

## **The complaint**

Mr A1, in his capacity as the executor of the estate of his late father Mr A, complains about Mr A's lifetime mortgage with Prudential Lifetime Mortgages Limited. Mr A1 says the loan was mis-sold because his father had dementia at the time. And he says that Prudential made it difficult for him to obtain information about the mortgage both before and after Mr A passed away. He said it was deliberately making things difficult to prolong the life of the loan and charge more interest.

Mr A1 brings this complaint with the consent of the other executor of Mr A's estate.

## **What happened**

Mr A took out a lifetime mortgage in 2009. The mortgage was arranged by a broker. Mr A borrowed around £20,000 at a fixed interest rate of 6.49%. Although there was a drawdown facility, Mr A didn't make use of it.

In 2021, Mr A1 says that he and his family discovered Mr A's mortgage. He tried to get information about it from Prudential, but Prudential refused to release information unless Mr A1 obtained power of attorney to act for Mr A. Mr A1 did so, but now says that was unnecessary because Prudential could just have suggested that Mr A get in touch and request the information himself. Mr A1 therefore wants Prudential to refund the cost of obtaining power of attorney, which he says was around £700.

Sadly, Mr A passed away in 2022 before the power of attorney was put in place. Mr A1 was appointed executor of his estate. He complains that Prudential made it difficult to resolve matters. It wouldn't agree to deal with him until he'd provided a copy of Mr A's will or a grant of probate. Mr A1 says this was inappropriate as it takes time to obtain a grant of probate and providing a copy of the will was unlawful because it interfered with the privacy of other beneficiaries named in the will.

Following a grant of probate, and having considered details about the mortgage provided by Prudential, Mr A1 complained that the mortgage was unlawful and shouldn't have been entered into. He said that Mr A had dementia at the time it was entered into and so the loan should not have been sold to him. He said that Prudential should have ensured Mr A's family were aware of the loan. He said that the mortgage deed had been altered and was therefore invalid and unenforceable.

Prudential said it couldn't comment on the sale of the loan, because it was sold by an independent mortgage broker. It said that as the owner of his property there was no obligation for Mr A to consult with family if he didn't want to. It said it couldn't deal with Mr A1 unless it was satisfied he was entitled to act for Mr A – which meant Mr A's authority or a power of attorney, or, after he passed away, a copy of the will or grant of probate showing Mr A1's appointment as executor. It said the mortgage deed and other documents were valid and the mortgage was binding on Mr A's estate.

Unhappy with Prudential's response, Mr A1 brought his complaint to us. He also complains that as soon as it had responded to his complaint, Prudential put pressure on him to repay

the loan and said it would keep adding interest to the balance until it was repaid. Mr A1 says he repaid the loan in 2023 under protest to protect the interests of his father's estate and its beneficiaries – but without accepting that the loan was properly due. He asked us to consider his complaint.

Our investigator reviewed the complaint but didn't think it should be upheld. So Mr A1 asked for it to be reviewed by an ombudsman.

### **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.

At the outset, I express my condolences to Mr A1 and his family on the loss of Mr A.

I've carefully considered everything Mr A1 has said. But having done so I'm afraid I don't think I can fairly uphold this complaint.

The mortgage was sold in 2009. It was sold by a mortgage broker – a separate firm which was acting on Mr A's behalf in giving him advice, identifying a suitable mortgage and lender, and arranging that mortgage for him. The broker was not acting on behalf or as agent for Prudential.

In those situations, it's a matter for the broker – not the lender – to give advice to Mr A and check that the mortgage is suitable for his needs and circumstances. As part of giving advice, it's standard practice to suggest (but not require) the borrower to consult with their family. But again this is a matter for the broker.

In making the decision to lend, Prudential was entitled to rely on the broker's assessment that this mortgage was suitable for Mr A and that he wanted to take it out.

Mr A1 says that Mr A had dementia. I don't know if that was the case in 2009 when the mortgage was taken out as well as at the time of his death. But if so, there's no evidence to show either that Prudential was aware of this, or that Mr A lacked capacity to make decisions about his affairs at that time.

Before entering into a lifetime mortgage, Prudential is required to ensure Mr A obtains a solicitor's certificate. This is confirmation that – as well as advice from the broker – Mr A has received separate and independent advice from a solicitor. The solicitor doesn't check that the loan was suitable for Mr A (that's the broker's role). But the solicitor does check that Mr A understood what he was agreeing to and had the capacity to do so. I've seen the solicitor's certificate confirming that in this case, signed by the solicitor Mr A saw. There's no date on the form, but I don't think that makes a difference. It's clearly contemporary with the taking out of the mortgage.

Prudential didn't deal directly with Mr A, it dealt with the broker acting on his behalf. The broker had advised Mr A about the loan and Mr A had confirmed he wanted to go ahead. A solicitor had separately advised Mr A about the implications of what he was agreeing to and had confirmed that Mr A did agree and had the capacity to do so. In those circumstances, I don't think there was any reason that Prudential ought to have been aware of that would have suggested it shouldn't lend. I don't uphold the complaint about the validity of Prudential's lending decision.

Mr A1 also points to issues with the documents from the time – for example, the date Mr A entered on the acceptance mortgage offer, and the date on the mortgage deed. Although the

date on the acceptance is in a slightly unusual format (the year 2009 is represented as “9” rather than “09”), there’s no reason to believe it wasn’t genuinely signed and dated by Mr A.

And although there appear to be faint marks around the date on the mortgage deed, again I don’t think there’s any reason to believe it wasn’t genuinely signed and entered into by Mr A.

Ultimately, if Mr A1 believes that these issues mean that the mortgage agreement is technically unenforceable as a matter of law, that’s something a court would have to decide on – it’s not the role of the Financial Ombudsman Service to decide pure questions of law such as the technical validity of a contract. But I don’t think there’s any reason to doubt that Mr A entered into this mortgage and received the benefit of the money lent – and in those circumstances it’s fair and reasonable for Prudential to expect the money to be repaid as Mr A agreed.

I don’t think Prudential acted unreasonably when Mr A1 contacted it. Before Mr A passed away, he was Prudential’s customer. It’s reasonable for Prudential to say that it wouldn’t communicate with third parties – even family members – without either Mr A’s consent or some other legal entitlement to act on his behalf.

I don’t think it would be fair to expect Prudential to cover the costs of applying for power of attorney. If Mr A had dementia, a progressive disease that would affect his capacity to manage his own affairs, then a power of attorney would be necessary to allow a third party (such as Mr A1) to act on his behalf in many situations – not just when dealing with Prudential. I appreciate that Mr A passed away before the power of attorney was completed. But that doesn’t change the fact that preparing one was sensible and necessary – and neither a requirement of Prudential, nor only required because of the Prudential mortgage.

Once Mr A passed away, Prudential asked for a copy of his death certificate. This is standard practice and not unreasonable. But a death certificate is not on its own enough to allow Prudential to deal with Mr A1. After Mr A passed away, Prudential could only deal with the lawfully appointed representatives of his estate – his executors. It couldn’t, for example, deal with family members who weren’t appointed executors. A death certificate doesn’t show who the executors are, and so wasn’t sufficient evidence that Mr A1 was entitled to deal with Mr A’s estate and liabilities.

It was reasonable for Prudential to ask to see evidence of who Mr A had appointed as executors – either in the form of a copy of Mr A’s will, or a grant of probate. Again, this is standard practice, not a specific requirement only Prudential insists on. Mr A1 wasn’t obliged to provide a copy of the will (and he says he couldn’t as one of the beneficiaries objected to their information, contained in the will, being given to Prudential). But unless he did so – or unless instead he provided a copy of a grant of probate when issued – Prudential wouldn’t be able to deal with him because it couldn’t be sure he was authorised to act for Mr A’s estate. This wasn’t an attempt by Prudential to string matters out to earn more interest; it’s a necessary and usual step to take to protect the interests both of Prudential and of Mr A’s estate.

Under the terms and conditions of the mortgage, the full amount due became repayable on Mr A’s death. But interest doesn’t stop when Mr A passed away. Interest continued to be chargeable until the loan was repaid. That was made clear in the terms and conditions and I don’t think it was unfair in the circumstances that Prudential continued to charge interest, or that it asked Mr A1 – once it was satisfied he was the properly appointed representative of Mr A’s estate – how and when the loan would be repaid.

I do understand this was difficult for Mr A1. He first discovered that Mr A had taken out a mortgage he didn’t know about, then had to deal with his father’s passing and the necessary

administrative tasks that followed. This is never an easy time, or an easy process to go through. But I don't think Prudential acted unfairly, either in lending the mortgage in the first place, or in how it dealt with Mr A1 on behalf of his father and his father's estate. For that reason, I don't uphold this complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A1 on behalf of the estate of Mr A to accept or reject my decision before 9 April 2024.

Simon Pugh  
**Ombudsman**