

The complaint

Mr M and Miss M complain that Target Servicing Limited, the administrator of their shared equity help to buy loan, has asked them to pay back a regular fee it failed to collect.

What happened

Mr M and Miss M purchased a property with the assistance of a shared equity loan under the help to buy scheme in May 2017. The lender of their shared equity loan is unregulated, but the loan is administered on the lender's behalf by Target Servicing Limited. In administering the loan Target is a regulated firm carrying on the regulated activity of debt administration. Target is therefore responsible for answering this complaint – including about whether and how it has collected sums due under the loan.

It's one of the terms of the loan that a £1 monthly administration fee is payable from the start of the loan onwards.

However, Target failed to collect this fee from Mr M and Miss M for the first four years. It's now told them they need to pay the missed fees. Mr M and Miss M don't think it's fair they should have to pay the fees now when it was Target's fault that it failed to collect them when they were due.

Target accepts that it made a mistake in failing to collect the fees each month. It said that Mr M and Miss M completed a direct debit mandate when taking out their loan, but Target failed to set the direct debit up on its systems and so did not collect the fee. But it says that the fees are due under the terms and conditions, and so Mr M and Miss M need to make up the missing fees. It was ultimately their responsibility to ensure that they paid sums due under the terms of their loan.

Our investigator didn't think it was fair for Target to collect the outstanding fees from before it made Mr M and Miss M aware of the problem, so Target asked for an ombudsman to make a 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.

Under the terms and conditions of the shared equity loan, a monthly administration fee of £1 is payable. The problem in this case is that it was not paid.

Target says that it's Mr M and Miss M's responsibility to ensure that they pay what is due under the loan agreement. And that's true – they have an obligation to keep to the terms of the agreement, including making payment.

But I've not seen any evidence that Mr M and Miss have tried to avoid their responsibilities, or have been unable to make the payment when it fell due.

I've seen the direct debit mandate Mr M and Miss M signed in 2017, and which was passed

to Target.

I'm satisfied that in this case, Mr M and Miss M were able to make the payment had they been asked to do so, or had it been collected via the direct debit.

As the administrator managing this loan on behalf of the lender, and carrying out the lender's obligations and exercising its rights, it falls to Target to ensure that payments are collected as appropriate. But in this case, it failed to do so because it didn't set the direct debit up on its systems and didn't use it to collect the payments.

A shared equity loan is a form of mortgage agreement. Our approach to mortgage underfunding is well established and well known, and set out on our website. Underfunding is where a lender (or, as the case may be, an administrator acting on a lender's behalf) fails to manage a mortgage appropriately and fails to collect the correct payments, mis-calculates the loan, sets it up on the wrong basis – or otherwise puts the customer in a position where their balance is higher than it ought to be or where there is a shortfall in payments collected.

And where underfunding has happened, and it is the fault of the lender (or administrator), it's generally not fair or reasonable to expect the customer to have to make up the shortfall to put right the mistake. Unless there's evidence the customer knew of the mistake and decided to sit back and benefit from it, the lender – or administrator – is responsible for the consequences of its failure.

As I say, our approach in this area is well established and well known. I'd therefore expect Target to have taken note of that in how it's dealt with this situation. But it hasn't done so – it's insisted that Mr M and Miss M make up the missed payments.

I'm satisfied that there's a shortfall on the payments because of Target's mistake in not collecting a payment Mr M and Miss M were able to make and would have been willing to make had it done so. The fact that the fee is a very small one is irrelevant to the underlying principle here. But that fact makes it more likely that Mr M and Miss M didn't notice and didn't give any thought to the fact that it wasn't being collected.

Putting things right

In the circumstances, I'm satisfied that it's not fair and reasonable to expect Mr M and Miss M to make up the shortfall now. If the lender will not write the uncollected fees off, then it is for Target not Mr M and Miss M to make up the shortfall.

However, once Target made Mr M and Miss M aware of the problem and asked them to begin making payment, it then becomes fair and reasonable to expect them to do so. Target did this in April 2021. And so Mr M and Miss M will need to make arrangements to pay the fees from May 2021 onwards, if they haven't already done so.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint. I direct Target Servicing Limited not to collect the monthly administration fees prior to May 2021 – so if the lender will not write those fees off, Target Servicing Limited will need to pay those fees itself rather than collect them from Mr M and Miss M. But Target Servicing Limited may collect the fees that fall due from May 2021 onwards.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Miss M to accept or reject my decision before 6 October 2022.

Simon Pugh
Ombudsman