

BARCLAYS BANK PLC

SAM Hardship Scheme

Annual Report for 2008

1. This is my third report as the Adjudicator appointed under the Shared Appreciation Mortgage (SAM) Hardship Scheme set up by Barclays Bank plc (the Bank) in mid-2007. It is in fact my second annual report, but, since I delivered a mid-year report in the summer of 2008, it concentrates on the second six months of the year.

The Scheme in outline

2. *Operation of the Scheme.* As at the end of December 2008 the position was as follows. (The main figures are for the Scheme since inception; those in brackets are for 2008). All customers have been made aware of the Scheme, including by message in their annual statement, and invited to apply for details. Some 405 (74) customers have been sent details of the Scheme, but only 14 of those 74 have been included in the last 6 months. A total of 224 (54) forms of application have been sent out, and again only 14 of those 54 were in the second half of the year. As a result 116 (45) applications have been made; of the 45, only 12 were made in the second six months. About three fifths of the 45 new applications, 27, were with a view to a move of home and two fifths, 17, were for necessary adaptation. This compares with an 80%/20% split during 2007 and one of 66%/33% in mid-2008. The change in split may be due to market conditions in the housing market. The fall in the number of applications overall could be as a result of market

conditions generally, and the fact that those in most critical need of assistance applied early in the life of the Scheme.

3. Of the 116 (45) applications, 95 (41) have been granted and 14 (6) refused. The remainder are in process.
4. There are two other changes to report.
 - a. First, the *process of completion*, which appeared rather slow in previous reports (not through any delay on the part of the Bank but through the complexity of the conveyancing process and the market generally) has much improved. Assistance has now been delivered in 32 (26) cases, 20(17) of which are for removal and 12 (9) for necessary adaptations. I am glad to see the improvement in these figures, and, indeed, I have noticed that the staff of the Bank are doing all they can to maintain and improve on that performance.
 - b. Secondly, the *decline* in the rate of *new applications*. The first burst of applications has now dwindled to something of a trickle. There is, however, a potentially sizeable number of customers still eligible for assistance. Of the 3253 SAMs initially sold, 763 had been redeemed by the time the Scheme began, and so the potential population was 2490. Since then, a further 124 have been redeemed (some with the assistance of the Scheme, some without). So there are still 2366 SAMs left in existence, and all but a few of these¹ could still lead to an application under the Scheme.

Overview of this Report

5. My broad conclusions, drawn from the Review, are as follows.
6. Conclusion 1; quality overall. The quality of the clerical work and of the decision making process continues to be high, and the turn around times for correspondence and internal communication are creditable. The attention to speed and to detail, and the consideration and sympathy shown to applicants continue to be heartening.
7. Conclusion 2: policy matters. The scheme has now settled down very well, and, although a number of policy points arose on my review, they are comparatively minor.
8. The main one to mention on this occasion is about the relationship between awards by the Financial Ombudsman Service (FOS) and the Scheme itself, where both are pursued in parallel.

¹ The exception being the cases where assistance has been given to adapt property; they cannot apply again under the Scheme, but the SAM remains intact until redeemed.

9. The previously central policy issue, which had surfaced on both earlier reviews (that is, that the scheme is limited so as to prevent financial payment otherwise than for relocation or adaptation) did not surface at all on this round.
10. Conclusion 3: administrative issues. The Scheme remains a complex and detailed one; it continues to require intensive casework and exercise of discretion. However, the administration seems to have settled into a kind of pattern which makes the process more manageable and somewhat less intensive, and I saw no case of any avoidable delay.
11. That said, the review threw up a surprising number of examples of defective work and poor planning by the Bank's nominated contractors and their subcontractors; it may be that some greater degree of quality control needs to be exercised in that area. At present the service to the customers is not good enough, and the Customer Relations team in Headquarters is having to spend a lot of time and effort sorting out avoidable problems. I have nothing but praise for their work here, and I was also impressed by the dedication and efficiency of the individual who is the main contact for the Bank with the nominated contractors.²
12. Conclusion 4: the slowdown in new cases. In view of the data at paragraphs 2 to 4 above, I suggest that the Bank should consider sending out, once again, a reminder to the SAMs holders who have not yet claimed that the Scheme is available to help where required. There may well be a number of holders who are slipping, through the passage of time, into "substantial hardship" as a result of the terms and conditions of the SAM, but who are not aware, or not sharply aware, of the right they have to apply. I was therefore glad to be assured that the Bank will continue to take steps to remind those for whom the Scheme was designed of its existence and what it can offer. All relevant customers will be reminded again when they receive their annual statement in April this year and this is to be repeated in every following year.
13. Conclusion 5: no need to change the Scheme. I continue to believe that the Scheme is working well and broadly as intended; there is no need for the Bank to consider amendment to the Scheme³.

² In one case, G3, he leapt into his car to drive from Leeds to the West Midlands to sort out the problems of a flood in the house being adapted, which he diagnosed as caused by the negligence of a sub-contractor.

³ Under clause 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."

The Report itself

14. On Tuesday 20 January 2009 I was shown some 11 files which I had selected at random a few days before. I had chosen
- a. 6 out of 27 successful applications for removal to a new home
 - b. 1 out of 2 unsuccessful applications of that kind, and
 - c. 4 out of 10 successful applications for a grant to make necessary adaptations, and
 - d. 0 out of 0 unsuccessful applications of that kind.
15. The files included all relevant case handling documentation, and all relevant decision making by the two collective bodies concerned.⁴ In contrast with previous reviews, and in response to my request, there was much more material relating to the finalisation of the successful cases after the decision had been made. As before I interviewed 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.

Conclusion 1 (Overall quality of the process)

16. The files contained a great deal of careful work, demonstrating a real willingness to help, and to explain things clearly even where they were quite complex. My July 2008 suggestion about more evidence of legal analysis has been fully implemented. I noticed one case where there had been a gap of two weeks during an internal handling phase, between a request in a complex case for an internal view and compliance with the request, but this was an isolated instance. In many cases, letters were sent out on the very day of the phone call that had led to the letter being needed.

Conclusion 2 (policy matters).

Redress outside the Scheme.

17. I take the main policy issue first. This arose out of case L5, where the applicant was advised by solicitors and, as well as making an application under the Scheme, had made an application to the FOS for alleged mis-selling of the SAM in the first place.
18. I understand that in most cases where SAMs cases have been taken to the FOS, the claim has been rejected on the basis that there is no evidence of a mis-sale, or of any lack of suitability of the product for the purposes that prompted it. However, there have been two isolated cases, of which case L5 is one, where there has been an award of redress by FOS: both of them, I gather, turned on their

⁴ These are the Interim Panel, chaired by a Staff Member, and the Executive Panel, chaired by a Director of the Bank's main Board.

special facts; this was certainly the case with L5, which was a most unusual case where the facts concerning the relationship between the Bank and the customer justified an FOS award, albeit of a relatively small kind⁵.

19. The case of L5 prompts the following reflections:

- a. The value of the Scheme as a source of redress is clear, and of substantial benefit to the Bank's customers. FOS exercises a jurisdiction based on "what is fair and reasonable in all the circumstance of the case". Even so, it only rarely makes an award in favour of a SAMs holder, whereas the success rate for the Scheme is much higher, as the figures above show⁶. A comparison of the Scheme to litigation in the Courts, with its attendant uncertainties and risk of adverse cost awards, is of course even more favourable to the Scheme⁷.
- b. Double avenues for redress. In cases of double applications, the order in which decisions are made may be important. Once a SAMs holder has received assistance under the Scheme, he or she has to renounce any rights to seek redress against the Bank in any other way. So any pending FOS application would need to be withdrawn. However, case L5 shows a more generous approach when the order of events was reversed. In that case, the FOS award was made while the Scheme application was still pending. I was glad to see that, even when notified of the FOS award, the staff went on with the consideration and decision to offer an interest free loan under the Scheme. The second offer took into account the earlier award,⁸ but was not withdrawn on account of it. This was a creditable way for the Bank to proceed.
- c. The two forms of redress impinge in different ways on a SAMs holder. If the Bank is required by FOS to pay a

⁵ Another, disconnected, feature of this case is mentioned at paragraph 21(b) below.

⁶ The population of cases from which I chose my random sample was 39, and of those all but two were acceptances.

⁷ On the day after my review, 21 January 2009, the Financial Times reported that a firm of solicitors is minded to bring legal proceedings against the Bank and another bank in this context under new provisions in the consumer credit legislation which replaced the old law about extortionate credit bargains. There are now new powers to reopen credit agreements where the court considers that the "relationship" between a lender and a borrower was "unfair", having regard to (a) the terms of the agreement, (b) the way in which the lender has exercised or enforced its rights and (c) other things done by the creditor before or after the making of the agreement. See section 140A(1) of the Consumer Credit Act 1974, as inserted by section 19 of the Consumer Credit Act 2006. If proceeded with, therefore, this litigation could prompt judicial consideration of the fairness and value of the Scheme, for the purposes of section 140A(1)(c).

⁸ For exceptional reasons that need not be explained, the customer in the end withdrew the application under the Scheme and the offer lapsed.

financial amount to the applicant⁹, then that is an *out and out* payment to him or her; on the other hand, if an interest free loan is made under the Scheme, the loan is *repayable* in due course. So the effect of redress in one way or the other will be different, at least where the assistance is by way of loan¹⁰.

Other policy matters.

20. In the course of my review I spotted a few lesser policy issues that had been decided, and which deserve a mention. Interestingly, one of them, like much of the decision-making on the FOS/Scheme issues just discussed, was decided in the course of the casework, and without being taken as issues of principle to any of the Committees. In each case, I agree with the way the matter was decided.

21. The points were:

- a. *Death of a joint applicant during the works.* In one very sad case (G1), a grant was made available for adaptation of a house for the husband (a downstairs toilet was needed, and a shower upstairs instead of a bath). He was unfortunately diagnosed to have terminal cancer during the time of the works and died within weeks of the diagnosis. At that point the work on the shower was complete, but that on the toilet had not started. The Bank decided not to proceed with the rest of the work, but assured the widow that she could still claim for herself later on if she fell into substantial hardship herself. This was a sympathetic and sensible decision, since the Bank could have taken the technical view that Clause 3.5 of the Scheme (no further claims in respect of SAMs) applied to prevent the widow from claiming afresh, since the Scheme had actually delivered part of the assistance. However, it leads me to suggest that the policy on further applications still needs some working out. For example, if, in a case not involving death, the request for a new toilet had been turned down, and the shower alone had been provided, a later application by either spouse would have been barred under Clause 3.5. I leave it to the Bank to decide whether to leave this policy loose end to case work as it arises or whether to seek to establish some guidelines now.

⁹ In this case the award actually reduced the amount payable by the SAM holder under the SAM, which amounts to the same thing (the Bank then being obliged to make up the difference to the assignees of the rights under the SAMs).

¹⁰ Where the assistance is by way of grant for alterations etc, the money granted does not have to be repaid to the Bank.

- b. *Use of the exceptional clause.* Another policy issue was looked at with great care by the Committees, and I agree on reflection with their approach. In Case L5, the applicant had actually moved house in 2006, but her SAM had (most abnormally, and as a result of a failure on the part of her solicitors for which she is separately seeking redress) been left in place and remained secured on the former home. She bought a more usable and better located house, and had no way of claiming hardship in relation to it. The Committees decided that the case could not be fitted into the normal criteria for hardship, but that it was an exceptional case under clause 2.4, in that, had she stayed in the previous house, the Scheme would have been available to help her move to where she in fact already was living. Initially, I questioned this, since the test for the property side of hardship (as opposed to the personal side) is that the SAM is in existence (clause 2.3); the home itself is not actually mentioned. However, I came to the view that the case was exceptional under 2.4, because, she having moved, the applicant could not show the personal side of hardship in the new home, which was smaller, more manageable, and nearer to shops and transport etc.

Conclusion 3 (Administrative matters).

22. I do not need to add more on the general administration of the Scheme in Headquarters and in Leeds. I was glad to see the way in which the interest free loans are actually delivered, using the regional networks of the Bank. On this occasion, all the loan cases which I reviewed went through without undue difficulty; in some cases the falling property market changed the figures, often to the net advantage of the customer and of the Bank.
23. However, the position with the grant cases was different. I was struck by the number of cases where unnecessary trouble was caused to the applicants, and (I should add) to the Bank staff, by errors or inefficiency on the part of the contractors employed to carry out the remedial works. In one case, indeed, (G3) a contractor fitting a stair lift contrived to puncture a hot water pipe and flood the downstairs of the house. I regard this as a source of some concern, though the Bank appears to me to be doing its best to keep things moving.
24. At the time the Scheme was set up, a decision was made that the grant process would involve delivery by the Bank of the alterations; the alternative, of calling for quotations by contractors for the customer etc, was not adopted. I consider that that was the

right decision, as the customers are often old and infirm and not well placed to handle the full responsibility. The files are full of their thanks and appreciation for the fact that the process was run for them, and that things were made easy for them. I also imagine that the method adopted was also probably advantageous to the Bank, even if it may have been more expensive in pure cost terms; indeed, there would have been a lot of administration, and some risk, in the other approach as well. I do observe, however, that the net effect on the Customer Relations staff is that they are operating for much of the time more like property agents and project managers than as bankers as such.

25. If the grant applications begin to rise in absolute terms, therefore, it may be timely for the Bank to consider whether there are other and better ways to outsource more of the oversight of the delivery of the adaptations. There is advantage in having a contractor who can operate throughout the country, but it may be that, say, a firm of surveyors could deliver a more cost effective system of oversight than the current arrangements.

Conclusion 4 (the slowdown in new cases)

26. I do not need to add much to paragraph 12 above. Last year, all SAMs holders received some information about the existence of the Scheme when they were sent their annual SAMs statements in April, and I have been assured that the Bank will do that again.

Conclusion 5 (no need to change the scheme)

27. Once again I am happy to report my overall conclusion that the Scheme is working well and broadly as intended, and that there is no need for the Bank to give consideration to any amendments to the Scheme. I have made a few suggestions about the administration of the Scheme, but none that in any sense detracts from the overall picture of a Scheme which is well designed and which is achieving, albeit perhaps in a small compass at present, exactly what it was created for.

Other matters

28. *Appeals.* There have been two appeals to me as Adjudicator so far. One was mentioned in the first report, and was disposed of to the satisfaction of the appellants on the basis of the fresh information which they provided with their appeal. The second appeal was been the subject of a hearing before me in the Spring of 2008, when I gave interim directions for fresh evidence. This resulted in further information from the applicants, who were represented in the

appeal by SAFE, and that in turn led to an offer from the Bank. This, after some further discussion, the applicants have recently accepted. Both appeals have thus been disposed of by consent.

29. *Conclusion.* The Bank has continued to administer the Scheme in the sensible and positive way that I have described. It deserves credit for what has been done. More assistance has been delivered to deserving applicants, and the files I reviewed showed that this is a source of satisfaction to them, to their families and, in one case, to the Member of Parliament concerned.

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