

The complaint

Mrs P with the assistance of her representative, complains that Barclays Bank UK PLC has treated her unfairly when it sold her a Share Appreciation Mortgage (SAM).

What happened

The details of this complaint are well known to both Mrs P and Barclays and our investigator has set these out in some detail before.

As a brief summary, Mrs P and her late husband took out a SAM in June 1998. They borrowed £23,750 which was the equivalent to 25% of the value of their property at the time. The loan was taken for non-essential spending and maintenance with it being said the funds were used for a car purchase and home improvements.

In November 2022, with the assistance of a professional representative, Mrs P brought a complaint against Barclays. This focused on a number of things including the terms of the agreement and the fairness of this as well as concerns about the sale.

Our investigator looked at this complaint and initially said that this Service was unable to consider the complaint as it had been brought too late. He said the event complained about was more than six years ago and he thought Mrs P ought reasonably to have been aware she had cause for complaint more than three years ago. He highlighted a part redemption of the mortgage had been made in 2012 and he felt it was reasonable to believe that Mrs P would have been aware of how the mortgage operated at this point. And if she had concerns about this, they would have needed to be raised within three years of this date.

Mrs P's representative responded and explained Mrs P was not aware of how the mortgage operated at this time. Mr P, her late husband had made the part redemption payments and this had no bearing on Mrs P's knowledge.

Our investigator looked at the complaint again and said he felt we could consider part of Mrs P's complaint, but some parts of it were not something this Service had jurisdiction to look at.

He explained that any complaint about the terms and conditions of the loan and its fairness were the responsibility of the lender. This was a separate firm called Barclays SAMS Limited and this firm was not and has never been part of our jurisdiction. So any complaints relating to the terms of the loan could not be considered.

He did think we could consider how the loan was sold and whether Barclays had acted unfairly when doing this. As although it did not provide the lending, it did sell the product on behalf of Barclays SAMS Limited. But he wasn't persuaded Barclays had done anything wrong during the sales process. He felt it had provided information to Mrs and Mr P to allow them to decide whether they wanted to take out the SAM and he didn't think it was fair to ask it to do anything else now.

Mrs P and her representative disagreed. They felt Barclays should be held liable for the

terms of the SAM as Barclays SAMS Limited is owned by it and as the parent company, it has an assumed duty of care to Mrs P.

It disagreed that the information provided by Barclays about the SAM was clear and it failed to provide an accurate reflection on what the loan might cost Mrs and Mr P over time. It also highlighted that a separate litigation taking place against another lender and this outcome should be considered as fundamental to this complaint.

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 appreciate this will be disappointing for Mrs P, but I agree with our investigator on this complaint. A large part of the complaint is not something we can consider as it relates to issues which are not the responsibility of Barclays. And for the complaint points that can be considered, I am not persuaded Barclays has acted unfairly.

This mortgage was sold in 1998 and this was before the existence of the Financial Ombudsman Service. And although sold and administered by Barclays, it is not the lender with Barclays SAMS Limited being the business which provided the borrowing.

As our investigator said, this Service can only consider the actions of firms which fall into our jurisdiction and Barclays SAMS Limited has never been within this.

As the lender, Barclays SAMS Limited is responsible for how the loan works and its terms and conditions. So it determines how the repayment is calculated and how payments will be applied. Barclays Bank administered the loan on behalf of Barclays SAMS Limited, including taking the payments, but as it collected what the lender was contractually entitled to, it administered the loan in line with the lender's rights and obligations. The fairness of collecting the full amount is a matter for Barclays SAMS Limited – but we cannot consider a complaint about that.

Mrs P also refers to s140B of the Consumer Credit Act – which deals with unfair relationships between borrowers and lenders. s140B is potentially relevant here – regulated mortgage contracts are excluded from its scope, but this is not a regulated mortgage contract – but whether there is any unfairness in the relationship between lender and borrower is not a matter I can consider because the lender, Barclays SAMS, is not in this Services, jurisdiction.

Our investigator explained when he first considered this complaint that he felt it had been brought too late. And this included the complaint points relating to the sale of the mortgage by Barclays.

The SAM was taken out more than six years ago with it being sold in 1998, so consideration does need to be given to whether Mrs P knew, or ought to reasonably have known she had cause for complaint sooner.

The information provided indicates Barclays has been in regular contact with Mrs and Mr P about the mortgage over the years it has been in place. And a part repayment was made to the loan in 2012. Mrs P and her representative have said this was done by the late Mr P and Mrs P has no awareness of the mortgage and how it was operating previously. So they don't think it is fair to say she was aware sooner that there was cause for complaint. Or that the part repayment can be pointed to as a point in time when she ought to reasonably have been aware there was cause for complaint if she was worried about the amount owed and

how this was calculated.

While I can see the letters were all address to Mrs and Mr P, I accept that Mr P may have taken charge with this and Mrs P may not have been aware of the part repayment and how this reduced the balance of the loan at the time. Because of this, I am happy to accept she may not have been aware she had cause to complain until later. So I have considered whether Barclays did anything wrong when the SAM was sold.

This sale took place a long time ago, but we do know how these products were generally sold and have sight of some of the information provided at the point of sale. Normally the sale took place on a non-advised basis and Barclays has said this is the case with Mr and Mrs P's SAM. I've not seen anything to persuade me that this was an advised sale to contradict this.

Our investigator set out in some detail what was provided and I think the information at the point of sale gave a reasonable level of detail as to how the SAM was to operate and I think there was enough information provided to allow Mr and Mrs P to be aware of this and what to expect.

I appreciate Mrs P and her representative feel Barclays failed to provide an accurate illustration of how the housing market might have changed but I don't think this is the case, nor is it reasonable to believe Barclays could have done more here. The housing market in the UK is not guaranteed to increase and different areas across it have seen very different levels of growth over the last 25 years. Ultimately, this is an unknown but Barclays produced illustrations to demonstrate what might have happened based on certain scenarios and I think this gave an indication of how the product worked which is all it could do.

Overall, I think Barclays provided Mr and Mrs P with enough information about the SAM to allow them to make an informed choice. And Mrs and Mr P were given time to digest this information with them being given time between the application form being submitted and the completion of the mortgage. So I don't think it would be fair to say that any pressure was applied during the sales process.

I accept that Mr and Mrs P may not have sought independent legal advice about the workings of the SAM and how this operated, but Barclays did advise that this was sought and it was their choice as to whether they decided to or not

It follows that I do not agree that Barclays did anything wrong when it sold Mr and Mrs P this product.

Mrs P's representative, in response to our investigators view, has questioned why Barclays allowed Mr P to make a partial repayment when this contradicted what the terms of the mortgage said. This is not something that has been considered as a complaint by Barclays and is a new point in relation to this complaint. In this first instance, any questions about this payment and why it was allowed will need to be raised with Barclays directly.

I appreciate that Mrs P's representative has highlighted the recent litigation against another lender who sold a very similar product. This has been noted, but I am satisfied this does not change what I've set out above.

My final decision

For the reasons I've explained above, I do not uphold Mrs P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or

reject my decision before 11 March 2024.

Thomas Brissenden
Ombudsman