

## **The complaint**

This complaint is about a mortgage Miss B and Mr F used to hold with Barclays Bank UK PLC. They repaid it in September 2022, incurring early repayment charges (ERCs) because they were in fixed interest rate products at the time. They then applied for a new mortgage with the aim of completing their purchase within 90 days.

This would have allowed them to port the interest rate products from the old mortgage to the new one, thus qualifying for a refund of the ERC. However, they complain that Barclays took so long to issue the new mortgage offer that they didn't have enough time to complete the purchase within 90 days. Miss B and Mr F are seeking a refund of the ERCs.

## **What I've decided – and why**

The broad circumstances of this complaint are known to Miss B and Mr F and Barclays. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat the details here.

Our decisions are published, and it's important that I don't include any information that might result in Miss B and Mr F being identified. Instead I'll focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us. It's for me to decide what the material issues are that will affect the eventual outcome. It's also my judgement on what evidence I need to see and consider, in order to reach a fair decision.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

If I'm to find in Miss B and Mr F's favour, I have to be satisfied of two things:

- that there were specific errors and omissions on Barclays' part in how it handled the mortgage application that unduly delayed the mortgage offer being issued; *and*
- that the delays resulting from such errors and omissions are the sole or primary reason Miss B and Mr F didn't complete their purchase within the 90-day window that would qualify them for a refund of the ERC.

The latter is not entirely a binary question. Ultimately, the test I have to apply is this: notwithstanding other factors, but for any shortcomings there may have been on Barclays'

part, is it more likely than not that Miss B and Mr F would have completed their new home purchase within 90 days of repaying their previous mortgage?

Our investigator wasn't persuaded that was the case, and having considered everything that both parties have said and provided, I'm not either.

The starting point here is that that under the terms of the interest rate products that applied to different sections of the existing mortgage, Miss B and Mr F would be liable to pay the ERCs if they redeemed that mortgage before 30 April 2023 and 31 July 2023 respectively. It's reasonable to conclude that they knew that when they took the decision to sell and look for a new home.

Miss B and Mr F have said 90 days isn't enough time to complete a house purchase, especially when Christmas and New Year holidays are taken into account. But the 90-day window was part of their existing mortgage contract, and they chose the time of year to seek to move house.

Miss B and Mr F have told us the deadline Barclays gave them for completing on the new mortgage in order to qualify for a refund of the ERCs was 23 January 2023. The new mortgage offer was valid until 28 April 2023, so I've inferred from this that 23 January 2023 was when the 90-day window for porting the interest rate products from the old mortgage ran out. So they will have known, or ought reasonably to have known, that was the deadline when they started the transaction in October 2022.

Arranging a mortgage isn't an exact science; nor is it a mechanical process. There may be anticipated timescales for how long an application might take, but occasionally things take longer than expected. Also, queries and issues might arise that couldn't have been predicted at the outset, and which either delay the application or take it in an unexpected direction.

Here, Barclays has said that it could identify a 19-day period during which it didn't progress the case as quickly as it could have done, and for that it has offered them £200 compensation. I'll come back to that shortly, but in the meantime, Barclays has also pointed to periods where Miss B and Mr F might have responded more quickly to requests it made for information to help it assess affordability before making the decision to lend.

It's arguable that this information wasn't strictly necessary, and that Barclays could have made its lending decision without assessing affordability. The rules of mortgage regulation allow it to do that in certain situations, and Miss B and Mrs F's application looks to be one of those where that was the case. But I don't think this is what the outcome of the complaint turns on. I'll explain why.

Even allowing for the shortcomings I've identified above, Barclays issued a new mortgage offer on 6 December 2022; that's 48 days after the application started. In itself, that's not an excessively long time in which to approve a mortgage and issue an offer. And even if it could have been done sooner still, for the reasons I outlined earlier, there were still 46 days left for the other elements of the purchase transaction, all of which were entirely outside Barclays' control, to fall into place.

All of those elements will have been running alongside the mortgage application from the outset, and could continue to progress after the offer had been issued, even allowing for the Christmas and New Year period. I'd reiterate the point I made earlier that Miss B and Mr F chose when to begin the transaction, and so could have anticipated the potential impact of the holiday period.

What's missing from the evidence from Miss B and Mr F is any context as to the timing of their purchase being aborted, or the reason behind it. Without that, I'm not in a position to attribute the failure to complete in time to qualify for a refund of the ERCs solely or even primarily to any shortcomings on Barclays' part. The transaction might have fallen through for reasons entirely unconnected to how long Barclays took to issue the offer, and I can't avoid the conclusion that it could just as likely have been aborted if the offer had been made sooner.

The fact remains that, notwithstanding the delay by the bank, by 6 December 2022 Barclays had done what it needed to do – issue a mortgage offer. If the mortgage offer was the only thing holding up the transaction, then at that point contracts could have been exchanged and the purchase could have been completed before 23 January 2023. But the fact that the transaction subsequently fell through suggests that the reason for this is unrelated to the timing of the mortgage offer.

In the circumstances, there is no basis on which it would be fair or reasonable for me to order Barclays to reimburse the ERC.

For the delay that Barclays identified and owned up to in its final response, I consider £200 compensation was a fair and reasonable offer, given the absence of anything to persuade me that this materially changed the eventual outcome.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see how strongly Miss B and Mr F feel. That's a natural, subjective reaction, and entirely understandable.

Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively, sometimes taking a step back from the minutiae, focussing on the broader picture. That's what I've done.

### **My final decision**

My final decision is that this complaint should be settled by Barclays Bank UK PLC paying Miss B and Mr F £200. I make no other order or award.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B and Mr F to accept or reject my decision before 2 January 2024.

Jeff Parrington

**Ombudsman**