

The complaint

The estate of Mrs H complains about the unfairness of a shared appreciation mortgage and the way it was sold to her by Barclays Bank UK PLC.

What happened

Mr H brought this complaint on behalf of the estate of Mrs H (his late mother). So, I'll refer to him throughout my decision, rather than the estate.

In 1998 Mr H's parents were sold a shared appreciation mortgage (SAM) by Barclays Bank UK PLC (Barclays). The lender was Barclays SAMS Limited (BSL) – a separate subsidiary company wholly owned by Barclays.

Under their SAM, Mr H's parents borrowed £25,000, which was 25% of their property's value at that time. The amount repayable – as stated on their credit agreement – was the amount borrowed, plus valuation and legal fees, plus the "shared appreciation amount." There were no regular repayments to make on the mortgage throughout the term.

The shared appreciation amount (where the property increased in value according to an independent valuation carried out at the time of redemption) was calculated multiplying the borrowed percentage by three and then multiplying the result by the valuation difference (the growth/appreciation).

The credit agreement showed a working example of that where the amount borrowed was 16.5% of the original property value and the property value had grown over the term of the mortgage by £20,000.

It's worth noting here that the mortgage term does not feature within the calculation as its only relevance is the growth in value that occurred over that period. The term of the mortgage was dictated by the date on which the mortgage was redeemed. The mortgage could be redeemed at any point chosen by the borrowers, but otherwise would be triggered by the sale of the property, the admittance of the borrowers to a long-term care facility or their deaths.

Mr H's parents signed the credit agreement on 15 July 1998. The Consumer Credit Act 1974 required Barclays to give Mr H's parents a copy of the agreement at least seven days before signing to allow them time to consider whether to proceed with the SAM.

Mr H instructed estate agents to sell the property, following his mother's admittance to a long-term care facility in 2022. Sadly, his mother died in January 2023 – his father having died some years before. Mr H obtained a redemption statement from Barclays in December 2022.

Mr H complained to Barclays in March 2023 as a representative of his mother's estate. He says the following:

- Barclays did not make the implications of the SAM clear to his parents.

- Barclays didn't establish his parent's need for the loan – they spent the money on some small home improvement projects, bought some shares and put the balance in interest bearing savings accounts. So, a much smaller personal loan would have been more appropriate.
- Barclays tried to sell his parents a “managed growth and income trust” – indicating it knew they were borrowing more than they needed. It's wrong that Barclays lent his parents money with the intention of selling them another product in which to invest the money they'd borrowed.

In its final response letter dated 21 March 2023, Barclays said SAMs were sold on an information only basis – meaning it gave Mr H's parents no advice. But the SAM literature at the time suggested they seek independent financial advice or discuss the matter with family. Barclays said it issued clear instructions to solicitors to ensure their clients understood the SAM before proceeding. And the terms of the SAM were clearly explained in the loan agreement and that also included a formula to illustrate the possible cost.

Dissatisfied with Barclays' response Mr H asked us to consider the complaint. Our investigator didn't uphold the complaint. She said she didn't think Barclays mis-sold the SAM as she hadn't seen that Barclays gave them advice and she thought the information Barclays gave them was clear, fair, reasonable and not misleading. Our investigator also said we couldn't consider a complaint about the fairness of the product as that would be a complaint about BSL – a separate company from Barclays.

Mr H disagreed. He said the example of a possible redemption figure used by Barclays at the time of the sale was not a reflection of the growth in house prices over the 20 years before Barclays started selling SAMs. The example used a growth figure of approximately 50%, while the growth in the preceding 20 years was 461%. He also said the term used was much shorter than the term Barclays might have expected to be typical of the SAMs it sold. Mr H said Barclays should also be responsible for the fairness of the SAM as it devised, marketed, arranged and administered the product.

As Mr H disagreed, the complaint has been passed to me for a final 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.

To decide this complaint, I've thought about whether Barclays provided advice to Mr H's parents and whether the information it provided was clear and not misleading. Mr H has argued that Barclays is responsible for the fairness of the agreement, so I've also thought about that.

The provision of advice and clear information to Mr H's parents

At the time of the sale of Mr H's parents' SAM, Barclays subscribed to the Mortgage Code. So, I'd expect to see that it adhered to the code when selling mortgages. The evidence available indicates that Barclays sold the SAM in this instance – rather than a mortgage broker.

Under the Mortgage Code, Barclays were required to inform borrowers of the level of service it was giving. Barclays has provided a copy of the confirmation it gave Mr H's parents at the time of the sale of their SAM. That confirmed it would give information on the mortgage product they had chosen. That means Barclays didn't provide Mr H's parents 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 H's parents.

Barclays has provided a copy of Mr H's parent's credit agreement. As I've said in the "what happened" section above, the credit agreement explained how the amount repayable on redemption of the SAM would be calculated. It outlined the formula for the calculation and then gave a working example.

I think, given that the formula provided was supplemented by a working example, it would have been relatively straightforward to follow. I say that mindful that Mr H's parents are unlikely to have been mortgage experts and may not have been particularly financially sophisticated. Even if Mr H's parents were not able to follow the working example provided, their solicitor was under instruction to confirm that they had understood the product. And I think it likely that the solicitor would have included an understanding of the calculation of the potential redemption amount to satisfy themselves that Mr H's parents understood the SAM. I say that because I think an understanding of the redemption calculation is fundamental to an understanding of the SAM.

The credit agreement Mr H's parents signed said:

"WHAT YOU CONFIRM BY SIGNING THIS AGREEMENT

You confirm that you have read and understood the 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."

Barclays has also provided a copy of the mortgage application. In that, Mr H's parents gave full details of the solicitor they were using.

So, I think Barclays made Mr H's parents aware that if there was anything about the agreement they didn't understand, they should speak to their solicitor. It's clear to me that engaging a solicitor was a requirement of obtaining the mortgage, so I'm persuaded that Mr H's parents did so.

Mr H says that the examples of amounts repayable on redemption do not reflect the history of the property market or the likely term of the mortgage. He says that, instead of relying on the solicitor to explain that to his parents, Barclays ought to have done that.

I understand Mr H's concerns in that regard. In particular, with regard to the example given on the loan agreement, I note that the term was only two years. So, given that the term of Mr H's parents' SAM transpired to be more than 20 years, the cost to the estate was considerably more than the example given in the loan agreement.

However, I haven't seen that the example in the agreement or the other examples provided were designed to illustrate the likely cost to Mr H's parents specifically. Had that been the case, I would expect that they'd shown the amount Mr H's parents actually borrowed as a starting point for the calculation. Instead, I think the examples were given to help customers understand the formula for the redemption calculation. So, I don't think the examples were misleading. Nor do I think they were necessarily unrealistic, albeit that they didn't match Mr H's parents' circumstances and the eventual term of their SAM. I don't think the term was predictable for an example that was only designed to aid the understanding of a formula and designed to be provided to all customers, irrespective of their personal circumstances.

I also understand Mr H's concerns about the amount his parents borrowed in relation to the amount they needed. I agree that the evidence available doesn't suggest they needed as much money as they borrowed and that it appears they were due to talk to Barclays about investing some of the equity they'd released from their property via the SAM. From what Mr H says, his parents chose to by a small number of company shares and invested in some deposit type savings accounts. And, again, I agree, given the cost of the borrowing, that may not have been an efficient use of the release of their equity.

However, as I've said, according to evidence from the time of the sale, the level of service provided to Mr H's parents, under the Mortgage Code, was to give information on a specific product they chose. I haven't seen any evidence to persuade me that Mr H's parents chose the product because Barclays told them it was right for them. Under the level of service documented, Barclays were unable to provide a recommendation and so were not required to assess or evidence a need for the product or the level of borrowing taken. And, as much as I understand Mr H's concerns, I cannot hold Barclays accountable to a different standard now. I don't think Barclays needed to do more to adhere to what was required of it under the Mortgage Code in respect of the level of service it provided.

The fairness of the agreement – the SAM product

Barclays SAMS Limited was the lender in respect of Mr H's parent's SAM. So, where a complaint is about the fairness of the agreement or its terms and conditions – as part of this complaint is – it would need to be made against Barclays SAMS Limited, rather than Barclays Bank UK PLC. In any event, Barclays SAMS Limited is not within our jurisdiction, so we don't have the power to consider such a complaint.

Mr H has expressed concern that it was Barclays that devised, marketed, arranged and administered the product. But for the purposes of our jurisdiction, we must consider different companies separately, even if one is wholly owned by the other. In this case, from a legal standpoint, BSL was the lender and so was responsible for the fairness of the agreement. That means we cannot consider that part of this complaint against Barclays.

My final decision

My final decision is I don't uphold the estate of Mrs H's complaint about Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms H to accept or reject my decision before 2 February 2024.

Gavin Cook
Ombudsman