DRN-3620709

The complaint

Mrs M and Mr R complain that Target Servicing Limited delayed the redemption of their help to buy shared equity loan, meaning they had to pay a higher amount to repay the loan.

What happened

Mrs M and Mr R bought a property with the assistance of the help to buy scheme. Under this scheme, a borrower takes out a standard mortgage to fund the purchase of the property. And instead of paying a substantial cash deposit alongside the mortgage, the deposit is funded in part by the help to buy scheme. This acts as a shared equity loan – meaning that the borrower borrows a sum based on a proportion of the property's value and must repay the same share – secured over the property by way of a second charge.

The help to buy scheme is a government scheme, and the lender is a government agency called Homes England. Neither the loans nor the lender are regulated. But the lender has appointed Target to administer the loans and deal with borrowers. Borrowers deal with Target, not the lender, and Target manages all aspects of the loan administration. Target is a regulated firm which falls within the jurisdiction of the Financial Ombudsman Service and is the respondent to this complaint.

Mrs M and Mr R bought their property in August 2014, borrowing 20% of the purchase price using a help to buy loan.

Mrs M and Mr R first tried to redeem their loan in 2019, when they had an agreement to sell their property. They obtained a valuation and, based on that valuation, Target gave them a redemption figure. Unfortunately, however, the sale of the property was delayed because the purchaser wanted further information about the possibility of cladding on the property.

In October 2019, Mrs M and Mr R's solicitor wrote to Target explaining that the sale was still being delayed, and that Mrs M and Mr R had decided to borrow further funds on their mortgage to repay the help to buy loan in the meantime. Target replied to their solicitor saying that as there was possible cladding on the property, the valuation request needed to be forwarded to the "relevant department" for them to confirm whether redemption could go ahead. Target also told Mr R that the redemption request was with its "legal team". It did not give Mrs M and Mr R any further updates after October 2019. In the end the redemption did not go ahead when the sale didn't proceed.

In May 2020, Mr R contacted Target again to ask about redemption. By now he and Mrs M were planning to repay the loan from their own resources without selling the property. He said that the property was affected by cladding, and asked Target how to go about redeeming his loan in those circumstances. He said he didn't want to instruct a further valuation until he had checked with Target what the process was for cladding affected properties. Target responded advising Mr R that he would need to obtain a valuation from a qualified surveyor.

In July 2020, Target advised Mr R that he would need a valuation and a "fire safety test" (which I assume means an EWS1 form), which would then be sent to a "specialist department" for review on a case by case basis. Mr R asked for further clarification, explaining that he didn't want to spend money on a valuation unless it would be accepted. Target said it would refer his query to "one of our experts" and get back to him. In August it told him it was still waiting for a response from its "legal team", and in October 2020 it told him it had no further updates.

In November 2020, Target asked Mr R if he still intended to redeem his loan. Mr R replied, but Target was unable to marry up the response with his initial request.

In February 2021, Target told Mr R that it would need to see an EWS1 form for the property. Mr R explained that there was no EWS1 form as yet, as the freeholder had not obtained one. And he said that he did not think an EWS1 was necessary for redeeming his loan – and that it was not part of the contractual requirements to provide one.

In March 2021, Target contacted Mr R to say that the 2019 valuation was not accepted because of the cladding on the property. It said Homes England would, with Mrs M and Mr R's agreement, instruct its own valuer to value the property. Mr R confirmed they agreed to that. In May 2021, the valuation had not happened, and Target told Mr R it could not confirm when it would take place.

In July 2021, Target agreed to contact the valuer who carried out the 2019 valuation and ask for an updated valuation. In August 2021, the valuer responded with a signed declaration Target asked it to provide. Target did not instruct the valuer to proceed, and no valuation happened.

An EWS1 form was prepared in March 2022, rating the property as "B2" (meaning it presented fire safety risks needing remedial work).

A valuation finally took place in April 2022. The property was valued at £490,000. Following receipt of the valuation, Target told Mr R his redemption request was still "under review". Target asked the valuer to confirm the valuation took into account the declaration signed in August 2021, which it did.

Mrs M and Mr R continued to try to redeem their loan, but Target did not provide them with a redemption figure. It said that the matter remained "under review".

Mrs M and Mr R received an offer to purchase their property, which they accepted. Target finally agreed to allow the loan to be redeemed, and the property was sold for £475,000 in December 2022, with the loan being repaid from the proceeds of sale.

Our investigator didn't think Target had acted fairly and reasonably. He said it had delayed the redemption of their help to buy loan, which should have gone ahead by August 2020 at the latest. To put things right, he said Target should pay Mrs M and Mr R the difference between the redemption price as it would have been at that time and as it eventually was, and pay them £1,000 compensation for the distress and inconvenience caused by the delays. He also said that Target should refund interest charged under the loan.

Target didn't accept that. It accepted that it had caused some delays. But it said the delays were mainly caused by the lender, Homes England, for which it was not responsible and over which it had no control. It therefore didn't think it should pay the redress our investigator set out. So the case comes to me for a final 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.

As a regulated entity, in administering the loan on behalf of the lender Target is carrying out the regulated activities of debt administration and debt collection.

Under the regulated activities, Target is performing the lender's duties, and exercising the lender's rights, under the terms of the credit agreement, as well as collecting payments the lender is entitled to. In my view this means that Target must do what the lender is required to do, and only take steps the lender is entitled to take, while acting on the lender's behalf. And as a regulated firm it has wider obligations to act fairly.

Although the lender is Homes England, it has appointed Target to act on its behalf as – using the description in the loan agreement – its "nominated agent". Mrs M and Mr R were told to deal with Target at all times and Target was presented as being responsible for the management and administration of their loan agreement.

I'm satisfied that these are matters I can take into account in deciding what's fair and reasonable in all the circumstances. In my view, as the appointed administrator and as the regulated entity carrying out regulated activities, Target is the appropriate firm to respond to this complaint.

Under the loan terms and conditions, Mrs M and Mr R are entitled to redeem their loan at any time, either by selling their property or by repaying in some other way (such as from savings, or by taking further borrowing on their main mortgage). The amount required to redeem the loan is the same proportion of the property's value as originally borrowed – 20% in this case – as determined by an independent valuation. Where the property is being sold, the redemption figure will be based on the higher of the valuation or the sale price; otherwise, on the valuation.

According to the terms and conditions, a redemption request should be made to Target as the nominated agent. A valuation is then arranged by the appointment of a qualified surveyor by agreement between the parties. That valuation is binding in setting the redemption figure, and the loan should be repaid within three months (extendable to four on application) of the valuation.

Mrs M and Mr R followed the proper process as set out in the contract in 2019. They notified Target of their intention to redeem before instructing a valuer. Target agreed to them appointing their own valuer, which they did, and a redemption figure was set.

Unfortunately, Mrs M and Mr R's property sale fell through following the discovery of potentially combustible cladding on their building.

Following the Grenfell Tower tragedy in 2017, there has been increased awareness of the dangers to fire safety caused by cladding on buildings, particularly blocks of flats. In the years since the Grenfell fire, safety issues have been found on many buildings. To help with the valuation of, and lending secured on, properties that may be at risk, the EWS1 form process was introduced. It's the responsibility of building owners and managers – not individual leaseholders such as Mrs M and Mr R – to obtain an EWS1 for their building.

In this case, no EWS1 was obtained until 2022. So while Mrs M and Mr R's sale fell through in 2019 following the discovery of potentially combustible cladding, it was some time before the building owner commissioned a detailed assessment – though Mrs M and Mr R have told us that remediation work was planned before that, and therefore the building owner didn't think an EWS1 was necessary.

In 2020, Mr R contacted Target again to ask about the process for redemption. Although he'd followed the standard process in 2019, he was concerned that extra information might be needed, or a different process might need to be followed, following the discovery of the cladding.

In fact, contractually, the same process is to be followed whether or not there is cladding on the building. I've said that the terms and conditions require notice of redemption, the appointment of a valuer by agreement, a binding valuation and then redemption within three months. There's nothing in the contractual terms that allow a different process, or extra steps, where there's a potential cladding issue.

The customer information pack Target issues in response to redemption requests does say that Target reserves the right to agree a valuer in advance where the property is affected by cladding. However, this isn't an additional or different step – it's merely a restatement of the contractual position. The contract says that a valuer has to be agreed by both parties before appointment – while, in practice, Target generally says it's content for the borrower to appoint a valuer of their choice, this means that it does always have the right to agree a specific valuer in advance.

However, Target didn't tell Mr R this. At first, in May 2020, it told him to go ahead and appoint a valuer. But then in July it said it would also need a "fire safety test" (which I assume means an EWS1) which would need to be reviewed by a "specialist department".

In fact, under the terms of the contract, there's no power for Target to require Mrs M and Mr R to provide an EWS1 or any other document. All that's required is a valid valuation. Nor is there a power for a valuation and redemption request to be reviewed by a "specialist department", or Target's "legal team". Once a valuer has been appointed by agreement, their valuation is binding and should be used to provide a redemption figure.

Mrs M and Mr R have explained that even though their sale had fallen through in 2019, they wanted to redeem the help to buy loan to make a future sale more straightforward. They've provided evidence to us that they had the funds available to redeem in 2020, and I'm satisfied that they would have redeemed their help to buy loan had they been able to at this time.

I'm also satisfied that Target failed to progress their requests for information about how to redeem and their requests to be able to redeem. I've set out a detailed timeline above, and it's clear from that that it failed to respond to contacts from Mrs M and Mr R, failed to give them useful information or meaningful updates, and failed to progress the redemption Mrs M and Mr R were entitled to. For reasons of space I've only set out the substantive replies, the timeline doesn't show the full extent of Mrs M and Mr R's attempts to get answers from Target. But having reviewed the correspondence in full I can see that this was made even more frustrating by the nature of the responses Target did give – including contradictory information and requests, repeated failures to match emails to their account (even where the necessary information was clearly included) and other examples of poor customer service, as well as periods of simply failing to respond.

Target says that it's not responsible for the delays – it blames the lender, which it said was reviewing Mrs M and Mr R's account. It was waiting for information from the lender before in turn updating Mrs M and Mr R.

However, I'm satisfied that Target is responsible for the failings here. In accepting appointment as the administrator, it held itself out as the firm Mrs M and Mr R would need to deal with. It continued during this time to suggest that it itself was responsible – referring to its specialist department and legal team, giving Mrs M and Mr R the impression these were departments of Target rather than the lender. It wasn't pro-active in chasing the lender or reminding the lender of its contractual obligations.

And Target didn't appear to appreciate that as a regulated entity it had obligations in its own right to ensure the loan was administered fairly and in line with its terms. As a regulated entity carrying out regulated activities, in my view it was required to exercise the lender's duties – including the duty to allow a redemption, and follow the contractual redemption process, once Mrs M and Mr R made clear they wanted to exercise their right to redeem. But Target did not perform that duty on the lender's behalf despite being the nominated agent and despite having the regulatory obligation to do so.

In this particular case, I'm satisfied that it was not fair and reasonable in all the circumstances that it took over two years from Mrs M and Mr R's renewed redemption request in May 2020 before they were finally able to redeem in December 2022. It was not fair and reasonable that Target's communication with them was so poor, and did not accurately tell them what was going on. And I'm satisfied that, as the regulated entity appointed to administer the loan and which ought to have exercised the lender's duty to allow a redemption on request (subject to an agreed valuation), Target did not treat Mrs M and Mr R fairly and reasonably – and that its failings caused them loss for which it ought fairly to compensate them.

Putting things right

Because their redemption was delayed by two and a half years, Mrs M and Mr R have suffered substantial financial loss. The value of their property – and therefore the amount they have had to pay to redeem the loan – has increased in the meantime. They've had to pay monthly interest throughout that period on a loan they should no longer have had. And they've suffered substantial upset and – as is clear from the correspondence – a great deal of inconvenience and frustration over that period.

Because Target failed to respond appropriately to their queries in 2020, no valuation was carried out at that time. So it's not possible to know exactly what the property was worth at that point – and what it would have cost Mrs M and Mr R to redeem their loan.

However, a reasonable estimate of that can be made. Mrs M and Mr R did have a valuation in 2019, as part of their abortive sale at that time, and that valuation was used to set a redemption figure at that time.

In May 2019, the property was valued at £450,000 – that would have led to a redemption figure of £90,000.

Had Target responded fairly to their queries in 2020, Mrs M and Mr R could have redeemed their loan from their own resources in around August 2020. But instead they were only able to redeem it in December 2022.

I think it's fair and reasonable to estimate what the property would have been worth in August 2020 by taking a pro rata approach to the difference between the May 2019 valuation and the value used to set the eventual redemption price for December 2022. Taking that approach, Target should calculate the value as at August 2020, 15 months later, in this way:

$$\pounds 450{,}000 + ((A - 450{,}000) \times (15 / B))$$

Where A is the valuation used to set the December 2022 redemption figure, and B is the number of months after May 2019 it was carried out.

This will give a fair estimate of the value of the property in August 2020. Target should then calculate what the redemption figure based on that valuation would have been and, to the extent that the amount Mrs M and Mr R actually paid to redeem in December 2022 exceeds that figure, it should pay them the difference.

Had Mrs M and Mr R been allowed to redeem their loan in or about August 2020, they would not have had to pay monthly interest on the loan, or monthly administration fees, since that date. And so that interest and those fees should be refunded to them, plus 8% interest as compensation for being out of pocket for those amounts.

Finally, I've said that the delays, and the poor communication and customer service Target provided in the meantime, was a deeply frustrating and distressing experience for Mrs M and Mr R, and one which went on for over two years. In all the circumstances, I agree that £1,000 compensation is fair to reflect the distress and inconvenience they suffered.

My final decision

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

- Calculate the value of the property as at August 2020, and thus the redemption figure at that date, in the way I've set out above;

- Pay Mrs M and Mr R the difference between the calculated August 2020 redemption figure and the actual December 2022 redemption figure, adding simple annual interest of 8%* running from the date of redemption to date of refund;

- Refund all monthly interest and monthly administration fees Mrs M and Mr R have paid from August 2020 until redemption of their loan, adding simple annual interest of 8%* on each payment running from the date they made that payment until the date of refund;

- Pay Mrs M and Mr R £1,000 compensation.

** Target may deduct income tax from the 8% interest element of my award, as required by HMRC. But it should tell Mrs M and Mr R what it has deducted so they can reclaim the tax from HMRC if they are entitled to do so.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr R to accept or reject my decision before 18 January 2023.

Simon Pugh
Ombudsman