

The complaint

Ms T has complained about her mortgage with Barclays Bank UK Plc. She says if she'd been given correct information in March 2023 then she would have selected a mortgage product without an early repayment charge (ERC). Instead she took a product with an ERC that she then incurred when she changed the mortgage from residential to buy to let (BTL).

What happened

Ms T took out her mortgage with Barclays in 2018 on a residential basis.

In March 2023 Ms T spoke to Barclays about applying for a new preferential rate product to take effect from 1 May 2023 when her existing preferential rate was due to end.

The mortgage offer was issued on 20 March 2023 and that indicated Ms T had applied for the new rate on an information only basis; that is, Barclays gave her information about the product but it didn't give her advice about what was best for her individual needs and circumstances. The offer said *'You must make your own choice whether to accept this mortgage offer.'* The mortgage offer showed the mortgage was just under £109,000 and was held on a repayment basis with a term of just over 30 years remaining. The new preferential interest rate product was described as *'a variable rate, which is 0.49% above the Bank of England Base Rate, currently 4.00%, to give a current rate payable of 4.49%'* until 30 March 2025, after which the offer confirmed the rate would be *'a variable rate, which is 3.49% above the Bank of England Base Rate, currently 4.00%, to give a current rate payable of 7.49%'* for the remainder of the mortgage term.

The mortgage offer also explained there would be an ERC of 1% of the total amount repaid if the mortgage was repaid early, either fully or partially. Supplementary Condition 1 provided that *'During the Early Repayment Charge period, this product may be rate switched to any Barclays fixed or capped rate product, subject to meeting the new product criteria and availability at the time of application, without incurring the Early Repayment Charge payable on this product. The rate switch will be subject to any product fee and rate switch fee applicable to the new product at that time. The new product may also have an Early Repayment Charge which will not have the benefit of the Switch & Fix.'*

The new preferential rate took effect from 1 May 2023.

Towards the end of July 2023 Ms T spoke to Barclays about transferring it from a residential mortgage to a BTL one, and she was told she would incur an ERC if she did so. Unhappy with that Ms T raised a complaint. Barclays explored the possibility of providing consent to let, which would have allowed Ms T to keep her residential mortgage (and preferential rate product) for a time, but it declined that application as it was noted that she didn't intend to return to live in the property so it didn't meet the consent to let criteria.

Barclays didn't uphold the complaint and so Ms T referred it to our service where it was looked at by one of our Investigators. Our Investigator's assessment was that the complaint shouldn't be upheld. She said that the move from residential to BTL meant a new mortgage contract was needed and so the option to not pay an ERC wasn't applicable, and Ms T

hadn't told Barclays that she was potentially going to want to change to a BTL mortgage. She said we couldn't consider hypothetical scenarios, such as what if Ms T had kept it as a residential mortgage but wanted to switch to a new tracker rate, but in any event the mortgage offer was clear that the ERC would only be waived if it was a switch to a fixed or capped rate product.

Ms T didn't agree and so the case was passed to me to decide.

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.

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

I understand Ms T feels Barclays and our Investigator were wrong to focus on the fact it was a change from residential to BTL that meant the ERC was incurred. She instead feels the complaint focus should be about the wording the Barclays staff member used to describe the ability to change to a new rate without incurring an ERC, saying that led her to believe she could switch to a tracker rate (not just a fixed or capped rate). She says that if she'd received the correct information, that is she could only switch to a fixed or capped rate (not another tracker rate) without incurring an ERC then she wouldn't have taken the tracker rate in question.

As our Investigator explained, we can't consider hypothetical scenarios. Ms T didn't incur the ERC because she was trying to move from the tracker rate to another tracker rate, she incurred it because she moved from a residential mortgage to a BTL one.

Ms T has said she wouldn't have taken the tracker rate if she'd known she couldn't move to another tracker rate without incurring an ERC, but the feature in question was called "switch and **fix**" [my emphasis]. Whilst Ms T asked if she could change to another deal that doesn't have an ERC, she didn't specifically say she was asking about whether she could move to another tracker rate. If she'd asked that, been told she could, and then had to pay an ERC when she later tried to move to another residential tracker product, then that would be a different complaint. But that isn't what happened here. The ERC was incurred because Ms T wanted to change a fundamental part of the mortgage contract; that is she no longer was going to be living in the property, so she was no longer eligible for a residential mortgage and instead needed to remortgage (albeit internally with Barclays) onto a BTL mortgage and product.

In addition, the March 2023 mortgage offer said '*...this product may be rate switched to any Barclays fixed or capped rate product*' so it was made clear the switch and fix only applied to switches to fixed or capped rate products, not variable ones (such as trackers). Ms T has asked what the purpose of the adviser was, but this wasn't an advised sale it was one where Ms T had to decide herself what the right product was, and in doing so she needed to provide detailed and specific questions and information about her intentions so the Barclays staff member could provide detailed and specific answers. The mortgage offer is an important document as it sets out the contract that Ms T was entering into, and that contract was clear that the switch and fix feature only applied for changes to fixed or capped rate products on the existing mortgage. If that wasn't how Ms T understood the feature to work then she needed to raise that with Barclays before the mortgage product went live in May 2023.

Ms T has said she had no intention, at the time she took the tracker rate, of renting the property and so she didn't discuss the possibility of a future change to BTL with Barclays. But Ms T also didn't, in the email trail, specifically ask about moving from tracker to tracker, and whether that was allowed, instead only asking about moving to another product without an ERC and whether that meant she could then redeem without paying an ERC which is a different question. Whilst fixed rates often have an ERC they don't have to have one, so it is possible Barclays could have released a later fixed rate, or capped rate, without an ERC that Ms T could have moved onto using her 'switch and fix' feature.

Having considered everything very carefully I don't uphold this complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 1 October 2024.

Julia Meadows

Ombudsman