mrs J was looking to move property. She already held a mortgage with Barclays with a remaining term of approximately 14 years. Roughly half the total outstanding balance was on a tracker rate (base rate plus 0.59%) to the end of the mortgage term and roughly half on a fixed rate (2.19% to 31 October 2024).

Initially, Mrs J was intending to buy a house where she was looking to port both parts of her existing mortgage. However, she then decided to buy a smaller property, where she would only need to borrow approximately half of the amount that she owed.

Following advice from a Barclays mortgage adviser, Mrs J ported the tracker rate part of her mortgage to the new property, repaying the fixed rate part in the process. Mrs J checked with the mortgage adviser whether an ERC would apply and she was told that it wouldn't.

Subsequent to this, the redemption statement sent to her solicitor included an ERC of £1,816.98. Mrs J transferred the redemption amount less the ERC, on the basis that she had been told no ERC would apply and she assumed it had been added in error. Barclays sent Mrs J a letter saying it was happy to confirm that she had paid off one of her mortgage accounts.

However, in August 2021, Barclays contacted Mrs J's solicitor to say there was an outstanding balance and that Mrs J did need to pay the ERC. Mrs J forwarded this to the mortgage adviser, who again told her that no ERC was payable. Subsequent correspondence between Mrs J and the mortgage adviser suggests that someone at Barclays told Mrs J's solicitors that Mrs J needed to pay the fee and it would then subsequently be refunded.

Correspondence between Mrs J's solicitor and the mortgage adviser followed, with the solicitor telling the mortgage adviser that the buyers' application to land registry for title of the property sold to them by Mrs J, was going to be cancelled, because there was an outstanding charge, caused by the unpaid ERC amount.

The mortgage adviser said he still understood that no ERC was applicable and it appears he tried to engage with other departments within Barclays to get the matter resolved, but didn't get anywhere. He offered to raise a complaint on Mrs J's half, which she agreed to.

Barclays issued a final response letter in February 2022. In summary, it said that the ERC was payable but that it could see there had been some errors made with regards to how this had been communicated. It offered £200 to reflect this.

Mrs J says she didn't receive the letter, but was sent a copy by the mortgage adviser. Mrs J remained unhappy because she was adamant Barclays had told her no ERC would apply.

Although unhappy with the situation, she rang to make payment, because she was becoming increasingly concerned about the impact of not having paid the ERC – in that the buyers of the property she had sold were still having difficulties registering title of the property, because of the remaining charge on it.

Mrs J tried to make payment on multiple occasions in April 2022, but on each occasion she was told by the Barclays representative she was speaking to, that she couldn't pay because the suggestion she needed to pay to then be refunded didn't make sense to them – and they needed to check what was happening. Mrs J was told her complaint was being re-opened because it wasn't clear that the ERC should've been applied. Mrs J was promised call backs, but it appears she didn't then hear anything further from Barclays

Mrs J referred her concerns to the Financial Ombudsman Service. An investigator here looked into things and issued an opinion. In summary, they said that based on the information contained with the mortgage offer in 2019 for the fixed rate part of Mrs J's mortgage, an ERC was payable in the event that the mortgage was repaid before 31 October 2024 (which it had been). As such, it was fair for Barclays to charge the ERC.

They said that had Mrs J been given the correct information, it was most likely she would still have chosen to port the lower tracker rate and repay the fixed rate, including the ERC.

However, from 30 March 2021 onwards, there were a number of errors in the way Barclays communicated with Mrs J about the application of an ERC. Given these errors and the considerable inconvenience caused to Mrs J, Barclays should pay £500 compensation. The investigator added that Barclays should refund Mrs J any additional solicitor fees incurred after 10 June 2021, that would not have been part of a standard sale / purchase.

Barclays didn't provide a response. Mrs J did. In summary, she said it still didn't seem fair that Barclays could charge the ERC after repeatedly telling her one wouldn't apply. She also challenged the notion that she would still have gone ahead with porting the tracker and paying the ERC, saying that had she known an ERC would be payable, she would have explored the available options and found a way to avoid it. She also didn't think that £500 was enough, given the amount of time and effort she'd put into trying to resolve matters, with no help from Barclays along the way.

The investigator said they'd looked at what other options Mrs J had regarding the mortgage and, in summary, there didn't appear to be a better option at the time. They said that if Mrs J had ported the fixed rate part of the mortgage instead (notwithstanding that this wouldn't have been for exactly the same amount), this would've resulted in Mrs J paying more interest during the fixed rate period, such that there was little difference in the two scenarios.

The investigator also explained why they thought the £500 they'd recommended was fair (and a significant amount in the context of the type of complaint being brought) and shared links to guidance on our web-site relating to compensation bandings and examples.

Mrs J asked for the case to be escalated to an Ombudsman. She questioned why we hadn't insisted that Barclays provide call recordings from when she made contact with Barclays in April 2022. The investigator explained that they hadn't deemed it necessary to request the calls and had accepted what Mrs J has said took place during those calls. The investigator did though request the calls and these were received and added to the complaint file.

The investigator then asked Barclays if it would consider releasing the charge, pending the outcome of the complaint. Barclays declined to do this, on the basis that the ERC amount was still outstanding.

Mrs J then let us know that she had unfortunately had an accident, resulting in quite serious injury – such that it would mean she couldn't work for a considerable period of time. She was still worried about the impact of the ERC being unpaid on the buyers of her property and that she wanted to make payment. But that, because of the accident, while she would still be able to meet her normal mortgage repayments, she would struggle to be able to make the ERC payment in one go and would need to explore being able to pay it off in instalments.

The investigator recently wrote to Barclays to ask it if it would release the charge and allow Mrs J to begin making payments on an instalment basis, pending the Ombudsman's review (and on the understanding that if the Ombudsman said the ERC shouldn't be payable, any such instalment payments would be refunded).

The case was passed to me to decide. I issued a Provisional Decision in November 2011. In it, I said:

"There are three fundamental issues to consider here:

- Was an ERC payable?*
- If it was, what would most likely have happened had Mrs J been given correct information about this before she proceeded with the mortgage on the new property?*
- What level of compensation is appropriate in this case?*

Was an ERC payable?

When buying her new property, Mrs J ported the tracker rate part of her mortgage and repaid the fixed rate element. I've seen the mortgage offer for the fixed rate part of the mortgage taken out in 2019. It says that an ERC of 3% is payable if the mortgage is redeemed in full before 31 October 2024. This happened and so an ERC was payable.

What would most likely have happened had Mrs J been given correct information about this?

It isn't possible to say with certainty what would have happened if Barclays had given Mrs J correct information about the ERC, before she proceeded with the mortgage for her new property. The investigator said they thought it most likely Mrs J would still have ported the tracker element of her mortgage and paid the ERC. Mrs J hasn't said she would definitely have taken a particular course of action, but she has said that she would have explored all the options, in order to avoid paying an unnecessary fee.

I accept the principle of this. However, from looking at approximate figures for how much extra interest Mrs J would've faced paying had she ported the fixed rate element of the mortgage instead, it appears as though there is little difference between this and the ERC amount.

Mrs J has said she would've explored porting both part of the fixed rate mortgage and part of the tracker, in such a way as to avoid paying the ERC. This may have been possible. But even if it was, as things stand, it still doesn't look (in the round) as though this would've been viewed at the time as an obviously better option to take.

Mrs J has also said that she would've looked to make overpayments to further optimise her situation. I don't disbelieve that she may have looked to do this (particularly as she has said that she has a history of making overpayments), but this is a variable one step removed from the core decision of which mortgage to port and so I don't think I can reasonably take this into account, with the benefit of hindsight.

Bearing all of this in mind, I can't be sure that if Mrs J has been given correct information, that she would likely have taken a particular alternative course of action at the time and without the benefit of hindsight.

What level of compensation is appropriate in this case?

An award for distress and inconvenience is an inherently subjective exercise. However, given the numerous errors made by Barclays and the impact this has had on Mrs J, I currently think that the amount of compensation should be increased to a total of £600. This is towards the top end of the range where the impact of a mistake has caused considerable distress, upset and worry – and/or significant inconvenience and disruption that needs a lot of extra effort to sort out.

Mrs J has spent a considerable amount of time and effort trying to get to the bottom of this issue – caused by Barclays repeatedly giving her incorrect information. In addition, Mrs J has said the knock-on impact of the issue on her buyers in terms of them not being able to register title on the property she sold, has caused her considerable upset, worry and embarrassment. I accept this to be the case.

Putting things right

I am currently minded to say that Barclays should:

- *Pay Mrs J £600 to reflect the distress and inconvenience caused by its errors.*
- *Remove the charge straight away and agree a suitable repayment plan for Mrs J to repay the ERC amount over a reasonable period of time, bearing in mind the vulnerable situation she finds herself in, due to her recent accident and injury. To note – this should only be the original ERC of £1,816.98 i.e. no interest should be added.*
- *Refund Mrs J any solicitor fees incurred after 10 June 2021 that would not have been part of a standard sale / purchase. In order for Barclays to pay any such charges, Mrs J will need to provide a letter or e-mail from her solicitors with details of the charges.”*

I asked for any further evidence and/or arguments to be provided by 14 December 2021. Mrs J replied to say she accepted my provisional findings as a reasonable conclusion to her complaint. Barclays appeared to request more time to respond – to 19 December.

Barclays then provided a further submission. It said that if Mrs J was unable to repay the ERC, she could contact Barclays' "Customer Home Assistance" (CHA) team, who may be able to set up a repayment plan. It said the team would need to complete a full income and expenditure assessment to understand how much Mrs J could afford to repay each month. It also said that if a plan is agreed with the CHA, this would impact Mrs J's credit file.

Barclays did not reference my Provisional Decision in its submission and I think it's possible it was actually a reply to the investigator's correspondence to Barclays before I issued my Provisional Decision – where the investigator asked Barclays if it would release the charge straight away and allow Mrs J to repay the ERC in instalments.

In any case, Barclays has had more than enough time to respond to 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.

Having done so, I reach the same overall outcome as my Provisional Decision (details of which are included above and form part of this decision), for the same reasons.

I still find that there are three fundamental issues to decide in this case:

- Was an ERC payable?
- If it was, what would most likely have happened had Mrs J been given correct information about this before she proceeded with the mortgage on the new property?
- What level of compensation is appropriate in this case?

Was an ERC payable?

Neither party has provided any further evidence or arguments in relation to this point, so I see no need to depart from my provisional findings. The mortgage offer for the fixed rate part of the mortgage taken out in 2019 says that an ERC of 3% is payable if the mortgage is redeemed in full before 31 October 2024. This happened and so an ERC was payable.

What would most likely have happened had Mrs J been given correct information about this?

Again, neither party has provided any further evidence or arguments in relation to this point, so I see no need to depart from my provisional findings. For the reasons set out in my Provisional Decision, I still can't be sure that if Mrs J had been given correct information, that she would likely have taken a particular alternative course of action at the time and without the benefit of hindsight.

What level of compensation is appropriate in this case?

Again, neither party has provided any further evidence or arguments in relation to this point, so once more I see no need to depart from my provisional findings. For the reasons set out in my provisional findings, the amount of compensation should be increased to a total of £600.

Other matters

Regarding what Barclays said in its most recent correspondence. Although it's not clear that Barclays' latest correspondence was intended as a response to my Provisional Decision, what it has said is relevant to the issue of what it needs to do to put things right.

In my provisional findings, I said that I was minded to say Barclays should agree a suitable repayment plan for Mrs J to repay the ERC amount over a reasonable period of time, bearing in mind the vulnerable situation she finds herself in, due to her recent accident and injury.

I do not consider that it would be unreasonable for Barclays to carry out an income and expenditure assessment to inform what a suitable repayment plan would look like, including what represents a reasonable period of time (which is interlinked with any regular amounts it is agreed Mrs J can afford to repay). However, it would not be fair for the setting up of a repayment plan to have any adverse impact on Mrs J's credit file.

I say this because despite being unhappy that Barclays was saying that she needed to pay the ERC (having been told on numerous occasions this wouldn't be the case), Mrs J did contact Barclays on a number of occasions to make the payment, before referring her complaint to the Financial Ombudsman Service. Barclays wouldn't accept a payment from her. Had Barclays accepted a payment from Mrs J at those times (which given that an ERC was payable, it reasonably should), the amount would've been repaid and Mrs J would not find herself in the situation she is in now.

Putting things right

Bearing all of this in mind, Barclays needs to do the following:

- Pay Mrs J £600 to reflect the distress and inconvenience caused by its errors.
- Remove the charge straight away and agree a suitable repayment plan for Mrs J to repay the ERC amount over a reasonable period of time, bearing in mind the vulnerable situation she finds herself in, due to her recent accident and injury. To note – this should only be the original ERC of £1,816.98 i.e. no interest should be added.
- Refund Mrs J any solicitor fees incurred after 10 June 2021 that would not have been part of a standard sale / purchase. In order for Barclays to pay any such charges, Mrs J will need to provide a letter or e-mail from her solicitors with details of the charges.
- Not report any negative information to credit reference agencies in relation to the setting up or operation of a repayment plan in relation to the repayment of the ERC.

In relation to the third bullet point, Mrs J hasn't provided any evidence of additional solicitor costs, so it seems unlikely there are any. However, the principle still stands.

My final decision

My final decision is that I uphold Mrs J's complaint about Barclays Bank UK PLC and I direct it to do what I've said above under 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 17 January 2023.

Ben Brewer
Ombudsman