

The complaint

Mrs W complains that Barclays Bank UK PLC mis-sold her a shared appreciation mortgage in 1998.

What happened

Mrs W is represented in this complaint by her daughter, but for the sake of simplicity I have referred to the submissions as though they have been made by her directly.

The shared appreciation mortgage (SAM) which is the subject of this complaint was sold to Mrs W in 1998. Given the length of time since the sale, there are limits to the evidence that has been provided. However, in addition to some case specific evidence, Barclays Bank has been able to provide some standard documents as well as an explanation of both the product launch and the standard sales process.

I will now set out the key documents and explain what they showed, as far as is relevant to this complaint. Where available, I will also make reference to the documents that have been provided which relate to Mrs W's sale.

SAMs

In 1998 Barclays Bank launched a new lending product; the SAM. Barclays Bank was not the actual lender for this product though. Barclays Bank established a wholly owned subsidiary company, Barclays SAMS Limited, which acted as lender. Mrs W's contract was with Barclays SAMS Limited.

A SAM is an equity release product, which provided customers with a loan that could last the lifetime of the borrower. The loan was secured via a mortgage on their property. These SAMs didn't require any monthly payments from customers and no interest was added to the loan. Instead, at the time of repayment, the customer would have to repay the loan and a percentage of the appreciation in the value of the mortgaged property. This percentage was three times the loan to value ratio (LTV) of the mortgage at the time of borrowing.

The maximum a customer could borrow was 25% LTV, which would lead to a repayment of the loan and 75% of any appreciation. However, if the property did not increase in value, the customer would only have to repay the amount of the initial loan - with no appreciation.

As mentioned, Barclays Bank was not the actual lender for these mortgages. It has told us that it acted as the lender's agent, arranging and then administering the mortgages on behalf of Barclays SAMS Limited. Barclays Bank has said that all activities involved in the sale were carried out by Barclays Bank staff, but as agent of Barclays SAMS Limited.

Product Launch

In early 1998, Barclays Bank sent circulars to branch managers letting them know about the product that was to be launched. They referred to more detailed information that was contained in its Mortgage Information Manual (the Manual) and a training support booklet.

As well as providing details of the repayment formula, in several places the Manual made it clear that the lender of the loan was a separate company to Barclays Bank. There were not though any directions that customers should be specifically informed of this separation. The Manual did direct staff to establish what level of service a customer wanted. These levels are set out in the Mortgage Code as being the levels of service that can be provided under the code by lenders and intermediaries.

These were for Barclays Bank to provide:

- advice and recommendation as to which mortgage is most suitable for the customer (Level A service),
- information on the different types of mortgage product available (Level B service), or
- information on a single mortgage product only (Level C service).

Sale Process

Various promotional materials were used to advertise the SAMs. Unfortunately, Barclays Bank hasn't been able to provide this service with an example of the advert it used at the time and it isn't known if Mrs W saw it.

The advert apparently directed interested parties to request a free 'Guide to Unlocking the Capital in Your Home' (Guide) written by the Daily Telegraph's Personal Finance Editor and sponsored by Barclays Mortgages. A copy of this Guide has been provided to us. But it isn't known if Mrs W saw a copy of this herself.

The Guide explained some of the potential risks with SAMs as well as the potential benefits of the product. But it did not refer to any separation of the lender from Barclays Bank. The front page of the Guide says that it has been sponsored by Barclays Mortgages.

The Guide also set out the mechanics for calculating the repayment, repeatedly saying that the repayment amount was the loan plus three times the increase in the proportion of value borrowed which occurs after the loan is advanced. It included several worked examples demonstrating this.

The final section of the Guide included the following:

"in return for not having to pay any interest on the capital unlocked from the home by the SAM, the owner must currently repay three times the proportion of the original valuation borrowed from any increase in the house price by the time it is so/d or transferred. So the risk with a SAM is that house prices rise substantially and the homebuyer finds they have given up their right to receive up to 75 percent of that uplift."

Parties interested in a SAM could also obtain a copy of SAM product brochure (Brochure) from branches of Barclays Bank and from Barclays Direct Mortgages. Again, we don't know if Mrs W received a copy of this Brochure.

The Brochure referred only to Barclays Bank and Barclays Mortgages, and did not mention that a separate company was the lender. The Brochure gave the following explanation of how the SAM worked:

"You simply borrow a percentage of your property's current value for as long as you want without making any monthly payments, until you come to part with your property (or die or wish to repay the loan)."

When you repay the loan, you also pay a percentage of any increase in the value of the property at that time, it really is that straightforward...

“Basically, if you come to sell your home (or if you should die) you must pay the original amount borrowed plus a share of the increase in the value of your property at that time... The share will be calculated by multiplying the percentage borrowed by three and then multiplying that by how much the property has gained in value.”

It included an example of “how some typical Shared Appreciation Mortgages work”:

Original Valuation (£)	100,000		
Final Valuation (£)	150,000		
Appreciation (£)	50,000		
Amount Borrowed (£)	15,000	20,000	25,000
Percentage of Property Value Borrowed (%)	15	20	25
Lender's Share of Appreciation (£)	$(3 \times 15\%) \times £50,000 = 22,500$	$(3 \times 20\%) \times £50,000 = 30,000$	$(3 \times 25\%) \times £50,000 = 37,500$
Total amount repayable (£)	$22,500 + 15,000 = 37,500$	$30,000 + 20,000 = 50,000$	$37,500 + 25,000 = 62,500$
Remaining equity (£)	112,500	100,000	87,500

Attached to the Brochure was an "Important Information You Must Read" leaflet (Leaflet). This included a further example of a SAM:

The stated APR on the Shared Appreciation Mortgage is –

APR 3.0%

However, you need to consider the impact of your obligation to pay the Shared Appreciation to Barclays which this APR does not include.

A TYPICAL SHARED APPRECIATION MORTGAGE EXAMPLE

The following example is intended to show the cost of a Shared Appreciation Mortgage when converted as an annual interest rate and is based on a house value of £100,000, a loan of £25,000 with Shared Appreciation of 75% of the increase in value of the property. Although the loan can be for life, this example is based on the whole of the loan and Shared Appreciation being repaid after 20 years. This example assumes average house price inflation of 4.5% per annum which produces a house value of £241,172.00. Total amount payable will be £131,409.00 to include Shared Appreciation (£105,879.00), Legal Fees (£305) and a Valuation Fee at redemption of your Shared Appreciation Mortgage (£225). For loans over £25,000 an administration charge of £150 will be made. As there are no monthly interest payments, all amounts are calculated without the benefit of MIRAS.

8.7%

The above is an annual interest rate (calculated as if it were an APR of 8.7%). This rate is based on the representative details given above. Please be aware that house price inflation and the costs and fees associated with a Shared Appreciation Mortgage may vary.

The Leaflet referred to the "obligation to pay the Shared Appreciation to Barclays..." and that "Barclays is a responsible lender".

The Brochure and the Leaflet also referred to Barclays Bank being a member of the Banking Ombudsman Scheme. And said that:

"Barclays is committed to The Mortgage Code and The Banking Code, both of which set out the commitments and standards of banks in dealing with their customers. As such, we ensure that our products and services comply with the terms of both Codes.

The Mortgage Code relates specifically to the service we provide, the provision of information regarding our mortgage products and services and how they operate.

This booklet therefore contains details regarding the following areas:

- *marketing of mortgages."*

It should be noted here that the Mortgage Code didn't apply to loans that were governed by the Consumer Credit Act 1974 (CCA). And Mrs W's loan was a regulated agreement under the CCA. However, the Banking Code did not contain this limitation and, as far as is relevant to this decision, contains similar provisions to the Mortgage Code.

Consumers like Mrs W, who chose to pursue the mortgage, submitted an application form. This application was on a Barclays Mortgages headed form.

Mrs W's application form set out her personal details, including that she was retired and had a basic annual income of £6,500. It also confirmed the property details and the loan sum required.

The estimated value of Mrs W's property was £60,000 and the requested loan amount was £15,000. The form did not include details of the purpose of the loan, but Mrs W has told this service it was to buy furniture.

Attached to the application was a declaration form that consumers were required to sign. Mrs W signed this on 18 May 1998. The first point on this form stated:

"I apply for a Shared Appreciation Mortgage from Barclays SAMS Limited a subsidiary of Barclays Bank PLC"

No further information on this was given though. There were also references to the consumer agreeing to their information being used by the "Barclays Group", without this group being defined.

It seems that in many cases the sales process also involved a conversation in branch. It isn't clear if this is what happened in Mrs W's case. Barclays Bank has said that these conversations would, usually, have been on the basis of a Level C service being provided - i.e. that the conversation would relate to Barclays Bank providing information on the SAM only.

A confirmation of discussion form was usually completed at the time of such discussions, usually confirming the level of service. The form is effectively a checklist of topics that might need to be discussed with the ability to confirm "Y" or "N" depending on the conversation that took place.

The confirmation of discussion form in Mrs W's sale is date 28 May 1998 and has been typed out. The level of service provided has not been stated. But from the answers to the questions, it seems different types of mortgage and product may have been discussed. It is unlikely Mrs W would have seen this form – the indication is that it was for internal use only.

The application was considered and, if approved, an offer was sent to the customer. Barclays' process was to send an initial Advance Copy and then a week after this an actual Agreement was sent, asking customers to sign and return if they wanted to take out the mortgage. A copy of the Advance Copy from Mrs W's sale has not been provided by Barclays Bank, but the Agreement from her sale has been. The form and content of the Advance Copy and the actual Agreement were largely the same.

The only significant difference between the two was that the Advance Copy set out the customers' right to withdraw from the proposed credit agreement. This gave customers a week to consider the terms of the loan and explained that if they did not wish to enter it, they should not sign the actual Agreement and should merely inform the lender or broker of their decision.

The Advance Copy also stated:

“You should read [the proposed agreement] carefully. If you do not understand it, you may need to seek professional advice. If you do not wish to go ahead with it, you need not to.”

A week after the Advance Copy, an Agreement was sent for customers to sign and return if they wanted to take out the mortgage. Mrs W’s Agreement is signed, though the date of the signature is not legible on the copy provided.

The Agreement, itself dated 24 June 1998, listed the lender as Barclays SAMS Limited. The Agreement confirmed the amount of credit being provided (A) as £15,000 against a property value of £60,000. This meant the borrowing was 25% of the LTV; the maximum amount that could be borrowed via this product. The Agreement also stated that a valuation fee (B) of £160 was payable on redemption and that there was a legal fee (C) of £305.

The offer stated the applicable APR as 2.5%, but clarified this by saying:

“The APR is based on the total charge for credit which includes fees, in calculating the APR we have not taken into account the Shared Appreciation Amount (if any) since this will not be known at the date of the Agreement, or any variation of fees B and C. The rate of interest under this Agreement is zero.”

The Agreement then explained the shared appreciation amount, as follows:

Shared Appreciation Amount

The Total Loan shown at A is to be repaid in one lump sum and the Shared Appreciation Amount will be payable where the Property value before redemption of the Mortgage is greater than the Original Property Valuation. (You will also be required to pay the Valuation fee B and the Legal fee C and any other sums due and payable under this Agreement.) The Shared Appreciation Amount will be calculated using the formula:-

Shared Appreciation Amount = (3 x Loan to Value Ratio %) x Valuation Difference, where:

Loan to Value Ratio % = $\frac{\text{Total Loan}}{\text{Original Property Valuation}} \times \frac{100}{1}$ and

Valuation Difference = Difference between the Property valuation before redemption of the Mortgage and the Original Property Valuation.

And later gave the following, generic, example:

Assume:

Original Property Valuation	=	£120,000
Property valuation before redemption	=	£140,000
Total Loan	=	£ 20,000 (being repaid in full two years after it was drawn) then:
Loan to Value Ratio %	=	$\frac{£20,000}{£120,000} \times \frac{100}{1} = 16.6\%$
Valuation Difference	=	£140,000 - £120,000 = £20,000

In this example the amount payable on repayment of the Total Loan will be calculated as follows:-

3 x 16.6% x £20,000	=	£9,960 (Shared Appreciation Amount) + £20,000 (Total Loan)
	=	£29,960 (together with any fees and expenses payable under the Agreement)

Mrs W's Agreement stated that the loan needed to be drawn down by 31 July 1998.

The Agreement also included the following:

"You confirm that you have read and understood this Agreement (including the Conditions and any special conditions), in particular, you confirm that we have recommended that you obtain independent legal advice on the meaning and effect of this Agreement and the Mortgage."

A copy of the Advance Copy was also sent to a customers' solicitors, along with a request for a report on the title of the property and Instructions to Solicitors. These Instructions directed, in part, solicitors to confirm that their clients understood the terms and conditions of the mortgage.

Barclays Bank's system indicates Mrs W's solicitors wrote to the bank on 14 July 1998 with the completed Report on Title. The points that Mrs W's solicitor would have agreed to in completing this included that they had complied with the Instructions, including that the terms and conditions of the mortgage had been explained to Mrs W. They requested the loan amount be released, which it seems is what happened.

The complaint

Mrs W is unhappy that in order to redeem the SAM she is required to pay what she considers to be a disproportionate amount. She had little financial experience when the SAM was sold to her. And she is unhappy Barclays Bank did not share "*expert knowledge from the council of mortgage lenders forecasting substantial property value increases*".

Barclays Bank said that the information provided during the sale clearly set out the terms of the SAM. And that no advice was given by the bank. Barclays Bank has said that customers, including Mrs W, were instructed to seek their own financial and legal advice. And that Mrs W's solicitor had confirmed that the details of the SAM, etc. were understood by Mrs W prior to the loan being drawn down.

Barclays Bank has said that it does not have control over house prices and could not have predicted the changes in the market since the sale of this SAM. It said it was also unable to vary the terms and conditions of the mortgage or lower the amount repayable.

Our investigator's opinion

Our investigator considered that parts of this complaint about Barclays Bank's actions in the sale of the SAM do fall within our jurisdiction. He explained that a predecessor to this service, the Office of the Banking Ombudsman (OBO), would have preconsidered such complaints. And that this service has the power to consider these complaints as well.

However, the investigator did also find that whilst this service was able to consider the bank's actions in relation to the sale, we are unable to consider any issues connected to the fairness of the product or the terms of the SAM itself. Such concerns would need to be raised with Barclays SAMS Limited and the investigator explained that this service does not have the jurisdiction to consider such a complaint against this entity.

In relation to the sale of the SAM by Barclays Bank, the investigator's opinion was that no advice had been provided to Mrs W by the bank. And the information they had been given at the time was clear on the terms of the SAM.

Ultimately, the investigator did not uphold the complaint about the sale of the SAM. Mrs W responded, disagreeing with this outcome. As such, this complaint has been passed to me for a decision.

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 taken into account, amongst other things, the relevant law, regulations and industry practice.

Before I can consider the merits of this complaint, I need to confirm whether it is a complaint that falls within the jurisdiction of this service. Based on the evidence available on this case, as well as the other information I have been provided with, I consider that there are aspects to this complaint that do fall within the jurisdiction of this service. But that there are also parts of the complaint that I am unable to consider.

Are the relevant sale activities of Barclays Bank within the scope of this service?

The ability of this service to consider complaints stems from the Financial Services and Markets Act 2000. The relevant provisions and associated rules have been incorporated into the Financial Conduct Authority (FCA) Handbook, particularly the Dispute Resolution: Complaints (DISP) section of this Handbook. DISP sets out the extent of this service's jurisdiction. We are bound to follow these rules and so can only look at a complaint if allowed by the rules.

This part of this complaint concerns events in 1998; before the start of the Financial Ombudsman Service's compulsory jurisdiction on 1 December 2001. But, as DISP 2.3.2G explains, we can consider complaints about acts and omissions that took place before this date, if that complaint could have been considered by one of our predecessor schemes.

If such a complaint does fall within the jurisdiction of this service, article 7 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 (the Ombudsman Transitional Order) requires, in part, that when considering such a complaint, we need to do so on the same basis as the former scheme would have.

Effectively, this means that although Mrs W's SAM was sold to her prior to the creation of this service, and the rules that govern our jurisdiction, we are able to consider a complaint about this sale if such a complaint would have been considered by a previous scheme. But that, if we are able to consider the complaint, we need to do so on the same basis as the former scheme would have.

At the time Mrs W's SAM was sold, Barclays Bank was a member of the OBO scheme. And I consider the OBO would have considered a complaint about Barclays Bank providing information about a credit agreement secured on land by a first charge mortgage. And that, as Barclays Bank provided such a service to Mrs W during the sale of her SAM, the OBO would have considered this complaint.

As such, I consider that this service can consider a complaint about the sale of Mrs W's SAM by Barclays Bank. However, this ability is limited to considering the information and any advice provided about the product. And it would not extend to considering the terms of the SAM itself.

Jurisdiction over the terms and fairness of the loan

A complaint about whether the terms and conditions of a SAM were unfair would need to be considered against the lender itself. The terms of a loan are set by the lender, not the intermediary.

As has been previously explained, the lender of Mrs W's SAM was Barclays SAMS Limited. It is Barclays SAMS Limited that is responsible for the terms of the SAM.

I appreciate that Barclays SAMS Limited is a subsidiary of Barclays Bank and that it was Barclays Bank that decided to launch this product. But Barclays SAMS Limited is nevertheless a separate company and Barclays Bank cannot be held liable for the actions of this separate company. These actions include setting the terms of the credit agreement. And this applies also to the relationship between the borrower and the lender.

Having established the parts of Mrs W's complaint I consider fall within the jurisdiction of this service, I shall now outline my findings in relation to the merits of her complaint.

Did Barclays Bank advise or pressure Mrs W to take out the SAM?

As has been noted, the Manual does envisage a situation where a Level A mortgage intermediary service might be provided. And there was no guidance, that I have seen, that Barclays Bank branch staff should not carry out an advised sale of the SAM. They would have, in other situations, carried out advised sales in relation to Barclays Bank's own mortgage products. So, I consider that some SAMs may have been sold by Barclays Bank during an advised sale.

The question here though, is whether Mrs W's SAM was taken out following such advice from Barclays Bank. There is no persuasive evidence that any advice was given to Mrs W by Barclays Bank. Barclays Bank has said that this was not an advised sale. And Mrs W has not provided any evidence, including testimony, that advice was given or that she thought she was being advised.

It isn't clear whether Mrs W contacted Barclays Bank about the SAM, or if the bank raised this option with her first. But it seems she was seeking finance for a purchase, so most likely approached the bank.

It also seems more likely than not that she was given at least a week to consider the terms of the mortgage, and to decide whether she wanted to proceed with it. From the timeframes involved in her sale, it does not seem that she was either rushed into entering the Agreement or in drawing down the loan. So, I think she would have had the opportunity to decide not to go ahead with the SAM. Overall, there is no evidence of Barclays Bank pressurising Mrs W into the Agreement.

Having considered all of the circumstances of this case, I do not consider it is more likely than not that Barclays Bank provided, or acted so as to lead Mrs W to believe they were providing, advice in relation to the sale of this SAM. And I do not consider Mrs W was pressurised into taking it out either.

But I am mindful that Barclays Bank still had a responsibility to provide clear information.

Did the information provided allow Mrs W to understand the SAM?

I am persuaded that the sale was more likely than not conducted on a non-advised basis. This means all Barclays Bank was required to do was provide appropriate information to allow Mrs W to make her own decision.

In terms of the activity in relation to the sale, I am required to take into account the approach OBO would have taken had a complaint about this activity been referred to them. This would likely have included taking into account the content of the Banking Code.

One of the key commitments in the Banking Code was for members to give information on services and products in plain language. And to offer help if there was any aspect the consumer didn't understand. Help should also have been provided to make sure customers understood the financial implications of mortgages and other lending. The Banking Code also required members to ensure all advertising and promotional material was clear, fair, reasonable and not misleading. So, I have taken approach into account when considering this complaint.

As Barclays Bank has said, it was not possible to accurately predict what would happen to the value of Mrs W's property. Mrs W has referred to forecasts from the council of mortgage lenders, but has not provided any evidence of what these were. Barclays Bank did forecast that there would be an increase in property values over the coming years – the example used in the Brochure was an annual increase of 4.5%. But I have not been provided with any evidence that Barclays Bank was aware that house prices would rise as steeply as they did in the early 2000s. They did set out, in the Guide, that such a rise was a potential risk that customers faced though.

Barclays Bank also did not know how long it would be until the loan was redeemed. This meant that all that could reasonably be provided was the formula for the calculation and some examples of possible outcomes.

As set out above, the Brochure set out the mechanism for how the shared appreciation amount payable on redemption was calculated as follows:

“The share will be calculated by multiplying the percentage borrowed by three and then multiplying that by how much the property has gained in value.”

It then provided several examples of how this might work in practice. In my view, this information provided a reader with a reasonable level of information to allow them to understand the basic mechanism behind the mortgage. And I don't consider that the language used was unclear or misleading. Further written examples of how the SAM worked were provided in the Leaflet.

We don't know whether Mrs W saw the Guide, the Leaflet, or the Brochure. But she was provided with the Agreement. This included its own example of what might happen, and showed a property increasing by 16.7% over a two-year period.

I do note that the examples in these documents used different figures and different lengths of time before repayment. But I don't think this in itself made the arrangements less clear. If anything, these differences gave the reader more opportunity to see possible outcomes.

I also note that the figures used in these examples are significantly different from the ultimate appreciation that has accrued on the value of Mrs W's property. But, as mentioned, Barclays Bank was not able to say how the housing market would develop in the years following the sale. And the examples used showed a range of possible outcomes and the information provided made it clear that the ultimate appreciation would depend on how long the mortgage was held and what might or might not happen in the future.

I have also considered the wording used in the explanations. I have taken into account Barclays Bank's comments that customers were directed to clarify anything they didn't understand through independent legal advice, and that Mrs W did use a solicitor who was sent the Instructions. But I am also mindful that Barclays Bank still had a responsibility to provide clear information.

The Agreement that Mrs W signed said that:

"The Total Loan shown at A is to be repaid in one lump sum and the Shared Appreciation Amount will be payable where the Property value before redemption of the Mortgage is greater than the Original Property Valuation"

This uses a number of terms which have specific definitions. But I consider that these definitions were clearly provided within the Agreement. So, whilst a customer would be required to consider the document carefully, I don't consider the language used to have been inappropriate. There were some unknowns, but these were highlighted by additional wording.

The Brochure also stated that branch staff could help if customers didn't understand any aspect of the SAM. It isn't possible for us to know what information Mrs W was provided with verbally. I do think that the examples and explanations provided to Barclays Bank branch staff, in the Manual and training material as well as the customer facing material, would most likely have made them aware of the mechanism involved in the SAM. And given this, I don't think it is more likely than not that Mrs W was given incorrect information about this verbally.

Ultimately, because of the nature of the loan, definitive figures could not be provided. But I do not consider that this in itself mean the information provided in the promotional material was not clear, fair, reasonable and not misleading. And the written information provided with the loan agreement would, in my view, have allowed Mrs W to understand the financial implications of the SAM.

Summary

Mrs W has referred to other customers apparently having received settlements in relation to SAMs in court. I am unable to comment on the circumstances of these court cases, and I am not sure if the parties involved included Barclays Bank. My role here is to consider the actions of Barclays Bank and decide whether their response to Mrs W's complaint was fair and reasonable in the circumstances of Mrs W's complaint.

In summary, I do not consider it more likely than not that Barclays Bank advised or pressurised Mrs W in relation to the sale. I also do not consider that the information provided to Mrs W at the time of the sale was not clear, fair, reasonable and not misleading. So, I do not consider Barclays Bank mis-sold this product to Mrs W. And it follows that Barclays Bank's response to Mrs W's complaint was fair and reasonable.

Whilst I note Mrs W's concerns over the fairness of this product, this service is unable to consider a complaint about this point in the circumstances. Such a complaint would need to be made against an entity which does not fall within the jurisdiction of this service.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 30 July 2021.

Sam Thomas
Ombudsman