DRN-5215769

The complaint

Mr P1, the executor of the estate of his late brother Mr P, complains on behalf of Mr P's estate that Prudential Lifetime Mortgages Limited mis-sold Mr P a lifetime mortgage.

What happened

In 2009, the late Mr P took out a lifetime mortgage with Prudential – which both gave him advice and acted as lender. He borrowed around £13,500, most of which was used to buy a car.

In 2023, Mr P1 was appointed power of attorney to manage Mr P's affairs due to dementia. More recently, Mr P has sadly passed away and Mr P1 now brings this complaint in his capacity of executor of Mr P's estate.

Mr P1 complains that the mortgage should never have been sold. He said that Mr P was vulnerable at the time, having experienced physical health problems and recent bereavements. He was vulnerable to being exploited by unscrupulous sales techniques – demonstrated by the fact that Mr P separately spent over £8,000 on various gadgets he didn't need and never used around this time.

Mr P1 said that Mr P didn't need to take out a lifetime mortgage to buy a car. When he purchased a replacement, in 2018, he bought it using his savings – he could have done the same in 2009 had he not been persuaded to take a mortgage he didn't need instead. Mr P1 said that Mr P could have paid for the car outright, or could have taken and paid off a short term loan instead – he did not need a mortgage which now stands at over £45,000, and it should never have been sold to him.

Prudential said Mr P contacted it because he was interested in equity release. At the time, his outgoings matched his income, so he had no spare money to put to repayments on further borrowing. He had savings of around £25,000. Its adviser discussed using the savings instead of taking a mortgage, but Mr P wanted to keep the savings. It said that Mr P wanted to raise the funds and there were no other alternatives. It said it made a suitable recommendation. It also explained how the loan would work. And it said that Mr P had also seen a solicitor who confirmed that Mr P understood what he was agreeing to.

Our investigator didn't recommend upholding the complaint so Mr P1 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.

Although the advice was given more than six years ago (and so might otherwise be out of time), Prudential has consented to us looking into the complaint.

Mr P1's complaint is essentially that Prudential should never have recommended this mortgage to Mr P. At the time, Prudential was regulated. Under the rules of mortgage regulation, it was obliged to:

- Take reasonable steps to obtain relevant information about Mr P's circumstances.
- Only recommend a mortgage for him if one was suitable, and recommend the most suitable – suitable meaning appropriate for his needs and circumstances. In deciding suitability, it should take into account
  - The impact on any benefit entitlement and the tax implications
  - Whether there are alternative means of raising the funds
  - Whether – if regular payments need to be made – the mortgage is affordable.
- If there was no suitable mortgage available, not make a recommendation.

With that in mind, I've looked at what Prudential learned of Mr P's circumstances at the time, and what his objectives were. It took an account of his situation, and then sent him an advice letter recording what he had said, and what advice it gave. It recorded that Mr P contacted Prudential because he was interested in equity release, in particular to buy a new car, some furniture and other household items.

The record of advice sent to Mr P at the time records that he was unconcerned about taking equity release because he had no children. He did not want to downsize, and he did not want to take on any debts that involved making monthly payments. Both the fact finding document and the advice letter include direct quotes from Mr P.

The advice letter also records that Mr P had savings he wanted to retain, and advises Mr P that by doing so he would pay more in interest on the lifetime mortgage than he would earn on savings interest. The advice letter also says that if Mr P used his savings now instead of taking a mortgage he could take a lifetime mortgage later if he needed further funds. But Mr P still wanted to retain his savings and investments. He had around £5,000 in cash, the rest in Premium Bonds and other investments. The implication is that Mr P's priority at the time was maintaining his current funds rather than preserving the value of his estate.

I've considered all that, taking into account what Mr P1 has said. I appreciate Mr P1 says that Mr P didn't need to take out the mortgage, because he had enough money in savings and investments. But it's recorded that Mr P had considered using his existing savings but didn't want to do so (that he felt differently in 2018 doesn't mean this wasn't his view in 2009). He didn't have enough spare income to take out a loan that would need monthly payments. And he didn't want to free up money in other ways, for example by downsizing to release equity from his property.

I'm satisfied that the information recorded by Prudential at the time is likely to be accurate. It's a contemporaneous record, and the information about Mr P's circumstances is consistent with what Mr P1 has said about them now.

Mr P had an objective in mind – to buy a new car. He couldn't afford to do so by means of any other borrowing. He could have used his savings instead, but he didn't want to do that, even though he was warned that taking a lifetime mortgage would be more expensive over the long term. I think that Prudential gave him adequate warnings about that. And given that it did make that clear, and Mr P chose to go ahead anyway, I don't think it ought to have refused to proceed.

I’ve also taken into account what Mr P1 has said about Mr P’s vulnerability at the time. But I’ve not seen any evidence that he lacked capacity, or was unable to make his own decisions (albeit ones that Mr P1 now doesn’t consider to have been wise decisions). A solicitor confirmed that he was able to understand what he was agreeing to. Based on the evidence from the time, I’m satisfied that Prudential got a good understanding of Mr P’s needs and circumstances. It made clear the benefits and disadvantages of taking a lifetime mortgage. And when Mr P decided he wanted to proceed, it recommended a mortgage suitable to those needs and circumstances. For those reasons, 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 P1, on behalf of the estate of Mr P, to accept or reject my decision before 14 January 2025.

Simon Pugh
Ombudsman