

## **The complaint**

Mr W said he planned the sale of his Buy To Let ("BTL") property around what Barclays Bank UK PLC told him about his mortgage. It said there was no ERC payable, but then at the last minute before his sale, it told him he had to pay an ERC after all, of over £4,000.

## **What happened**

Mr W said he had decided to sell his BTL property, so his broker asked Barclays about redeeming the mortgage. Barclays told his broker there was no ERC payable on the mortgage, and Mr W went ahead with the sale. But on the day he was due to complete, Barclays finally supplied a redemption statement, which showed he was being charged an ERC after all. Mr W said he had no choice then but to pay this. But he said because Barclays had wrongly advised him, he thought it should pay back the ERC it had charged.

Barclays wrote to Mr W in response to his complaint, saying it couldn't confirm the broker had been wrongly advised. And the ERC had been charged correctly, so Barclays wouldn't pay it back. Barclays did accept it had provided some poor service, and it offered Mr W £50 to say sorry for that.

Mr W said if he hadn't been misinformed, he thought he could have delayed completion of this sale until the ERC was no longer payable.

When this case came to our service, Barclays had seen the information Mr W had shared with us, showing Barclays did tell his broker there was no ERC payable on this mortgage. Barclays said that was wrong, and it didn't know why Mr W's broker had been told that. But it said the original mortgage offer did make clear Mr W had to pay an ERC, so although it said there had been an error in what Mr W's broker was told, there were other documents which had been provided to Mr W which showed an ERC was payable.

Our investigator thought this complaint should be upheld in part. She said Barclays didn't have to pay back the ERC it had charged, because it wasn't a mistake to charge that. The ERC was payable at the time, under the terms of Mr W's mortgage offer. But she said Barclays had made a mistake in telling Mr W's broker there was no ERC on this mortgage, and she thought it should pay £200 in compensation to make up for that.

Our investigator didn't think it was likely Mr W could have delayed the sale of his property by three months, until the ERC was no longer payable. But Mr W replied, to say he'd worked very hard to make this sale happen quickly – it was completed a little under two months after the price was agreed. He said his estate agent told him sales usually take about twice as long as this, so Mr W thought he could have delayed a further two months. And he said the ERC came off the mortgage at the start of December 2022, not the end of December, so a delay of two months would have been long enough to sell without an ERC being payable.

Our investigator said she thought property transactions usually take between six and eight weeks, so Mr W's sale took an average amount of time. And she said it was hard to tell now what might have happened if Mr W had delayed the sale. She didn't feel she could reasonably tell Barclays to make a refund in this case.

Mr W didn't agree. He stressed he'd been given incorrect information by Barclays, and said although the original mortgage offer, issued two years earlier, would have mentioned the ERC, he still thought it was reasonable for him to have relied on the more recent guidance and written confirmation from Barclays that there was no ERC due.

Mr W said it was debatable whether or not the completion of this sale could have happened in December. But he thought, based on his experience of this sale and the feedback from his estate agent, that it could have been. And he said because of the incorrect information from Barclays, he wasn't able to make an informed decision about the timing of the sale, so we'd never know for sure.

Mr W said he'd settle for a 50/50 split, with half the ERC being refunded. But our investigator didn't change her mind. As no agreement was reached, this case was passed to me for a final decision. And 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:

It's now common ground that Mr W was wrongly advised there was no ERC payable on his BTL mortgage, when he was considering selling the property. And because Barclays appears to have taken a little time to issue a redemption statement, Mr W only discovered there was an ERC, of well over £4,000, on the day his sale was due to complete. I don't think it's likely Mr W had any choice then, but to go ahead with his sale, and pay the ERC.

But Mr W did have some choices earlier. He had choices about when he would sell the property. And I've reached a different conclusion in this complaint to our investigator, on whether it's likely Mr W could have delayed his sale until after the ERC had ceased to be payable on his mortgage.

Mr W told us he'd agreed a price in early August, his property then sold in late September. His estate agent told him that was a quick sale, and I think it's reasonable to conclude that many sales do take rather longer. It also appears that Mr W was selling a leasehold property, where I understand conveyancing can be more complex. So, whilst it's always difficult to predict what could, hypothetically, have happened, I think, on balance, in the circumstances of this case, it is more likely than not that Mr W would have been able to agree a price in early August, then sell his property on 4 December, the day after the ERC on his mortgage ended. And I think Mr W is likely to have sought to do this, if he'd been warned about the ERC.

That doesn't mean Mr W should just receive a refund of all the money he paid for an ERC, because that's not the position Mr W would have been in, if he'd successfully delayed his sale until 4 December. If Mr W had been successful in delaying his sale, he would not have needed to pay the ERC. But he would have needed to pay a little over two months of additional interest on his interest-only mortgage.

So I think Barclays should now rework Mr W's completion statement, to show completion on 4 December 2022 instead of 30 September. And it should refund Mr W any money he's overpaid, based on that recalculation. Barclays should add interest at 8% simple on any overpayment Mr W has made, calculated from the date of the overpayment to the date the refund is made.

I think Barclays has also provided Mr W with poor service in this case, both because it gave him wrong information and because it also seems to have failed to provide a redemption statement until the day of completion, leaving Mr W with few options. For those reasons, I think Barclays should pay Mr W a total of £200 in compensation. Barclays has already offered Mr W £50 for this complaint. It doesn't look as if that's been paid, but in case it has, I'll allow Barclays to count towards my award, any payment it has already made to Mr W for this complaint.

I invited the parties to make any final points, if they wanted, before issuing my final 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 asked our service for a short extension to respond to the above decision. That time has now passed, and no reply has been received by our service. I think it's now appropriate to bring this case to a close.

Mr W said he was happy with the provisional decision, and he wanted to accept it. He said that Barclays had already paid him £50 in compensation. My decision allows Barclays to take this into account when paying the award I'm making. Mr W said he would like a revised completion statement from Barclays. He also wanted a certificate showing how much tax Barclays was deducting from the 8% simple interest I'd included in the award.

Neither side has offered any further evidence or argument, and I haven't changed my mind. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that Barclays Bank UK PLC must rework Mr W's mortgage, so that it was redeemed on 4 December 2022, instead of 30 September 2022.

Barclays Bank UK PLC must pay Mr W interest at 8% simple on any overpayment he has made, calculated from the date of the overpayment to the date the refund is made.

HM Revenue and Customs requires Barclays Bank UK PLC to take off tax from this interest. Barclays Bank UK PLC must give Mr W a certificate showing how much tax it's taken off if he asks for one.

Barclays Bank UK PLC should also pay Mr W a total of £200 in compensation. Barclays Bank UK PLC can count towards that amount, any payment it has already made to Mr W for this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 September 2023.

Esther Absalom-Gough  
**Ombudsman**