

The complaint

Mr G and Mrs I complain that Barclays Bank UK PLC gave them misleading information about how long they would have to pay an early repayment charge (ERC) on their mortgage.

What happened

Mr G and Mrs I have a mortgage with Barclays. They took a five year fixed rate in 2018, expiring on 31 October 2023.

In 2022, concerned about the impact of rising interest rates, they decided to end their fixed rate early and take a new ten year fixed rate. They consulted a mortgage broker to help them with the application.

Barclays told Mr G and Mrs I's broker that they had 150 days to pay the ERC, so the broker submitted an application on their behalf. Barclays then said that in fact a rate switch offer would only be valid for 90 days, and that Mr G and Mrs I would need to pay the ERC within 30 days of receiving a payment request. They would have to pay it direct; it couldn't be added to their mortgage balance without a full affordability assessment. An affordability assessment isn't usually needed on a rate switch application as the balance isn't increasing – but adding the ERC would increase the balance.

On 20 October 2022 Barclays told Mr G and Mrs I that the ERC would be around £22,000 and said they would have 30 days to pay it for their rate switch application to be effective.

Mr G and Mrs I complained about the misleading information they'd been given. Following their complaint, Barclays told their broker that they had 30 days to pay the ERC – but again told Mr G and Mrs I direct that they had 150 days.

Barclays extended the deadline for paying the ERC to 31 December 2022. It offered £200 compensation for the contradictory information it had given about the deadline for making payment. Mr G and Mrs I paid the ERC and their product switch completed in January 2023, taking effect from 1 March 2023.

Mr G and Mrs I brought their complaint to us. They said that Barclays had repeatedly given them misleading information. It had repeatedly delayed in communicating with them, both about the ERC and their complaint, and not responded when it said it would. They said it only confirmed the deadline for making payment in mid-December, leaving them a short time over the festive period to find a large sum of money. And they complain that Barclays wouldn't email them its response as they requested. To resolve their complaint they want Barclays to refund the ERC.

Our investigator agreed that Barclays had provided poor service and given Mr G and Mrs I conflicting and misleading information. He didn't think it would be fair to refund the ERC, since Mr G and Mrs I would always have had to pay it. But he said it should increase its offer of compensation to £400.

Mr G and Mrs I didn't agree and asked for an ombudsman to review their complaint. They

said that the ERC was only 3% of their mortgage balance, so adding the ERC to the balance wouldn't have made a material difference. They said they'd understood they were buying a product which allowed them 150 days to pay the ERC, and that wasn't correct, so the new rate had been mis-sold to them. They said that appropriate compensation for their distress should be measured in the thousands not the hundreds of pounds. And they said Barclays should be made to refund the ERC to mark the unacceptability of its actions. They said a £400 fine wasn't significant enough to punish Barclays.

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.

There's no dispute that Barclays gave Mr G and Mrs I misleading information and that its service was poor. It gave them contradictory information about when they would have to pay the ERC by, it took too long to respond to their complaint, and it left them with a short time in which to pay the ERC – even after it extended the deadline. None of that is in dispute.

The question for me to resolve in this decision is what Barclays needs to do to put matters right. In order to do that, I'll first set out the basis on which the Financial Ombudsman Service resolves complaints. We're not the regulator – that's the Financial Conduct Authority – and it's not our role to oversee firms' general performance, or to punish them when things go wrong.

The role of the Financial Ombudsman Service is to resolve individual complaints – which as an ombudsman I am required, under our rules, to do by reference to what appears to me to be fair and reasonable in all the circumstances. Where, as here, I uphold a complaint I am empowered to award fair compensation. The purpose of compensation is to compensate the complainant, not punish the firm – it is to put right the impact of what the firm did wrong. In some cases that might be by an award of compensation for financial loss; in others it might be by an award of compensation for non-financial loss, to recognise and compensate for the distress and inconvenience caused by the firm's failures.

It's therefore not appropriate for me to measure my award by what Mr G and Mrs I – or I – might consider the scale of Barclays' wrongdoing. Rather, my award is determined by the impact of that on Mr G and Mrs I.

Dealing first with financial loss, I'm not persuaded there was any. Mr G and Mrs I decided to take a new interest rate, knowing they'd have to pay an ERC, to protect themselves against future rate rises. They ended up with the rate they wanted, having paid the ERC they knew they would have to pay. They haven't been caused any financial loss. I don't think it would be fair and reasonable to require Barclays to refund the ERC when had nothing gone wrong Mr G and Mrs I would still have had to pay it. There was no way Mr G and Mrs I would have been able to take a new rate starting before October 2023 without having to pay an ERC, and so it wouldn't be fair to put them in a better position than they would have been in had nothing gone wrong.

I've noted that Mr G and Mrs I say that the ERC could have been added to their mortgage balance. They say that as it was only 3% of the mortgage balance doing so wouldn't have made a material difference and wouldn't have required a separate application. But I'm afraid that's not correct.

The regulator's rules for mortgages are set out in the FCA Handbook, in the section headed MCOB. MCOB 11.6.2 says that before agreeing to vary an existing mortgage contract a firm must assess whether doing so would be affordable and not do so unless it is. MCOB 11.6.3

says that this requirement does not apply if the variation would not involve the customer taking on additional borrowing (other than a product fee) and would not involve any other change material to affordability (such as changing the mortgage term).

What this means is that, under the rules, Barclays could offer Mr G and Mrs I a new interest rate without an affordability assessment. But it could not add the ERC payable on the end of the previous rate to the balance without an affordability assessment, since that would involve taking on additional borrowing – that is, an increase in the mortgage balance. I appreciate Mr G and Mrs I don't think a 3% ERC would make a material difference. But that's not something allowed for in the rules – *any* increase in balance (other than adding a product fee for a new interest rate) requires an affordability assessment. This means that Barclays could not simply have added the ERC to their outstanding balance, unless they made – and passed – a separate application to increase their mortgage balance by the amount of the ERC which included a full affordability assessment.

I don't think the new rate was mis-sold to Mr G and Mrs I. Ultimately they got what they wanted – a new 10 year fixed rate – and they paid the ERC they always understood they would have to pay. The process by which that would need to happen was misrepresented to them, but the product itself was as they expected and wanted.

Mr G and Mrs I would always have needed to pay the ERC to obtain the rate they wanted. But they thought they had more time to do so than turned out to be the case. That ultimately didn't prevent them paying the ERC, but it made the process of doing so considerably more stressful and difficult than it would otherwise have been. And so, while – as I've explained – there was no financial loss, Barclays did cause them distress and inconvenience for which it's fair it compensates them.

Our website sets out some guidance on awards for distress and inconvenience, and the sorts of awards that might be appropriate for different levels of impact.¹ I've noted what Mr G and Mrs I say about this. This was an already stressful time as Mrs I was expecting their child. They were caused a substantial amount of confusion and upset. Barclays gave them conflicting information, didn't contact them when it said it would and ultimately left them with a short window, including the festive period, in which to pay the ERC. This took place between October and December 2022.

I don't agree it would be appropriate to take into account Mr G's professional hourly rate here. The mortgage process was done in a personal, not a professional, capacity and I haven't seen any evidence that the problems with it resulted in lost work or income.

Instead, I've taken into account the guidance on awards set out on our website. The guidance says that an award of up to £300 might be appropriate where the firm's mistake causes more frustration and annoyance than might be expected as part of everyday life with an impact that last some days or weeks and causes some distress or inconvenience. The guidance says that an award of more than £300, up to £750, might be appropriate where the impact caused considerable distress and / or significant inconvenience that needs a lot of extra effort to resolve and typically lasts many weeks or months.

Taking that into account, I agree with our investigator that an award in the band between £300 and £750 is fair compensation in this case. It recognises that Mr G and Mrs I were caused upset and annoyance that lasted several weeks and came at an already difficult time for them. I'm satisfied £400 is fair compensation in all the circumstances.

¹ See <https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience>

My final decision

My final decision is that I uphold this complaint and direct Barclays Bank UK PLC to increase its offer of compensation to Mr G and Mrs I to £400 in total.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs I to accept or reject my decision before 18 December 2023.

Simon Pugh
Ombudsman