DRN-3126905

The complaint

Mr G complains that Target Servicing Limited failed to collect a monthly management fee for his help to buy shared equity mortgage, and then required him to make up the missed payments.

What happened

Mr G took out a shared equity loan using the help to buy scheme in 2017. His loan is managed by Target.

In May 2021, Target wrote to Mr G saying that there was a monthly loan management fee of £1. It had not been collected since 2017 as the result of an error. Target asked Mr G to pay the missed fees over the three and half years since the loan was taken out, and said it would collect the fee monthly from now on.

Mr G complained. He didn't think it was fair that he had to pay the fees that had been missed because Target had failed to collect them. And he didn't think it was fair to charge him a fee for managing his loan – when the management of it was so poor Target hadn't even noticed it wasn't being paid.

Target didn't uphold his complaint. It said that a direct debit should have been set up to collect the fee when Mr G took his loan out. And it said that it should have realised that there was no direct debit when it set the loan up on its systems and contacted him at that point. However, it said, the fee was payable under the terms and conditions of the loan, and so Mr G would need to make up the missed payments now. It said it considered him to be in arrears.

Our investigator said that Target had not acted fairly in failing to collect the fee, and should waive the accrued fees. But he said it was entitled to charge the fee going forwards.

Target did not agree. It accepted it has made an error in not collecting the fee. But it said the fees were due and would need to be paid. It said it was Mr G's responsibility to make sure he was complying with the terms and conditions of the loan – including paying all fees due. He should have contacted Target to ask why it was not collecting the fee. Target asked for the complaint 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.

The help to buy scheme is a government scheme lending a share of the purchase price to help people buy homes. It's a second charge loan that sits alongside the main mortgage.

The lender is a government agency, and the lender and the loan are both unregulated. However, the lender has appointed Target to administer the loan – and in doing so, Target is carrying out a regulated activity which falls within my jurisdiction. I'm therefore satisfied that this complaint – about how Target has managed the loan and collected (or failed to collect) payments due under it – falls within my jurisdiction.

The monthly fee is governed by the terms and conditions. Clause 4 of the terms and conditions says that Mr G must pay the "management fee" from the "management fee commencement date" by direct debit on the first day of each month. The terms and conditions say the "management fee" is £1 per month, and the "management fee commencement date" is the first day of the month following the month in which the loan begins.

Therefore, under the terms and conditions Mr G is required to pay the management fee and has been required to pay it since the month following the start of the loan. And under clause 5, if he fails to do so, the lender can then serve a default notice on him.

I can see that Mr G signed a direct debit form in favour of Target on 17 November 2017, when he took the loan out. The direct debit form is included with the loan agreement pack, a copy of which was sent to us by Target. So it's not clear why Target has maintained that no direct debit form was completed – when it clearly was.

I'm therefore satisfied that Target is at fault here. The payment was due. Mr G completed a direct debit form, as required under the terms. I've seen no suggestion that he was unable or unwilling to pay the £1 monthly fee – the fact is that, due to administrative failings on its part, Target failed to collect the fee from him. Had Target tried to collect it via the direct debit it should have set up, the fee would have been paid from the start.

Our approach to mortgage underfunding is well established and well known. It's set out on our website, and it's something I would expect Target to be aware of.

In my view, this is a case of underfunding. There was a sum due under the terms and conditions. Mr G was able to pay it, and had complied with his obligations to ensure that it could be collected from him. Because of its own error, Target failed to collect it. It has instead added it to the outstanding balance of his loan, which has increased as a result. Target's failure has resulted in Mr G not paying a sum due, and his balance increasing as a result.

I don't agree with Target that it was Mr G's responsibility to pro-actively contact Target to draw Target's error to its attention. Mr G had signed a direct debit form, as he was required to do, and was entitled to expect that as the administrator of his loan, Target would administer it in line with the terms and conditions and ensure any payments due would be collected. It failed to do that. And given the amount of the fee, it's unsurprising that Mr G didn't notice that it wasn't being collected.

I'm therefore satisfied that it's fair and reasonable to say that Target should be responsible for the missed payments until this issue came to light. Once the issue came to light, it could then have set up the direct debit Mr G signed in 2017. It didn't do that, but it did contact Mr G and ask him to complete a new one. Once it drew the error to Mr G's attention, it's reasonable to charge him the payments from then on – as Mr G expects.

Putting things right

Applying our established approach to underfunding, and my view of what's fair and reasonable in all the circumstances, I'm satisfied that it's fair to require Target to write off the management fees it failed to collect until the error came to light – for the first 41 months of the loan. Thereafter, it's reasonable to expect Mr G to pay the monthly fee.

Mr G recently told our investigator that he was contemplating repaying his loan. If, by the time he accepts this decision (if he does), the loan is still outstanding, then Target should remove the first 41 months of payments from the loan balance and waive the right to collect those fees. And if the loan remains outstanding, Mr G will need to agree with Target how the remaining outstanding fees are to be paid, and how future fees are to be collected.

If, on the other hand, Mr G has redeemed the loan including the first 41 months of payments added to the balance, Target should refund those fees to him, adding simple annual interest of 8% running from the date the loan was redeemed to the date it makes payment. Interest is not required prior to redemption, as Mr G's loan has not yet entered the period five years after completion when interest starts to become payable on the loan balance.

Target should not treat Mr G as in arrears in respect of the outstanding fees. If it has reported any adverse information to Mr G's credit files in respect of the first 41 months of missed fees, that information should be removed. If the loan remains outstanding, any adverse information in respect of later fees should also be removed provided Mr G pays the remaining fees within 28 days of accepting this decision. If the loan has been redeemed, all adverse information should be removed..

My final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct Target Servicing Limited to do whichever of the following is applicable:

- If the loan remains outstanding, waive the first 41 months of fees and remove £41 from the loan balance; or

- If the loan has been repaid, pay Mr G £41 plus simple annual interest of 8%* running from date of redemption to date of payment.

In addition, Target should correct Mr G's credit file (if it has reported any information to it) as I've set out above.

** If the second option applies, Target may deduct income tax from the 8% interest element of my award, as HMRC requires, but should tell Mr G what it has deducted so he can reclaim the tax if he is entitled to do so.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 July 2022.

Simon Pugh
Ombudsman