

## The complaint

This complaint is brought by Mrs W in her capacity as Administrator of the estate of her late mother, Mrs M. It is about a Shared Appreciation Mortgage (SAM) taken out in 1998 by Mr and Mrs M through Barclays Bank UK PLC.

Mrs W says that her long-held assumption would be that, on her mother's death she would inherit the house and would then be able to help out her own children. However, the existence of the mortgage has meant that this will now not be possible. Mrs W says that she is unable to understand how the product was allowed to be sold, and that if she'd acted in such a manner, she'd be "*charged and locked up for theft*".

## What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here.

In addition, our decisions are published, so it's important I don't include any information that might lead to Mrs M or Mrs W being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

In 1998 Mr and Mrs M took out a SAM through Barclays. They borrowed £20,625, which was 25% of the value of their home. The fixed interest rate of 2.4% was low compared with standard residential mortgages at the time, and no monthly repayments were due. In return, it was a term of the mortgage that Mr and Mrs M agreed to pay back 75% of any increase in the value of the property since the original valuation.

Mr M pre-deceased Mrs M, who passed away in January 2023. Mrs W says that it was only just before Mrs M passed away that Mrs W first discovered the existence of the SAM. Mrs W says that, when she tried to explain the mortgage to Mrs M, it came as "*a total shock*". Mrs W says that her mother would have signed anything her father asked her to and believes Mrs M had no knowledge or understanding of the SAM.

A complaint was raised with Barclays, but the bank didn't uphold the complaint. Barclays said it had provided information only about the mortgage, and that Mr and Mrs M had been given advice by their own independent solicitors before taking it out. Barclays apologised for the delay in responding to the complaint, and offered £200 compensation for this.

Dissatisfied with Barclays' response, Mrs W brought the complaint to our service. Our Investigator explained that Barclays SAMS Limited was a wholly separate company from Barclays Bank UK PLC (which I will refer to as Barclays, for ease of reference). Barclays SAMS Limited was responsible for the lending and the structuring and terms and conditions of the loan, but it had never been covered by the jurisdiction of the Financial Ombudsman Service. However, the loan was arranged by Barclays and so the Investigator thought this part of the complaint fell within our jurisdiction.

After looking at what happened when the loan was sold in 1998, the Investigator didn't think Barclays had done anything wrong during the sales process. It had provided information to Mr and Mrs M to allow them to decide whether they wanted to take out the SAM, and they had had legal advice before completing on the mortgage.

Barclays agreed with the Investigator that we could consider the complaint about the sale of the complaint, and accepted her findings that the bank had done nothing wrong when it sold the mortgage.

Mrs W didn't agree with the Investigator, and asked for an Ombudsman to make a final decision on the complaint. Mrs W says that, regardless of how or why Barclays advertised or promoted the SAM, her mother wouldn't have seen any information about it. Mrs W says that her father, Mr M, was not the kind of man to have asked for Mrs M's advice or opinion in relation to financial matters.

### **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.

Having done so, I'm afraid I have disappointing news for Mrs W. First of all, I agree with the Investigator that a large part of the complaint – the operation of the SAM – can't be considered by our service. And for the complaint point that I *can* consider – the way the loan was arranged – I am not persuaded Barclays did anything wrong.

We 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 was responsible for the way the loan worked, and its terms and conditions, including determination of how the final repayment is calculated. Barclays administers the loan but it isn't responsible for setting the terms and conditions that apply. The fairness of the terms and conditions is a matter for Barclays SAMS Limited, and as that business isn't covered by the Financial Ombudsman Service, I can't consider a complaint about that.

The mortgage was sold in 1998 before the existence of the Financial Ombudsman Service. The sale of the mortgage was covered by the Mortgage Code, which applied from 1997 until mortgages became regulated on 31 October 2004. (I note the Investigator referred to this as the 'Banking Code', but it was actually called the Mortgage Code.)

Under the Mortgage Code, Barclays was required to inform borrowers of the level of service it was giving. Barclays has provided a copy of the confirmation it gave Mr and Mrs M in 1998. That confirmed it would give information on the mortgage product they had chosen. That means Barclays didn't provide Mr and Mrs M with advice, so was not required to assess their needs and make a recommendation based on those needs.

However, the Mortgage Code did require Barclays to provide borrowers with information that was clear, fair, reasonable and not misleading. So I've thought about whether Barclays did that when it sold the SAM to Mr and Mrs M.

Barclays has provided a copy of the documentation from 1998. From this I'm satisfied that the credit agreement explained how the amount repayable on redemption of the SAM would be calculated. It outlined the formula for the calculation and provided a working example. It wasn't possible to provide an exact figure, because this would be dependent on the date of redemption of the mortgage and the valuation of the property at that date. But I'm satisfied that the documentation was relatively straightforward to follow.

Barclays wasn't required to provide a forecast of how the housing market might fluctuate over the term of the mortgage. This isn't something the bank could ever predict. The housing market in the UK isn't guaranteed to increase, and different areas across it have seen very different levels of growth since 1998, as a result of various economic and political factors, such as the 2008 financial crash and the effects of Brexit, the Pandemic and interest rate rises on the economy. Ultimately, this is an unknown, but Barclays produced illustrations to demonstrate what might happen based on certain scenarios, and I think this gave an indication of how the product worked, which is all the bank could do.

Barclays also made it clear that if Mr and Mrs M had any questions about how the mortgage operated, they would need to ask their solicitor. So even if Mr and Mrs M hadn't been able to follow the working example provided, their solicitor was under instruction to confirm that they'd understood it, and to have explained it if asked.

I'm satisfied that the paperwork is clear; Mr and Mrs M received information about the mortgage; they did not receive advice from Barclays about its suitability. Mr and Mrs M also received advice from their own solicitors before taking out the mortgage. Therefore, whilst I acknowledge Mrs W's insistence that her mother wouldn't have had any understanding of the mortgage, and would have signed anything Mr M asked her to sign, the documentation from the time it was taken out persuades me otherwise.

In the circumstances, I'm not persuaded Barclays has done anything wrong and so I'm not upholding the complaint.

### **Other matters**

I note Mrs W has raised queries about the valuation process, and the bank has received a fresh complaint about this. I will therefore make no further comment about that here, as it will be addressed by Barclays in its final response to that complaint.

In relation to this complaint, Barclays acknowledged the delay in responding to Mrs W, and offered her £200 compensation. I don't have any power to award compensation in relation to the handling of complaints, as this isn't a regulated activity and so doesn't fall within the scope of our rules.

In addition, Mrs W, as Administrator of her late mother's estate, isn't entitled to compensation in her own right for distress or inconvenience. That's because she isn't Barclays' customer – it was Mr and Mrs M who were the bank's customers in relation to this mortgage. That customer relationship vested in Mrs M when Mr M died, and then in Mrs M's estate after she died. Mrs W is the representative of Mrs M's estate.

Given the above, whilst I would expect Barclays to honour its offer and pay Mrs W the £200 compensation, I don't have any power to make an award to her.

### **My final decision**

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs

M to accept or reject my decision before 17 June 2024.

Jan O'Leary  
**Ombudsman**