

## **The complaint**

Mrs P's complaint is about Barclays Bank UK PLC (Barclays) in relation to a shared appreciation mortgage it administers on behalf of the lender. The complaint is two-fold:

- The mortgage having been mis-sold to Mrs P and the late Mr P in 1998. This is because Barclays didn't explain it wasn't the lender and it did not explain clearly how the mortgage worked, thereby misrepresenting the mortgage.
- The administration of the mortgage at the time it was paid off, as Barclays required Mrs P to pay a significant proportion of the sale proceeds to the lender to clear the mortgage debt. It would not then consider adjusting the amount it required to be paid.

Mrs P is represented in this complaint by her attorney.

## **What happened**

In 1998 Mrs P and the late Mr P took out a Shared Appreciation Mortgage with Barclays SAMS Limited (the lender). They borrowed £20,000 and in exchange, when the property was sold, the lender would receive the amount of the original advance plus 75% of the increase in value of the property. The mortgage is administered by Barclays.

When the mortgage was paid off in 2024, the amount that had to be paid to the lender was just under £204,000. Mrs P's attorney complained to Barclays that this amount was too high and asked that it adjust the balance by applying a 'reasonable' amount of interest to the original advance. She explained that the money released from the sale was to pay for care home fees, but the amount Barclays had required from the sale proceeds meant that Mrs P wouldn't be able to afford the care home of her choice. The attorney complained that the terms of the contract were unfair and unreasonable.

Barclays responded to the complaint in a letter of 14 February 2024. It said that it was the responsibility of the conveyancing solicitor to ensure that Mr and Mrs P understood the mortgage, as no advice was given by Barclays or Barclays SAMS Limited in 1998. Barclays also confirmed that it had administered the mortgage in line with the terms and conditions.

The complaint was referred to this Service, as Mrs P and her attorney were not satisfied with the response they received.

One of our Investigators considered the complaint. He explained that the terms and conditions of the mortgage were set by the lender, not Barclays. As the lender is a separate company to Barclays, and the lender fell outside of our jurisdiction, we were unable to consider a complaint about the mortgage terms and conditions. The Investigator went on to confirm that Barclays, as administrator, was required to administer the mortgage in line with the terms and conditions, and this appeared to be what it had done.

The attorney then raised a new issue about the mortgage having been mis-sold as Barclays had not made it clear that it wasn't the lender or adequately explained how the mortgage worked when it was sold to Mr and Mrs P. She considered the mortgage had been misrepresented.

Barclays consented to us considering the new issue, but it said that it thought that as the events being complained about happened in 1998, they would fall outside of our jurisdiction due to the time limits contained in our rules. Our Investigator considered this objection and concluded that the complaint points would be time-barred by our rules and so we could not consider the merits of the new complaint point.

Mrs P's attorney said that she thought the Investigator had missed the point that had been made. She said that as the mortgage was sold through a Barclays branch, it was, therefore, presented as a Barclays product by implication. She said that the fact that the communications were from a lender in the same group still gave the impression that the lender was part of Barclays and so the sale of the product was misrepresented and not specifically explained. It was also put forward that it was unreasonable that we had concluded that Mr and Mrs P should have made the complaint earlier, when the impact of the unfair mortgage terms was not known until the property was sold. It was requested that the complaint be referred to an Ombudsman if the Investigator didn't change their conclusions.

The Investigator considered Mrs P's further comments, but he was not persuaded to change his conclusions. As such, the complaint has been passed to me to consider.

I issued a provisional decision on 28 January 2025, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

*'We can only consider a complaint against a financial business if it is responsible for the matter complained about. In this case there are two financial businesses involved with the mortgage in question. The first business being the lender, which is responsible for the literature that was available to Mr and Mrs P before they took out the mortgage, the documentation they were provided with after they applied, and the mortgage terms and conditions.*

*The second business involved is Barclays. The literature for the mortgage was available in its branches and in some cases, it will have provided information about the mortgage, but that was not always the case. Following mortgages being set up, Barclays also administered them on behalf of the lender.*

*In 1998 when Mr and Mrs P took out their mortgage, mortgages were not a regulated product. This means that in order to be able to consider a complaint against a lender, that lender had to be a member of a voluntary scheme at the time the mortgage was arranged and subsequently have become authorised and fall within our jurisdiction. The lender in this case was not and so we can't consider a complaint about anything the lender is responsible for. That includes the terms and conditions of the loan and whether the literature and documentation from before and after the sale was clear and not misleading.*

*As such, the concerns that have been raised about the terms and conditions of the mortgage – that they were unfair and unreasonable – don't fall within my remit to consider as they were set by the lender. However, I can consider how Barclays has applied those terms and conditions when administering the mortgage, which I will do later in this decision.*

*The new complaint point raised after the complaint was referred to us is that the mortgage was mis-sold because Barclays did not make it clear that it was not the lender, and it didn't explain adequately how the mortgage worked. Barclays has said that as the event complained about happened in 1998, it would not fall within our remit as the complaint would have been raised too late under our rules. However, before I consider the time limits contained in our rules, I must be satisfied that the financial business is responsible for the*

*matters being complained about, and that those matters are ones that fall within my remit. If that is not the case, then the time limits in our rules are not relevant.*

*The type of mortgage Mr and Mrs P took out were advertised in the national press and in branches of Barclays. These advertisements directed interested parties to request literature (either directly from the lender or in a Barclays branch) which set out the things that Mrs P has said Barclays didn't adequately make them aware of, including how the amount that had to be paid back would be worked out. If a potential borrower then wanted to ask any questions they could speak to a member of Barclays' staff in a branch. It was not a requirement for a potential borrower to speak to Barclays before applying for a mortgage, but if they did, Barclays only gave factual information. There was no obligation on Barclays to do more than answer the questions the potential borrower had. Advice about the suitability of the mortgage for a consumer was not a service Barclays provided at all.*

*If a meeting with a potential borrower took place a form was completed to confirm what had been discussed. Mr and Mrs P did meet with a member of Barclays' staff to ask for more information. I have looked at the record from the time and it confirmed that the only information provided to them related to the costs associated with the mortgage – the valuation, application and legal fees etc. It was set out that this was the only thing discussed because Mr and Mrs P didn't want to discuss anything further. It was also confirmed that Barclays didn't issue literature to Mr and Mrs P.*

*This would indicate that Mr and Mrs P had obtained the brochure for the mortgage, which would have confirmed who the lender was and how the mortgage worked, before they spoke to a member of Barclays' staff. Given they did not want to discuss anything other than the fees that would be payable, it would seem they made their decision based on the literature they received, rather than anything Barclays said to them.*

*As Barclays was not asked for, nor did it provide, information about how the mortgage worked or who the lender was, I can't find it responsible for any misunderstanding Mr and Mrs P had about those matters. As such, I can't consider these matters further.*

*Mrs P is unhappy with Barclays' administration of the mortgage when she sold her home because of how much it asked to be paid to the lender from the sale proceeds. I have reviewed the information in relation to this and it appears that it asked Mrs P to pay an amount that was calculated in line with the mortgage terms and conditions. That is what it was required to do as the administrator of the mortgage.*

*As I have said above, Barclays doesn't set the terms and conditions and so it was not in a position to vary them when Mrs P and her attorney asked it to. I can understand how difficult a position Mrs P is in due to how the mortgage works, but I can't find that Barclays did anything wrong when it administered the mortgage as it was required to. As such, I can't uphold this aspect of the complaint.'*

Mrs P and her representative didn't accept my conclusions. They highlighted that the lender and Barclays are part of the same financial group and so it was the Barclays Group that benefited from the profits of the mortgage, and it should have to take some responsibility for what they consider to be an unfair mortgage product. They asked that we make a recommendation for the Barclays Group to make a gesture of goodwill toward Mrs F in order to treat her fairly.

Barclays accepted my provisional 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 can understand why Mrs P and her representative have asked I make the award they have, but I quite simply can't do that. We are only able to consider complaints about financial businesses that are regulated and fall within our jurisdiction. While the lender is part of the Barclays Group and the Group will, therefore, likely have profited from Mrs P's mortgage, I have no more jurisdiction to make an award against the Barclays Group than I do against the lender. Neither the lender nor Barclays Group, as an entity, falls within our remit. So I can't make an award against either of those entities or recommend they do anything.

None the less, I have reviewed the file again in its entirety and I have revisited my provisional decision. Having done so, I have reached the same conclusions – that many of Mrs P's concerns cannot be considered against Barclays, and those that can, should not be upheld.

## **My final decision**

My decision is that Barclays Bank UK PLC is not responsible for Mrs P's understanding of the mortgage, the literature she received or the mortgage terms and conditions, and so we can't consider her concerns about those matters against it. In relation to its administration of the mortgage, I do not uphold the complaint made, as I am not persuaded that Barclays Bank UK PLC did anything wrong in this regard.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs P to accept or reject my decision before 7 March 2025.

Derry Baxter  
**Ombudsman**