

## **The complaint**

Mr and Mrs Y complain that Barclays Bank UK PLC wouldn't let them port their mortgage, which meant they ended up paying an early repayment charge (ERC).

## **What happened**

Mr and Mrs Y had a mortgage with Barclays. The mortgage was on interest only terms and secured on their residential property at the time. Mr and Mrs Y were building another house on part of their land, with the intention of moving to the new house and selling the old one.

Mr and Mrs Y say that they'd always made this plan clear to Barclays. They'd taken a succession of fixed interest rates on their mortgage, always discussing the plan to move to the new property once it was completed.

Mr and Mrs Y took their most recent two year fixed rate in 2021. They said they made their plan clear to the adviser who sold them the fixed rate. In early 2023 they applied to Barclays to port their mortgage to the new property, speaking to the same adviser. The adviser told them they couldn't port their mortgage to a property they already owned. So if Mr and Mrs Y sold their old property within the fixed rate period, they'd have to pay an ERC.

Mr and Mrs Y complained. They said they had always been clear about their intentions, and had repeatedly been reassured they would be able to port their mortgage to the new property once it was complete. They said it wasn't fair they weren't able to do this in 2023 – or, alternatively, that the fixed rate had been mis-sold to them because they had been told otherwise in 2021. Either way, Mr and Mrs Y said Barclays should refund the ERC they paid on the sale of their property. They also said that this meant they had to pay the mortgage back sooner than they otherwise would have done, and as a result had lost out on the gains they would have made from investing those funds instead – which would have been higher than the saving on mortgage interest from early repayment.

Barclays didn't uphold the complaint. It said it had never told Mr and Mrs Y that they would be able to port their mortgage to a property they already owned. It accepted that there were delays when Mr and Mrs Y tried to make an appointment to discuss their options with a mortgage adviser, and offered £400 compensation. But it didn't agree to waive the ERC.

Mr and Mrs Y didn't accept that and brought their complaint to us. Our investigator didn't think Barclays should refund the ERC (which Mr and Mrs Y had by then paid), so Mr and Mrs Y asked for their complaint to be reviewed by an ombudsman.

## **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 looked very carefully at everything, but I'm afraid I don't think I can uphold this complaint.

Barclays doesn't allow customers to port mortgages to a property they already own – only to a new property they are buying with the new ported mortgage. This is standard; most mortgage lenders have similar policies.

Barclays didn't explicitly say that in the rate switch offers. It just said that Mr and Mrs Y had the right to port "subject to your circumstances meeting our lending criteria at the time". It's not possible to set out lending criteria in full, both because they cover many different scenarios which may never arise in an individual case, and because they are subject to change over time. So it's not unfair that the rate switch offer didn't explicitly say Mr and Mrs Y would not be able to port the mortgage to a property they already owned. Barclays did make clear porting wasn't guaranteed and would be subject to Barclays' criteria at the time of an application, and that's enough.

I've reviewed the emails Mr and Mrs Y have provided alongside the other evidence, and I don't think there's any evidence that Barclays ever told Mr and Mrs Y that they would be able to port in those circumstances. The emails show that Mr and Mrs Y told Barclays their plans from time to time, but Barclays' response was that this would be something to discuss with a mortgage adviser when the time comes – not that they would definitely be allowed to do so.

Mr and Mrs Y say they told the adviser who sold them the two year fixed rate that this was their plan in 2021. They say that if they wouldn't be allowed to port to their new property, that means the rate was mis-sold. But even if Mr and Mrs Y did say that, and if the adviser didn't make clear that this wouldn't be possible, I don't think Mr and Mrs Y have lost out as a result.

In that situation, Mr and Mrs Y would have been faced with two options – either to take a fixed rate knowing they might have to pay the ERC. Or not take a fixed rate – and either stay on the higher standard variable rate or take a lower tracker rate instead. Barclays offered tracker rates without ERCs, so while Mr and Mrs Y wouldn't have been able to port a tracker rate either, they wouldn't have had to pay an ERC when repaying their mortgage.

At the time of the 2021 offer, their mortgage balance was around £402,000, on interest only terms. They took a two year fixed rate of 1.05% with a 2% ERC. Their monthly payment was £352 with a maximum ERC of £8,000 (I have rounded all figures).

Whereas if Mr and Mrs Y had taken a tracker rate, they wouldn't have had to pay the ERC. But the best tracker rate Barclays had around this time was a margin of 1.59% above base rate. In 2021 base rate was 0.1% - meaning Mr and Mrs Y would pay 1.69%. But by March 2023, when Mr and Mrs Y redeemed their mortgage, base rate had risen to 4% - and so the interest rate on their mortgage would have risen to 5.59%.

I know Mr and Mrs Y made some overpayments during this period, so their balance reduced from £402,000 to £370,000. I've looked at what they would have paid had they taken the tracker rate instead of the fixed rate. For ease I haven't included the overpayments, though I have factored in the reduced ERC.

Assuming their balance stayed the same, for the period on the fixed rate until redemption in March 2023 they'd have paid around £7,400 interest on the tracker rate, plus an ERC of £7,250 – making £14,650 in all. Had they taken a tracker rate instead they wouldn't have paid an ERC, but would have paid around £20,000 in interest. By March 2023, their monthly payment would have risen to around £1,800.

As I say, I've not taken account of the overpayments, so the total interest figure for both calculations is a slight over-estimate. But nevertheless the principle is clear – the tracker rate would have been much more expensive overall, even factoring in that it didn't include an ERC.

Even if, therefore, Barclays knew in 2021 that Mr and Mrs Y were planning to port to the new property not just at some possible point in the future (bearing in mind they'd been working towards this since at least 2013) but specifically within the two year fixed rate period, and even if I were to find that the tracker rate was mis-sold as a result, there is no detriment.

If Barclays had made clear in 2021 they couldn't port and would have to pay an ERC – or not take a fixed rate – and sold them a tracker rate with no ERC instead, then Mr and Mrs Y would have paid much more in interest since 2021 and therefore would have been worse off overall even factoring in the ERC. That wouldn't have been foreseeable at the time, but is nevertheless relevant in deciding whether Mr and Mrs Y have actually ending up suffering a loss by taking a fixed rate. I'm satisfied they haven't.

I don't think it was unfair that Barclays charged the ERC in 2023. The fixed rate offer set out that it would be payable if the rate ended early, and set out that porting was subject to lending criteria at the time. Mr and Mrs Y's plan didn't meet Barclays' lending criteria, and therefore the ERC was chargeable if Mr and Mrs Y nevertheless chose to go ahead before the end of the fixed rate term.

Mr and Mrs Y have referred to another ombudsman's decision they've seen on our website. The facts of this complaint are similar to the facts of that one. That complaint wasn't upheld either, so I don't think there's any inconsistency. Mr and Mrs Y have pointed to a passage in that decision where the ombudsman said that Barclays doesn't publish all its lending criteria. That's true. But it's not obliged to.

With all that in mind, then, I don't uphold this complaint. I'm satisfied that Barclays never promised that Mr and Mrs Y would be able to port to the new property. If it should have told them that in 2021, and sold them a tracker rate with no ERC instead, Mr and Mrs Y would have been much worse off overall. And when Mr and Mrs Y did go ahead in 2023, it was fair that Barclays refused their porting application and charged the ERC when they redeemed before the end of the fixed rate term.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Y and Mr Y to accept or reject my decision before 8 April 2024.

Simon Pugh  
**Ombudsman**