

The complaint

Mr L complains that Barclays Bank UK PLC gave him incorrect information about how an Early Repayment Charge (ERC) would be applied to his mortgage upon redemption.

What happened

Mr L had an offset mortgage with Barclays. This meant he had a current account and savings account that were linked to his mortgage account. Mr L's interest rate product was due for renewal in March 2022 and so he was speaking with his mortgage broker about what to do next. Mr L wanted to secure a new rate but was also thinking about selling his property at the time, so ideally didn't want to be tied into a product that would incur an ERC if he redeemed the mortgage early.

Mr L's broker gave him some options, and ultimately recommended he stay with Barclays and take a two-year variable rate linked to the Bank of England base rate, as Mr L was able to keep his offset mortgage account with that rate. Before Mr L agreed to the new product, he called Barclays to clarify how the ERC would work if he were to redeem the mortgage before the end date of the product. During the call the Barclays adviser explained that an ERC would only be charged on the balance outstanding at redemption. He said this meant Mr L could overpay his mortgage beforehand, which would leave a smaller sum at redemption, and he would only have to pay the ERC on that smaller sum once the mortgage had been fully redeemed. Mr L's broker had also been told the same information by Barclays.

Mr L went ahead and agreed to a variable rate linked to the Bank of England base rate that would end on 30 May 2024. The mortgage offer set out that an ERC of 1% would apply if the mortgage was repaid before 31 May 2024.

In October 2022 Mr L arranged for the sale of his property. He said before completion, he tried to speak to Barclays about paying the money that was in his linked savings account to the mortgage before redemption to minimise the ERC. He said he wasn't able to get through on the phone and so went into branch on 6 October to make the overpayment. He said he was initially told by a member of staff in the branch that once he'd made the payment, the ERC would only be charged on the remaining balance at redemption. But he said another member of staff told him differently and said he would still need to pay an ERC on the existing mortgage amount even if he paid his savings (of around £900,000) towards the mortgage before redemption.

Mr L decided not to make the overpayment, and on redemption of the mortgage Mr L was charged an ERC of £11,925. He complained to Barclays, and asked for a refund of the ERC he'd paid on the £900,000 he had in his savings account, as he had been led to believe by Barclays that he wouldn't have to pay it if he applied those funds to the mortgage before redemption, which he says was always his plan. He said that if he'd known the ERC was always going to be based on the full mortgage balance (excluding his savings) then he wouldn't have taken that product in the first place, as he'd always planned to sell before the product end date. He said he would have taken a different product that had no ERCs attached.

Barclays issued their final response letter in January 2023 and said that Mr L was told both verbally, and in the mortgage offer, that he would be charged an ERC of 1% on the balance if he repaid the mortgage early. Mr L didn't reduce the balance before redemption, and so he was charged 1% of the full amount.

Mr L brought his complaint to our service and an Investigator looked into things. He said Mr L's complaint should be upheld. He said he thought had Barclays given Mr L the correct information at the outset, he wouldn't have taken that product and would have taken a product without ERCs instead. He also said he thought Mr L would have used his savings of around £900,000 to reduce the mortgage balance to around £300,000. He set out in his view what he thought appropriate redress would be to put things right.

Mr L accepted the view. Barclays asked for some more time to consider the findings and investigate, so the Investigator extended the deadline to respond. Following the expiry of the new deadline, Barclays didn't provide a response to the Investigator's view, but did provide some clarification about the application of the ERC and how it operates. They confirmed that Mr L's understanding of how the ERC would operate upon redemption was correct. If he had overpaid on his mortgage before redemption, he would only have been charged the ERC on the remaining amount at redemption.

The complaint was passed to me to issue a decision.

My provisional decision

I initially issued a provisional decision not upholding Mr L's complaint. That was based on the information Barclays gave about how the ERC would be applied to Mr L's account at redemption. However, after receiving further information from both parties, I changed my outcome and issued a second provisional decision on 13 March 2024. This is what I said.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I would firstly like to say that it is very disappointing that Barclays have provided this service with incorrect information. They have now confirmed the correct position, which is supported by the evidence provided by Mr L, and so as a result I am now having to issue another provisional decision to both parties. I would also like to assure Mr L that I have considered his recent submissions thoroughly, and I mean no discourtesy by only summarising what he's said above.

It is now clear that the product Mr L took out with Barclays had an ERC attached that would be charged at one percent of the initial mortgage balance if the mortgage was to be repaid within the product term of two years. As I explained in my previous decision, I am satisfied that Barclays told Mr L, and his broker, on more than one occasion – that the ERC would be calculated on the outstanding balance at the time the mortgage was redeemed. Barclays have also confirmed in their submissions to our service that is what Mr L was told by them.

So before Mr L decided to take out this product, Barclays gave him incorrect information about how it would operate.

Barclays did not advise Mr L to take out this product, but they did give him information about how it would work. They had a duty to provide Mr L with information that was clear, fair and not misleading in order for him to make an informed choice about how to proceed. I'm satisfied that Mr L made his objectives and his needs clear to Barclays when he asked them for information. He told them he would likely be redeeming the mortgage within the term, and so he specifically wanted to know what the implications of that would be.

I'm satisfied from considering all the evidence including the recordings of the calls Mr L had with Barclays, and the emails Mr L exchanged with his broker, that Mr L placed a great deal of importance on the information Barclays told him about the ERC, as he didn't want to incur any additional costs as a result of his plans. I'm satisfied that had Barclays told Mr L and his broker the correct information – that he would be charged an ERC of one percent of the initial mortgage balance regardless of any overpayments made during the term if he redeemed the mortgage early, Mr L would not have chosen to take out this product, as it wasn't suitable for his needs.

I have considered the fact that Mr L was advised to take out this product by a mortgage broker (independent of Barclays). And so it was the broker's responsibility to ensure the product Mr L was taking out was suitable for him. The broker contacted Barclays herself twice to check how the ERC would be applied if Mr L was to overpay on the mortgage before full redemption. During the first call in March, Barclays agreed with the broker that the information about the ERC and the overpayments wasn't clear in the product information. Barclays confirmed to the broker that under the terms of the offset product, Mr L would be able to make unlimited overpayments without incurring an ERC, and an ERC would only be chargeable when the mortgage was fully redeemed. In that call Barclays didn't confirm how that ERC would be calculated.

But there was another call that took place between the broker and Barclays in May 2022. The broker called Barclays again as Mr L wanted to confirm that what the broker had told him about the ERC was definitely right, as he hadn't seen it written down anywhere. Unfortunately, Barclays haven't been able to provide a recording of that call. But I have seen a copy of the email Mr L's broker sent to him after the call had taken place. That email said "I have just spoken to my rep. It seems the reason this info is not documented anywhere, is because it could always be subject to change (although in all the time she has worked for Barclays which is circa a decade, these rules have not changed). So to confirm, as things stand, you can pay the balance of an offset mortgage down to £1 at any time without penalty. If you redeem the loan in full, then the one percent penalty is applied to the outstanding balance at the time you redeem the loan (and not the original balance). My rep suggested a call to Barclays directly, if you wanted to confirm this is current policy with them directly – but as things stand what we were told earlier this year is the case currently."

Whilst I haven't been able to listen to the second conversation Mr L's broker had with Barclays in May, I'm persuaded that on balance, Barclays gave her incorrect information about how the ERC would be charged on the mortgage, or at the very least, unclear information. That's because Mr L's broker told Mr L that's what she'd been told after she'd spoken to her representative at Barclays, and following that conversation Mr L contacted Barclays himself and was told the same information (which I have heard). As a result, whilst Mr L's broker was responsible for ensuring Mr L took out a mortgage product that was suitable for him, I'm persuaded that the advice turned out to be unsuitable as a result of information the broker was given by Barclays. This was then re-enforced when Mr L contacted Barclays himself, and was given not only misleading, but incorrect, information about how the ERC would be charged.

The mortgage offer that was sent to Mr L after those conversations took place did set out that an ERC would be chargeable if the mortgage was repaid before the product end date in 2024. However, the offer just said that the basis of the charge would be one percent of the loan amount. It did not specify whether that would be the loan amount at the time of redemption, or the loan amount at the time of inception. As it wasn't clear, I don't think it was unreasonable for Mr L to think that it meant the ERC would be calculated at one percent of the outstanding balance at redemption, as that was what he'd been told. And the information contained in the written mortgage offer didn't contradict that.

So, considering all the evidence, I'm satisfied that it was a direct result of Barclays' misinformation that resulted in Mr L taking out a product that was not suitable for him, and he incurred losses as a result.

Mr L has said that if Barclays had given him and his broker the correct information, he would have taken out a standard tracker mortgage product which had no ERCs attached. Based on all the evidence I've seen, I'm persuaded that's likely. As I've said above, Mr L planned to redeem his mortgage early, and only selected the offset product on the belief that he could minimise the ERC incurred through making overpayments. If he'd known he wasn't going to be able to do that, I think he would have chosen to take out a similar product without an ERC as the next best alternative for him. I say that because that is what he was discussing with his broker before he chose the product, and he also made his plans clear to Barclays during his calls with them too.

Putting things right

Mr L has said if he'd been given correct information about how the ERC would be applied on his mortgage, he would have chosen to take out a standard tracker rate that had no ERCs attached instead.

Looking at the rate information that Barclays have sent us from 10 May 2022 (which would have been the rates available to Mr L when he selected his product), I'm persuaded the rate Mr L would have chosen to take would have been a two year tracker rate at 0.87% above base rate. This was available for borrowers with a 75% loan to value ratio, which Mr L said he had, and would have incurred a product fee of £999. Mr L has told us this is the rate he would have selected, and I think that's likely after reviewing the emails he exchanged with his broker, and considering it's the nearest product to the one he actually took, but didn't have any ERCs attached.

However, if Mr L had taken this mortgage product, he would have lost the benefits of his offset mortgage account. Mr L has said that if that was the case, he would have used his savings to reduce his mortgage balance, and therefore, the interest payable on his mortgage, as the benefits would have outweighed any savings rates he would have achieved on those funds. Based on what he's said, I think that's likely.

I'm also persuaded Mr L has suffered distress and inconvenience as a result of Barclays giving him and his broker incorrect information. He had planned his finances in such a way that meant he would only need to pay an ERC on a balance of around £300,000 (which would have been around £3,000) when he redeemed his mortgage in October 2022. However, when he went to overpay his mortgage, he was told that wasn't the case, and ended up having to pay over £11,000. I'm satisfied that would have been distressing for Mr L.

Considering everything, I'm currently persuaded Barclays should do the following to put things right:

- Calculate what Mr L's mortgage balance would have been if it had been reduced by the amount he held in his Barclays offset savings account at the time his new product completed in May 2022. This re-calculated balance should also take into account the difference in product fee Mr L would have added to the loan at inception – so £999 rather than £1,749.
- Calculate the interest Mr L would have paid on that mortgage balance between product completion in May 2022, to redemption in October 2022 on an interest rate of base rate plus 0.87%.
- Refund the difference between the amount above, and the interest Mr L did pay on his actual mortgage balance between completion in May 2022 and redemption in October 2022. Subtract from the refund the total interest benefit Mr L received as a result of holding his savings in the offset account for that same period.
- Pay 8% simple interest* on the above amount calculated from the date each interest payment was made, to the date of settlement.
- Refund the ERC Mr L paid in October 2022.
- Pay 8% simple interest* on the ERC refunded calculated from the date the mortgage was redeemed, to the date of settlement.
- Pay Mr L £250 for the distress and inconvenience caused by the incorrect information Barclays gave.

*Interest is at the rate of 8% a year simple. If Barclays considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr L how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate."

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.

Both parties responded to my provisional decision and had nothing further to add. As a result, I see no reason to depart from my findings as set out above.

Putting things right

In order to put things right for Mr L, Barclays should do the following:

- Calculate what Mr L's mortgage balance would have been if it had been reduced by the amount he held in his Barclays offset savings account at the time his new product completed in May 2022. This re-calculated balance should also take into account the difference in product fee Mr L would have added to the loan at inception – so £999 rather than £1,749.
- Calculate the interest Mr L would have paid on that mortgage balance between product completion in May 2022, to redemption in October 2022 on an interest rate of base rate plus 0.87%.
- Refund the difference between the amount above, and the interest Mr L did pay on his actual mortgage balance between completion in May 2022 and redemption in October 2022. Subtract from the refund the total interest benefit Mr L received as a result of holding his savings in the offset account for that same period.
- Pay 8% simple interest* on the above amount calculated from the date each interest payment was made, to the date of settlement.
- Refund the ERC Mr L paid in October 2022.

- Pay 8% simple interest* on the ERC refunded calculated from the date the mortgage was redeemed, to the date of settlement.
- Pay Mr L £250 for the distress and inconvenience caused by the incorrect information Barclays gave.

My final decision

Considering everything, for the reasons I've explained, I uphold this complaint and instruct Barclays Bank UK PLC to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 23 April 2024.

Kathryn Billings
Ombudsman