

The complaint

Mr and Mrs T complain about an early repayment charge (ERC) that they were charged when they redeemed a mortgage they held with Barclays Bank UK PLC.

What happened

Mr and Mrs T held a buy to let mortgage with Barclays. The mortgage interest rate was fixed for ten years until 2027. The mortgage offer set out that an ERC applied and would be charged if the mortgage was redeemed within the ten-year fixed period. The mortgage offer also set out that it could be ported to a new property, subject to Barclays' lending criteria at the time of any application to port the mortgage.

In 2022, Mr and Mrs T spoke with Barclays about porting the mortgage to another property they wished to buy. They were told that the new mortgage must complete within 90 days of redemption of the previous mortgage in order that the ERC be refunded.

Mr and Mrs T repaid the mortgage in late October 2022 and an ERC of around £41,000 was charged. They had until late January 2023 to port the mortgage to a new property and have the ERC refunded.

Mr and Mrs T applied in November 2022 to port the mortgage to another property they wished to purchase. Following a mortgage valuation being completed, the surveyor didn't think that the property was suitable for Barclays lending criteria. So, Barclays declined to port the mortgage to the new property. Mr and Mrs T appealed this, and it was considered by Barclays' underwriters. But ultimately, Barclays wasn't prepared to lend on the property Mr and Mrs T wished to buy.

Mr and Mrs T complained to Barclays about its refusal to port the mortgage. They said the new property was suitable security and the surveyor used wasn't competent to make the judgement they did. And they believe Barclays deliberately delayed matters which meant that they were unable to find another property within the 90-day window to have the ERC refunded.

Barclays responded to the complaint but didn't uphold it. It said that it didn't think it had caused any delays that meant the mortgage couldn't complete on time, and the fact that the property didn't meet its lending criteria, following comments from the surveyor, meant that it wasn't able to agree to lend on the new property or to port the original mortgage.

Unhappy with this response, Mr and Mrs T referred their complaint to our Service. One of our Investigators looked into the complaint but didn't think it should be upheld. Mr and Mrs T didn't accept this. They responded in detail, but said, in summary:

- They'd tried without success to get things going sooner with Barclays, but it had deliberately "run down the clock" on their porting window.
- It took longer to verify Mr T's income because he was self-employed and his income was diversified. This wasn't fair and his diversified income was better security than

someone who had one source of income.

- The surveyor was incorrect in his statement that there was an unreliable rental market for this property, and they could provide evidence from local estate agents.
- Had Barclays agreed to lend on the new property, they could've completed on time.

Mr and Mrs T asked for the complaint to be reviewed by an Ombudsman. So, it's been passed to me to consider and make a 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.

Mr and Mrs T responded to our Investigator in detail raising a number of points. I want to reassure them that I've read and thought about everything they've said. I may not address each and every point they've made. That's not because I haven't considered it. It simply reflects the informal nature of this Service. Instead, I'll focus on the crux of this complaint. Whether Barclays was entitled to decline the application to port the mortgage, and whether any delays it may have caused had an impact on this application.

The porting of a mortgage is a concession a lender will make rather than an automatic right. This is set out in the mortgage offer, and this makes it clear that it's going to be subject to the lenders criteria at the time of the application to port.

Mr and Mrs T first spoke with Barclays in September 2022 prior to redeeming their existing mortgage. This mortgage was then redeemed on 28 October 2022. And, at this stage, Mr and Mrs T were aware of the 90-day time limit in which they would need to complete a new mortgage for the ERC to be refunded.

Many lenders require a mortgage to be ported on the day it's redeemed. However, Barclays has a policy of allowing 90 days between redemption and the new mortgage completing for the ERC to be refunded. Mr and Mrs T have said this is an arbitrary time scale. Whilst this isn't a core part of their complaint, for clarity, I'm satisfied this time scale is fair. However, this does of course mean that time will always be of the essence once the mortgage has been redeemed. And it also means there's a risk of the ERC not being refunded if these timescales aren't met.

The contact notes show that Mr and Mrs T next got in touch with Barclays on 16 October 2022 to try to arrange an appointment. There were some issues with this, and Barclays paid some compensation for this in a separate complaint. But an appointment seems to have been booked for 23 November 2022.

The application wasn't submitted until 12 December 2022. And, due to errors by Barclays, it needed to be rekeyed which was done on 23 December 2023. At this stage, further information was requested from Mr and Mrs T. This was provided and the application was fully completed by 4 January 2023 and approved, subject to valuation, on 11 January 2023. So, I'm satisfied there were some delays here which appear to be down to Barclays of around 20 days.

Mr and Mrs T have said it then took longer than it should've done for the mortgage to be approved because of how Mr T's income comes from various sources. I agree this is probably the case. And I do understand their point that they consider having a diversified income might make Mr T a lower risk than someone with one source of income. However, as

a responsible lender, Barclays is required to confirm a borrower's income. The fact that Mr T's income was from a number of sources means it was always likely to take longer to verify his income than someone who has a single source of income. But the fact that this may make Mr T lower risk, doesn't mean that Barclays can set aside the verification checks and due diligence that it's required to complete under its regulatory obligations.

The crux of this complaint is that the surveyor Barclays appointed didn't think that this was suitable for Barclays' lending appetite. The surveyor had concerns about an annex the property had which might be sublet and said this went against Barclays' criteria. I can see that after an appeal, Barclays agreed to discount this concern as it didn't think it likely that the annex would've been sublet.

However, the surveyor also stated that they didn't consider there was a reliable rental market for this particular property. Mr and Mrs T have explained in detail why they disagree.

When a mortgage is applied for, a surveyor will be instructed by the lender to confirm whether the property should be considered as suitable security, taking into account that individual lender's lending criteria. In this case, the surveyor was independent of Barclays. This means, that I can't consider the actions of the surveyor, or whether they were right or wrong in their valuation report.

Barclays is not an expert in property surveys or valuations. That's why they employ an independent surveyor who is an expert in these matters. Whilst I can see that Mr and Mrs T have gone to great lengths to explain why they consider the surveyor was wrong, it's the surveyor who is the expert in this field, and therefore Barclays was entitled to rely on their opinion. Lending criteria is generally a matter for a lender's commercial judgement. Based on this, I'm satisfied that Barclays was entitled to decline the application to port the mortgage to this particular property.

Mr and Mrs T have said they weren't told about potential restrictions such as this. However, lending criteria is generally commercially sensitive information that wouldn't be publicly available. And, given how complex and varied lending criteria can be, I can't see how Barclays could've provided detail on every type of issue that may arise. This is why mortgages are always subject to a suitable valuation being received. That's how the lender ensures that any property is right for its individual appetite for risk.

Mr and Mrs T have explained why they think Barclays risk was lower than it was on the previous property they had the mortgage secured on, given things such as a lower loan to value. This may be the case. However, all lenders have lending criteria that they are entitled to set. This property wasn't considered to have met the criteria. And there was no requirement for Barclays to lend on it simply because it would've been considered lower risk from a loan to value point of view.

As I've said, there were delays by Barclays. This seems to amount to around 20 days. However, I can't see that had it not been for these, Mr and Mrs T would've been able to recoup their ERC. It was some weeks from redeeming their mortgage to Mr and Mrs T first contacting Barclays. Even if Barclays had been able to provide them with its lending decision 20 days sooner, the only way that Mr and Mrs T would've been able to receive a refund of the ERC would've been to have withdrawn from this property purchase, find another property and complete the mortgage prior to 26 January 2023. On the balance of probabilities, I find it unlikely they could've done so given the limited amount of time they had. I note that Mr and Mrs T ended up purchasing the property in question without a mortgage. So, I don't think I can find that on balance they would've changed direction and bought a different property, even if they had sufficient time.

Whilst I understand that Mr and Mrs T feel strongly about this matter, I'm not going to ask Barclays to do anything further. I accept that there were times when Barclays could've acted quicker. However, regardless of these delays, Barclays was entitled to rely on the surveyor's opinion and to decline the mortgage application. So, I can't see that the mortgage ever would've been ported in time and the ERC refunded.

My final decision

I'm sorry to disappoint Mr and Mrs T. But my final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 19 August 2024.

Rob Deadman
Ombudsman