

## The complaint

Mr J said Barclays Bank UK PLC sold him a mortgage which was portable, but he complains later it wouldn't let him port this mortgage to a new property he wanted to buy. Mr J had to pay a substantial Early Repayment Charge ("ERC"). He wanted Barclays to refund this.

## What happened

Mr J initially took out this mortgage with a third party, but he then took on sole responsibility for the mortgage, and this third party wasn't involved in his application to port the mortgage.

Mr J said he took out a fixed rate mortgage with Barclays in 2019. He said he chose this mortgage because it was portable, so he could move house before the fixed interest rate ended, and any ERC would be waived. But Mr J said when he applied to port this mortgage, Barclays refused, because it said its underwriters were fully extended on the development where his new property was situated.

Mr J said Barclays just told him *"Your new mortgage was declined due to our bank policy"*. Mr J said he was not warned at any time, either when taking out the fixed rate or when applying for the new mortgage, that it might be declined for a policy reason.

Mr J said by the time Barclays withdrew its offer, he was already committed, so he felt he had no real option but to go ahead. Mr J said he had to pay an ERC of over £7,000, and was only able to buy the property because he got assistance from his family to cover the shortfall.

Mr J wanted Barclays to pay back the ERC it had charged him.

Barclays said it had declined Mr J's new mortgage due to bank policy, and it didn't think it had done anything wrong. It said the ERC was charged in line with the terms and conditions of his mortgage. So it wouldn't pay this back.

Mr J said the problem didn't arise because his application didn't meet bank policy. He said it met Barclays' banking policy in all regards. It was just because Barclays was overcommitted on this development, so its loss adjusters would not cover any more lending.

Mr J said he was promised when he took out the mortgage that as long as he ported it he would not be charged the ERC. There was no suggestion that there may be circumstances in which Barclays would not port.

Our investigator didn't think this complaint should be upheld. She said the terms of Mr J's mortgage said that there was a possibility the mortgage could be ported, subject to the new property and Mr J's circumstances meeting Barclays' lending criteria at that time. But when Barclays completed its checks, it discovered that it had reached its exposure limits on the development Mr J's property was in, so it wouldn't lend to him for this purchase.

Our investigator said she understood this would have been disappointing for Mr J, but Barclays wasn't obliged to lend to him. She didn't think Barclays had treated Mr J unfairly

when it declined his mortgage application. His new property was just, unfortunately, outside of its lending criteria. But our investigator said Barclays had assessed his application fairly and reasonably. And it had told him an ERC would apply if he repaid this mortgage early. So our investigator didn't think Barclays needed to take any further action on this complaint.

Mr J didn't agree. He said he'd understood that he would be able to port his mortgage, both when he took out the mortgage and when he first made this application. Mr J said he'd specifically chosen this mortgage because it was portable, and he could have remortgaged elsewhere for less with a mortgage that wasn't portable. So he said if Barclays then decided not to port his mortgage, it should refund the ERC it charged.

Mr J also said that it wasn't right to say that his new property didn't meet Barclays' lending criteria. The only reason Barclays wouldn't lend wasn't because of the property, it was because of how Barclays chooses to manage its risk. Mr J was never told there was a possibility that the new property might not fit in with Barclays "*risk appetite*".

Mr J wanted to stress that he wasn't warned either when taking out the fixed rate or when applying for the new mortgage that it might be declined for a policy reason. And he said he was entitled to rely upon the representation that Barclays made to him that, provided he applied for another mortgage with it, he would not have to pay the ERC.

Mr J said if Barclays had told him there was a chance that it wouldn't port the mortgage, then he would have delayed moving home until the ERC was no longer payable. But he said Barclays had made an offer in principle which he relied on to proceed to what was really a point of no return.

Our investigator didn't change her mind. She said that Mr J's mortgage offer set out the terms of his mortgage, including that "*You have the possibility to transfer the outstanding balance of this loan to another property, subject to the new property and your circumstances meeting our lending criteria at that time*". And she repeated that Mr J's new property just didn't meet Barclays criteria.

Mr J also asked to see the documents that Barclays had sent our service, so he could decide if he wanted to make any further representations. Those documents have now been sent to Mr J, and he's confirmed he has nothing further to add.

It now falls to me to reach a final decision in this case.

### **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've reached the same overall conclusion on this complaint as our investigator.

When Mr J took out the mortgage with Barclays that he later wished to port, the mortgage offer contained two relevant provisions. The first was that "*Early repayment charges are payable on this mortgage until 31 October 2022 as follows*." So I think Mr J was notified that he would need to pay an ERC if he redeemed this mortgage before the end of October 2022.

The second provision was "*You have the possibility to transfer the outstanding balance of this loan to another property, subject to the new property and your circumstances meeting our lending criteria at that time*."

Mr J said he was given express reassurances when he took out the mortgage that this mortgage was portable. I think those reassurances were likely to be correct, as this was a mortgage that could potentially be ported. However, I can see that Mr J was also given documentation at the time of offer, which clearly stated this was not an unqualified right.

Mr J said he was told again when he applied for a mortgage for his new purchase, that the mortgage he had could be ported. And again, I think that's right, but it does remain subject to the conditions of the original offer.

Mortgage lending is always subject to a series of checks, both on the property providing the security for the lending, and on the person borrowing the money. I don't think it's likely that Mr J was given any clear and unequivocal commitment, either when he originally took out this mortgage or when he later decided to apply to port this lending, that the only condition for Barclays waiving the ERC was just that Mr J should apply for another mortgage with it when he wanted to move house.

Mr J said he then relied on the decision in principle to lend to him, and moved to a stage where he felt he was committed to this purchase. But a decision in principle isn't a commitment to lend. At this stage, Mr J's application remained subject to additional checks, including on the suitability of the property for use as security against lending.

In this case, Barclays took the view that this property wasn't suitable security for its lending, because Barclays had reached its exposure limits on this development. I think it's clear that Barclays' lending criteria include ensuring that it limits its exposure on a single development, and Mr J's application unfortunately fell outside of this policy.

I understand how disappointing this was for Mr J, and that he feels this is quite unfair. But I don't agree with Mr J that this had nothing to do with the property, or that this is actually an external policy. I think this was a decision by Barclays' own underwriters, that Mr J's new property simply didn't meet Barclays' lending criteria at the time of his application.

Mr J chose to go ahead with his purchase, and pay the ERC on his mortgage with Barclays. I'm satisfied that Mr J had been properly notified of the ERC when he took out the mortgage, and I think it was charged in line with the terms of that mortgage. I know Mr J will be disappointed, but I don't think Barclays has to repay this now. And that means this complaint won't be upheld.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 19 September 2023.

Esther Absalom-Gough  
**Ombudsman**