DRN-4724610

The complaint

Ms G and Mr V complain that Barclays Bank UK PLC didn't tell them that getting permission to let their property out would restrict the choice of interest rates they could take on their mortgage.

What happened

Ms G and Mr V have a mortgage with Barclays. The loan is made up of three sub-accounts. In July 2022, the crucial time for this complaint, the three sub-accounts were as follows (I have rounded the balances for ease):

- Sub-account one – a repayment loan of around £85,000 on a lifetime tracker rate of 0.59% above the Bank of England base rate.
- Sub-account two – an interest only loan of around £275,000 on a fixed rate of 2.09% until May 2025.
- Sub-account three – a part interest only / part repayment loan of around £345,000 on a fixed rate of 1.28% until January 2023.

Ms G and Mr V were intending to move abroad for work and in July 2022 they applied to Barclays for permission to let the property out temporarily. Barclays granted permission and Ms G and Mr V moved abroad in August 2022.

In advance of the fixed rate on sub-account three coming to an end, Ms G and Mr V applied for a new rate. Barclays said that because their mortgage now had permission to let in place they weren't eligible for a standard residential rate. It offered them a two year tracker rate of 1.29% above base rate.

Ms G and Mr V complained. They said that Barclays hadn't made them aware in July 2022 that if they took permission to let they wouldn't be able to take a new standard interest rate. If they'd known that, they would have applied for a new rate before applying for permission to let – although they knew that meant they would have paid a 2% early repayment charge (ERC) on that part of the balance, they would still have done that to secure a new fixed rate rather than a tracker rate. They said that in July 2022 they could have secured a fixed rate of 2.82% - which they would have done if they had known that they would have been restricted to a tracker rate in January 2023.

Barclays agreed that it hadn't made clear when Ms G and Mr V applied for permission to let that they wouldn't be able to take a new standard interest rate. It offered them £100 compensation for that. But it didn't think it would have made any difference to the position Ms G and Mr V ended up in, so it didn't agree to change their interest rate.

Our investigator thought that if Barclays had made this clear Ms G and Mr V would have taken a fixed rate in July 2022. She said that Barclays should calculate whether Ms G and Mr V would have been better off taking that fixed rate – bearing in mind they would have to pay an ERC, a £999 product fee and higher interest payments between July 2022 and

January 2023 – compared to the tracker rate they ended up with. If they would have been better off, Barclays should refund the difference and switch their mortgage to the fixed rate now. If they would have been worse off Barclays should still switch them to the fixed rate moving forwards – but only if Ms G and Mr V pay the extra amounts they would have had to pay had they taken the fixed rate. And she said Barclays should increase the compensation from £100 to £300.

Barclays didn't agree. It said that it didn't think Ms G and Mr V would ever have ended up with the fixed rate. So it asked for an ombudsman to review their complaint.

My provisional decision

Having considered matters, I thought the complaint should be upheld, but in a different way. I set out my thoughts in a provisional decision.

In summary, I said:

- Barclays ought to have made Ms G and Mr V aware of the implications of permission to let on the availability of future interest rates. But it didn't do that.

- However, I didn't think that Ms G and Mr V would ever have been able to take a new fixed interest rate on their residential mortgage. That's because:

    - They would need to apply for permission to let before their old fixed rate ended, and before the window for applying for a new one.

    - Once permission to let was in place, they would not have been eligible for a new fixed rate – as in fact happened.

    - Therefore they would have needed to take a new fixed rate before completing the application for permission to let. This would involve paying an ERC. Barclays doesn't allow customers to end a fixed rate, incurring an ERC, and take a new fixed rate via an online application. The only way to do this is via an appointment with a mortgage adviser. This is reasonable, as it means Barclays can satisfy itself that incurring an ERC is appropriate in the circumstances.

    - That means that if Ms G and Mr V were warned that they wouldn't be able to take a new fixed rate once permission to let was in place, and then decided to pay an ERC to take a new fixed rate first, they would have had to discuss that with a Barclays mortgage adviser.

    - If they had done that, and explained their reasons for doing so, Barclays wouldn't have agreed – because it doesn't allow new fixed rates on mortgages with permission to let. So it wouldn't have allowed Ms G and Mr V to take a new fixed rate knowing they were about to apply for permission to let.

    - It follows that even if Barclays had warned Ms G and Mr V that they wouldn't be able to take a new fixed rate once permission to let was in place, they would still not have been able to take a new fixed rate. Just as it turned down an application for a fixed rate once permission to let was in place, Barclays would have turned it down if Ms G and Mr V explained they wanted to pay an ERC to take a new fixed rate ahead of applying for permission to let to avoid that happening.

- Therefore I didn't think that fair compensation was for Barclays to re-work the mortgage as if Ms G and Mr V had been able to take a new fixed rate on their residential mortgage – because it wasn't likely they'd ever have been able to do that.

- However, I was persuaded that fixing their outgoings at a time of uncertainty due to their move abroad was very important to them. Ms G and Mr V were reasonably and prudently concerned about the prospect of rising interest rates at that time. And they didn't want to have the financial uncertainty of not having a fixed rate in place when they were managing the increased costs of a move abroad.

- In those circumstances, I thought it likely that Ms G and Mr V would have considered switching their mortgage to a buy to let mortgage instead. If they'd taken out a new buy to let mortgage, they'd have been able to access buy to let fixed rate products.

- But Barclays' failure to tell them the implications of applying for permission to let meant they didn't know they might need to do that – and were deprived of the opportunity of doing so.

- I said that Barclays should allow Ms G and Mr V to apply to switch their mortgage to buy to let terms. Provided they otherwise meet Barclays' criteria – such as those related to the property and rental income – it should then offer them a buy to let mortgage to replace their residential mortgage.

- Any such offer should be based on the buy to let rates that would have been available to Ms G and Mr V on 1 May 2022 – allowing a reasonable time for an application to be made after 31 March – and if Ms G and Mr V accept that offer, Barclays should refund the additional interest they've paid as a result since 1 August 2022, allowing a reasonable time for the mortgage to complete. But Barclays can offset the ERC and mortgage exit fee, and any buy to let application or product fee, they would have paid to end their residential mortgage from that refund.

- And if they accept this outcome, I said that Ms G and Mr V should be aware that it will complicate their future return to the UK – as they will then have the opposite situation; a buy to let mortgage whose terms prevent them living in their property.

The responses to my provisional decision

Barclays said it would consider an application for a buy to let mortgage – but that Ms G and Mr V would need to meet its lending criteria and pay the ERC that would have been applicable had they done so at the time.

Ms G and Mr V said that they understood that it was difficult to be sure what Barclays would have done in the hypothetical situation that they applied to pay the ERC and take a new residential rate, but they didn't agree that it was unlikely they would have been allowed to take a new rate. They'd discussed similar situations in the past and never been advised that permission to let would be a barrier to a new rate. But they would accept a switch to a buy to let mortgage as a compromise. Ms G and Mr V asked that the existing fixed rate on sub-account two continue in place on the new buy to let mortgage, rather than having to pay an ERC on this part of the mortgage too. Ms G and Mr V noted that in July 2022 Barclays didn't offer three year rates on buy to let mortgages, and say they would in those circumstances have opted for a five year rate rather than a two year rate.

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.

I've also considered again my provisional conclusions in light of the responses summarised above.

I'm still not persuaded Ms G and Mr V would have been able to obtain a new residential fixed rate. They've mentioned past discussions, but they've not in the past had firm plans to move abroad from the start of and for most if not all of the duration of a new fixed rate. Barclays doesn't allow new fixed rates on a mortgage with permission to let. Had Ms G and Mr V made an application for a fixed rate, explaining why they wanted to end the old one, I'm satisfied it's more likely than not Barclays would have applied that policy. I don't think it makes any difference which order the rate application and permission to let application would be made in – once Barclays was aware of the broader situation, it would have concluded that Ms G and Mr V wouldn't be eligible for a new residential mortgage rate.

I'm afraid Ms G and Mr V won't be able to retain the fixed rate on sub-account two, or the lifetime tracker rate on sub-account one, while only converting sub-account three to buy to let terms. It's not possible to have one mortgage on both residential and buy to let terms, and it's not possible to have separate residential and buy to let mortgages secured over the same property. Either the whole mortgage will need to be replaced with a buy to let mortgage on a buy to let rate, or the whole mortgage will need to stay on residential terms with permission to let on the existing rates.

Ms G and Mr V will therefore need to think carefully before accepting this decision. If they do accept it, that means applying for a new buy to let mortgage to replace the entirety of their residential mortgage – paying the ERCs that would have applied to both fixed rates, and also losing the lifetime tracker on the other part. The whole of the mortgage balance will then move over to buy to let terms, with a buy to let interest rate that would have been available in May 2022. Ms G and Mr V will need to weigh up the cost implications of that, alongside the fact that having a buy to let mortgage means that they will need to get Barclays' permission to re-occupy the property when they do return to the UK, before deciding whether to accept my decision.

As I said in my provisional decision, and as Barclays pointed out in its response, I am not directing Barclays to offer Ms G and Mr V a buy to let mortgage. Had they known they might need to apply for one in 2022, an application would still need to have been made, and would be subject to Barclays' lending criteria. So the same will need to happen now – which is likely to include Ms G and Mr V providing information about their financial circumstances and the rental agreement, as well as there being a valuation of the property. But if Barclays accepts their application, and Ms G and Mr V agree to pay the ERC – on all parts of their residential mortgage – as well as any buy to let application costs, then Barclays should offer them a buy to let mortgage based on the interest rates available in May 2022.

Putting things right

To put things right, Barclays Bank UK PLC should allow Ms G and Mr V to apply for a buy to let mortgage, based on the interest rates available on 1 May 2022, to replace their existing residential mortgage. In assessing that application, Barclays should apply its normal buy to let lending criteria as they were at the time.

If that application is successful and an offer of a buy to let mortgage is accepted, Barclays should refund the additional interest Ms G and Mr V have paid on their residential mortgage since 1 August 2022, compared to what they would have paid on the buy to let mortgage. Barclays should add simple annual interest of 8%* to the refund, running to and with payment made on completion of the buy to let mortgage.

Before making payment, it should offset the ERC and exit fee that would have been paid to exit their residential mortgage on 1 August 2022, as well as any fees applicable to the buy to let mortgage (including valuation and product fees). Should those costs outweigh the refund, Barclays will not be required to convert the mortgage to buy to let terms unless Ms G and Mr V make up the difference within 28 days of being notified of that amount by Barclays, and until they do so.

Barclays should also pay them the £100 compensation it has offered if it hasn't done so already. This payment should be made whether or not the application for a buy to let mortgage is accepted.

*Barclays may deduct income tax from the 8% interest element of my award, as required by HMRC. But it should tell Ms G and Mr V what it has deducted so they can reclaim the tax from HMRC if they are eligible to do so.

My final decision

My final decision is that I uphold this complaint and direct Barclays Bank UK Plc to put matters right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G and Mr V to accept or reject my decision before 9 May 2024.

Simon Pugh
Ombudsman