

## **complaint**

Mr and Mrs P complain that Barclays Bank Plc failed to tell them that an application to port (transfer) their mortgage to a new property could be declined. As a result they incurred an early repayment charge (ERC) of £9,623.45, which they are asking Barclays to refund.

## **background**

Mr and Mrs P's previous Barclays mortgage had been ported in December 2011. On that occasion they paid and were refunded the ERC when their new property purchase completed in April 2012.

In August 2013, Mrs P called Barclays to discuss porting the mortgage again. Mrs P says she wasn't warned or prepared that the application to port might be declined. She was repeatedly advised that it would not be a problem to port the mortgage.

Mr and Mrs P's property sale completed in October 2013. They approached Barclays in January 2014 to discuss a new mortgage and were advised that they could borrow up to £125,000. The mortgage advisor did confirm that they may only be able to borrow £120,000 but reassured them everything was fine. The application was returned with a maximum loan of £111,000. After referral to underwriting, this was again decreased to £15,000, because of the type of income they received.

So Mr and Mrs P took out a mortgage with another lender to buy their new property, and in doing so were unable to receive a refund of the ERC. Mr and Mrs P complained to Barclays, asking it to refund the ERC. Barclays declined to do so. It said Mr and Mrs P had been told the application to port was at its discretion.

The complaint was considered by one of our adjudicators. She noted that call recordings weren't available. But she did note that Barclays had acknowledged it had provided misleading information about the ERC. It had offered £400 for this and for any inconvenience Mr and Mrs P had been caused.

But the adjudicator also noted that Mr and Mrs P had actually benefitted from moving to a new mortgage lender – even taking into account the ERC – because they are now paying a lower rate of interest. In the circumstances, the adjudicator asked Barclays to pay £700 for the trouble and upset Mr and Mrs P had been caused, and to refund the valuation fee of £265 they had to pay.

Mr and Mrs P disagreed, and asked for an ombudsman to review the complaint. They believe Barclays should reimburse the ERC to them.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I agree with the adjudicator, for broadly the same reasons.

Barclays acknowledges Mr and Mrs P were given misleading information. I'm also satisfied that, having ported their mortgage in the past without a problem, Mr and Mrs P wouldn't have been expecting their new request to be treated any differently.

Generally where a business has made an error – as Barclays has done here – we try to put the customer back in the position they'd have been in, had the error not been made.

Mr and Mrs P said that, if they'd known they wouldn't have been able to get a new mortgage from Barclays, they'd have stayed in their old home until after July 2018, when no ERC would apply. I understand Mr and Mrs P told the adjudicator that they were in a position to do this.

I'm satisfied Barclays was entitled to decline to lend Mr and Mrs P the amount they wanted. This was a legitimate exercise of its commercial judgment. Barclays' notes show that it took into account all relevant factors when deciding not to offer Mr and Mrs P the mortgage they needed.

So their only options, in all the circumstances, were to stay in their old home, or to take out a mortgage with another lender so they could move. I now have to consider what their position would have been, if they'd not moved house.

The Barclays' mortgage rate of 5.59% was fixed until 31 July 2018, with an ERC which ran to that date.

The interest rate they are now paying to their new lender is fixed at 3.59%. This means that between April 2014 when they bought their new home and July 2018 (when their Barclays product would have reached the end of the fixed-rate period), Mr and Mrs P will be charged interest of £17,950 with their new lender. They also had a £999 product fee and had to pay £9,623.45 to Barclays for the ERC. So the interest + product fee + ERC makes a total sum of £28,572.45.

If Mr and Mrs P had stayed with Barclays until July 2018, they would have incurred interest totalling £42,465.

So in the circumstances, I'm satisfied that the move to a new lender hasn't resulted in Mr and Mrs P incurring any financial loss – and in fact has improved their overall position.

This means that I can't order Barclays to reimburse the ERC, because to do so wouldn't be fair, given that Mr and Mrs P have improved their position by moving to a new lender. They'd have incurred a product fee with a new Barclays mortgage, but no valuation fee, so Barclays should refund this.

### **my final decision**

My decision is that I uphold this complaint in part. In full and final settlement Barclays Bank Plc must pay Mr and Mrs P £700 compensation for the trouble and upset they've been caused. Barclays Bank Plc must also reimburse the valuation fee of £265 Mr and Mrs P paid on their new mortgage application.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs P to accept or reject my decision before 9 July 2015.

Jan O'Leary  
**ombudsman**