

The complaint

The executor of Mrs H's estate has complained about the lifetime mortgage with The Prudential Life Assurance Company Limited Mr and Mrs H were sold in 2008 and the drawdowns paid out in 2012 and 2018. She considers the lending was irresponsible due to Mr and Mrs H's health at the times of the first two advances and Mrs H's health at the time of the third. In the latter case, she's told us the advance affected Mrs H's ability to obtain assistance with the cost of care.

The executor is also unhappy about Prudential's initial approach to the interest accrued during the Covid-19 pandemic. While Prudential agreed to reduce the interest added to the mortgage during this period, the executor doesn't think the reduction was enough. In addition, she is unhappy about the timescales involved in dealing with the complaint and in responding to correspondence.

What happened

I issued on 8 March 2022 a decision setting out our jurisdiction in relation to this complaint. In that document I set out, with reasoning, why I had concluded that we were only able to consider part of the estate's complaint. That part being the matter of whether the initial mortgage advance and further drawdowns were lent irresponsibly due to Mr and Mrs H's health at the various times. As such, I have only documented below the evidence relating to that part of the complaint.

In early 2008 Mr and Mrs H met with an adviser from Prudential and a lifetime mortgage was arranged. It was recorded at the time that Mr and Mrs H had bought a car the previous year from their savings and this had depleted the savings to a level that Mr and Mrs H weren't comfortable with. They wanted money to increase their savings balance to £5,000, cover the cost of replacing some windows at the rear of their home and put in an en-suite bathroom. In addition, they wanted to cover the cost of a trip they were planning to visit relatives abroad. When taking fees for the advice into account, they wanted £25,000.

At that time Mr and Mrs H owned their own home outright and were retired. Options were discussed to raise the funds wanted, but they weren't interested in conventional borrowing as they didn't want to commit to a monthly payment to the debt. They also didn't want to move and didn't want to put their plans on hold. It was confirmed that Mr and Mrs H only had £2,000 left in savings, which wasn't enough to do what they wanted, and they didn't want to deplete that money. They also confirmed that they weren't eligible for a local authority grant to fund the home improvements, as they were deemed to be cosmetic, rather than essential. Furthermore, Mr and Mrs H weren't willing to alter their lifestyle in order to create a surplus income that could be used to provide for their needs. They were quoted as saying "*Best option for us as we do not want to move and seems a safe option. The house has increased in value in the last 10 year so why not use it.*"

Mr and Mrs H also said that they wanted the option to borrow more in the future, because they wanted to be able to gift their daughter the deposit for her own home. In light of this, the maximum amount they could borrow against their home was calculated - £52,800. It was recommended that the difference between that sum and the £25,000 Mr and Mrs H needed

immediately was placed in a 'cash reserve' facility, from which they could draw additional funds whenever they were needed and no interest would be charged in the meantime.

It was highlighted that the mortgage would affect the amount Mr and Mrs H would leave their daughter as an inheritance. The adviser recommended that they discuss the mortgage with their family and close friends before deciding to accept the recommendation. Mr and Mrs H said that they had discussed their plans with their daughter, and she was reported as having said that she felt they should do what they wanted with their own assets. However, despite that sentiment, Mr and Mrs H opted to guarantee that at least 20% of the original property value would be left to their estate after the mortgage was repaid.

It was also explained to Mr and Mrs H that the equity release might affect their ability to claim state benefits. The adviser recommended that Mr and Mrs H contact various government departments and charities to ensure that there was no help for them to fund their plans and that it wouldn't impact on possible state benefits and their tax situation. It was recorded that Mr and Mrs H had declined to look into how the mortgage would affect state benefits because their income was such that they had been told in the past that they wouldn't qualify for any means tested benefits.

A key facts document was produced to help explain the mortgage to Mr and Mrs H. This set out how the lifetime mortgage worked – that the interest would roll-up onto the debt and the mortgage was designed to be repaid when the property was sold. It was documented that there was an early repayment charge (ERC) if the mortgage was paid off within the first 19 years unless this happened because of death or a move to long-term care. Figures were given for how much would be owed under the mortgage for the first 19 years along with examples of how much the ERC could be at different points. Under the section titled 'risks' it was documented:

'Taking out this lifetime mortgage may affect your ability to claim social security benefits and your tax position. If you are worried about this and need further information you should contact the Benefits Agency, Citizens' Advice Bureau or HM Revenue and Customs.'

The mortgage offer sent to Mr and Mrs H on 18 March 2008 again set out how the mortgage worked, including the interest roll-up, and gave detailed information about how much Mr and Mrs H would owe at the beginning and end of each of the first 19 years. It was shown that by 2020 the £25,000 borrowed would have increased to a debt of over £56,000. The same warning about eligibility for state benefits as above was included in the risks section of the offer document.

Mr and Mrs H were required to receive independent legal advice before they accepted the mortgage offer. A copy of the offer was sent directly to their nominated solicitors. Following meeting with Mr and Mrs H, the solicitor confirmed that it had explained the terms and effects of the lifetime mortgage to them, and they had agreed that the mortgage was suitable for their requirements. It confirmed that it had highlighted the effect of the mortgage on their estate and:

'The amount of Income Support, Council Tax and other Benefits to which they may be entitled, either now or in the future, could be reduced as a result of proceeding with the Lifetime Mortgage.'

The initial mortgage advance happened in the spring of 2008 and was for £25,000 on a fixed interest rate of £6.84%. Late in 2008 Mr and Mrs H applied to borrow a further £10,000, but it appears that they changed their mind and the money wasn't advanced.

In 2012 Mr and Mrs H drew down another £25,000, bringing the total amount released to £50,000. This borrowing had a fixed interest rate of 7.79% attached to it and it was documented they were borrowing the money to have a new kitchen installed. In 2018 Mrs H drew another £10,000 to have a stairlift installed. Both further advances included the 20% equity guarantee.

When each of the drawdowns were requested, Prudential issued a further mortgage offer for the amount of the drawdown. These documents again explained the nature of the lifetime mortgage and what the individual advance would cost over time. The risks were also documented in the same way as they had been in the original mortgage offer.

Mr H passed away in 2016 and the mortgage was altered to be in just Mrs H's name. Following Mrs H's death in 2020, her executor raised a complaint with Prudential about the mortgage having been lent irresponsibly. The executor didn't believe the correct processes had been followed before the mortgage was recommended. In addition, she highlighted that Mr H had been suffering from the early stages of a progressive nervous system disorder at the time of the sale, which was diagnosed in 2009. Mrs H then became his carer until his death in 2016. The executor has said that this was Mrs H having some problems relating to her own stability. The second drawdown Mrs H took in 2018 then meant that she didn't qualify for state assistance in providing the care she later needed.

Prudential responded to the complaint in its letter of 26 May 2021. It set out the process that was followed and the discussions that had taken place. It confirmed this was regulated advice and that Mr and Mrs H had received advice from legal advisers too. It also confirmed that Mr and Mrs H were made aware of alternatives to the lifetime mortgage. In relation to Mr and Mrs H's capacity, it explained that part of the solicitors' role was to ensure they were mentally capable of entering into the contract. There was no evidence that the solicitors had raised any concerns in this regard and Mr and Mrs H had confirmed to Prudential that they were in good health.

In respect of the further funds drawn from the mortgage in 2012 and 2018, Prudential explained that these weren't separately advised on, as the drawdown facility was part of the 2008 mortgage and advice. The record of discussions about benefits and the written statements contained within the various documents was highlighted. Overall, Prudential was satisfied that it had done what it needed to do, the advice was suitable, and Mr and Mrs H were happy with the advice they'd received.

The executor wasn't happy with the response from Prudential and asked this service to consider the complaint.

One of our investigators looked into the complaint. In respect to the merits of this part of the complaint, he was satisfied that the mortgage provided for Mr and Mrs H's needs. He was also satisfied that the documentation provided was clear and wasn't misleading. As for Mr and Mrs H being vulnerable, he highlighted that as adults, they were entitled to keep their finances private from their family if they wanted to. In addition, he said there was no evidence from the time that there were any concerns about Mr and Mrs H's health or that they were vulnerable because of it. He explained that it would be inappropriate to assume vulnerability simply because of age or a consumer wanting to make home improvements to make the property more comfortable for them. The investigator also explained that the drawdowns in 2012 and 2018 were a facility that had been included in the original mortgage and didn't involve new advice being needed or given. Overall, he wasn't persuaded that the mortgage had been mis-sold or that Prudential had failed in its duty of care to Mr and Mrs H.

The executor didn't accept the investigator's view of the complaint. She expanded on her opinion that Prudential should have reviewed Mr and Mrs H's medical position before issuing

further loans in 2012 and 2018. In support of this extracts of Mr and Mrs H's medical records were provided. These showed that at the time the mortgage was taken out, Mr H had been suffering from a heart condition for many years and 18 months later, he was diagnosed with the progressive nervous system disorder. Mrs H had no serious health issues at the time, but from 2013 she began suffering from an age-related physical health problem. It was highlighted by the executor that Mrs H had been admitted to hospital numerous times during the spring and summer of 2018. The executor said that while the medical notes were difficult to follow, Mrs H was gravely ill, was suspected of having had a stroke and was extremely confused.

Our investigator considered the executor's further comments and evidence, however, he wasn't persuaded to change his conclusions. As such, the executor asked that the complaint be referred to an ombudsman for review.

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 would confirm that the mortgage arranged in 2008 involved an initial cash pay-out and a drawdown facility. As Mr and Mrs H wanted the guarantee that they could have more money than they needed in 2008, they effectively took a mortgage for a higher amount. Rather than the extra amount being advanced to them, placed in a deposit account, and Mr and Mrs H paying interest on that amount, the extra money was placed in a drawdown facility. This meant that they could access the money easily when they wanted it, but they didn't pay interest on it until they drew it. As such, no additional advice process needed to be done when Mr and Mrs H asked for more of the money from the mortgage. This is not an unusual arrangement within the lifetime mortgage market, and I can't find that there was anything wrong with it. As such, Mr and Mrs H didn't need to go through a further advice process or application before taking more money from their mortgage

I have also considered whether Prudential should have considered Mr and Mrs H vulnerable at the time of the 2008 advice. Given that lifetime mortgages are products that are only available to consumers who are in the later part of life, there is of course a higher likelihood of vulnerability within that population. However, it would be wrong for a lender to assume a consumer was vulnerable or incapable of making their own decisions simply because of their age or because they had medical conditions. Having considered the information about Mr and Mrs H's circumstances, the document signed by the independent solicitors and the medical evidence provided, I don't consider there is anything that suggests they couldn't make their own decisions or understand what they were doing when they met with Prudential's adviser.

That said, I note that Mr and Mrs H were recommended to speak to their family and friends about the mortgage before deciding to apply. Mr and Mrs H told the adviser that they had done so, and their daughter supported them using the value of the house to make their lives more comfortable. However, even had they said they didn't want to discuss their finances with a friend or family, which is often the case, there was nothing to say they had to. They were independent adults who could make their own decision about their own assets and finances.

Turning now to the recommendation that was made, I don't consider that the evidence shows that the mortgage was inappropriate for Mr and Mrs H. They were retired and living on a fixed income without the ability to make significant savings unless they materially changed their lifestyle. Having significantly depleted their savings the previous year, they didn't have the funds to achieve the home improvements they wanted to complete or to pay

for the holiday they wanted. It was documented that alternative options were discussed with Mr and Mrs H, but they didn't want to take any of them. As such, the lifetime mortgage provided for their needs and fitted with their circumstances at the time.

I note that the executor has said that Mr and Mrs H wouldn't have signed the mortgage contract if they had understood that so much interest could be payable and that the debt could double. However, all of the documentation made it very clear that the debt would increase year on year and that this could amount to a very significant amount over time. Indeed, the amount of the debt that would be owed was detailed for each and every year for the first 19 years. In the case of the initial advance of £25,000 it was set out that the debt would have more than doubled by the end of year 19. Similar information was given before each of the drawdowns were signed for.

I also note that Mr and Mrs H decided to take the equity guarantee option on the mortgage. This guaranteed that an amount equal to at least 20% of the value of the property at the time of the original advance would be available to their estates after the property was sold. This would suggest that Mr and Mrs H were aware that all of the equity in the property could be eroded, and they wanted to make sure their estate received some money.

The executor has said that the second drawdown, which was taken for the purpose of installing a stairlift, meant that Mrs H had to pay for her own care. I haven't seen any evidence of this, but I don't doubt that may have been the case. However, Mr and Mrs H were warned by the adviser before accepting the recommendation that mortgage could result in just such a situation. The adviser even noted Mr and Mrs H's response – that they wouldn't look into the matter further as they'd already become aware that they didn't qualify for any means tested benefits. That risk was then repeated in the offer documents before each release of money happened. I am satisfied that Mr and Mrs H were not only warned about this possibility, but they were also told where they could investigate the possibility further if they wished to do so and provided with guidance of where they could find assistance.

In addition, as has previously been highlighted, Mr and Mrs H spoke to their solicitor before they were allowed to accept the mortgage offer. The solicitor again explained how the mortgage worked and its consequences. Those consequences included how the mortgage would affect the amount of the property value that would be left to the estate. It was also confirmed that the solicitors highlighted to Mr and Mrs H the fact that the mortgage might affect their ability to receive state benefits at that time and in the future.

Overall, I am satisfied the mortgage sold to Mr and Mrs H in 2008 was suitable for them. I am also persuaded that they understood the mortgage they were arranging; including that the amount owed could increase to eventually erode all of the equity in the property and their ability to qualify for benefits in the future could be affected.

My final decision

My decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask the estate of Mrs H to accept or reject my decision before 20 July 2022.

Derry Baxter
Ombudsman