

## The complaint

Mr and Mrs C's complaint is that they are unhappy they couldn't port their mortgage with Barclays Bank UK Plc to a new property, and so they had to pay an early repayment charge when they paid off their mortgage. They also consider the amount of the ERC is unfair and didn't represent a reasonable pre-estimate of the costs to Barclays of them exiting their product early.

## What happened

Mr and Mrs C took out their mortgage of £324,000 with Barclays at the end of 2019. It was arranged on a repayment basis over 30 years. Attached to the mortgage was a fixed interest rate product, which had an early repayment charge (ERC) of 3% if the mortgage was repaid before the end of its term on 31 October 2024.

The mortgage offer explained that Mr and Mrs C might have the option to transfer the outstanding balance of the loan to another property, but that was subject to the new property and their circumstances meeting Barclays' lending criteria as it was at the time of application. Barclays has evidenced that its lending criteria regarding the location of any property to be mortgaged is that it had to be located in the UK.

In 2023 Mr and Mrs C decided to move home and applied to Barclays for a new mortgage on their proposed new home and asked to port the existing product to the new mortgage, thereby avoiding having to pay the ERC. When Mr and Mrs C told Barclays of their plan, it confirmed that it didn't lend on properties where they were proposing to buy, as it was outside the UK. As such, when the existing mortgage was repaid, an ERC would be payable.

Mr and Mrs C complained and asked Barclays to waive the ERC, given the circumstances. Barclays responded to the complaint in its letter of 29 March 2023. It didn't uphold the complaint, as it hadn't made a mistake. Barclays highlighted the mortgage offer Mr and Mrs C accepted had detailed the ERC. In addition, the terms and conditions had confirmed that properties outside of mainland UK did not meet its lending criteria.

Mr and Mrs C were not satisfied with Barclays' response and referred the complaint to the Financial Ombudsman Service. When they did so they also complained that the amount of the ERC meant it was a penalty on them. They said they didn't think it was a genuine pre-estimate of the costs Barclays would incur if they repaid their mortgage early. As such, Mr and Mrs C said the ERC was not legally enforceable.

One of our Investigators considered the complaint, but he didn't recommend that it be upheld. He was satisfied Barclays had reasonably applied the ERC when Mr and Mrs C repaid their mortgage and that it was a reasonable pre-estimate of the cost to Barclays of early repayment.

Mr and Mrs C didn't accept the Investigator's conclusions. They expressed dissatisfaction that they were not given access to the methodology of how Barclays had estimated the ERC. They said they believed this failed to comply with its requirement to 'make charges transparent to customers'. They also said they don't consider they were treated fairly as the

ERC was unfair and excessive, and they believe it didn't reflect the cost to Barclays of early termination of the product, as most of this would be the lost interest payments over the remainder of the term. Mr and Mrs C consider the ERC should be on a sliding scale due to this, as the losses Barclays would make in the first year would be far more significant than they would be in the fourth or fifth year. Furthermore, they put forward that any loss Barclays suffered due to them ending the mortgage early, should be offset by any benefit it derived from the mortgage before that point.

The Investigator considered what Mr and Mrs C had to say, but he didn't change his conclusions. As such, it was decided the complaint should be passed to an Ombudsman.

### **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.

The rules we operate under say that in doing that I must take into account, amongst other things, the relevant rules and regulations. The relevant rules for residential mortgages are set out in the Financial Conduct Authority's Mortgages and Home Finance: Conduct of Business sourcebook (MCOB).

MCOB includes provisions about ERCs. In summary, they say that an ERC must be able to be expressed as a cash value and must be a reasonable pre-estimate of the costs resulting from early termination of the mortgage. However, a lender can choose how it calculates an ERC and can calculate the same level of ERC across a group of mortgages of similar type, rather than for individual loans. Barclays is entitled to set an ERC based not on the actual cost to it of Mr and Mrs C ending their own mortgage early, but on a reasonable pre-estimate of the costs of early termination of a group of mortgages of similar type.

Lenders generally raise money to offer preferential rates for their mortgage customers on the wholesale money markets. There's a cost to that, and it's generally fixed in advance. However, the lender expects to receive a return to outweigh those costs. If a mortgage ends early, it doesn't get back all the returns it expected, and so doesn't make back the costs in raising the funds to offer that preferential rate.

It is complex and onerous for lenders to calculate individual losses as and when individual customers decide to terminate their contracts early. Also, it isn't possible to estimate, for any given individual, when or if they might do so. So, Barclays is allowed to project how many customers, on average, are likely to terminate early and, on average, at what point they're likely to do so, and to apportion that cost across the mortgages in the group. For some individual mortgages that will end up being an over-calculation, and for others it will be an under-calculation. However, that's allowed; Barclays doesn't have to refund the difference, but equally it doesn't tell a consumer to pay the difference if it goes the other way.

The ERC is documented in the mortgage offer that was sent to Mr and Mrs C before the mortgage was advanced, and it was expressed as a cash value in that document. They accepted the offer and the ERC that was associated with it, even if they thought at the time it was unlikely they would have to incur it.

Given the property Mr and Mrs C wanted to buy fell outside Barclays' lending criteria, it was not unreasonable for it to decline to allow a port. As such, when the mortgage was paid off it was also not unreasonable for Barclays to charge the ERC that Mr and Mrs C accepted as part of the mortgage they had entered into. So I've considered whether the ERC was a reasonable pre-estimate of the cost of the mortgage being repaid early.

Barclays has provided us with evidence to show how it pre-estimated the costs of this group of mortgages being repaid early. Under our rules I am allowed to accept evidence in confidence if it is appropriate to do so. I am satisfied that the information Barclays has provided is commercially sensitive and I have good reason to accept that in confidence and so I won't be disclosing it to Mr and Mrs C.

The information from Barclays shows that it takes into account a number of factors when estimating the cost of a fixed rate mortgage being repaid. It has provided a breakdown of the figures it used and an explanation for the calculations and estimates it has made. It shows that the ERC reflects its costs of setting up and servicing the mortgage, the cost of the capital it has to set aside, the cost of funding the fixed rate, the cost of financial instruments that could be used to protect its position (and unwinding those) and its future losses. I have looked carefully at what Barclays has said and I consider it is a fair way to calculate the ERC.

Mr and Mrs C consider the ERC is unfair because it is for more than the amount of interest that would have been paid to Barclays over the remaining term of the interest rate product. As I have explained above there are many factors that are taken into account when an ERC is calculated. Under the rules, provided the charge is a reasonable pre-estimate of the loss suffered by Barclays if the mortgage is paid early, it can make the charge.

MCOB only requires Barclays to make a reasonable pre-estimate of the cost to it of the mortgage being repaid early across a range of similar mortgages. I consider that is what it has done. Furthermore, based on the information presented to me I consider it was reasonable for it to charge the ERC it did.

I note that Mr and Mrs C asked Barclays to waive the ERC. However, there was no reason for it to do so, as it hadn't done anything wrong. This service can only uphold a complaint and award redress if a financial business has done something wrong. As I am satisfied Barclays didn't, there are no grounds for me to uphold the complaint and order it to refund the ERC.

### **My final decision**

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs C to accept or reject my decision before 29 December 2023.

Derry Baxter  
**Ombudsman**