

The complaint

Mr A, Mrs A and Mrs B complain that Barclays Bank UK PLC didn't tell them they could make an overpayment on their mortgage, which they say means they lost the chance to make the payment without incurring an early repayment charge (ERC).

What happened

Mr A, Mrs A and Mrs B have a mortgage with Barclays. Their fixed rate was due to expire on 31 August 2023. During a fixed rate term, there's a limit on making overpayments of 10% of the mortgage balance per year – anything more than that results in an ERC. This is set out in the mortgage offer.

But during the last 90 days of a fixed rate term Barclays allows customers to make overpayments of more than 10% despite what the offer says. This allows customers to make more substantial payments while still on a fixed rate rather than waiting until it expires – and in turn means customers can go straight from one fixed rate to another, without having to take a period on the standard variable rate to make overpayments. This is not something that features in Barclays' terms and conditions, which simply limit overpayments during a fixed rate. Rather, it's a policy concession whereby Barclays agrees to waive the limit for the last 90 days of a rate.

Mr A, Mrs A and Mrs B complain that Barclays didn't make them aware of this policy. They had made the maximum overpayment in November 2022. They say that having made that payment they didn't think they could pay any more. Barclays' banking app said that they had reached their overpayment limit and any further payments would incur an ERC.

On 17 August 2023, Mr A called Barclays to arrange a new fixed rate. He says he was going to ask for the new fixed rate to start after a gap, so that he could make an overpayment after the old one ended. This means he would reduce the loan to value and potentially be able to get a better rate. He says that it was only on that call that Barclays told him of the overpayment policy, which meant he didn't need to wait until the fixed rate expired.

Mr A, Mrs A and Mrs B complained. They said that they'd seen a two year fixed rate of 4.58% in May, but decided not to apply for it because they wanted to be able to make an overpayment and reduce the balance first. By August, that rate was no longer available. Had they known they could have made an overpayment sooner they would have done so and secured a lower rate than the one they ended up taking in August.

Barclays said that its app couldn't show all possibilities, so it only included contractual information – and it was correct that under the terms of the offer, there was a 10% per year allowance right up to the end of the fixed rate. Barclays said that while it was policy to waive the ERC in the last 90 days of a rate this wasn't contractual, and it didn't think it was something it needed to publicise to customers unless they asked. Barclays said it wrote to Mr A, Mrs A and Mrs B in June to remind them that their rate was expiring and they could have booked a rate at any time up to 180 days before the rate ends – they didn't have to wait until August. So Barclays didn't think it was responsible for them ending up on a higher rate.

Our investigator didn't think Barclays had acted unfairly so Mr A, Mrs A and Mrs B asked that an ombudsman review their complaint. I reached a different view and issued a provisional decision setting out my thoughts.

My provisional decision

I said:

"Mr A, Mrs A and Mrs B have a repayment mortgage. In July 2021 they took a fixed rate of 1.22% until 31 August 2023. Their balance was £189,031 at that time. The offer said that overpayments of up to 10% a year could be made without incurring an ERC. It said "[t]his will apply throughout the early repayment charge period", and that the ERC applied until 31 August 2023.

There is no mention of Barclays' policy to waive the ERC on overpayments in the last 90 days in the offer – nor, as this is a non-contractual concession which I understand was only introduced after they took this rate, would I expect there to be mention of it.

On 3 June 2023 Barclays wrote to Mr A, Mrs A and Mrs B to remind them that their interest rate would end on 31 August 2023 and that they could now apply for a new rate to follow on from the old one. The letter says that if they don't take a new rate their mortgage will automatically switch to the reversion rate. There is no mention in this letter of the facility to make overpayments without ERC in the last 90 days of an interest rate.

In August 2023, following the conversation with Barclays, Mr A, Mrs A and Mrs B took a tracker rate, at a margin of 0.49% above Bank of England base rate until 30 August 2025. Their balance (on the part of the mortgage subject to this interest rate) by now was £103,837 as they made a further £60,000 overpayment once they learned – because of the phone call – that they could do so without ERC.

I've thought carefully about whether Barclays acted fairly here. It says that the information it gave Mr A, Mrs A and Mrs B in its 3 June letter and on the banking app was accurate in that it reflected the terms of the contract. It says there was no requirement for it to tell them of an internal policy concession unless they asked about it – and when they did it told them.

I don't agree with that. Although the information Barclays gave reflected the strict terms of the contract (on the app), and was silent about overpayments (in the letter), I don't think this goes far enough. In saying that, I've borne in mind Barclays' obligations at the relevant times. Although the regulator's consumer duty came into force on 31 July 2023 I don't think that's a significant factor in this case, because although Mr A's phone call happened in August, I think the crucial period is before that.

Mr A, Mrs A and Mrs B's interest rate expired on 31 August. Under Barclays' concession, it wouldn't charge an ERC on overpayments – even over 10% - within 90 days of the end of the rate. That means they could have made an overpayment from 5 June onwards without ERC.

The rules of mortgage regulation, known as MCOB, don't have a specific requirement to tell Mr A, Mrs A and Mrs B about particular changes to policy like the waiving of the 10% limit.

But as well as the mortgage rules, Barclays is also subject to the general principles

applicable to all regulated firms. One of those principles is that it should communicate in a way that's clear, fair and not misleading, paying due regard to customers' information needs.

Barclays knew it had a contractual limitation on overpayments. It knew it had decided to waive that limit for overpayments made within 90 days of the end of an interest rate term. But it didn't tell Mr A, Mrs A and Mrs B that, even though it also knew they made regular use of the ability to make overpayments.

The information included in the app was misleading – because it (incorrectly) told Mr A, Mrs A and Mrs B that they were subject to an overpayment limit after 5 June when, in fact, Barclays had decided to waive the limit.

And in my view the information included in the letter was incomplete. It failed to tell Mr A, Mrs A and Mrs B about the waiving of the overpayment limit – even though it ought to have known that this would be something that customers in general might want to factor into decisions about when to apply for a new rate, and that Mr A, Mrs A and Mrs B in particular had a track record of making overpayments and had already used their annual allowance.

Taking that into account, I think Barclays' decision to waive the overpayment limit, but not tell customers it had done so unless specifically asked, meant that it didn't pay due regard to Mr A, Mrs A and Mrs B's information needs, and didn't communicate in a way that was clear, fair and not misleading.

I think that if Barclays had made this information available to them, whether in the app or the letter or both, it's more likely than not that Mr A, Mrs A and Mrs B would have made an overpayment at the start of the 90 day window and then applied for a new rate immediately. Instead, believing they were still subject to a limit, they delayed making an application for a new rate until they could make the overpayment – until they were told about the change in August.

I think it's more likely than not, therefore, that Mr A, Mrs A and Mrs B would have made the overpayment and applied for a new rate on or around 5 June rather than in August.

To put matters right, therefore, that's the position Barclays should put them back into. It should backdate the overpayment to 5 June 2023, re-working the mortgage balance accordingly. And it should allow Mr A, Mrs A and Mrs B to select from the interest rates available on that day, and apply their selection to the mortgage backdated to 1 September 2023. This is likely to result in Mr A, Mrs A and Mrs B having made overpayments in the meantime, and Barclays should give them the choice of having the overpayments refunded to them or used to reduce the mortgage balance further. Finally, it should pay Mr A, Mrs A and Mrs B £350 compensation to recognise the distress and inconvenience caused by discovering they'd missed out on the chance to make the overpayment and missed out on the interest rate they could have had."

Both parties broadly accepted my provisional decision. Barclays had nothing further to add. But Mr A, Mrs A and Mrs B didn't think £350 was sufficient compensation – they said £350 each, rather than £350 in total, would be fair. They said that each of them had been impacted and caused significant worry about increased mortgage payments.

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'm pleased that both parties have accepted my provisional view of how to put matters right as regards the interest rate. In light of that, I see no reason to revise my provisional view.

I've considered what Mr A, Mrs A and Mrs B have said about the amount of fair compensation for the distress and inconvenience that resulted. I appreciate this was a frustrating experience, and resulted in higher payments than would otherwise have been the case – though I've not seen evidence that this caused particular hardship or undue difficulty in making those payments. Having borne in mind the guidance on our website about compensation for non-financial loss, I remain of the view that £350 is fair compensation, and I don't think it would be fair to increase it to £1,050.

My final decision

My final decision is that I uphold this complaint and direct Barclays Bank UK PLC to:

- Backdate the overpayment to 5 June 2023.
- Allow Mr A, Mrs A and Mrs B to select from the interest rates applicable to their mortgage which were available on 5 June 2023, and implement that rate backdated to 1 September 2023.
- Re-work Mr A, Mrs A and Mrs B's mortgage following those changes, giving Mr A, Mrs A and Mrs B the following options:
 - Having any resulting overpayments refunded to them, adding simple annual interest of 8%* running from the date of each payment to the date of refund; or
 - Having the resulting payments used to reduce the mortgage balance as at the date each payment was made, with interest charged thereafter reduced accordingly.
- Pay Mr A, Mrs A and Mrs B £350 compensation.

*If Mr A, Mrs A and Mrs B select this option, Barclays may deduct income tax from the 8% interest element of my award, as required by HMRC. But it should tell them what it has deducted so they can reclaim the tax if they are entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A, Mrs A and Mrs B to accept or reject my decision before 3 April 2024.

Simon Pugh
Ombudsman