

## **complaint**

Ms V through her relative Mr F complains that The Prudential Assurance Company Limited ("Prudential") is acting unfairly and unreasonably by applying its lending policies to her lifetime mortgage. She wants to be able to move elsewhere without paying an early repayment charge ("ERC").

## **background**

Ms V took out a lifetime mortgage in 2008 with a lender through a broker, which was transferred to Prudential in 2010. She said that when the transfer occurred, she was told that there would be no change. But as the mortgage is now held by Prudential, its lending policies apply, not the original lender's, which Mr F said would have a "devastating effect" upon Ms V's retirement. This was because the income being paid to Ms V under the mortgage was due to end before the ERC period ended; Ms V wouldn't be able to remortgage elsewhere to regain her income without paying an ERC for another five years. Mr F said the position was unfair because while the original lender would've made further advances to Ms V under its lending policies, Prudential wouldn't as it no longer offered such mortgages.

Mr F complained to Prudential. It said that the terms and conditions of the original mortgage hadn't changed. Ms V had received the money that the original lender promised to give her over ten years, but the mortgage said it had to last 15 years to avoid the ERC. It pointed out that the broker should've explained the mortgage to Ms V. Prudential also noted that the original lender never guaranteed that Ms V could borrow more money and applications would be considered using the lending policies in place at the time. It said that it was able to take the commercial decision to stop offering such mortgages.

Mr F complained to us. The investigator's view was that Prudential should refund the ERC. This was because while the extra borrowing wasn't guaranteed, Ms V now definitely couldn't borrow further from Prudential. The investigator felt that this wasn't fair and was a material change to her current mortgage terms. He also pointed out that it was for the broker to ensure that the mortgage had been suitable.

Prudential disagreed. It pointed out that the investigator had accepted that there was no guarantee of future borrowing within the original mortgage, and said as a result the terms and conditions of the mortgage hadn't changed. Prudential noted that even the original lender's terms and conditions said that it didn't have to lend extra money. It also thought that the investigator was confused about how a lifetime mortgage worked in practice.

## **my provisional decision**

In my provisional decision, I said:

"The first point to consider is whether the terms and conditions of the mortgage changed upon transfer to Prudential. They didn't in my view. The mortgage never promised Ms V could have extra money in the future. Indeed, it's clear that any such application would be considered in light of the lending policies that apply at the time and it was made clear that there is no guarantee of success by the original lender.

The fact that the lending policies to be applied now are Prudential's, not the original lender's, is effectively irrelevant as neither lender promised to lend more money. Mr F says that the original lender definitely would've lent the money to Ms V, but I can't find this— there's no evidence supporting this view, apart from a suggestion that the broker said the original lender would lend more money. But the broker was independent of the lenders and couldn't have made such a binding promise; if he did, that's a matter to be taken up with the broker, not Prudential. And I note that when the mortgage transferred, it was made clear in the letter explaining this to Ms V that she wouldn't be able to borrow extra money from Prudential.

The next point to consider is that it was the role of the broker to explain the mortgage to Ms V and ensure that it met her needs. Ms V was also advised by a solicitor about the mortgage. She chose to accept the mortgage offer, which clearly set out that if Ms V repaid the mortgage early, and this would include a period of five years when she wasn't receiving any income from the lender, she'd have to pay the ERC.

It's been suggested that the product itself is unusual. In my experience, it isn't. Ms V got a lump sum and ten years of regular payments. The fact that the mortgage was due to last longer isn't uncommon in the field of lifetime mortgages. Again though, I would point out that this was all set out within the mortgage offer, and Ms V was advised by a broker and a solicitor. If this product wasn't suitable for Ms V, that's a matter for the broker."

Prudential agreed with my provisional decision, but Mr F felt that I hadn't given enough weight to his arguments made on Ms V's behalf. In essence, Mr F felt that Ms V's rights and obligations under the mortgage had changed due to the transfer to Prudential, despite the terms and conditions of the original mortgage making it clear that there was no right to borrow more money in the future. Mr F said that Ms V believed that she would be able to borrow more in the future as she could borrow elsewhere, the equity in her property would increase and it was a profitable loan for the lender (amongst other points made).

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have also thought carefully about what Mr F has said, but my view remains as set out in my provisional decision.

Ms V's rights and obligations under the mortgage didn't change due to the transfer of the mortgage to Prudential; she had no contractual right to borrow more; and lenders are able to use their commercial judgement about whether to lend at all to consumers. In all the circumstances of this case, I think Prudential acted lawfully, fairly and reasonably in requiring Ms V to pay the ERC for the reasons given previously.

### **my final decision**

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms V to accept or reject my decision before 20 April 2019.

Claire Sharp  
**ombudsman**