

The complaint

Mrs L complains that Barclays Bank UK PLC gave her incorrect information about the early repayment charge (“ERC”) on her flat which was £6,000.00 not the £600.00 she was quoted.

What happened

Mrs L had an interest-only buy to let mortgage with Barclays for £307,795.00 which had a mortgage product with a fixed rate but subject to an ERC if the mortgage was redeemed early. Section 8 of the mortgage offer says that the ERC would be payable up to 30 November 2023 at a rate of 2% of the amount redeemed which on a full redemption would be £6,156.00

In 2023 Mrs L had to sell this flat as her husband was made redundant and she was on maternity leave so rang up Barclays about the ERC. Mrs L put the flat on the market. Mrs L says that it was a tough market at the time and got an offer in July and rang Barclays. Mrs L says that the Barclays adviser told her the ERC was £600. So, they went ahead and sold it before the ERC period elapsed. But then they were told that they needed to pay over £6,000.00 when they completed on 29 September.

Barclays accepts that in a phone call on 4 July that Mrs L and her husband were misinformed about the amount of the ERC. But Barclays says that the adviser set out the position correctly in a follow up email the same day. Barclays operated a concession on the ERC so that in the last 30 days of the period – in this case if redemption was made in November 2023 – the ERC would be waived. Mrs L could also redeem up to 90% of the outstanding balance within the final 90 days without incurring an ERC on a partial redemption. In its letter of 15 September, Barclays offered compensation of £350 for the distress and inconvenience that the misinformation on the phone call caused together with a refund of 50% of the ERC

Our investigator’s view

Our investigator recommended that this complaint should be upheld. She felt that had Mrs L been told the correct amount of the ERC in July that she would have delayed the sale of the flat by one month until 1 November 2023 and so recommended a full refund of the ERC. Barclays disagreed and asked for a review.

My provisional findings

As my view of this complaint differed from our investigator, I issued a Provisional Decision as set out below.

“Mrs L’s husband had been made redundant and Mrs L was on maternity leave and to meet these financial difficulties she decided to sell their flat. Mrs L says she was worried about the ERC – which is set out in the mortgage offer and phoned Barclays to discuss. From listening to the call Mrs L would have liked some reduction on the ERC given that they were financially struggling at the time. The adviser tells her that Barclays operates a concession as the mortgage product approaches its termination date. It’s not the clearest exchange of

information but Mrs L or rather her husband is given the incorrect information after a calculation is made that the ERC will be £600. Mrs L's husband asks for this in writing and the Barclays adviser then sends an email which sets Barclay's true position in respect of the ERC. That email reads:

"The ERC will be waived for part redemptions of up to a maximum of 90% of the mortgage balance where the customer has less than 90 days remaining on the ERC period of their existing period. Where greater than 90% of the balance is paid off in any single payment the full ERC will be applied automatically.

The ERC will be waived for full redemptions where a customer has less than 30 days remaining on the ERC period of their existing product."

My reading of that is that for a limited period, part redemptions – up to a certain amount will not attract an ERC but full redemptions will except (in this particular case) if the full redemption is after 1 November. That's fairly clear and as Mrs L would be redeeming in full and before 1 November the full ERC would be due. But that information differs from the figure in the phone call.

As the information wasn't clear Mrs L's husband rang on 6 July asking to see Barclays policy to check it. That's understandable given the mixed messaging he had received. The Barclays mortgage adviser was unable to assist Mr L and advised him to request the redemption statement after the beginning of September as that would be 90 days before the ERC term expired and would show the ERC payable.

So, by 6 July, Mrs L had mixed messages from Barclays as to what the ERC would be. Mrs L had found a purchaser for the property and in a difficult market proceeded with her sale. Although she sold within the 90-day period prior to the ERC expiring, as she redeemed the mortgage in full, as per Barclays's email of 4 July, she paid the full ERC.

My view on this differs from our investigator. Mrs L had the property for sale because of her personal circumstances. When she contacted Barclays she had a buyer, knew there was an ERC payable, and that the ERC would be about £6,000 but hoped it could be reduced. Barclays operated a concession. In the phone call there was some confusion about the terms of that concession, how it would work and what ERC would be payable. But that was clarified by Barclays, in writing the same day. I understand that with the mixed messages Mrs L wanted further clarification and on 6 July the adviser suggested that they ask for a redemption statement in early September. I appreciate that there were mixed messages but I don't consider it was reasonable for Mrs L, given the email which followed the phone call of 6 July to assume that the ERC would only be £600 if she redeemed the mortgage in full within the 90 day period.

Mrs L's husband took this from the initial call which I agree wasn't clear but the information in the following email was clear as set out above which says that full redemption in the 90-day period – excluding the last 30 days – will attract a full ERC. I believe that Mrs L wasn't convinced that she only had to pay £600 as her husband rang two days later to check. As it happened that adviser wasn't able to help and suggested they wait to September and request a redemption statement. The mixed messaging and lack of clarity wasn't good customer service and I agree that Barclays should pay compensation for that and £350 seems appropriate.

I have looked at whether Barclays should do more and whether it should refund the full ERC. The amount of the ERC was set out in the mortgage offer and Mrs L was under the terms of the mortgage liable to pay it if she redeemed the mortgage in full before 30 November and she has paid that. Barclays operated a concession and Mrs L could avail of that if she

redeemed the mortgage in full after 1 November, but she redeemed the mortgage before that date and can't avail of that.

I've considered whether it was reasonable for Mrs L to rely on Barclays statement that the ERC would only be £600 within the 60 days before 1 November and whether she suffered financial loss by relying on that statement when she could have completed after 1 November when no ERC would have to be paid.

There are two problems with that. Firstly, as I say above I don't consider that it was reasonable for Mrs L to believe that the ERC was only going to be £600.

Secondly, Mrs L doesn't actually say in her email setting out her complaint on 29 September 2023 that the timing of her sale was influenced by the information she got from Barclays. Mrs L originally contacts Barclays because she's under pressure from the purchaser who wants to exchange contracts in August /early September. In that email to us of 29 September 2023 Mrs L says that after she got the redemption statement in September she records " This was the worst week as the buyer threatened to pull out if we delayed completion." Mrs L has told us that this was a bad time to sell. She says "We were lucky enough to sell the flat in a very tough market which was at £15k less to what I paid 7 years ago " and this being a buyers market the indications on the file are that the date of completion was in the hands of the purchaser which Mrs L was facilitating.

There is no indication that the sale could be adjusted to meet Mrs L's requirements in terms of what was the best time to sell to minimise the ERC. The only way that Mrs L could avoid the ERC was if the sale took place after 1 November. But Mrs L in her call with Barclays on 4 July had said this wasn't an option because of the purchaser's requirements. So, the evidence doesn't support the argument that if Barclays hadn't misled Mrs L, she could have adjusted the completion date to minimise the ERC. So, whilst I agree that Mrs L got mixed and confusing messages from Barclays and that its service could have been better, I don't agree with our investigator that the full refund of the ERC should be made. Instead, I'm of the view that Barclays acted fairly here and offered fair compensation by offering to refund 50% of the ERC and £350 for Mrs L's distress and inconvenience. "

I issued my Provisional Decision and invited submissions from Mrs L and Barclays before issuing my final decision. Barclays accepted my decision and Mrs L made further submissions which I refer to below.

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.

In response to my Provisional Decision, Mrs L made the following points which I summarise here :

- Barclays initial phone call contained a blatant error and not mixed messaging and directly influenced her decision to proceed with the sale.
- The decision speculates on what she may have done differently if informed correctly.
- The decision glosses over the immense financial pressure she was under which is crucial in understanding why she urgently needed to sell the property.

- As a customer in a vulnerable financial position, she should have been able to trust the information given by her financial provider and I don't adequately address this breach of trust issue.
- The property in question is in an area of high demand and the comment Mrs L made on the phone "*lucky to sell*" was taken out of context and I referenced it in a tone which is misguided and misinformed.
- Mrs L produced evidence that she had comparable offers for the property during the height of the Covid-19 Pandemic showing she had viable options undermining the claim that she was bound to a specific buyer's timeline.
- There was an emotional aspect to the breach of trust leading to sleepless nights, anxiety and a strain on family relationships.
- Mrs L is concerned that the different conclusions reached by myself and the initial investigator reflects a disparity in understanding and empathy towards her situation and asks me to reconsider the potential influence of unconscious bias and review the decision on that basis.

I've considered Mrs L's further submissions but they don't alter my view that my Provisional Decision represents a fair outcome to this complaint. Mrs L knew what the ERC was from the mortgage offer, contacted Barclays hoping to get a discount on that amount. Barclays operated a concession and the Barclays adviser gave her an incorrect interpretation of how the concession operated on which Mrs L's husband calculated that the ERC would be £600. Shortly afterwards an email followed from Barclays setting out how the concession operated. That indicated that the amount of the calculation was incorrect. I don't consider that Mrs L relied on the incorrect calculation as her husband phoned a few days later to check and wasn't provided with any confirmation of the £600 figure. I don't consider the mistake in the initial phone call was a breach of trust but an error in the interpretation of how the concession operated by the Barclays mortgage adviser.

Even if I agreed that Mrs L relied on what was said in the phone call, the evidence doesn't support the view that if Barclays hadn't misled Mrs L, she could have adjusted the completion date to minimise the ERC. I've set out the basis of my conclusion on this above and Mrs L's further submissions when weighed against that evidence don't alter my view.

This was a case unfortunately of poor communication in the initial phone call. That would have been disappointing. But I believe that Barclays has offered fair compensation for that. I've come to a different conclusion than our investigator. I've noted Mrs L's concerns about how I reached my conclusions. I reviewed the decision in light of those. But, having done that, I believe that my Provisional Decision is a fair and reasonable outcome to this complaint.

My final decision

Barclays Bank UK PLC has already made an offer to settle this complaint and I think the offer is fair in all the circumstances. So, my decision is that the bank refund Mrs L 50% of the ERC she paid and pay her £350.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 18 June 2024.

Gerard McManus

Ombudsman