

The complaint

Mr and Mrs D complain that The Prudential Assurance Company Limited (Prudential) declined their request for further borrowing on their lifetime mortgage. They have since re-mortgaged with another lender but were charged an Early Repayment Charge (ERC) of around £10,000.

Mr and Mrs D have brought their complaint to this service with the help of a representative, who I'll call 'Mr R'.

What happened

In 2008, Mr and Mrs D took out a 'lump sum max' lifetime mortgage with their previous lender (Stonehaven) - following advice from a broker. They borrowed around £40,000 against their property, which was valued at £160,000.

Since then, their mortgage has been taken over by Prudential. Mr and Mrs D asked if they could apply for further borrowing in 2019 and Prudential responded to say this wasn't possible. It said the terms and conditions of the mortgage state that in deciding whether or not to agree to make a further advance, the current lending criteria will be applied. It said these terms have remained the same since Mr and Mrs D took the mortgage out but it's lending policy has changed, and it no longer provides lifetime mortgages or further advances on any existing mortgage lending.

Mr and Mrs D re-mortgaged with another lender and incurred an ERC when they redeemed their mortgage with Prudential in October 2019. They raised a complaint. Prudential replied to say it hadn't done anything wrong and was within its rights to decline the request for further borrowing as the lending criteria had changed and further advances were never guaranteed.

Unhappy with this, Mr R brought Mr and Mrs D's complaint to this service. Our investigator considered the complaint but didn't think it should be upheld. She concluded that Prudential were able to set its own lending criteria and that further advances were not guaranteed.

Mr R disagreed and asked for an ombudsman to consider the matter.

My provisional findings

I issued a provisional decision setting out my thinking. I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Further borrowing

Mr and Mrs D say that, at the time they took this mortgage out, they were told that further borrowing may be available in the future and that the original paperwork

confirmed this. Prudential has said that the type of mortgage they took out (a “Lump Sum Max”) only offered a one-off loan at the outset - and that was it. And it says that the conditions of the mortgage stated no further borrowing was available.

I've carefully considered the original mortgage offer from 2008, and accompanying terms and conditions. I can see that additional advances are mentioned in the mortgage offer under Section 5- “Description of this mortgage”. This has the following wording:

*Additional Advances - 'if you need to release **further funds** from your property in the future, you should contact your financial adviser who will be able to talk through your options. The amount available to you will again be based on your age and property value at the time and will be subject to Stonehaven's lending criteria at the time'.* (my emphasis). This suggests to me that additional borrowing may be possible with this mortgage, and that an application would be considered by the lender.

It's accompanied by the terms and conditions - which under section 14: (specifically 14.1), it is written: - *'we will consider an application for further advances **at any time** where you have kept to the terms of your lifetime mortgage.'* (my emphasis)

Having thought about this carefully, I think the mortgage contract did allow for applications for further borrowing to be made. I don't think that additional borrowing was a guaranteed right of the mortgage contract - but I'm satisfied that these terms provide Mr and Mrs D with a contractual right to make an application for further advances, and for any such applications to be fairly considered – provided they had kept to the terms of the mortgage contract.

The above offer and terms do put conditions on these rights - for example the amount that could be borrowed is dependent on the age of the borrowers at the time and property value, and subject to lending criteria. I think that's reasonable and the following terms outline how it could be subject to such criteria:

14.2 – To decide whether or not we will agree to make a further advance we will apply our then current lending criteria. This includes such things as the type and value of properties we are willing to accept as security for our loans and the minimum and maximum amounts we are willing to lend'.

14.3 – we are not committed to making any further advances. Further advances are not guaranteed and are decided by the lending policy at the time of the request.

These seem reasonable to me. As these terms outline the relevant considerations that the lender will take account of when assessing applications for further borrowing, I think this further demonstrates that Mr and Mrs D's mortgage contract did allow applications for further advances – and, in my view, an implied term that any application would be given reasonable consideration.

From the information I've seen, Mr and Mrs D kept to the terms of their lifetime mortgage and so I think this gives them a reasonable expectation that an application for further advances would be considered.

But that's not what happened here. When Mr and Mrs D called Prudential in 2019 to ask for additional borrowing, they were simply told that they couldn't have any - and that no application could even be made because it's lending criteria had changed. I don't think this is in line with the mortgage contract – which, as I've said, in my mind gives them a clear right to make an application and for any such application to be

fairly considered.

Lending criteria

I've carefully considered Prudential's reasons for not allowing Mr and Mrs D to apply for further borrowing. It's said that the lending policy has changed and that it no longer offers lifetime mortgages or further borrowing of any kind on existing mortgages. It's entitled to set its own lending criteria and make decisions as to whether to offer alternative mortgages such as a lifetime mortgage.

But in applying this here, I don't think that it's resulted in a fair outcome for Mr and Mrs D. Prudential took over this mortgage from Stonehaven – and in doing so it agreed to take on the liability for the whole mortgage and, in turn, give fair consideration to any contractual features – such as a right to apply for further borrowing.

The terms outline that further advances are decided by the lending policy at the time of the request. I think that's reasonable and I accept that further borrowing on this mortgage was never *guaranteed* and was subject to certain criteria as I've already mentioned. The mortgage contract doesn't give them the right for further advances, it gives them the right to have an application fairly considered. The issue here is that Prudential failed to allow an application.

Has the contract changed?

The call notes from Mr D's request in 2019 reflect that Prudential told him the terms hadn't changed since the mortgage passed from Stonehaven - and so he would not have been able to apply for additional borrowing with them either. I don't think that's correct. As I've set out, I think Mr and Mrs D were entitled apply for further borrowing and for any applications to be considered. This applied from the start of the mortgage contract in 2008, and included the period Stonehaven owned the loan.

The relevant rules – specifically MCOB 7.6.1 - state that a firm must inform their customers if there is a material change to the contract. Here, Mr and Mrs D had a mortgage which contained terms that state a request for additional borrowing would be considered at any time. I've not seen anything to suggest that a change to the terms has been communicated to Mr and Mrs D since they took it out - and Prudential agree that they haven't.

I'm also aware that some of the Stonehaven mortgage book has been bought by other lenders – who still offer lifetime mortgages and other mortgage borrowing. I don't consider it fair for Mr and Mrs D to be prevented from making an application due to circumstances outside of their control – that their mortgage was taken over by Prudential rather than a different lender.

Having considered everything available to me, I'm satisfied that the contract continued to make this a mortgage in which Mr and Mrs D could apply for further advances. And so, it follows that this entitled Mr and Mrs D to make an application - and to have that application fairly considered.

It's in the nature of a lifetime mortgage that it runs for the rest of the borrowers' lives. Needs and circumstances can change over time – as they get older, borrowers might need to fund adaptations to their property, or need to withdraw more equity to support their lifestyles. That's why it's common across the industry for further advances to be considered – subject to matters like loan to value – and no doubt why

Mr and Mrs D's mortgage was set up and sold to them on the basis that they would be able to make further applications.

In my view, removing the ability to apply for further borrowing on a mortgage set up on that basis solely because one lender rather than another bought the mortgage from the previous lender hasn't resulted in Mr and Mrs D being treated fairly. While I can't fairly require Prudential to lend to them when it no longer wishes to do so, I think it should recognise that in fairness it shouldn't stand in Mr and Mrs D's way if, as a result, they need to access further borrowing elsewhere.

Putting things right

Since Mr and Mrs D were told that they could not have a further advance, they re-mortgaged to another lender and incurred an ERC of around £10,000. I don't consider it was fair for Prudential to have charged this for Mr and Mrs D to exit the mortgage as they have said they needed the additional borrowing to fund day to day living and they were left with no choice but to re-mortgage elsewhere.

As this was a direct result of Prudential's refusal to consider an application, I think it's fair that the ERC is refunded to Mr and Mrs D.

I also think that Prudential should pay Mr and Mrs D £250 in compensation for the trouble and upset this matter caused. Having considered all the circumstances, I consider that this is a fair sum.

My provisional decision

My provisional decision, subject to further information from either party, is that I plan to uphold this complaint.

I intend to direct Prudential Assurance Company Limited to refund the ERC that it charged Mr and Mrs D when they redeemed their mortgage. If accepted, Prudential should also add simple annual interest of 8% to the ERC refund, running from the date the mortgage was redeemed to the date the refund is paid.

I also intend to direct Prudential to pay Mr and Mrs D £250 in recognition of the trouble and upset caused by this matter.

The responses to my provisional decision

Mr R responded and agreed with my provisional decision.

Prudential didn't agree with my provisional decision or my proposed settlement. It said, in summary, that:

- When it took over the mortgage in 2010, it wrote to Mr and Mrs D to explain that any further advances would not be possible
- Specifically, for the 'Lump Sum Max' product that Mr and Mrs D had, the letter outlined that it *'does not include a Guaranteed Cash Reserve facility and Prudential will no longer be offering you access to non-guaranteed further advances'*.
- It complied with MCOB 7.6.1 as it told customers about the change
- It's entitled to make a commercial decision such as this and has no facility to offer

any such lending on this product

- There was no guarantee that additional borrowing would have been provided even if Prudential still offered it

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've also reconsidered my provisional decision in light of the comments made.

I don't dispute that Prudential wrote to Mr and Mrs D to let them know that it will not provide additional borrowing as far back as 2010. But regardless of when they were told this – it doesn't change the fact that it was *unfair* to remove this from their mortgage and deny Mr and Mrs D the chance to have an application considered – which is the key issue here.

I consider that the mortgage contract continued to allow for applications for further advances. And that it gave Mr and Mrs D a reasonable expectation that such applications would be given fair consideration.

I agree that Prudential is entitled to make a commercial decision as to the lending it wishes to provide. But I don't think, when applying this as a blanket policy, it's resulted in a fair outcome for Mr and Mrs D.

Mr and Mrs D took this mortgage out with their original lender and agreed to the terms and features at the time – which as I set out in my provisional decision – clearly included the right to apply for additional borrowing.

In taking it over, Prudential accepted liability for the whole of the mortgage as well as any key features from Stonehaven. This change in lender was outside of Mr and Mrs D's control and has resulted in, what I consider, a key feature being removed – the option to apply for additional borrowing. I don't consider this fair, especially keeping in mind that their mortgage could have been taken over by a different provider who offered lifetime mortgages and further borrowing.

Prudential is of course entitled to make a commercial decision not to offer additional borrowing and I accept that it's said it has no facility to offer any such lending on this product. I can't fairly direct Prudential to lend. But I think it should appreciate that, in fairness, it shouldn't put barriers in the way if Mr and Mrs D need to go elsewhere to access the additional borrowing required.

I take the point that additional borrowing was never guaranteed and, again, I can't fairly require Prudential to lend. But that's not the key issue here. Their mortgage – taken with the original provider – offered the option to apply for additional borrowing and, implied in this is the right to have an application fairly considered. That's not what happened here. They were simply told no application would even be considered.

I understand that Mr and Mrs D have now changed providers and their representative has said they've been able to draw down further funds on their lifetime mortgage. They were charged an ERC of around £10,000 to exit from Prudential and so it follows that it's only fair for this to be refunded now.

For these reasons, I've not been persuaded to change my provisional decision.

Putting things right

To put matters right, I consider it fair for the ERC to be refunded and for Prudential to pay Mr and Mrs D £250 for the trouble and upset caused by this matter.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct Prudential Assurance Company Limited to:

- Refund the ERC charged to Mr and Mrs D when they redeemed their mortgage – adding simple annual interest of 8% to the refund running from the date the mortgage was redeemed, to the date the refund is paid
- Prudential may deduct income tax from the 8% interest element of my award but should give the calculations to Mr and Mrs D so they can reclaim the tax from HMRC if they're entitled to do so.
- Pay Mr and Mrs D £250 in recognition of the trouble and upset caused by this matter

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr D to accept or reject my decision before 4 October 2021.

Camilla Finnigan
Ombudsman