

## The complaint

Mr and Mrs C, with the assistance of their representative, complain that Barclays Bank UK PLC has incorrectly failed to refund an early repayment charge (ERC) charged when changes were made to their mortgage.

## What happened

In July 2022, Mr and Mrs C approached their broker to assist them with an application to raise funds against their main property to purchase a second holiday home. So they were looking to take out additional borrowing against this main property.

At this point they had an existing repayment mortgage with Barclays which had been taken out in March 2019 on a ten-year term. This mortgage had a five-year fixed rate product with a rate of 2.05% with a balance of just over £124,000. There was an ERC applicable if the mortgage was repaid in full before the end of the product term on 30 April 2024. This fee was a flat rate of 3% of the mortgage balance at the date of repayment.

Mr and Mrs C's broker spoke to Barclays about the best options for Mr and Mrs C to raise the additional funds they wanted and these conversations took place with online chats to Barclays staff. During these conversations the broker explained that Mr and Mrs C had seven years remaining on their existing mortgage, but they wanted to increase this to 21 years.

The member of staff at Barclays said the further advance for the additional borrowing could be done as a new application, for the term of 21 years as Mr and Mrs C wanted. But it would only be the additional borrowing on this term rather than the whole balance. Or Mr and Mrs C could do a re-mortgage and get the whole amount on the extended term of 21 years. Mr and Mrs C's broker asked in response to this whether an ERC would become payable on the current mortgage, to which the agent replied, "*No ERC will be paid*".

On this basis Mr and Mrs C's broker proceeded with a re-mortgage application for the whole amount Mr and Mrs C wanted to borrow. An application was made for a ten – year fixed rate product at 2.72% with a total mortgage term of 22 years on interest only. The product fee for the mortgage of £749 was added to the balance of the mortgage with the total amount of borrowing increasing to just over £565,000.

Mr and Mrs C redeemed their previous mortgage and paid an ERC of around £2500. They asked when they could expect the ERC to be refunded but Barclays didn't provide this and a complaint was raised.

Barclays looked into Mr and Mrs C's complaint and said it didn't think it needed to refund the ERC. It felt this had been correctly applied and there was no application made to port the previous mortgage rate which could have resulted in the ERC being paid and then refunded. A refund of £80 had been sent to Mr and Mrs C and it was sorry if this caused confusion, but it didn't agree the ERC should be refunded.

Our investigator looked at this complaint and thought Barclays had provide incorrect

information and this will have resulted in a loss of expectation. But they didn't think it was fair to ask Barclays to refund the ERC. No application was made for a further advance and when the previous mortgage was redeemed with the funds from the re-mortgage, the ERC was correctly charged in line with the previous mortgage offers terms. They also felt it was reasonable to expect that despite the incorrect information being provided about the ERC, that Mr and Mrs C's broker ought to have reasonably been aware the ERC was chargeable if the previous mortgage was being repaid and this should have been questioned further.

Reference was also made to the application not being done as a port either so there were no criteria met whereby the ERC would have been refundable.

To recognise the impact of the incorrect information leading to a loss of expectation, the investigator awarded £100 but didn't think the ERC should be refunded.

Barclays accepted the proposed outcome. Mr and Mrs C replied to say they didn't agree.

They didn't think the complaint had been understood with the reference to porting the mortgage not being relevant. They highlighted their complaint points again and that they couldn't understand how Barclays could be allowed to provide false advice and not need to stick to what it had said. They said the re-mortgage application had only been made because of the information provided by Barclays to say no ERC was chargeable, the reliance on this incorrect information caused the loss. Had this not been provided, the application for the additional funds would not have been made in the way it was.

Our investigator's opinion remained unchanged. They felt Mr and Mrs C's broker was aware the re-mortgage option would result in the ERC being chargeable and it wasn't reasonable to rely on the incorrect information provided by Barclays. And it should have been questioned further before taking the steps they did. As the ERC had been correctly charged based on the application made by Mr and Mrs C for their additional funds, they maintained that Barclays didn't need to refund this. And they felt the £100 recommended for the inconvenience when Barclays provided incorrect information was fair still.

Because Mr and Mrs C continue to disagree with our investigator, the complaint has been passed to me for decision. I issued a provisional decision on this complaint setting out that I broadly agreed with our investigator but had taken account of additional things when reaching this conclusion and I felt the award for distress and inconvenience needed increasing.

Barclays replied to accept my proposed outcome with no further comments. Mr and Mrs C have not provided a response or additional comments, so my final decision is in line with what I've said previously.

### **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 am upholding this complaint in part. I know this will be disappointing to Mr and Mrs C, but I'll explain why I don't think Barclays needs to refund the ERC charged.

I've read and considered the whole file, but I'll keep my comments to what I think is relevant to the outcome. If I don't comment on a specific point it's not because I've not considered it but because I don't think I need to comment on it to reach the right outcome.

It isn't disputed that Barclays provided incorrect information and it is frustrating when

businesses make mistakes, but mistakes do happen. In this case it was human error when Mr and Mrs C's broker was told that, contrary to his belief, there would be no ERC if a re-mortgage application was completed instead of making an application for a further advance. This was incorrect and when a re-mortgage application was made to repay the previous mortgage and provide the additional borrowing Mr and Mrs C wanted, the ERC was charged correctly.

When looking at complaints like this, I need to consider the position Mr and Mrs C would have been in had the correct information been given from the start. Had Mr and Mrs C's broker been told the ERC was chargeable, he has said the application to re-mortgage would not have been made. I accept this might not have happened but I don't think it can be said for certain that Mr and Mrs C has lost out as a result.

Had an application been made for a further advance only in 2022, Mr and Mrs C's previous mortgage would have continued until April 2024 before it could be redeemed without an ERC. This would have meant the borrowing would have been on a lower interest rate than the new mortgage taken out in 2022 by 0.67%. So for the short term, there was a benefit to keeping the lower interest rate. And if rates were comparable to the 2022 rate when Mr and Mrs C came to re-mortgage they would have benefited from this saving and not paying the ERC.

However, if later rates were higher than the 2.72% offered in 2022, the future borrowing costs could outweigh the benefits of the earlier savings. (Current 10-year fixed rate mortgage rates are somewhat in excess of this rate as are 5-year fixed rate products). And while there are often products available without a product fee, Mr and Mrs C may have also needed to pay a separate product fee in April 2024 to secure the best interest rate available at this point. With this in mind, I don't think it can be determined that in paying the ERC in 2022 and moving all of the borrowing onto one product with a fixed rate until 2032, that Mr and Mrs C have lost out as a result of the incorrect information.

Overall, while I acknowledge the frustration at being told an ERC was not chargeable and the loss of expectation that came with this, I am not persuaded that Mr and Mrs C have lost out as a result.

The £100 our investigator recommended to put things right is not intended to be a token towards the ERC but is made in acknowledgement of the loss of expectation when Barclays confirmed its earlier advice was wrong and what this meant in relation to the refund.

I agree it is right that Barclays recognise this but I think an award of £200 for this loss of expectation is fair and in line with what I'd expect to see for this failing.

Although I understand why Mr and Mrs C's broker has said they were happy to rely on the information provided, I think they have demonstrated they were aware the information regarding the ERC appeared to be wrong. And I think Further clarity could have been sought on this.

### **Putting things right**

To recognise the loss of expectation and the distress added with this, Barclays should pay Mr and Mrs C £200.

### **My final decision**

For the reasons I've set out above, I uphold Mr and Mrs C's complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 17 April 2024.

Thomas Brissenden  
**Ombudsman**