

The complaint

Mr and Mrs W's complaint is about a lifetime equity release mortgage they used to have with Prudential Lifetime Mortgages Limited.

After a jurisdiction decision, an ombudsman has decided that we are able to consider the following issues:

- the interest rate applied to a drawdown made in 2020, and the early repayment charge (ERC) applied to that drawdown when it was repaid;
- further drawdowns took the borrowing over the maximum limits originally applied when the mortgage was taken out in 2008;
- that from 1 February 2015 Prudential failed to check that Mr and Mrs W could afford the mortgage, other than by sending annual statements;
- Prudential's customer service was poor in 2020, 2021 and 2022;
- there were data breaches by Prudential.

What happened

I will not set out the history of the matter. There are several reasons for this. First of all, there are detailed summaries of the complaint set out in correspondence between the parties, in the ombudsman's jurisdiction decision dated 7 June 2023, and in the investigator's letter dated 17 July 2023. There is therefore no need for me to repeat all those details here.

In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs W being identified. So for these reasons, I will instead concentrate on giving the reasons for my decision.

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.

Before I decide the merits of a complaint, I am required first to consider whether the complaint falls within our jurisdiction. That's because we review jurisdiction at every stage of our case-handling process. I confirm I've read the jurisdiction decision issued by my fellow ombudsman on 7 June 2023, and I agree with her conclusions about which parts of the complaint we can, and cannot, consider.

I will address the complaint issues in the order set out above.

2020 drawdown

On 8 June 2020 Mr and Mrs W drew down a further advance of £23,000 at a fixed rate of interest of 4.03%. Interest rates on equity release mortgages generally reflect the

commercial reality that lenders advance funds to borrowers on the understanding that the lenders will receive no return on the funds for many years, and so the product is priced to reflect this. I am satisfied that interest has been charged on this further advance at the contractual rate specified in the offer, a rate which Mr and Mrs W accepted when they took out the additional £23,000 drawdown.

The further advance offer explains the circumstances in which an ERC will be charged and how it is calculated. The mortgage was repaid in January 2021. Prudential has confirmed that there was no ERC charged on the £23,000 drawdown. I've looked at the redemption statement and I note that on redemption of the mortgage there was an ERC of £25,000 charged on the initial drawdown from 2008, but there was no ERC charged on any of the other six drawdowns Mr and Mrs W had taken over the years. Mr and Mrs W have therefore suffered no financial loss or detriment, as they weren't charged an ERC on the £23,000.

I don't uphold this part of the complaint.

Drawdowns allowed over the maximum limit

The mortgage offer from 2008 says:

"The maximum amount you are currently eligible to borrow is £112,000.00. This represents 16% of the original property value shown above. This is the maximum amount that you can currently borrow and this figure will increase by £7,000.00 each year up to an absolute maximum of £245,000.00."

and

"Your additional borrowing facility will increase by £7,000.00 each year up to the maximum loan amount of £245,000.00."

The initial drawdown in 2008 was £100,000. Between 6 August 2010 and 8 June 2020 (inclusive) six further drawdowns were made, totalling £83,000, taking the total borrowing to £183,000. This is below the maximum loan amount provided for in the contract. Prudential did not therefore allow Mr and Mrs W to withdraw more than the maximum contractual limit.

I don't uphold this part of the complaint.

Prudential failed to check affordability

An ombudsman has already decided that our power to consider this part of the complaint runs from 1 February 2015 onwards. The complaint is that, other than sending annual mortgage statements, Prudential failed to carry out any affordability checks to ascertain whether Mr and Mrs W could afford the borrowing.

By design, this type of mortgage is expected to be repaid from the sale of the property. Therefore the risk of it not being repaid altogether with minimal. No monthly (or other periodic) repayments were required to be made by Mr and Mrs W during the lifetime of the mortgage. Consequently, affordability wasn't an issue because there were no monthly (or other periodic) repayments.

Prudential was required to inform Mr and Mrs W of the interest that was continuing to accrue against the amounts they'd borrowed, and I'm satisfied that the annual statements sent since February 2015 fulfilled that obligation.

I don't uphold this part of the complaint.

Poor customer service between 2020-2022

In her detailed letter dated 17 July 2023 the investigator set out the issues Mr and Mrs W had had with Prudential's customer service.

"In 2020, you complained that it was difficult to get through to Prudential and with communicating via secure email system. Prudential hasn't disputed this. They have apologised for these delays.

In 2021, you complained there were delays with Prudential coming back to you regarding the redemption payment. Prudential hasn't disputed this and have apologised for these delays and the concern this would have caused.

In 2022, you complained that the figures you were given were incorrect on the mortgage. Prudential hasn't disputed this and they have apologised for the incorrect information given."

For these customer service issues, Prudential has paid compensation totalling £809.89, as follows:

10 June 2020	£100 plus £9.89 interest = £109.89
16 June 2020	£100
18 March 2021	£500
26 July 2022	£100

I've looked at the customer service issues and, having done so, I'm satisfied the compensation already paid by Prudential is fair and reasonable in all the circumstances, and is proportionate to the customer service errors made. I therefore do not think Prudential needs to do anything more.

I don't uphold this part of the complaint.

Data breaches

Prudential inadvertently sent Mr and Mrs W information about a third party. That isn't a breach of Mr and Mrs W's personal data. The third party could have complained that their data has been breached, but Mr and Mrs W's data wasn't breached in this respect.

Mr and Mrs W are also unhappy that a letter sent to them was delivered to a neighbour, who opened it. Mr W says it had been put into the envelope in such a way that the address on the envelope couldn't be seen. However, if Royal Mail hadn't been able to read the address, it would, or should, have returned the letter to Prudential. Whilst I acknowledge Mr W's strength of feeling that the letter was opened by a neighbour he doesn't like, I can't hold Prudential responsible for any errors by Royal Mail.

I don't uphold this part of the complaint.

Further points

I appreciate this isn't the outcome Mr and Mrs W were hoping for. I can see from what Mr W has told us that he feels very strongly about how unfair a product he thinks this equity release mortgage was. He sees wrong-doing and unfairness in practically everything Prudential has done. That's an understandable reaction when you're as close to a situation as Mr W is.

But I have a different remit; I have to be impartial and decide a case on the evidence. Having done so, other than the customer service issues for which I find Prudential has already paid sufficient compensation, I'm unable to find Prudential has done anything wrong.

Mr W has made reference to a potential legal claim under the Misrepresentation Act 1967. If Mr and Mrs W are contemplating taking legal action against Prudential, I would suggest they take advice from a solicitor before doing so.

Mr W has also explained – and I am sorry to hear this – that he is facing bankruptcy. It might help Mr and Mrs W to speak to one of the free debt advisory services, such as Citizens Advice or StepChange, or to discuss their situation with an Insolvency Practitioner.

My final decision

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 11 October 2023.

Jan O'Leary
Ombudsman