

BARCLAYS BANK PLC

SAM Hardship Scheme

FIRST ANNUAL REPORT

1. This is my first annual report as the Adjudicator appointed under the Shared Appreciation Mortgage (SAM) Hardship Scheme which took effect in June 2007. It gives an account of the outcome of my first periodic review¹ and (so far as relevant) the appeal process². Although the period reported on is less than a year, it seems to me important to report on the first six-monthly review, and I expect hereafter to report on two six-monthly reviews on a calendar year basis.

The Scheme in outline

2. *Reason for the Scheme.* For a period in 1998 Barclays Bank plc (the Bank) sold a form of equity release product to around 2500 customers. It was an interest free loan secured as a first mortgage on a house or flat, and was available for as long as the customer needed it. However, on sale of the property or on redemption of the loan, the lender became entitled to a share of the increase in the value of the property over the period of the loan. This lender's share of an increase was to be derived by taking the initial "loan to value" ratio, and multiplying it by three. So a borrower who took out a loan for 15% of the value of the home would repay 45% of the later gain in value of the home, and for a borrower who took out a loan for 25% (the maximum percentage allowed), the gain transferred would be 75%. Equally, if there were no gain during the period of the loan, then all that the borrower had to do on sale or redemption was to pay back the amount of the advance.
3. The Bank was not and will not be the recipient of any of the agreed financial return, since the loans were "securitised" shortly after their creation. This means that the Bank "sold" the debt to third

¹ I carried out the review on Friday 11 January 2008, as described in more detail below.

² Under paragraph 5.7 of the terms of reference, "The Adjudicator will review periodically a random sample of the decisions reached by the SAMs Executive Committee (after the time for appealing against them has expired) and will produce an annual report, for external publication, on the appeal process and on the periodic review. The identity of individual customers will not be revealed in that report." The only reference in this report to the appeal process is at paragraph 10 below.

party investors in the form of bonds, and remained responsible only for the administration of the SAMs on behalf of the bond-holders. The Bank discontinued the sale of the product after only 3 months, when the funds raised from investors to finance the product had been used up. In the years after 1998, and until recently, there has been a very substantial amount of house price inflation. I understand that this growth has been much greater than either the borrowers or the Bank expected, and arguably more than either could have predicted. Although the loans may generally appear with hindsight to have worked to the benefit of the lender, all the borrowers were recommended to take legal advice at the outset and I am informed that none of the complaints about the terms of the product have been upheld by the Financial Ombudsman Service.

4. As time went by, it began to appear that substantial hardship was on occasion being caused by the SAM product owing, in whole or in part, to the difficulties inherent in it in taking out further advances on the property or the inability to transfer the loan to another property. A number of complaints began to appear about these features. It was sometimes said, by or on behalf of customers, that they had become “trapped into their own homes” by the terms and conditions of the SAM. As a result, the Bank decided that it wished to take steps to assist these customers. In June 2007, after detailed discussions with interested parties including a representative body of customers³ and a number of Members of Parliament, the Bank established the SAM Hardship Scheme as a goodwill gesture, with detailed terms of reference and arrangements for external review.
5. *Structure of the Scheme.* The Scheme is designed to provide assistance to individual customers who hold Barclays SAMs and find themselves in circumstances of substantial hardship as a result of one or more features of the SAM. The applicant must show that he or she had taken out a SAM and that he or she⁴ is suffering substantial hardship as a result or partly as a result of one or more of the terms or conditions of the SAM⁵. The SAM must also still be in existence and unredeemed at the date of the application.
6. The Scheme provides that any successful applicant for assistance under the scheme is to “*be offered the choice either to relocate to a more suitable property or to make necessary adjustments to their*

³ Known as SAFE (Struggle against Financial Exploitation): see www.safe-online.org.

⁴ Or a dependant who permanently resides with him or her.

⁵ Under the terms of reference, at 2.2.1 and 2.2.2, an example of a term or condition of the SAM causing hardship may be the inability to transfer the SAM to another property., and an example of substantial hardship may be illness or disability making it necessary to move home or adapt the current property.

current property to allow them to remain living there."⁶ Examples of these adjustments might be a stair lift or a wet room or walk-in shower in place of a bath. So the scheme is essentially about-

- a. Helping people who need to move home to do so, or
- b. Helping people who need to adapt their home, so as to be able to stay in it, to do so.

Those that need help to move home receive an interest free loan. Those that need help to adapt their home receive an outright grant, which is not repayable but which has to be used for the agreed purposes. An applicant can have one remedy or the other, but not both. Once an applicant has had any assistance of either kind he or she may not apply afresh, though those that are rejected can always come back. It follows from this that the Scheme does not contemplate cash payments, whether to help pay off the SAM itself or other indebtedness, or to incur expenditure not directly related to relocation or to necessary adjustments to the existing home.

7. The Scheme also recognised that the requirements mentioned in paragraph 5 above may themselves not have covered all the cases that might arise, but where substantial hardship has in fact arisen in some other unexpected way. Accordingly, an exceptional clause was included to prevent applications from being shut out by those requirements where there are exceptional circumstances which mean that it would be harsh or unconscionable if the case were not treated in a comparable way to those expressly envisaged by the Scheme.
8. Finally, I need to mention that the Scheme is expressly not available in a number of cases. The most significant one for this report⁷ is where there could be legal liability on the Bank in any event, for example through mis-selling. Such cases are dealt with under the Bank's standard procedures, and if necessary through use of the Financial Ombudsman Service.
9. *Operation of the Scheme.* As at the end of December 2007, about 330 customers had been sent details by the Scheme. Most had been contacted to ask if they wished to apply, but some had otherwise been able to apply themselves, whether as a result of the media coverage given to the Scheme at its launch or through membership of the representative body, SAFE. Some 170 forms of application have been sent out, and as a result 71 applications have been made. Some four fifths of the applications were with a view to a move of home and one fifth were for necessary adaptation.

⁶ Scheme, at paragraph 4.1.

⁷ There is another exclusion, not relevant to this review, where the claim is by relatives of SAM customers complaining that their inheritance has been diminished.

10. Of the 71 applications, 54 have been granted and 8 refused. The remainder are in process, and one appeal is expected⁸. At this early stage, the process has been completed, and assistance actually provided, in only 6 cases, three of which are for removal and three for necessary adaptations. I discuss below the reasons for the completion of only 6 cases out of the 62 successful applications, but I emphasise here that none of the reasons for the low percentage reflects in any way on the Bank.

Overview of this Report

11. My broad conclusions, drawn from the Review, are as follows.

12. Conclusion 1. The quality of the clerical work and of the decision making process is high, and the turn around times for correspondence and internal communication are creditable.

13. Conclusion 2. The Scheme is a complex and detailed one, in two particular ways, described below. One of these has prompted some important decision making in the early stages, and the other is capable of leading to some lapse of time in the actual delivery of the agreed assistance. But the complexity and the level of detail are no more than is necessary for a Scheme with the policy aims concerned and have not led to any avoidable delay.

14. Conclusion 3. At an early stage a number of policy issues and points of interpretation arose and were dealt with. Those that I came across in the case papers had been handled in a way that seemed to me to accord closely with the spirit and letter of the Scheme itself. One particular issue is the scheme limitation, referred to at paragraph 6 above, preventing financial payment otherwise than for relocation or adaptation.

15. Conclusion 4. In my review I picked up a number of other, relatively minor issues, and I received explanations of the approach that had been or would be taken on each of them. Each of these deserves a brief mention below.

16. Conclusion 5. Over all, I have no hesitation in concluding that the Scheme is working well and broadly as intended. I do not suggest to the Bank that it should give consideration to any amendments to the Scheme⁹.

The Report itself

⁸ So far, the only action I have taken as Adjudicator under the Scheme in relation to this potential appeal is to allow the appellant more time in which to lodge an effective appeal, after a further medical appointment that had, when I gave that leave, yet to take place.

⁹ Under paragraph 5.8 of the Scheme, following a periodic review, the Bank “may consider whether to make any amendments to the way in which the [Scheme] will operate.”

17. On Friday 11 January 2008 I was shown some 13 files which I had selected at random in the course of December 2007. I had chosen
- a. 6 out of 45 successful applications for removal to a new home
 - b. 3 out of 6 unsuccessful applications of that kind, and
 - c. 4 out of 9 applications for a grant to make necessary adaptations, of which there were
 - i. 3 out of 6 successful applications, and
 - ii. the only unsuccessful application¹⁰
18. The files included all relevant decision making by the two collective bodies concerned.¹¹ I was also able to interview the Customer Relations Manager in charge of the casework leading to the decision making process, and the Legal Adviser most closely concerned with the casework. The Case Team has included two caseworkers from a major consultancy firm, and, while I saw their work on paper, I did not find it necessary to ask to see either of them.

Conclusion 1.

19. I need say little more about Conclusion 1. The files contained a great deal of careful work, and the correspondence with and notes of telephone calls with applicants seemed to me to be sympathetic and to demonstrate a real willingness to help the applicants to succeed where possible, and to explain things clearly even where they were quite complex.

Conclusion 2.

20. The second conclusion relates to the complexity and level of detail involved in the scheme. This is a general issue running across the two halves of the scheme, though of course the landscape is different in the two halves. The complexity and detail arises in two separate ways. One is that the criteria for eligibility are broad and leave a certain amount to the *discretion of the Bank*, which makes for a complex evidence gathering process and for a formal and detailed decision making process¹². The second is that the *arrangements for the actual delivery* of the financial assistance (whether by loan to help removal, or grant to help adaptation) are inherently complex. In the case of a removal to a new home, the

¹⁰ There had been one other, but it was the case where an appeal has been entered.

¹¹ These are the Interim Panel, chaired by a Staff Member, and the Executive Panel, chaired by a Director of the Bank's main Board.

¹² I should make it plain that the complexity and detail involved has not led to any delay in the handling of the cases, which seemed to me to be brisk and businesslike.

amount of the interest free loan will usually not be finally fixed until the price of the new house has been agreed with the vendor and supplied to the Bank, and so there is, inevitably, some to-ing and fro-ing as new property is being considered and negotiated for. The best example of this kind of correspondence was in Case A5 in my review, where there was, among other things, a special offer of a discount available to those who committed early to purchase a newly built flat. This would have involved very speedy decision making, as the customer could not proceed without certainty that the Bank would provide a specified sum based on the amount finally negotiated in the context of the offered discount itself¹³. In the case of necessary adaptations the value of property does not come into the reckoning, but even so there are inevitable discussions about photographing existing facilities, about obtaining surveys, architects plans and estimates from plumbers, builders, decorators etc, about evaluating them, and about making payment after the work is done.

21. The first of these areas (*the discretion of the Bank*) is most conveniently discussed in the context of the issues that were mentioned to me, or which I picked up myself, and I will turn to them below at Conclusions 3 and 4.
22. The second of these areas is *the arrangements for the actual delivery* of the assistance. Although I had for review the papers held in the Bank in London¹⁴ about the decision making process, and not those kept by the Bank staff involved with the conveyancing and assessment process, I saw a certain amount of material about the latter. It seems to me to be dealt with to high standards and with commendable speed as well. I found no case of any delay or other loss of expedition within the Bank itself. I was also glad to note that the decision making process had itself been streamlined in November 2007 so as to make it easier for the Bank to adjust the original offer speedily in the light of negotiations about house purchase or the outcome of surveys and estimates from tradesmen.
23. If the Scheme had been structured so as to provide a fixed sum irrespective of the cost of the new home or irrespective of the detail of the adaptations required, then the finalisation process could have been somewhat simpler. But it is in the very nature of the Scheme that it is not compensating, but is providing assistance of one or

¹³ In the case A5, the property in question was not in the event bought; I mention the case simply by way of example of the need for communication and speed.

¹⁴ The delivery unit is in Leeds, while the decision making process is handled in the Bank's Headquarters in London.

other of the two kinds. That cannot be done without detailed involvement by the Bank in the particular plans of the person being assisted, and the Bank has put in place machinery to deliver that necessary involvement to high standards of speed and consideration. I therefore do not suggest any change in the Scheme on this account.

24. I do observe however that this detailed involvement may be one of the principal reasons why so few of the cases have yet been finally concluded. It also strikes me that the present instability of the housing market may make things more unpredictable and complex for consumers and for the Bank than was envisaged when the Scheme was set up¹⁵. So I intend to look in more detail at this aspect in the next review.

25. Conclusion 3 relates to the policy issues and points of interpretation that featured in the papers I studied. I mention them only for completeness, since each of them, in my view, was dealt with in a satisfactory way. The Scheme, as already mentioned, uses fairly broad phrases to define the area where the assistance it offers is to be available, and this has inevitably left some edges to be dealt with by discretion. I reached the clear view on dealing with the casework sample that this was the best way that the Scheme could have been structured, and that the broad language may well have enabled more decisions to be made in favour of the applicants than if there had been more detail and less flexibility. I conclude therefore that there is no need to change anything in this respect.

26. There were four policy issues and points of interpretation in my sample set of cases:

- a. The fact, already mentioned, that the Scheme is not available for financial assistance other than for moving house or making adaptations;
- b. The issue whether and to what extent physical incapacity or disability is required to establish hardship, and the associated issue whether evidence from a medical practitioner is required;
- c. The fact that the Scheme is not able to provide a loan which would exceed 50% in value of the new home, and
- d. The treatment, in the calculation of the amount of a loan to help removal, of the anticipated removal expenses.

I deal with each of these in turn.

¹⁵ I accept of course that it is also true that administrative complexity would be caused to a Scheme of this kind by a rampantly inflationary housing market just as much as by one of uncertainty and periods of decline in property values.

27. (a) *Financial assistance*. In three cases the request, or the final request, was for financial assistance outside the envisaged limitation to removal to a new home and adaptation of the existing home. Case A6, for instance, started off as a request for a loan for a new home, but ended with a lesser request for money to pay off a second mortgage (lying behind the SAM) as it was the second mortgage payments that were prompting or sharpening the need to move home. In Case R2, the applicant was fairly deeply in debt through his own expenditure and through his efforts to help with the survival of a relative's business; he applied for assistance on the basis that his hardship was attributable to the SAM. Case R3 also was an application for financial help¹⁶.
28. In all of these cases the Bank, rightly, in my view, decided that assistance had to be refused. For example, "The Scheme", read the decision in Case A6, "is designed to provide assistance to help people move or award a grant to carry out specific required adaptations to the SAM property. It is not designed to provide cash payments or equity release." Before agreeing with this view, however, I felt it necessary to test the legal basis for it. Under the terms of reference, at 2.2, the key concept is "substantial hardship as a result or partly as a result of one or more of the terms or conditions of the SAM". The example of substantial hardship at 2.2.2 is "illness or disability making it necessary to move home or adapt the property", but this is only an example. In both cases A6 and R2, it could be argued that there was substantial (financial) hardship caused by the existence of the SAM, but that of course is not enough. The hardship, under the Scheme, has to have been caused, in whole or in part, by one or more of the terms and conditions of the SAM. I agree with the conclusions that there was no hardship in these cases that was attributable in any way to any of the terms and conditions of the SAM.
29. Further, the language of a later clause in the Scheme makes it very clear that sheer financial assistance, divorced from the property itself, is not contemplated. Under clause 4.1¹⁷ the Scheme is expressly limited to the two types of assistance there mentioned, both of which are property related, and do not cover mere financial help for other purposes. I also considered whether the residual discretion in clause 2.4 could help, but concluded that it could not.

¹⁶ In this case the SAM had already been paid off, and no evidence of substantial hardship was available; so the fact that the request was for financial help was not the only reason for the rejection, though (see below) the case was referred on to another part of the Bank to consider whether the SAM had actually been mis-sold.

¹⁷ It reads, so far as material, "All customers who are successful in their application for assistance . . . will be offered the choice either to relocate to a more suitable property or to make necessary adjustments to their current property to allow them to remain living there."

Its ambit is related to eligibility in a number of ways, but does not extend to the type of assistance that can be offered. Even therefore if Cases A6 and R2 could have got past the test of hardship related to the terms and conditions of the SAM, the cases would still fail because of the type of assistance that was required. I observe also that the Bank's own documents describing the scheme make it clear that the assistance has to be one of the two kinds. So there is no case for suggesting that either of these cases should be reconsidered under the Scheme¹⁸.

30. (b) ***No need for evidence of disability.*** I also noted that the approach to establishing substantial hardship was the subject of some development. The leading case here was case A5, where the applicant may well not have been suffering from any condition leading to physical incapacity or disability, other than old age itself.¹⁹ Nonetheless, after a certain amount of correspondence and consideration, the decision was reached that assistance could be provided; the rationale was that substantial hardship was established on the basis of advanced years, a long distance from the nearest relative, and the applicant's own evidence of various medical conditions, such as arthritis making it difficult to walk far without sticks. The case shows that the actual test of "substantial hardship" does not necessarily involve any physical disability: the reference to illness or disability in Clause 2.2.2 is by way of example only. Secondly, while it is obviously desirable, in order to establish substantial hardship based on medical matters, to obtain a report from a medical practitioner, the casework shows that the Bank is prepared to dispense with that in a proper case, such as that of Case A5. I regard all this as satisfactory.

31.(c) ***The 50% cap.*** In at least one of the cases I studied²⁰ it was relevant that the Scheme is not available for lending any amount in excess of 50% in value of the new home. The particular points, both interrelated, that concerned me, both before and during the review, were whether that "cap" could be set aside through the exceptional jurisdiction, and whether the application of the cap was appealable to the Adjudicator. My conclusion was, and remains, that the cap is an absolute limit, which cannot be adjusted in either

¹⁸ I have however discussed with the Group Vice Chairman an issue in case A6 arising outside the Scheme, and I was glad to have his assurance that the point would be considered within the Bank.

¹⁹ The point was never determined, though not for any lack of effort on the part of the applicant. The lack of any medical evidence came about because the applicant's general practitioner did not respond to her request that he should cooperate with the Scheme. His view was that the Scheme should be prepared to make the loan without his having to give evidence about his patient.

²⁰ Case A6. The point was also covered in some correspondence I had had, before the review, with the Bank.

way. I also conclude that this is a fair and defensible outcome. The Bank is lending on an interest-free basis and without limit of time. It is entitled to take steps to protect the value of the rights it has as a first mortgagee in those circumstances, and it seems reasonable to limit the amount of the voluntary assistance it is giving to a proportion, and indeed to one half only, of the value of the property as at the date of the assistance. There is no machinery for the Bank to inspect the property or to require the borrowers to keep it in tip-top condition, and it is perfectly possible that some of the property lent against may decline in value through lack of upkeep over the years. Further, as a responsible lender, the Bank ought not to be making loans, even on an interest free basis, where there is a risk that the families of the borrower might face financial problems when the property was eventually sold and the loan had to be paid off. I do not therefore invite the Bank to consider whether to change this limit.

32.(d) **Removal expenses.** I noted in the course of my review that the exact accounting treatment for future removal expenses (legal fees and furniture removal etc) was not settled at the outset. There were some minor differences, for example, as between case A3 and case A1. However, I was pleased to learn from case A5, and from my interview with the staff, that a general practice soon developed for the accounting treatment, and that it did so in the way that was most favourable to the applicants.

Conclusion 4

33. The fourth conclusion relates to some relatively minor issues that appeared in the course of the review. I can take them fairly shortly.

34. **Exceptional cases.** I found at least two cases of potential use of the exceptional cases clause²¹. In cases R1 and R3, both the applicants had actually redeemed the SAM before the Scheme came into effect, and the cases therefore could have been taken forward only if the exceptional cases clause had come into play.²² In neither case, however, did this happen, partly because each of the applications was defective in other ways, and also, in the case of R1, because the case fell outside the “agreed parameters” for the exercise of the discretion. When I enquired as to what those

²¹ Clause 2.4 allowing applications if “there are exceptional circumstances which mean that it would be harsh or unconscionable if his or here case were not treated in a comparable way to those envisaged by the . . .Scheme”.

²² Clause 2.3 requires, unless overridden by clause 2.4, that the SAM must be in existence and unredeemed at the date of the application.

parameters were, I was assured that they were no more than a requirement to apply the Scheme's own test as just set out.

35. There was an interesting case which might be considered "**retrospection**", though it is in my view an instance of a sensible exercise of discretion arising under the Scheme. In case G2, the applicants had in fact made the necessary adjustments to their house before they applied for assistance. They needed money for other repairs which themselves would have fallen outside the Scheme (as not related to the hardship in question, but to routine maintenance of the home). In dealing with this grant the staff were, rightly, concerned not to breach the prohibition, discussed above, on pure financial assistance, and the eventual grant was therefore related to reimbursement for the earlier adjustments made (a wet room etc) which were of the type envisaged by the scheme. I was glad to see that this view had been reached. In my view it was not a decision under the exceptional cases clause just discussed, but is to be classified as a sensible and creditable exercise of discretion in the context of part 4 of the Scheme (Hardship Solutions).
36. A further case raised an **allegation of mis-selling** of the SAM at the outset. This was case R3. I was very glad to be assured, on inquiring, that the case had been referred to the Bank's standard mis-selling procedures for further consideration.
37. Finally there were two cases where **gestures of good will** came into the picture. One of these was case G1, where the necessary adaptations to a bathroom falling within the scheme could have been carried out for around £600 less than the applicants wanted. Strictly, for example, not all the toilet fittings needed to be replaced. Very sensibly, however, the case management decision was to allow the higher sum, and to treat the extra £600 as a gesture of goodwill. In another case, G2²³, the payment on a retrospective basis for the necessary adjustments was described in the offer letter as a gesture of good will, and the offer was made on the footing that, if it were accepted, there could be no further application under the Scheme. This is perhaps slightly unusual, but eminently sensible in the circumstances, and it was pleasing to see that the applicants were grateful for the "help in achieving a successful conclusion". None of this gives me any cause for concern.

Conclusion 5

38. My overall conclusion is that the Scheme is working well and broadly as intended, and that there is no need for the Bank to give

²³ Already discussed under the heading of "retrospection"

consideration to any amendments to the Scheme. The first six months of the scheme appear to have thrown up relatively little by way of teething problems, and to have provided some useful decisions for the future. I am sure that the Bank will continue to administer the Scheme in the sensible and positive way that I have noted in the case work.

39. Perhaps the most important general subject to emerge from this review, taken as a whole, is the nature of the hardship test. The cases examined, some of which are described above, have demonstrated that the test of substantial hardship-
- a. excludes any hardship relating to purely financial difficulty, disconnected from the home itself (see paragraphs 27 to 29 above), but
 - b. does not mean that there has to be any illness or disability as such (see paragraph 30 above). For example, loss of mobility due to old age could be enough, as could a real need to move home even if the reason for it is “social” (eg a move reasonably required in order to be nearer to relatives or friends). Provided that the need bears a real relationship to the terms and conditions of the SAM, therefore, there is no need for illness or disability to be shown.

I regard all this as satisfactory, sensible and within the parameters set by the terms of the Scheme.

40. I look forward to my second review in the summer of 2008, and to reporting on it and on my third review in a year’s time. By then, I should be able to report that the amount of assistance actually delivered by the Scheme will have increased very substantially compared to this account of start-up period of the first six months.

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