

The complaint

This complaint relates to a transfer of equity and re-mortgage with Barclays Bank UK PLC in 2023. Mr W believes that an early repayment charge shouldn't have been charged when he re-mortgaged his jointly owned family home into his sole name with an associated transfer of equity to him.

Mr W raised the complaint in his sole name, but as the matter relates to a charge applied to a joint account and associated implications for both borrowers, Mrs W was asked to join the complaint. She consented to do so. However, as all correspondence has been with Mr W, I will refer predominantly to him in what follows.

What happened

In 2023 Mr W wanted to remove Mrs W from their joint mortgage with Barclays as part of the financial settlement of their divorce. The mortgage was made up of six sub-accounts.

Mr W discussed his needs with Barclays and it agreed in principle to the change, but when it completed an affordability check, it didn't think he could afford the full mortgage balance on his sole income. As such, it required him to re-mortgage and reduce the amount of borrowing by around £7,000 and also to repay some unsecured debts.

When Mr W made his mortgage application he spoke to a mortgage adviser (MA). He had funds to reduce the mortgage by more than Barclays required – around £25,000. He introduced the concept of repaying one of the sub-accounts (ending 6800) with a balance of around £24,000 as it had a much higher fixed interest rate than any of the other sub-accounts, and he wanted to make sure the new mortgage payments were comfortable. The MA explained to Mr W that if he paid off the whole sub-account he would have to pay an early repayment charge (ERC).

There was discussion about how much that ERC would be and the MA encouraged Mr W to spread the £25,000 he wanted to pay off the mortgage over several of the sub-accounts, in order to remain within the 10% overpayment allowance and avoid paying an ERC at all. Mr W made the decision that he wanted to pay off the sub-account with the higher interest rate and would "... take the hit on the penalty." The application moved on at that point, but it was left in the position that Mr W could change his mind about where his payment would be directed. This meant that Mr W was only porting the balance and interest rate product associated with five of the sub-accounts to the new mortgage.

The mortgage advice was documented as:

'All details of the mortgage are on the information sheet REPAYMENT- I recommend a repayment mortgage as you like to see the balance coming down and know repaid at the end. PRODUCT TERM AND FEATURE- I recommend you port and keep all the fixed rates of the current mortgage bar the £24,822 which paying off separately [sic] as happy with these and tied into penalties. You as still like the stability to know what s [sic] coming out and to budget as think rates unstable at the moment. PENALTIES- You are happy to tie in for the remainder of the 3 different fixed rate periods as no plans to overpay more than product

restrictions or move without porting in this time aware of penalties if do. ... LOAN AMOUNT- I recommend a mortgage amount of £314,059 as this is the amount needed to remove [Mrs W] off the mortgage and change to [Mr W] name alone, reduce one part with savings also.

The mortgage offer of 29 June 2023 sent to Mr W and his solicitors detailed an additional condition:

'1. Provided this new mortgage completes simultaneously with the redemption of account number [ending 5920], [ending 6995], [ending 1581], [ending 6836], [ending 2169], any early repayment charge, clawback of cashback and mortgage exit fee shown on the redemption statement for the existing mortgage will not be payable and should be excluded from the redemption monies sent to us. This is only applicable if your new mortgage is for at least 75% or more than your current mortgage. If the new mortgage is for less you should seek confirmation from us as to the amount you will be entitled to deduct from the redemption money. The Solicitors must advise us when sending the redemption monies that the existing mortgage product is being ported and quote both the old and new mortgage account numbers.

Mr W's solicitors asked for a redemption statement, which was sent on 14 August 2023. This documented total ERCs of almost £16,000, which was the total of the ERCs that would be payable on all of the sub-accounts. Mr W questioned this with the MA on the same day.

Mr W's solicitors also contacted Barclays on the same day to question the ERC. It was confirmed to the solicitors that if their client was porting, then the ERC didn't need to be paid and the solicitors should deduct that amount when making the payment to Barclays.

A few days later the MA responded to Mr W and confirmed that ERCs were always documented on the redemption statement. However, the additional condition on the mortgage offer overrode that.

Following the new mortgage being advanced and payment being made to the existing one, Mr W questioned with the MA why the existing mortgage was still showing with a balance of the amount of the total ERCs detailed on the redemption statement when he logged into mobile banking. The MA responded and explained that it was common for the system to take time to catch up and realise that ERCs were not being charged, as this had to be manually input. She said she would check that day and if a balance was still showing she would put a task into the system for the relevant team, so it was sorted out. A couple of weeks later the MA confirmed to Mr A that the matter was in the relevant team's hands, but she would raise it with her line management, but it might need a complaint to be raised to get the issue resolved.

In the meantime, the relevant team at Barclays looked into the matter and established the ERC that remained outstanding as a balance on the joint mortgage was that for the sub-account Mr W had chosen to repay in full. Barclays wrote to Mr W's solicitors and explained that not enough money had been transferred. It told the solicitors how much needed to be paid to clear the mortgage.

Mr W's solicitors were chased by Barclays twice for payment of the ERC. When no response was received, Barclays reactivated the account on 25 October 2023, which meant that it would be reported on Mr and Mrs W's credit files and payments would be expected to be made. Barclays also stopped the charge relating to the existing mortgage being released.

A complaint was raised about the situation and Barclays responded in a letter of 13 October 2023. It confirmed that Mr W hadn't ported all parts of the existing mortgage – he had

chosen to pay one of them off, which was confirmed by the mortgage offer only detailing the other five sub-account numbers. As such, it rejected the complaint. However, it acknowledged that it could have made this clearer in the documents, which caused confusion. As such, it offered Mr W £150 compensation.

Mr W wasn't satisfied with Barclays response and asked this Service to look into his complaint. When he did, he explained that Barclays had decided which account the £25,000 payment was allocated to. Had he known that allowing Barclays to select the sub-account would incur an ERC, he said he would have made the decisions himself and spread the payment over the various sub-accounts so that it fell within the overpayment allowance.

One of our Investigators considered the complaint, and he recommended that it be upheld. He highlighted that it had been confirmed on three occasions in the weeks before redemption that no ERC was payable. The Investigator was also satisfied that had Mr W been aware of the consequences of paying off one of the sub-accounts completely, and not spreading the payment to reduce the total borrowing over all six sub-accounts, he would have done the latter. As a result, the Investigator recommended the ERC be waived, any adverse data removed from Mr W's credit file, plus Barclays should pay the compensation it had already offered.

Mr W accepted the Investigator's recommendation, but Barclays did not. As agreement couldn't be reached, it was decided the complaint should be passed to an Ombudsman for consideration.

I issued a provisional decision on 2 August 2024, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'Having listened to the recording of the conversation Mr W had with the MA when he applied for the new mortgage, I am satisfied that not only was repaying the sub-account ending in 6800 Mr W's idea, but also that he was made aware more than once that doing so would mean that he would have to pay an ERC. In addition, the MA tried to persuade Mr W to spread the payment he wanted to make across more than one sub-account, using the overpayment allowance, in order to avoid him having to pay an ERC. Numbers were discussed and the concept explored, but Mr W told the MA that he wanted to go ahead on the basis of the sub-account ending 6800 being repaid. This was confirmed in the written recommendation.

On this basis, I can only find that Mr W made the decision to repay the sub-account and made that decision in the full knowledge that it would incur an ERC. I am also satisfied he knew approximately how much the ERC would be.

The mortgage offer then detailed the sub-accounts involved in the interest rate product port. The one ending in 6800 was not included in this list, as it was being repaid and the product was not being ported. It would appear there was some confusion on the part of Mr W's solicitors, as it doesn't appear to have known that Mr W was repaying one of the sub-accounts when he took out the new mortgage. It would have been expected that Mr W would have informed the solicitors that this is what was happening when he appointed them to deal with the matter on his behalf.

Overall, I can't find Barclays did anything wrong in charging the ERC on the sub-account ending 6800. This means that the amount Mr W's solicitor paid Barclays was less than it should have been. Barclays was correct in treating this as a shortfall in payment and, when the shortfall was not paid, reactivating that sub-account on the mortgage.

However, as Barclays has acknowledged, it could have been clearer in its communications following the shortfall being identified. It would have been helpful if it had explained to Mr W and his solicitors how the shortfall had come about. It would also have helped if the MA had reminded Mr W that he had to pay the ERC on one of the sub-accounts, and not answered on what appears to be a generic basis assuming he was aware of what he had to pay. However, I consider the £150 Barclays has offered as compensation for the effect of this poor communication is appropriate and proportionate in the circumstances.'

Mr W and Mrs W said they were disappointed with my conclusions. They suggested that Barclays may have been selective in the call recordings provided so that its narrative was supported. Mr W went on to reiterate points about his interactions with the MA both before and after his application had been submitted. While Mr W said he didn't remember the contents of the advice call, he accepted what I had said about the discussions. Mr and Mrs W also questioned that the ERC that would be paid was not documented separately following the advice and felt that this could not be in line with the Regulator's requirements.

Barclays accepted the provisional decision.

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 note Mr W's comments about conversations he had with the MA and that different options were discussed over time. The telephone call I relied on when I reached my conclusions is that in which Mr W's application was made and the decision about what interest rate products he was going to port, or more importantly, not port to the new mortgage was made. Having listened to the recording again, I remain satisfied that Mr W was aware when he applied for the transfer of equity mortgage that he was not porting one of the interest rate products and that he would have to pay an ERC because of that.

Mr W again mentioned that he had three pieces of communication that state there would be no ERC payable. I commented on this in my provisional decision, but I would reiterate that those email exchanges are open to interpretation, depending on the context they are viewed from. When answering Mr W's concerns the MA knew he was aware the ERC was payable on the sub-account being fully repaid and at the point he contacted the MA, the mortgage account was showing an ERC figure that covered all of the interest rate products. In that context, I don't consider the responses the MA gave should reasonably be interpreted as telling Mr W that he didn't have to pay the ERC on the sub-account that had been repaid. Furthermore, even if Mr W had interpreted the responses in the way he has suggested, these answers were given months after Mr W had decided what to do in relation to the porting of interest rate products and could not have influenced his application.

Mr W has said that he believes Barclays should have sent him separate communications detailing the ERC associated with the sub-account he had decided to repay. This isn't something that would be normal practice or required by the Regulator. Mr W and Mrs W were given clear information in the mortgage offers they accepted about there being an ERC associated with the interest rate products they had selected, when it was payable and how it would be calculated. Monetary examples of how much the ERC could be were also included in the mortgage offers. The next time the ERC would be expected to be documented would be in the redemption statement. That is what Barclays did.

While Mr W has repeated he was reassured that he wouldn't pay an ERC at all, as I have confirmed, that is not what the evidence from the time of the application shows. It was made

very clear to him in the telephone conversation when his application was made, that an ERC would have to be paid. Mr W made a rough calculation himself of the amount he would have to pay, and decided he would “take that hit” in order not to have the higher interest rate attached to his new mortgage arrangements. This was despite the MA trying to persuade Mr W to spread the payment he wanted to make across several of the sub-accounts in order to avoid paying an ERC.

I have considered everything both parties have said and I have reviewed the file again in its entirety. Having done so, my conclusions remain the same.

My final decision

My final decision is that the offer made by Barclays Bank UK PLC is sufficient to compensate Mr W for the fact that it could have been clearer in its communications at times. As such, Barclays Bank UK PLC should settle the complaint by paying £150 compensation to Mr W.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W and Mrs W to accept or reject my decision before 13 September 2024.

Derry Baxter
Ombudsman