

The complaint

Mr J complains that when he made an overpayment to his mortgage with Barclays Bank UK PLC, he was charged an Early Repayment Charge (“ERC”) which he wasn’t expecting. Mr J wanted Barclays to pay this back.

What happened

Mr J told us that he made an overpayment on his mortgage on 26 October 2022. He said this was just under a year since his last overpayment. He told us he’d understood that he could make overpayments up to a set amount every year without any cost, and he thought that year ran from 1 October to 30 September, the same as his statements. But when he made this payment, Barclays said he’d gone over the amount he could pay in the year without paying a charge too, and he was charged an ERC.

Mr J said he tried to contact Barclays straight away, but it was so busy because of changes to interest rates that it took him two days to speak to someone. When he did, he said he was told that his overpayment year ran from 1 November to 31 October. Mr J asked why he wasn’t told this when he took out his new mortgage deal. He said there was nothing in his offer document telling him when the year was, it just referred to payments of 5% per annum.

Mr J said Barclays told him this information isn’t given directly to customers. It said he should have called Barclays to ask when his overpayment year ended. Mr J didn’t think that was fair. He said if he’d known about the dates, he could easily have waited a few days until 1 November, when his overpayment wouldn’t have incurred an ERC.

Mr J also said that as a good customer of Barclays, loyal to the bank over many years, he would expect to be given the benefit of the doubt. Mr J wanted Barclays to pay back the ERC it had charged, of £139.48.

Mr J sent us the offer document he received, to confirm the new fixed interest rate mortgage product he took out in 2019. That details an ERC which runs from 1 August 2019 to 31 October 2019. And it also contains the following –

Overpayments

A capital reduction of 5% per annum can be made without incurring an early repayment charge. This will apply throughout the early repayment charge period. Please refer to the early repayment section for details.

The early repayment section does not give details of what Barclays considers to be the applicable year for overpayments to this mortgage, or how that would be worked out.

Barclays has confirmed that Mr J’s overpayment year runs from 1 November to 31 October each year. It said he’d overpaid in late November in 2021, then on 26 October 2022, so those payments both fell into the same year. Each of those payments individually was less than the annual allowance, but when they were added together, they were above this amount, so an ERC was charged.

Barclays has shown us internal documentation which makes its policy on this clear. The annual period for overpayments is worked out from the end date of the product, so it's the twelve months before this date. But Barclays hasn't shown us anywhere where Mr J could have seen this policy, or any way he could have been aware of it other than to contact Barclays and ask.

Barclays said that if Mr J didn't know what his overpayment period was, he should have contacted it to confirm the dates. And Barclays said this was what he'd done in the past – it said he'd been told three times previously what his overpayment allowance period was for his previous mortgage deal. So it didn't agree that Mr J could have thought this was from 1 October to 30 September, in line with his statements.

Barclays sent us contact notes which show that Mr J's overpayment year was discussed in July 2018, December 2016 and August 2014, when the overpayment year on his previous product ran from 1 July to 30 June.

Our investigator didn't think this complaint should be upheld. He said Mr J had just assumed when his overpayment year was, Barclays had never confirmed that. It had told him about his previous overpayment period. So our investigator said Mr J could have called Barclays to check what the period was on his new mortgage deal. Our investigator said Barclays had correctly and fairly applied its own procedure. Mr J had exceeded the permitted payment within the overpayment year, so it was fair for Barclays to charge an ERC. That wasn't a mistake, and our investigator didn't think Barclays had to pay that back.

Mr J didn't agree. He said he'd sent us the documents Barclays had shared with him, and the overpayment year wasn't set out anywhere there. Barclays still hadn't put this in writing to him. He wasn't sure how it could be fair for Barclays to have told us its policy on this, but not told him. He said it couldn't be right that he always had to contact the bank if there was any doubt about things, otherwise no complaint would ever be upheld.

Our investigator set out that Mr J's new mortgage product ends on 31 October 2029, which is the contract he read and agreed to. As his product ends at the end of October, the overpayment period for each year would end in October.

Mr J didn't agree. He wrote to stress that there was no term covering the overpayment year in his mortgage offer. He said he thought that annually in that document meant the same as annually in his annual statement – so from October to September. Mr J said he thought the investigation should be based on documents which had actually been sent to him by Barclays, not things the bank had said later. He thought the year we'd decided on was only based on the experience and personal opinion of the investigator. Mr J said that as a customer he should have clarity about the exact dates of the overpayment period, which should be set out in the mortgage deal he had signed. He said that was the legal contract both parties are supposed to follow.

Our investigator said he thought it was clear from the mortgage offer that Mr J's product term ended in October, and therefore any overpayment year cycle should end in October.

Because no agreement was reached, this complaint was passed to me for a final decision. I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

I'd like to start by saying that I have seen the internal policy that Barclays applies to set an overpayment year. I'm satisfied that this policy was correctly applied in this case.

But I think that the arguments Mr J makes do have some merit. There is nothing in the documentation he signed which sets out the year Barclays would use for working out if an ERC should be paid. And his payments were almost a year apart.

Barclays has also accepted that Mr J couldn't have known, from the documents it sent him, what the overpayment year would be. It hasn't been able to show us that its policy on this is publicly available at all. It says Mr J should have asked, and used previous conversations that it had with him about overpayments to say that it would have expected him to contact it.

I note that the most recent of these conversations was several years ago. And I also note what Mr J has said, about the difficulties he had getting in touch with Barclays, because recent turmoil in the mortgage markets has made Barclays exceptionally busy.

Mr J, not unreasonably, says if he'd known his overpayment year ran from 1 November to 31 October each year, he would have delayed this payment for a few days, so no ERC was due. And I can see that when he contacted Barclays, he asked it either to repay the ERC, or to return his overpayment – presumably so he could then make this payment again later. I can see from its internal notes that Barclays said it couldn't return the overpayment, because the overpayment had been applied to his mortgage.

I think it's reasonable to assume, from what Barclays' internal notes say about this, that if Barclays' phone lines hadn't been so busy, and Mr J had been able to get through to the bank straight away, then it would have refunded this overpayment so Mr J could make it again, a few days later. And in that way, the payment of an ERC would have been avoided.

I have considered all the circumstances of this complaint carefully, not limited to the documentation Mr J has signed and Barclays' own policy on overpayments, but also taking account of the unfortunate short delay to his complaint, due to market turmoil at the time.

I think that in this case, rather than ask Barclays to refund Mr J's ERC now, it would be a fair outcome to ask Barclays to treat Mr J's payment as having been made on 1 November 2022, so no ERC was payable. So I'll ask Barclays to rework Mr J's mortgage now, to remove the overpayment he made on 26 October 2022, and the ERC he was charged on that date, and to reapply the full overpayment of £3,000 to his mortgage on 1 November 2022. That's what I currently propose to do.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Only Barclays replied.

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 said there was a problem with my proposed resolution. It said that, after his complaint came to our service, Mr J had made another overpayment in the 2022 to 2023 overpayment year. So, unfortunately, if it reworked Mr J's mortgage in the way I had suggested, then he would end up paying an ERC anyway, but this time, for the period between 1 November 2022 to 31 October 2023, the current overpayment year.

I understand that the further part redemption Barclays has now told us about, was made earlier this year by Mr J. That happened after our investigator had suggested the complaint wouldn't be upheld, and before the case reached me. So I appreciate that Mr J would not necessarily have been expecting my suggested resolution when he made that payment.

Barclays suggested, as an alternative, that it could make a payment of £139.48 onto Mr J's mortgage account now. This isn't a payment to him directly, it's a reduction in his mortgage debt. That would, in effect, refund the ERC Mr J was charged by Barclays in the 1 November 2021 to 31 October 2022 repayment year.

I thought this did provide a fair and reasonable outcome to this complaint, and I wrote to Mr J to say I proposed to amend my reward in this way. Mr J has contacted us, and hasn't indicated he has any objection to this. So, instead of the resolution I previously proposed, I will ask Barclays to make this payment onto Mr J's mortgage account now.

My final decision

My final decision is that Barclays Bank UK PLC must refund £139.48 onto Mr J's mortgage account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 22 August 2023.

Esther Absalom-Gough
Ombudsman