

The complaint

Mr T complains that Target Servicing Limited wouldn't allow him to redeem his help to buy loan, which meant that the sale of his property fell through.

What happened

Mr T bought a flat with the assistance of the help to buy scheme in 2012.

The help to buy scheme is a government scheme to support home ownership. In addition to the usual mortgage from a regular lender, a borrower takes a shared equity loan funded by the government to reduce the amount of cash deposit required. Mr T's property is in England, and so the lender of his help to buy shared equity loan is Homes England (formerly known as the Homes and Communities Agency), an executive agency and non-departmental public body sponsored by the Department for Levelling Up, Housing and Communities. Homes England lends a percentage of the property purchase price to the borrower to enable them to buy a home.

Help to buy shared equity loans are interest free for the first five years. From year six onwards, interest is payable. Help to buy shared equity loans are secured by way of a second charge over the property, ranking behind the main mortgage. This means that the loan must be repaid at the end of its term (generally 25 years) – but if the property is sold before then, it must be repaid on sale of the property. A borrower can also elect to repay the loan at any time, even if the property is not being sold.

In either case, what the borrower must pay back is calculated by reference to the value of the property at the time they want to sell it or otherwise repay the shared equity loan. So, depending on how property prices have changed in the meantime, the borrower may have to pay back more or less than the amount originally borrowed. For example, in this case, Mr T borrowed 10% of the purchase price as a shared equity loan. So, if he wanted to sell his property, he would have to pay back 10% of the value of his property at the time of sale to redeem his shared equity loan. His help to buy shared equity loan funded part of the deposit which he used to buy the property alongside a mortgage from a mainstream mortgage lender.

As I explain in more detail below, a help to buy shared equity loan is not a financial product regulated by the Financial Conduct Authority (FCA). And Homes England is not a regulated firm within the jurisdiction of the Financial Ombudsman Service. Formally, this type of lending is known as a shared equity loan, though they're commonly referred to as help to buy loans. A help to buy loan is simply a shared equity loan offered through the help to buy scheme.

Homes England has appointed Target Servicing Limited to administer help to buy loans on its behalf. Target Servicing Limited is a regulated firm within the jurisdiction of the Financial Ombudsman Service and is therefore the respondent to this complaint. The extent to which it is responsible for the matters complained about by Mr T is in dispute, and I'll say more about that below.

In 2019, Mr T needed to move abroad for work. So he decided to sell his flat. He put it on the market and received an offer to buy it. And he applied to Target to redeem the help to buy loan in June 2019. Both the help to buy loan and his main mortgage would be repaid with the proceeds of sale of the property.

Target sent Mr T an email explaining the process for redeeming his loan. It included a link to its customer information pack giving more details on the redemption process, and said that Mr T would need to complete and return various forms and pay a £250 fee. Target said Mr T should request a formal valuation from a surveyor who was a member of the Royal Institution of Chartered Surveyors (RICS). It said the redemption figure would be based on the higher of the valuation or the agreed sale price. In either case, Mr T would need to pay back 10% of this amount - the same proportion of the original purchase price that he had borrowed.

Mr T instructed a RICS surveyor to value his property. The surveyor completed the valuation on 10 July 2019. The surveyor said the property was worth £198,500 (the same as the agreed sale price). Within the report the surveyor said that the property had “*elements of composite cladding*”.

Mr T sent a copy of the valuation to Target and asked it to agree a redemption figure and provide a redemption statement.

Target did not initially respond. When it did, in August 2019, it told Mr T it was unable to provide him with a redemption figure.

Mr T continued to ask Target for a redemption figure in the following months, but none was forthcoming. In the absence of being able to redeem the loan and remove Homes England's charge from the property, Mr T's sale fell through. But he still had to move out of the property and move abroad. He complains that he remains unable to sell his property, and is having to cover the costs of a property he can't live in and can't sell, in addition to the costs of where he is living now. He wants to be able to sell his property, and wants to be compensated for the losses arising from the delay.

Our investigator upheld his complaint. Target didn't agree. In summary, it argued that while the Financial Ombudsman Service has jurisdiction to consider a complaint about how Target itself treated Mr T (for example, as regards any delays in the redemption process that Target was itself responsible for), we do not have jurisdiction to consider anything to do with the terms of the shared equity loan itself, given that it was not a regulated mortgage contract or a regulated credit agreement, and given that Target is not the lender. It also said that it had simply acted as it was instructed to do by Homes England. The issues that Mr T is complaining about are the result of actions taken (or not taken) by Homes England for which Target is not responsible. Target offered to put a redress proposal to Homes England for it to consider, but did not accept that it was itself liable to him for what had happened or that this complaint should be upheld.

I issued a provisional decision setting out my thoughts on the complaint. Although I broadly agreed with the investigator's outcome, my reasons were more detailed, and so I wanted to give the parties a further chance for comment before making my final decision.

My provisional decision

As I explain below, neither party had anything further to add to my provisional decision. For that reason my provisional decision is largely the same as my final decision. And so I won't repeat my provisional findings in full. But in summary – and for reasons which are essentially the same as those I give below – I said I was minded to find that:

- Target, as a regulated entity engaged in the regulated activity of debt administration, is responsible for answering this complaint;
- I therefore have jurisdiction to consider the complaint;
- As the regulated debt administrator, Target has obligations to Mr T and regulatory obligations in its own right;
- Those obligations include performing the lender's duties, and exercising the lender's rights, under the terms of the loan agreement;
- Target is also required to act fairly and reasonably in all the circumstances;
- On the facts of this case, Mr T made a proper request to redeem his help to buy loan and, once the valuation was carried out, was entitled to do so;
- However, that did not happen – because the lender would not accept the valuation;
- Target was responsible for ensuring that Mr T was able to redeem his loan but failed to do so;
- That was not fair and reasonable in all the circumstances;
- It's fair and reasonable to hold Target responsible for Mr T's losses that flow from the failure to allow him to redeem as he was entitled to do.
- I set out how I expected Target to put matters right.

The responses to my provisional decision

Mr T accepted my provisional decision. Target did not make any further argument or provide any further evidence.

My further enquiries

I then made further enquiries of Mr T to confirm the detail of the financial losses that flowed from the failure to redeem in time. This was to gather updated financial information, to allow Target to comment on the detailed redress before I make a final decision.

I therefore set out a detailed breakdown of the financial losses to date which I was minded to direct Target to pay Mr T. I sent that breakdown to both Target and Mr T, inviting further comment. I've set out more detail on this below.

Mr T accepted the redress calculations I set out. Target did not reply.

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.

I've also considered again what I said in my provisional decision. Neither party provided any further evidence, or made any further arguments. I've reached the same conclusions as I provisionally reached, and I set out my reasons below.

In its response to the investigator's initial findings, Target disagreed with the extent of the Financial Ombudsman Service's jurisdiction to consider Mr T's complaint in its response to the investigator's view. So I'll firstly explain why I consider that the Financial Ombudsman Service does have jurisdiction to consider Mr T's complaint against Target. I'll then set out what I consider Target's responsibilities towards Mr T were in the circumstances of this case, and why I consider it is fair and reasonable to hold Target responsible for compensating Mr T for the loss he suffered as a result of the delays in the redemption process. Finally, I'll set out what I think Target needs to do to put matters right.

But before I do that, I'll set out a more detailed timeline of events. The timeline is taken primarily from Target's internal notes and correspondence with Mr T and with Homes England and is not, as far as I'm aware, in dispute.

Timeline of events

In early 2019, Mr T marketed his property and received an offer to buy it. As it was necessary to get agreement to redeem the help to buy loan, and to agree how much Mr T would need to pay, Mr T contacted Target to notify it of his intention to redeem the loan.

Mr T rang Target on 27 June 2019. On the same day, Target sent him a link to a customer information pack. In its covering email it said

To accurately process your request, we require the following:

- *A copy of Form A (if you are selling) or Form B (if you are not selling) ...*
- *A recent valuation of the property which must be independently performed by a RICS qualified surveyor*
- *A memorandum of sale if you are selling the property*
- *An administration fee of £250....*

Upon completion of the above we will complete your request within 7-10 working days. In line with the terms and conditions of the mortgage, the redemption figure will be calculated on the higher of the following:

- *The sale price of the property*
- *The valuation of the property at the time you repay the loan*

Mr T instructed a RICS qualified surveyor to value the property, and the surveyor reported on 10 July 2019. Mr T sent a copy of the valuation to Homes England by uploading it to Target's online portal. It's not clear exactly what date he or his solicitors did this on, but on 16 August 2019 he called Target to say he had done so. The valuation was dated 10 July 2019, and Mr T's Form A was signed and dated by him on 13 July 2019.

The valuation gave a value for the property. It said that the property had "elements of cladding", but did not say that the cladding presented any concern or risk, or required any further action, or that it affected or qualified the valuation in any way.

On 20 August 2019, Target emailed Homes England about the valuation, saying *"this is a potential cladding issue case. Please can you confirm on how I should proceed"*.

The same day, Mr T called and asked about the valuation. Target told him that it was unable to provide a redemption figure as the valuation mentioned cladding. It also sent an email to his solicitors which said:

"Unfortunately we are unable to process your request as the valuation report mentions elements of cladding. Because of this, we have to relay this case to the specialist department to advise us of the next steps to follow. Please note that once we have a response we will contact you and your client."

It seems – though this wasn't made clear in the email – that the "specialist department" means Homes England and not a department of Target.

Mr T and his solicitor continued to chase Target. On 4 September 2019, Target sent a further email saying

“... the purpose of this email is to make you aware of the most recent discussion. The account currently is with our specialist team in relation to the cladding that has been mentioned within the valuation. I understand that [Mr T] has contacted before and he has advised me that he was given timeframes that have not been met, which has been frustrating for him. Whilst I understand both yourself and [Mr T] are looking for a timeframe, I have been unable to give one, but have confirmed that my aim is to help support this situation and try and do what I can to reach a conclusion as soon as possible. Please be aware that we are in contact with the Specialist Department to understand where we are in the process, what else still needs to be done if anything, and if there is any timeframe we can put forward. Once this has been defined, we will get in contact with yourselves...”

Again, there is no indication given that the “specialist department” was in fact Homes England.

The solicitors continued to chase Target. And on 19 September 2019 Mr T called to say that his buyer was on the point of pulling out. He asked to speak to the “specialist department” himself but Target was unable to put him through.

On 19 September 2019, Homes England instructed its own valuer. It appears that this valuer visited Mr T’s property at the end of that month. It’s not clear if the valuer gave a valuation report to Homes England, but if so it was never provided to Target or to Mr T and I haven’t seen it.

Mr T continued to call Target over the following months. But Target was unable to tell him anything – for example, in March 2020, its contact notes record:

“advised we can not produce RQ [redemption quotation] due to cladding issues that are ongoing with HE [Homes England], advised we had no update, referred to [Target staff member] who said we would send a chaser email”

On 12 June 2020, another contact note records:

“Mr not happy that he has no update on the cladding issue and HE[’s valuer] went out back in September. I have advised Mr I will look in to the situation and email him to call us when we have a reply”

On both occasions Target sent a chasing email to Homes England. Homes England replied that it was waiting for an answer from its legal team.

Mr T continued to chase Target periodically, though by this time he was living outside the UK.

Target says that in July 2021, Homes England introduced a new process for redeeming loans secured over cladding-affected properties. The new process is that it will accept a valuation, provided that the valuer signs a specific declaration in the terms Homes England requires. That declaration, and instructions for borrowers affected by cladding who wish to

redeem, was made available to borrowers and valuers online from 4 August 2021.¹ Though it was not communicated to Mr T at this time.

In September 2021, Mr T told Target that he did still want a redemption figure and wanted to sell the property. Target again chased Homes England for a decision. It did not tell Mr T that a new process had been published a month before.

Homes England said that its valuer, that it instructed in September 2019, had never produced a report. It said that it now needed Mr T's valuer, who did report in July 2019, to complete a further declaration. This did not happen.

It doesn't seem Mr T was asked to obtain a further declaration from his valuer; Target emailed him on 6 September 2021 asking him to contact it, but without saying why. It did not tell Mr T in the email that there was a new process, or that an updated declaration would be needed from his valuer. Anyway, by this point Mr T was not living in the UK and over two years had passed since the valuation was carried out.

In February 2022, Target told Mr T that in order to proceed with his redemption, a new and updated valuation would be required, which Target would pay for.

My jurisdiction to consider this complaint

The Financial Ombudsman Service's jurisdiction is set out in our rules (including the Dispute Resolution: Complaints chapter ("DISP") of the FCA's handbook and in legislation (including the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the "RAO")).

DISP says that we can only consider a complaint where (among other things) both the firm and the activity complained about fall within our jurisdiction.

DISP 2.3.1R says

"The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

(1) *Regulated activities*

...

or any ancillary activities, including advice, carried on by the *firm* in connection with them.

A "*firm*" includes an entity that is authorised and regulated by the Financial Conduct Authority (the "FCA"). Homes England is not authorised and regulated by the Financial Conduct Authority and so we cannot consider a complaint against Homes England about anything it may or may not have done. However, Target is authorised and regulated by the FCA and so is a "*firm*" for the purposes of DISP 2.3.1R.

DISP 2.3.1R(1) says we can consider a complaint against Target if it relates to an act or omission by it in carrying on a "*regulated activity*" (or ancillary activities, including advice, in connection with that regulated activity). In turn, the definition of "*regulated activities*" refers (in the main) to the list of activities set out in the RAO.

¹ See <https://www.gov.uk/guidance/check-if-your-home-has-cladding-that-may-need-a-specialistvaluation> and <https://www.gov.uk/government/publications/request-to-appoint-a-valuer-for-a-propertywith-external-cladding>

Target doesn't dispute that it is carrying on (and authorised by the FCA to carry on) two regulated activities in relation to Mr T: the activities of *debt administration* (Article 39G) and *debt collection* (Article 39F).

So far as is relevant for present purposes, article 39G(1) of the RAO defines debt administration as:

taking steps

- (a) To perform duties under a credit agreement ...on behalf of the lender, or*
- (b) To exercise or enforce rights under such an agreement on behalf of the lender*

So far as is relevant for present purposes, article 39F(1) of the RAO defines debt collecting as:

taking steps to procure the payment of a debt due under a credit agreement

For the purposes of both articles 39F and 39G and in the context of this complaint (see article 3 of the RAO) a "credit agreement" has the meaning given in article 60B of the RAO.

Article 60B(3) says that a credit agreement means:

"... an agreement between an individual or relevant recipient of credit (A) and any other person (B) under which B provides A with credit of any amount".

In this case, it's not in dispute that the shared equity loan is a "credit agreement" for the purposes of articles 39F and 39G of the RAO.

In its response to the investigator's view, Target argued that the Financial Ombudsman Service does not have the jurisdiction to consider anything to do with the terms and conditions of (or processes relating to) Mr T's help to buy loan because the loan "is not regulated".

What I understand Target to mean by this is our jurisdiction is limited by the fact that this loan is not a regulated credit agreement or regulated mortgage contract as defined in articles 60B and 61(3) of the RAO respectively.

However, I don't think this makes any difference to my jurisdiction. The definition I've quoted above refers to a "credit agreement" not a "regulated credit agreement". It doesn't matter that this is not a *regulated* credit agreement, since the definitions of the activities of debt administration and debt collection are not limited to regulated credit agreements; they cover *all* credit agreements.

That means that we can consider a complaint about Target about its acts or omissions – what it did but also what it failed to do – in carrying on the regulated activities of debt administration and debt collection relating to the shared equity loan that Mr T took out. In other words, we can consider not just the steps Target took; we can also consider whether it should have taken steps but omitted to do so. And in considering that, I can have regard to all the circumstances of the complaint – including the terms and conditions of the loan.

Now I've set out the extent of my jurisdiction in this complaint, I'll go on to consider what happened, whether those events fall within my jurisdiction, and what in my view is fair and reasonable in all the circumstances.

Since this is a complaint about the redemption – or rather Mr T’s inability to redeem – his loan, I’ll start by setting out something of the context in which this complaint arises, as well as what the valuation obtained by Mr T actually said. I’ll then move on to considering what the contractual redemption process was. And the starting point for that is the terms and conditions of the loan. I’ll then go on to consider what went wrong – that is, what Target ought to have done and whether it failed to do that – and whether – and to what extent – Target is responsible for that and whether it’s fair and reasonable to uphold this complaint.

The relevance of cladding to this complaint

At this point, I would like to say something about the presence of cladding on Mr T’s property, as noted by Mr T’s surveyor in his July 2019 report.

Following the Grenfell Tower tragedy in 2017, there was increased awareness of the risk caused by certain types of building construction, including potentially combustible composite cladding, particularly on blocks of flats.

Uncertainties around whether individual buildings either have cladding, or whether – if they do – the cladding is a fire safety risk (and indeed whether there are other, non-cladding, fire safety risks present), have had a significant impact on both the sales and mortgage lending markets in the years since the Grenfell fire. Identification of affected buildings, and the responsibility for carrying out – and paying for – any necessary remediation continue to be matters of public concern and controversy.

I’m aware from this complaint and other complaints, as well as my wider knowledge of the mortgage market, that the presence – or potential presence – of unremedied combustible cladding and other fire safety concerns can cause difficulty in valuing affected properties.

As will be apparent from the timeline above, that was reflected in the course of this complaint. Since this was a shared equity loan, the redemption figure was based on the valuation of the property at the time of redemption. At the time Mr T wanted to redeem his loan, in July 2019, Homes England was considering the approach it wanted to take to redemption requests on properties potentially affected by these issues. It seems that it was not until 2021 that it resolved this question to its own satisfaction.

I’ve looked at the valuation Mr T commissioned in July 2019. That’s the only valuation or inspection that has been done in respect of Mr T’s property. And it’s not been suggested during this complaint that it was inaccurate in its description of the property.

The valuation says that the property is a second floor flat in a four-storey block built around 10 years ago. It says *“the building appears to be of concrete frame construction with brick elevations with elements of composite cladding”*. That is the only mention of cladding in the report; there is no suggestion that the cladding is extensive, potentially combustible, or requires further inspection or analysis. It is not flagged by the surveyor as a potential risk or as a matter affecting the valuation, and the valuer gives a valuation which is not qualified or caveated by any matter.

However, it seems that merely this mention of cladding within the valuation report was enough for Target to put Mr T’s redemption request on hold while Homes England considered its approach.

I bear this in mind when now turning to consider what Target (as the regulated administrator of Mr T’s shared equity loan) should have done in this case – starting with what the terms of the loan agreement and the customer information pack say, then moving on to consider what Target did and what in my view it ought to have done in Mr T’s specific situation.

The contractual redemption process

Mr T's right to redeem his loan – and the process to be followed – is set out in the loan's terms and conditions. The loan agreement was entered into by Mr T and the Homes and Communities Agency, dated 6 March 2012. I'll refer to the Homes and Communities Agency and Homes England as the "lender" in the rest of my decision. The loan agreement has not been amended since it was entered into.

The loan agreement sets out how the loan is to be redeemed before the end of the term, if the borrower wishes to do so. I've set out the relevant sections below.

Clause 4.1 says:

"[The Borrower covenants with the Lender] To pay to the Lender on or immediately after a redemption event (which is described in clause 5) an amount equal to the Repayment Sum by reference to the valuation as on the date of such an event together with any reasonable costs and expenses incurred by the Lender pursuant to this Mortgage and any other sums payable and outstanding under this Mortgage. This payment is to be made in the way described in clause 6 which clause also describes the valuation which is required."

Clause 5.1 defines a "redemption event" as the occurrence of "any Disposal save for an Exempt Disposal". Given how these terms are defined in clause 1.1 (interpretation), Mr T's planned sale of his home would constitute a Disposal (and not an Exempt Disposal).

Clause 6 says:

6. Transfer of the Property and Determining the Repayment Sum

- 6.1. If the Borrower wishes to make a Disposal the Borrower must notify the Lender in writing to the effect that he wishes to make a Disposal...
- 6.2. Within fourteen (14) days of the service of the Transfer Notice... the Borrower shall apply (at its own cost) to the Valuer (whose decision shall be final) to determine the Market Value as at the date of receipt of the Transfer Notice [defined in clause 1.1 as the notice served pursuant to clause 6.1] or as at the date of the other relevant event as the case may be and within five working days of receipt of such determination the Borrower shall serve a Valuation Notice on the Lender.
- 6.3. The Valuation Notice shall remain valid for a period of three months (or four months if extended by the Valuer) and in the case of a Disposal where completion of the Disposal does not take place within three months (or as extended) of service of the Valuation Notice by the Borrower on the Lender, the procedure set out in clauses 6.1 and 6.2 shall be repeated prior to the Disposal.
- 6.4. Upon completion of the Disposal in accordance with this clause 6 or, where any other relevant event occurs within seven days after determination of Market Value under clause 6.2, the Borrower shall also pay to the Lender the sums due in accordance with clause 4.1 PROVIDED THAT following completion of a Disposal no person shall be registered as proprietor of the Property until such time as the sums due in accordance with clause 4.1 are paid to the Lender at which time the Lender shall provide consent to the registration in the Land Registry in accordance with Clause 11 and apply to the Land Registry to remove the restriction referred to in clause 11 from the Register.

Capitalised terms have specific definitions as set out in clause 1.1 (Interpretation):

“Valuer” means

An independent qualified valuer appointed by agreement between the parties or failing agreement by or on behalf of the president for the time being of the Royal Institute of Chartered Surveyors on the application of either party.

“Valuation Notice” means notice of the determination of the Valuer of the Market Value.

“Repayment Sum” means

The Remaining Proportion [the initial percentage of the purchase price less any earlier payment] of the Market Value shown in the Valuation obtained under clause 6,7 or 8 as the case may be.

“Market Value” means

The price which the Property would fetch on the open market on a sale by a willing vendor to a willing purchaser ... provided that in the case of a Disposal where the Disposal price (disregarding any part of that price attributable to any additions or improvements made by the Borrower with the written consent of the Lender) is greater than the Market Value then the Market Value shall be substituted with such Disposal price when calculating the Repayment Sum.

“Disposal” means

A transfer to a third party of the Borrower’s interest in the Property or any part of the Property

I also note clause 1.7 (Nominated Agent) which says:

“The Lender reserves the right to appoint a Nominated Agent to administer this loan ... on its behalf and to collect all payments that are due Where the Lender has confirmed that a Nominated Agent is appointed:

1.7.1. all correspondence and/or payments that are required under this mortgage should be directed to the Nominated Agent unless the Lender has notified you otherwise (in writing) of any changes to this arrangement; and

1.7.2. the Nominated Agent will be entitled to recover from the Borrower on behalf of the Lender any reasonable costs and expenses which the Lender is entitled to recover from the Borrower under the terms of this Mortgage.

For the purposes of administering this shared equity loan, Homes England appointed Target as its Nominated Agent.

As noted above, Mr T wanted to sell his property (a “Disposal”) and therefore needed to repay his help to buy loan.

In brief summary, the terms and conditions provide that the process for this is as follows

- (i) he should apply to the lender and then within 14 days apply to a valuer for a valuation;

- (ii) a valuer should be RICS qualified and appointed by agreement between Mr T and the lender (or by the president of RICS if they can't agree);
- (iii) under clause 6.2, this valuer's decision shall be final. There is no right of appeal, for either party, against a decision of a properly appointed valuer. The redemption amount for the shared equity loan is then worked out accordingly – so, in Mr T's case, it would be 10% of the valuation (or, if higher, the actual sale price);
- (iv) Mr T then has three months (extendable to four) to pay the sum due to redeem his loan. If completion fails to happen within that time, the above steps must be carried out again.

The redemption information pack

As I've set out in the timeline above, Mr T notified Target that he wanted to sell his property and redeem the loan. He did this because Target was appointed to manage the loan on behalf of Homes England (i.e. it was the Nominated Agent under the loan agreement), and Mr T was told that all contact was to be with Target. Target was therefore acting as the lender's agent for these purposes.

After Mr T contacted Target, Target sent Mr T a link to the customer information pack and some forms. Mr T completed and returned Form A, which is the notice required in the provisions I've quoted above.

The link sent to Mr T no longer works. Target has not provided us with a copy of what Mr T would have seen. However, we have been given copies of the standard information pack in use at this time in other cases. In the absence of evidence to the contrary, I'm satisfied that Mr T would have seen the same document when he clicked on the link he was emailed.

I say that because I've seen it on other cases involving redemption issues around this time, and because Mr T and his solicitors attempted to follow the process as described therein. And I say that because I made the same observation in my provisional decision, and Target did not take issue with what I said or provide a different version of the redemption pack as the one Mr T would have seen. I'm therefore satisfied that what I quote below is what Mr T would have seen.

The information pack says that *"The Homes and Communities Agency (known as Homes England) has appointed Target Servicing Limited as its Mortgage Administrator to manage the redemption process"*.

The pack says that a borrower should obtain a valuation and should send the valuation to Target.

The relevant sections of the customer information pack say:

"1. Obtain a valuation

In order to produce a redemption figure for redeeming your loan, we will need a valuation for your property that has been conducted by a RICS (Royal Institute of Chartered Surveyors) Certified Surveyor.

We do not endorse any particular companies; however the web link below may assist you in identifying a RICS Certified Surveyor: www.rics.org/uk

Once a RICS Valuation Report has been generated, please send the report to Target.

...

Once you have successfully submitted a valid valuation report you will received [sic] an estimated repayment quote .This will include details of any arrears and your daily interest payment rate to allow your solicitor to calculate an accurate final repayment sum.

...

If your property is affected by novel issues in relation to its valuation e.g. its external cladding, we reserve the right, in accordance with the terms of the equity loan, to agree the RICS Valuer you intend to use, with you, before you instruct them.

There are then a number of further sections relating to the mechanics for the redemption of the loan, but which I do not need to cite here.

There is then a further section about the valuation requirements which says:

“Valuation Requirements

You will need to provide a valuation report. You will need to instruct an independent surveyor and pay for their services. You should instruct a Royal Institute of Chartered Surveyors (RICS) valuation surveyor to value the property.

To help you locate a RICS surveyor, please use this link: www.rics.org/uk

When instructing the RICS valuation surveyor please ensure you inform them that:

The Valuer must be registered with the recognised qualification of RICS.

The Valuer must be independent to an estate agent.

The report must be on headed paper, signed by the RICS surveyor and addressed to Target HCA.

The Valuer MUST provide at least 3 comparable properties and sale prices.

The comparables provided must be like for like in terms of property type, size and age and within a 2 mile radius to the property that is being inspected.

The Valuer must not be related or known to you.

The Valuer must inspect the interior of the property and provide a full valuation report.

Valuations carried out for bank or mortgage purposes are not acceptable.

A copy of the valuation report must be supplied to Target; the inspection date must be shown on the report.

If the valuation report does not meet the above guidelines, you will be required to liaise with the RICS valuation surveyor for rectification; any additional costs incurred for this will be your responsibility.”

The appointment of a valuer to value Mr T’s property

When Mr T told Target he wanted to sell and pay off his loan, asking for a redemption figure, Target sent him an email which said that it required a valuation by a RICS surveyor. I’ve quoted the full text of the email in the “timeline” section above. It did not say that Mr T needed to agree a surveyor with Target in advance; it merely asked him to obtain a valuation and send it to Target.

Target also sent him a link to the information pack I’ve described above.

I'm satisfied that this means that Target asked Mr T to appoint his own valuer provided that the valuer was a RICS qualified surveyor whose report complied with the requirements above.

The valuer which Mr T instructed was a RICS qualified surveyor. The surveyor produced a report dated 10 July 2019 which complies with the requirements in the Customer Information Pack I have set out above – there's been no suggestion that the report didn't meet those requirements.

In the customer information pack – though not in the email – Target said it reserved the right to agree a valuer *in advance* in certain situations, including where the property was affected by cladding.

I will return to this point below because – according to Target – the presence of cladding (as identified in the surveyor's report) and Homes England's reaction to that means Target did nothing wrong in not providing a redemption figure to Mr T in accordance with the terms of the loan agreement and Customer Information Pack at the relevant time.

However, for the moment, I note the following:

- (i) Target told Mr T to instruct his own RICS qualified surveyor to value the property. It did not say that Mr T had to notify Target of the identity of his proposed valuer, or seek its agreement in advance. It simply told him to appoint a valuer and to send it the valuation.
- (ii) The contract says that "Valuer" means an independent qualified valuer appointed by agreement, or if not agreed by the president of RICS. While Target did not agree in advance to a specific named valuer proposed by Mr T, I'm satisfied that in telling him to go ahead and appoint a RICS qualified surveyor of his choice – which Mr T did – Target is to be treated (on the lender's behalf) as having agreed to Mr T's choice of valuer.
- (iii) Clause 6.2 of the loan agreement says that the valuation produced by the valuer shall be final. The valuer did produce a valuation, and Mr T sent it to Target in late July or early August 2019. Mr T had also agreed a sale of his property, and the valuation was for the same amount as the agreed sale price.
- (iv) I'm therefore satisfied that under the terms of the contract, this meant that the Market Value had been determined by a qualified and properly appointed valuer whose decision was final. That in turn gave Mr T the right to repay his loan for the repayment sum, 10% of the Market Value.
- (v) The terms of the shared equity loan (and Customer Information Pack) provide that Target should have proceeded to provide a redemption figure to Mr T on this basis.

However, Target did not do this. I will consider the reasons that Target has given for not doing this below.

The failure to redeem the loan

As noted in the timeline, Mr T and his solicitors tried repeatedly to arrange the redemption of his loan. They were in regular contact with Target for the rest of 2019 and early 2020 asking for a redemption figure and for it to agree to accept payment and discharge the charge over the property so that Mr T's sale could be completed.

However, Target did not provide a redemption figure and did not agree to set or collect the redemption sum. It said that because the valuation had identified "elements of cladding", it

could not go ahead and it had referred Mr T's request to its "specialist department" (meaning Homes England) for consideration and a decision.

It was two further years until Homes England reached a decision; by that time, Mr T's sale had long fallen through.

At first, Homes England wouldn't accept Mr T's valuation. Then in 2021, it decided that it would accept the valuation – but only if the valuer signed a new declaration in the specific terms that Homes England wanted. But this was not communicated to Mr T. And in 2022, Target said that a new valuation would be required.

Even though, therefore, there was a properly appointed valuer whose decision was – according to the contract – final, and which triggered the right to redeem and the setting of a repayment sum, that valuation was not accepted and Homes England did not allow Target to allow Mr T to redeem his loan.

Is Target responsible for the failure to redeem the loan?

In summary, Target says that it's not responsible for the failure of Mr T's loan to be redeemed. It says that it followed Homes England's instructions and that any delays – and losses that flow from them – are not due to Target or its administration of the loan, but rather due to decisions taken by Homes England which Target was entitled to act in accordance with.

I've already set out above that, in administering Mr T's shared equity loan on the lender's behalf, Target is carrying out the regulated activity of *debt administration*.

As a reminder, the regulated activity of debt administration involves:

Taking steps

- (a) To perform duties under a credit agreement or relevant article 36H agreement on behalf of the lender, or*
- (b) To exercise or enforce rights under such an agreement on behalf of the lender*

In my view, the loan agreement makes it clear that the lender had the following contractual duties (subject to the borrower providing the required notices, which I'm satisfied Mr T did or tried to do) when Mr T sought to exercise his right to redeem the loan on a sale:

- On receipt of a redemption request, to agree the appointment of a valuer or, failing agreement, to accept an appointment made by the president of RICS;
- Accept the nominated valuer's decision as final and as determining the repayment sum (subject to the sale price not being higher);
- Collect – or agree to receive – the repayment sum as determined by the valuation or sale price;
- Discharge the charge over the property.

As I've noted above, the lender nominated and authorised Target (as its Nominated Agent) to deal with the administration of the loan, including its redemption, on its behalf. The customer information pack sets out Target's role in the process.

When Mr T gave notice that he wanted to redeem his loan, that triggered the lender's contractual obligations to take the steps I've set out above. The lender had appointed Target as its Nominated Agent to take those steps, and the customer information pack makes clear that in fact it would be Target that would take those steps. In doing so Target was carrying

on the regulated activity of debt administration – it was performing the lender’s duties and / or exercising the lender’s rights on the lender’s behalf.

I’m satisfied that, in regulatory terms and in the context of this complaint, this means Target is responsible for the failure to comply with the lender’s contractual obligations to allow Mr T to redeem his loan.

I’ve said that it’s fair to say that the valuation should have been treated as final and binding giving Mr T the right to redeem his loan – and setting the redemption amount.

As far as Mr T was concerned – both in what the customer information pack said, and in what Target told him according to its contact notes – it was Target that was responsible for this. Target doesn’t dispute that the valuation wasn’t accepted, that Mr T wasn’t given a redemption figure, and that he wasn’t able to redeem its loan.

But Target says that this was because it was acting on the lender’s instructions, and the mention of cladding in the valuation meant the lender was unable – or unwilling – to accept the valuation and agree a redemption. It says it acted on the lender’s instructions and isn’t responsible for the consequences that followed.

But I’m not persuaded by this. Target was appointed by the lender to manage the loan and carry out its duties. In accepting that appointment, it acted as a regulated firm carrying out regulated activities. It was carrying on the regulated activity of administering this loan, and in doing so, it is responsible for any failure to administer it in line with the terms and conditions – and the consequences that flowed from doing so. I’m satisfied that I can consider whether, in administering this loan, Target acted fairly and reasonably in all the circumstances.

Did Target act fairly and reasonably in all the circumstances?

In deciding what’s fair and reasonable in all the circumstances, I take into account relevant law, regulation, guidance and what I consider to have been good industry practice at the time – as required by our rules.

As I’ve explained above, Mr T did everything necessary to comply with his contractual obligations regarding the redemption of his loan, and so should have been issued with a redemption figure based on the valuation which his surveyor produced in accordance with the timescales set out in the loan agreement.

I’m satisfied, as I’ve said, that in telling Mr T to appoint his own valuer, Target agreed to the valuer Mr T chose – and that made the valuer’s decision final, entitling Mr T to redeem his loan.

I’ve noted that the customer information pack says that Target reserves the right to agree a valuation in advance in certain circumstances. And I’ve also noted that Target has said that cladding was a “novel issue” that the lender needed to consider its response to before agreeing a valuation.

I’ve quoted the relevant sections of the customer information pack above. It simply states that Target reserves the right to agree the *specific individual* RICS valuer *in advance* if cladding is identified. In other words, this reiterates the right which Target (acting on the lender’s behalf) already has under the loan agreement – that is, to agree a particular named RICS valuer.

However, Target did not as a matter of fact in this case ask Mr T to agree a particular valuer of its choice in advance, or ask Mr T to present his choice for agreement. As I have

explained above, it told Mr T that he could use *any* RICS valuer, which he in fact did. I'm satisfied this means that it agreed to Mr T's choice of valuer – and that in turn meant the valuer was the agreed Valuer referred to in the terms and conditions whose valuation was final.

While it might be that Target was not aware of the cladding issue on the building until Mr T's valuation report mentioned its presence, that does not in my view mean that Target was therefore entitled (whether or not Homes England instructed it to do so) to refuse to accept the valuation which Mr T's valuer did in fact produce and/or otherwise delay the contractual redemption process.

If Target (acting on Homes England's behalf) wanted to exercise the right to agree a particular individual valuer, it needed to do so *before* one was appointed. If Target or Homes England were concerned about the possibility of cladding on a building (which, as I have noted above, was a known issue affecting the property market generally as at July 2019), it could have and should have made enquiries *before* telling Mr T that he could appoint whichever RICS qualified valuer he wanted to appoint – and having made those enquiries told Mr T to appoint a specific named valuer or to propose one for its agreement.

The fact that cladding might, in certain circumstances, impact a valuation was clearly something Target was aware of, since it was mentioned in the information pack. So it could have taken that step before telling Mr T to instruct a valuer of his choice. In short, I don't think the discovery of potential cladding after the valuation invalidates the appointment of the valuer.

It follows that the valuation which Mr T in fact obtained was, for the purposes of the redemption of the loan, final and binding on the lender. It also follows that Target, who was the debt administrator authorised to act on the lender's behalf, did not have any contractual right to reject this valuation or otherwise delay the redemption process for the reasons it did. For that failure, it is Target – as the regulated debt administrator performing the lender's duties and exercising the lender's rights under the loan agreement – which is responsible to Mr T.

I will also address Target's argument that it was entitled to delay the redemption process - notwithstanding the absence of any provision in the loan agreement to cover this situation – because Homes England needed time to consider its approach to properties affected by cladding – because this was a “novel issue”.

It seems that Homes England told Target to refer redemption of loans where the valuation mentioned cladding. This was because it wanted to consider its position – though it's not clear exactly what it was considering, or why it took two years to do so. That meant that rather than allowing Mr T to proceed, Target referred his valuation to Homes England – which, according to Target's records, did not respond for two years.

I accept that the fire safety risk presented by combustible cladding was at this time a novel issue. Many building owners, managing agents, insurance companies, mortgage lenders, government agencies and others were considering the implications of potential combustible cladding fire safety risks (and other fire safety risks), the implications for their own position, and what to do about it. That seems to be what was happening here.

However, I note that there's no suggestion in the valuation which Mr T did obtain that – having identified the presence of cladding – the specific cladding on Mr T's block presented a fire safety risk, or that it warranted further investigation to see whether it did, or that it had any impact on the valuation or marketability of the property. Indeed, the valuer was prepared to give a valuation figure of £198,500 for Mr T's property without qualification.

It therefore seems that it was the mere use of the word “cladding” that led to the delays in this case.

But I don’t think that a novel issue like combustible cladding and fire safety means that the lender can unilaterally delay the redemption of the loan outside the express terms of the loan agreement (and in circumstances where the borrower has otherwise complied with his contractual obligations to redeem the loan).

I note, for instance, that it would have been open to the lender to include an exceptional circumstances or unforeseen events clause, or a valuation review or appeal mechanism, in the contract, but it didn’t do that. In the absence of such a clause, where there’s a binding valuation and a valid redemption request, it wasn’t open to the lender (or the regulated debt administrator, acting on the lender’s behalf) just to ignore that request for two years – whether or not a “novel issue” was under consideration.

Mr T and his solicitors repeatedly tried to redeem the loan. They asked Target to agree the redemption figure, asked for the required paperwork, tried to agree a date. But Target wouldn’t engage, and wouldn’t agree to set a figure or collect the payment. Mr T tried himself to speak with the “specialist department” (which was Homes England) and was told he couldn’t – though it seems he wasn’t told that the “specialist department” wasn’t part of Target, or that it was Homes England that was causing the delay.

And while it seems that Target was waiting for the lender to make a decision and waiting for instruction about what to do next, it also seems from the communication I’ve seen that Target was not pro-active. Despite having its own regulatory obligations, it made little or no effort to carry them out.

Target only chased the lender when it itself was contacted by Mr T, and then only in very general terms and not in any way that made clear the urgency of Mr T’s requests or the impact of delay on his situation. Target didn’t remind the lender that there was a valid and binding valuation entitling Mr T to redeem his loan, it didn’t point out that there was no suggestion that Mr T’s property or its valuation was affected by combustible cladding, it didn’t spell out to the lender the consequences to Mr T of the delay, and it didn’t try to resolve the issue itself. It didn’t point out to the lender that either the lender or Target itself had obligations to Mr T to complete the contractual redemption process – and that was failing to happen. Nor did it explain to Mr T what the underlying problem was or what – if anything – Target was trying to do about it.

Overall, and having taken all the circumstances into account, I’m satisfied that Target did not act fairly or reasonably towards Mr T in handling his redemption request. As I’ve found above, once the valuation was carried out and provided to Target in accordance with the terms of the loan agreement, the lender (and Target, performing the lender’s duties on its behalf) was bound to accept the valuation, collect (or agree to accept) the payment and agree to discharge the legal charge to permit Mr T to complete the sale of his home.

However, Target failed to do so and bears responsibility towards Mr T for that failure and its consequences.

I’m therefore satisfied that it’s fair and reasonable in all the circumstances that Target compensates Mr T for the losses that flow from the failure to do so.

Putting things right

In my provisional decision, I said that as a starting point, I should aim for Target to put Mr T

back in the position he would have been in had nothing gone wrong – as if he had been able to sell his property in 2019.

But I also recognised that, in reality, that's not possible. The 2019 sale fell through at the time. And although Mr T is still keen and willing to sell his property, he hasn't been able to market it or agree a new sale unless and until Target confirms he is able to redeem his loan. So Target should now agree for that to happen.

As Target and the lender have now introduced a process to allow borrowers such as Mr T to redeem their loans, Mr T should be able to re-start the sale process and apply again to Target to redeem his loan – and should not have any further difficulties in doing so.

However, although that process is now open to him, the delay in his being able to sell and redeem his loan since 2019 has caused him substantial upset and – depending on whether his property has risen or fallen in value since, and by how much – potentially significant financial loss.

Separately to allowing Mr T to re-start the sale of his property and the redemption of his loan, therefore, Target will also need to calculate the extent of the loss its delay caused him and compensate him for that. I've set out below how that calculation is to be made, and Target should pay compensation in line with that calculation whether or not Mr T goes on to sell the property.

The redemption process

In order to resolve this complaint, Target should commission – at its own expense – a new valuation of Mr T's property. This valuation should then be used to determine the redemption figure for Mr T's loan, and the redemption process should be started. A new valuation will be required because the one commissioned in 2019 has now expired and is out of date. The contractual redemption process will have to start again, and that requires a new valuation.

The new valuation should be at Target's expense because it would not have been necessary had Mr T been allowed to redeem his loan in 2019, and it is not therefore fair to expect him to bear the cost of a second valuation which should not have been necessary. And for the same reasons, he should not be charged a second redemption administration fee.

Mr T should also be given time to market and sell the property. It will take him some time to do so, to find a new buyer and to complete on a sale. I think it's reasonable to allow six months from the date Mr T accepts my final decision. If Mr T sells his property or otherwise repays the loan in that time, his financial loss should be the figures I've set out below, together with further expenditure up to the date of redemption.

If Mr T does not sell his property or otherwise repay the loan in that time, the financial loss should be the figures I've set out below, together with further expenditure up to six months from the date Mr T accepts my final decision. If Mr T does not redeem his loan in that time, Target will not be responsible for his further losses thereafter as resolution for this complaint.

Although the terms of the contract say that a valuation should only be valid for three months, extendible to four, I think it's fair to expect Target to allow Mr T six months in this case, since in the normal course of events he wouldn't have started the redemption process until he had found a buyer. But now he will have to re-market the property. It is open to Target to wait until some time into the six month period before commissioning the valuation – provided it does so in good time to allow a market value and redemption figure to be set.

Mr T's financial loss – day to day expenditure

In my provisional decision I said that Mr T was no longer living in the property – it was empty pending the sale as he was living abroad. I said that Target should refund the additional costs Mr T has incurred in continuing to own a property he no longer needs and is not living in and which he should have been able to sell in 2019. These include his service charge, ground rent, council tax and utilities, as well as the interest he has paid on his mortgage. However, the capital part of his mortgage payments should not be refunded, as that would result in a double benefit – since Mr T will also receive the value of those payments through increased equity when the property is eventually sold.

Having considered the matter again, I still think it's fair for these costs to be taken into account.

Mr T said he had been forced to borrow on credit cards and from friends and family to cover these expenses. However, I've not seen any evidence that he's had to pay interest to friends and family. But I've seen evidence that he has made some of the payments on credit cards – and where that is the case, Target should also refund the credit card interest he has had to pay. Where Mr T did not pay by credit card or other borrowing, Target should add simple annual interest of 8% to each refunded item of expenditure, running from the date Mr T paid it to the date of refund, to compensate him for being out of pocket for those sums.

Target said it doesn't agree that it should be responsible for Mr T's additional expenditure in continuing to own the property. I'm not persuaded by what it's said about that. I'll explain why.

Target has suggested that either that Mr T might have been renting out the property – and hasn't incurred those losses (or has offset them through increases in rent) – or that he ought to have mitigated his losses by doing so. But I don't agree.

We've asked Mr T about this, and he says he wasn't renting the property out. Target has not presented any evidence to suggest that he was. And his utility bills do not suggest that the property was being lived in.

As to whether he ought to have done so to mitigate his losses, I don't think that's a reasonable expectation. The terms and conditions of this loan prevented him from doing so. And, though I've not seen the terms and conditions of his main mortgage, I'm aware that it's standard for residential mortgage contracts to forbid letting too.

Even if Mr T was permitted to do so, he didn't want to rent the property out he wanted to sell it – and sell it as soon as possible. It's only with the benefit of hindsight that we know he would have to wait over two years for a response to his request to redeem – as far as he knew at the time, he could have been given the go-ahead at any time and renting the property out (on a tenancy of six months or more) would have prevented or delayed a sale.

Target has also suggested that any redress should end at June 2020, because it doesn't think Mr T was being pro-active in contacting it thereafter. I don't agree about this. I've set out the timeline above. Mr T was contacting Target – but in any case, each time he did so, he was told that Target would contact him when there were any developments. Therefore the onus was on Target to contact Mr T, not the other way round.

And Mr T then complained to us about the failure to let him redeem, and it's reasonable for him to leave his complaint in our hands. Finally, even if Mr T had contacted Target far more often than he did, it would have made no difference. He would not have been able to redeem his loan any sooner whatever he did. The failure here is in Target not allowing Mr T to redeem, not in Mr T not chasing Target often enough.

Target said that once there was a process in place, from September 2021, it was up to Mr T to contact it. But for the same reasons, I don't agree about that either. It should have been more pro-active. It sent one email, asking Mr T to call without explaining why, and then took no further action.

For all those reasons, I'm satisfied that it's fair and reasonable to take into account the additional expenditure Mr T has incurred in continuing to own the property past the point at which he ought to have been able to sell it.

Following my provisional decision, I itemised the expenditure Mr T had sent us evidence of, and sent a schedule of those payments to both parties. Mr T accepted my proposed schedule of loss, and Target did not reply. In those circumstances, I'm satisfied that my proposed schedule of loss accurately reflects Mr T's financial losses, and therefore should form part of the redress calculation I have set out below.

In each case, I have taken expenditure as refundable from 1 December 2019. I selected that date because Mr T sent his valuation to Target in late July 2019. A valuation is valid for three months, extendable to four. This was sufficient time for Target, acting fairly, to have given Mr T a redemption figure and for Mr T's sale to complete and the loan be repaid. Therefore, the latest Mr T's loan ought, fairly, to have been paid off is the end of November 2019 and so expenditure from 1 December 2019 was incurred after he ought no longer to have owned the property or needed to incur it.

I haven't reproduced the detailed breakdown of invoices for reasons of space, though both parties have been sent a copy. But I reproduce here a summary:

Item	Dates covered	Amount	Interest applicable
Service charge	Dec 2019 to March 2023	£4,705.56	Credit card on March 2022 and March 2021 payments; otherwise 8% simple
Ground rent	Oct 2020 to Sep 2022 (2019/20 not included as payable annually in advance so would have been incurred before the sale)	£500	8% simple
Mortgage interest	December 2019 to December 2021	£2,696.92	8% simple
Council tax	2021/2 and 2022/3	£1,722.72	8% simple
Electricity	December 2019 to January 2022	£461.91	8% simple
Water	December 2019 to June 2022	£920.88	8% simple
Sewage	December 2019	£1,326.47	8% simple

	to December 2021		
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The summary table above represents the invoices available at the time I prepared it. Before Target makes the final redress calculation I've set out below, it will need to contact Mr T to obtain further invoices that have since become available to ensure that his full expenditure up to the end of the redress period is taken into account.

Target will also need to calculate any interest Mr T has paid on his help to buy loan, and the monthly administration fees he has paid, since December 2019 to the end of the redress period. Those amounts, plus simple annual interest of 8% running from the date of each payment to date of refund, will also need to be added to the expenditure itemised above.

Mr T also incurred wasted legal costs in 2019 on a sale that could not go through. Those costs should be refunded. But legal costs associated with a new sale should be Mr T's responsibility, since selling would always incur legal costs. And for the same reason, the cost of the 2019 valuation should not be refunded, since Mr T would always have paid that.

Target will need to obtain the 2019 legal costs from Mr T, and again will need to add 8% simple annual interest running from the date he made payment to the date of refund. And this amount should also be added to the itemised expenditure.

The end of the redress period is the earlier of six months from the date Mr T accepts my final decision, if he does so, or the date on which Mr T sells the property and redeems his loan.

This total expenditure then becomes figure D in the calculation I set out below.

Mr T's financial loss – taking account of changes in the property's value

A further complication is that property prices may well have changed in the meantime. If the property has increased in value since 2019, by selling it now Mr T will have made a gain from the delay, in that he will realise more equity from a sale now than he would have done in 2019 – and that gain will need to be offset from his financial losses. But the increased value will also mean a higher redemption figure than would have been the case in 2019 – and that is a further loss to take into account.

But if the property has fallen in value over that time, Mr T will have made a further loss in having less equity to take from the sale. Though he will also have made a gain in having to pay a smaller redemption sum than would have been the case in 2019.

The change in the property value, and its impact on Mr T's losses, will need to be assessed. And this is therefore a further reason why Target should arrange a new valuation of the property – without cost to Mr T – to determine the current market value.

If the value of the property has increased in the meantime, then Mr T has made a gain through his increased equity in the property. And in that situation, the amount by which the property has increased in value (disregarding the share covered by the help to buy loan) will need to be offset from the financial losses set out above – and, if the property has increased substantially in value since, it may be that Mr T has not in fact suffered a financial loss at all.

If, on the other hand, the value of the property has fallen since the 2019 valuation, the reduction in his equity will represent a further loss to Mr T, which would need to be added to the costs set out above.

To be clear, this valuation will need to take place, and this calculation happen, whether or not Mr T is able to sell the property now. The reason for this is that Mr T has incurred losses – in the regular outgoings set out above, and potentially in the change in value of the property – whether or not he manages to sell it now. That's because he should have been able to sell in 2019, and therefore the consequences of him not being able to do so fall to Target to put right.

In upholding this complaint, I am directing Target to put right the consequences of the unfairness I've set out above. Those consequences will need to be calculated, and Mr T's losses as a result of this complaint crystallised. Following the conclusion of this complaint there should be no further barrier to Mr T's redemption – so the loss that flows from this complaint is the losses to the end of the redress period I've set out above.

Depending on the change in value of the property, he may or may not have suffered a financial loss overall. But if he has, he is entitled to be compensated for it. Whether he is then able to go on and sell the property or otherwise repay the loan, within six months or at all, is separate to the losses he has been caused to date. If Mr T sells the property, he will not face further losses. And if he does not, whether through choice or through factors outside Target's control, Target is not responsible for losses that flow from that.

However, if for any reason Mr T is unable to sell or redeem because of what he considers to be further failings or further unfairness on the part of Target following the conclusion of this complaint, he will be able to bring a future complaint about losses that result.

The redress calculation

Once the new valuation has been carried out, and the market value and redemption amount determined, Target will then need to assess whether Mr T has in fact incurred any losses through its delay.

Target will need to calculate the redress due, if any, in the following way:

If the new valuation is higher than the 2019 valuation:

Calculate:

- The increase in the value of the property, disregarding the 10% covered by the help to buy loan (A)
- The redemption amount of the help to buy loan, based on the new valuation (B)
- The redemption amount of the help to buy loan, based on the 2019 valuation (C)
- The cumulative losses of owning the property, including interest, as set out above, to the end of the redress period (D)

In this situation, Mr T's losses are the monthly costs (D) and the increase in the redemption figure (B – C). Against this is to be offset his gain (A). Therefore, Target should calculate $D + (B - C) - A$.

If this produces a positive figure, Target should pay that amount to Mr T. If it produces zero or a negative figure, Mr T will not have suffered a financial loss overall and no payment (other than for his distress and inconvenience) will need to be made.

If the new valuation is lower than the 2019 valuation:

Calculate:

- The reduction in the value of the property, disregarding the 10% covered by the help to buy loan (E)
- The redemption amount of the help to buy loan, based on the new valuation (F)
- The redemption amount of the help to buy loan, based on the 2019 valuation (C)
- The cumulative losses of owning the property, including interest, as set out above, to the end of the redress period (D)

In this situation, Mr T's losses are the monthly costs (D), and the fall in value of his property (E). Against this should be offset the gain from the reduction in the cost of redemption (C – F). Therefore, Target should pay to Mr T the result of $E + D - (C - F)$

Compensation for non-financial losses

As a result of Target's failure in this case, Mr T's sale fell through. This has resulted in him owning and having to manage a property he no longer wants, in a different country to the one he lives in. As well as the practical inconvenience that has caused, the additional costs involved have caused him significant hardship, upset and embarrassment. He has struggled to meet his obligations. He has been forced to borrow both from commercial lenders and from friends and family – with the embarrassment that causes – to make ends meet.

This situation has been ongoing for almost three years, and Mr T has not known when it will end. This has caused him a great deal of strain. In all the circumstances, I'm satisfied £2,000 compensation is fair – and should be paid to him regardless of the outcome of the new valuation, and not offset against any gain (if there is one). That's because, regardless of whether the delay has caused Mr T financial loss, or has led him to benefit from increased equity, he has had a very difficult and frustrating time – not least in meeting the costs of continuing to own the property (which he has had to pay out even if he also benefitted from increased equity he couldn't at the time realise). I'm satisfied that it's fair and reasonable to compensate him for that distress and inconvenience independently of any financial loss.

My final decision

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

- Commission, at its own expense, a new valuation of Mr T's property and use that valuation to determine the market value of his property and the repayment sum of his help to buy loan;
- Following that valuation, carry out the calculation I have set out above and, if that results in loss, pay the result to Mr T. This calculation and payment should be made following sale of the property or six months after Mr T accepts my final decision, with final losses under heading D calculated to that date, whichever comes first;
- Pay Mr T £2,000 compensation within 28 days of the date we notify Target that Mr T has accepted my final decision. If payment is not made by that date, simple annual interest of 8% will run from the 29th day until payment is made and should be added to the payment.

If any element of the eventual award – whether on losses under heading D or on the £2,000

compensation for non-financial loss – includes an 8% interest element, Target may deduct income tax on the 8% interest element as required by HMRC. But it should tell Mr T how much it has deducted so that he can reclaim the tax from HMRC if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 18 November 2022.

Simon Pugh
Ombudsman