

complaint

Mrs K complains that The Prudential Assurance Company Limited mis-sold her a lifetime mortgage. She is assisted in bringing her complaint by her solicitors.

background

In late 2008, Prudential gave Mr and Mrs K advice and in early 2009, Mr and Mrs K entered into a lifetime mortgage with Prudential. Unfortunately, Mr K died in late 2009. Subsequently, Mrs K wished to move into a retirement complex closer to her daughter. In 2013, she asked Prudential for a redemption statement and was alarmed to discover the amount of the early repayment charge.

Mrs K says that she was misled as the early repayment charge was not mentioned by the adviser. She says that she recalls telling the adviser that if either she or Mr K died, the remaining person would wish to downsize and move closer to their daughter. She says that the early repayment charge is disproportionate and unfair and that the adviser failed to take into account her circumstances and future plans.

The adjudicator did not recommend that the complaint should be upheld. She said, in summary:

- The fact find indicated that at the time of the sale, there were no plans to downsize or move.
- The early repayment charge was set out in the documentation.
- The delay in investigating the complaint did not cause additional difficulties or delay any transaction, therefore the business' payment of £50 in relation to this matter was reasonable.

Mrs K did not accept the adjudicator's view and her solicitors responded to say:

- The question of miss-selling has not been properly addressed.
- In any form of financial obligation, proper advice must be given without undue influence.
- There is an obligation to give a full explanation to individuals.
- The advice here was not totally independent as the adviser completed the whole form, including the name of the person at the solicitor's office.
- Proper advice was not given as the interview at the solicitor's office lasted only a matter of minutes.
- Mrs K does not wish to take the matter to court for a declaration of invalidity due to miss-selling.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

We consider complaints as an informal alternative to the civil courts. This service cannot determine the validity or otherwise of the mortgage as that is a matter for the courts. We can

consider the suitability of the recommendation and whether sufficient information was made available to Mr and Mrs K.

The adviser had a duty to make a recommendation that was suitable for Mr and Mrs K's stated needs and circumstances. The lifetime mortgage questionnaire completed at the relevant time indicated that Mr and Mrs K wished to repay existing debts, update their car, create an emergency fund and undertake home improvements and that they did not have surplus income or existing savings from which to do so.

The questionnaire also records that Mr and Mrs K could not foresee the need to move home in the future and that, when one of them dies, the other would want to stay in the house, if possible. Mrs K says that she recalls telling the adviser that if either she or Mr K died, the remaining person would wish to downsize and move closer to their daughter. However, Mrs K is recalling conversations which took place several years ago. I am not persuaded that Mrs K's recollection is correct and I prefer to rely on the documentation completed by the adviser at the time the recommendation was made.

In all the circumstances here, I find that the lifetime mortgage was suitable for Mr and Mrs K at the time the recommendation was made. I do appreciate that Mrs K's circumstances have now changed but that does not mean that the recommendation was unsuitable.

The documentation set out details of the early repayment charge and gave details of how it is calculated and the circumstances in which it did not apply. Mrs K says that the early repayment charge was not mentioned by the Prudential adviser and that may well have been the case. However, the documentation was clear. In addition, Mr and Mrs K had their own solicitor. I note what Mrs K's current solicitor says about the choice of solicitor and the advice, but it was open to Mr and Mrs K to choose any solicitor and Prudential is not responsible for the advice Mr and Mrs K's solicitor gave. I have seen no evidence of duress or undue influence in this case.

There was some delay in Prudential dealing with the complaint. Mrs K first wrote to Prudential and complained on 11 April 2013 but the final response letter was not sent until 16 July 2013. On balance, I find that Mrs K's letter of 11 April 2013 was received by Prudential but not acted on in a timely manner. While that did not change the outcome here, it was no doubt inconvenient for Mrs K at a time when she was considering her future plans. Prudential has already made a payment of £50 in relation to this matter but I consider that a fair resolution is for it to pay Mrs K an additional £100, bringing the total compensation to £150.

my final decision

My final decision is that I uphold this complaint in part. In full and final settlement I order The Prudential Assurance Company Limited to pay Mrs K £100 in addition to the £50 it has already paid.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs K to accept or reject my decision before 19 January 2015.

Louise Povey
ombudsman