

## **The complaint**

Miss C has complained about the amount Target Servicing Limited said she needed to repay on her Help to Buy (HTB) shared equity loan when she sold her property.

## **The HTB scheme**

The HTB scheme was a government scheme in place to support home ownership. In addition to the usual mortgage from a regular lender, a borrower took a shared equity loan funded by the government to reduce the amount of cash deposit that would be otherwise required.

Miss C's property was in England, and she took the shared equity loan out with Homes England, which was formally known as Homes and Communities Agency. Homes England isn't regulated by the Financial Conduct Authority (FCA) but it appointed Target to administer the loan on its behalf. Target is regulated by the FCA.

HTB 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, but if the property is sold before then, it must be repaid on the sale of the property.

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 they originally borrowed.

## **What happened**

In June 2017 Miss C bought her 7<sup>th</sup> floor flat with the assistance of the HTB scheme. Miss C took out a HTB equity loan, which equated to 36% of the property value. The equity loan was secured over the property, which has a Land Registry title number ending \*299.

In March 2018 Miss C bought a parking space for £20,000 using her savings to do so. She says she phoned a company who were involved with the HTB loan at the time to ask what would happen when she came to sell the property, and it said that upon sale Miss C would keep the full value of the parking space as she wasn't being lent any additional funds to buy it. The parking space is separately registered at the Land Registry with a title number ending \*127.

In early 2021 Miss C was looking to sell the flat and the parking space as she was moving abroad. She contacted Target to let it know about her plans, and it said that, as the parking space was bought for the flat and was being sold with the flat, it would be included in the valuation of the property when it was working out how much Miss C would need to pay to redeem the HTB equity loan. Unhappy with that Miss C complained to Target.

Target responded to the complaint in March 2021. It said under the terms of the equity loan credit agreement Miss C agreed not to cause, or permit any alteration to the property, without seeking prior consent. It said, if the parking space forms part of the property when it

is valued then it would be seen as an alteration to the property and included in the redemption calculation. It clarified that it would be classed in much the same way as building an extension or making structural changes to the property. It said if the parking space wasn't included in the sale then it wouldn't be included in the redemption calculation.

In April 2021 a valuation of the property was carried out which gave a valuation figure of £540,000. The valuation only mentioned the flat, not the parking space.

The sale completed in June 2021. Target based its calculations on a market value of £560,000 – that is, the £540,000 property valuation plus £20,000 for the parking space - which means Miss C had to pay £201,600 (plus a £1 management fee) to redeem the HTB equity loan.

In the meantime, the complaint had been referred to our service and was considered by one of our investigators who recommended that the complaint should be upheld. He said, in summary;

- The parking space is at ground level with a different address to that of the 7<sup>th</sup> floor flat that was the security for the HTB equity loan, so it didn't interfere with the property itself.
- The flat and the parking space had two separate titles at the land registry, and the HTB equity loan charge was only set against the flat (not the separate parking space).
- The valuation report for redemption gave a value of £540,000 for the flat, whereas the redemption calculation that Target provided was based on a valuation of £560,000 which implies the value of the parking space had been included.
- He didn't think Miss C had acted outside of the terms of the agreement as she hadn't made changes to the property, and he could find no reason as to why 36% of the value of the parking space had also been claimed at redemption.

To put things right, our investigator said Target should pay the £7,200 to Miss C (that is, 36% of the value of the parking space) plus 8% simple interest from the date the HTB loan was redeemed until the date of settlement. He also said Target should pay £500 compensation in recognition of the impact on Miss C.

Target didn't agree. It said that as Miss C had purchased a car parking space to be sold as part of the property, that is a structural addition to the property and therefore Miss C should have sought authority from the lender. It said Miss C had the option to sell the parking space separately, and therefore not include it in the valuation figure, but she chose not to.

Our investigator responded to Target, saying he didn't think a consumer would consider buying a separate parking space as a structural change to a property, and that the valuation that was carried out at redemption didn't include the parking space – it was a valuation of just the flat and gave the value as £540,000.

Target said its position remained the same and asked that the case be referred to an ombudsman.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

The rules which set out the complaints our service can consider are found in the Dispute Resolution (DISP) section in the FCA's handbook. DISP 2.3 says that our service can consider a complaint if it relates to an act or omission by a firm carrying on a regulated activity.

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 sets out the list of regulated activities referred to in DISP. Among the regulated activities listed is debt administration and debt collection.

Having considered Miss C's loan agreement, and the activities that Target was carrying out in relation to that agreement, I'm satisfied that the event Miss C has complained about is an activity that forms part of administering the loan or collecting payments, and therefore is a matter we can consider against Target.

The HTB loan agreement sets out how the equity loan is to be redeemed if the borrower wishes to do so before the end of the term.

Clause 4 says:

*The Borrower covenants with the Lender:*

*4.1 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 6 says:

- 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 service of the Transfer Notice or where any of the other events set out in Clause 5 applies (each a "relevant event"), 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 or as at the date of the other relevant event as the case may be and within five (5) 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 (3) months (or four (4) months if extended by the Valuer) and in the case of a Disposal where completion of the Disposal does not take place within three (3) 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 (7) days after determination of Market Value under clause 6.2, the Borrower shall 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 accordance with Clause 11 and apply to*

*the Land Registry to remove the restriction referred to in clause 11 from the Register.*

The various terms are defined as:

*“Disposal means a transfer to a third party of the Borrower’s interest in the Property or any part of the Property...”*

*“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 on the assumption if not a fact that all the covenants on the part of the Borrower in this mortgage have been fully complied with and in the event of damage to the Property that it has been fully reinstated and disregarding any additions or improvements made by the Borrower with the written consent of the Lender 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.”*

*“Repayment Sum means the Remaining Proportion of the Market Value shown in the Valuation obtained under clause 6,7 or 8 as the case may be.”*

*“Transfer Notice means notice served pursuant to clause 6.1.”*

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

*“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.”*

Target has said that Miss C was in breach of clause 4.10, which says:

*The Borrower covenants with the Lender:*

*4.10 Not to make or cause or permit to be made any alteration in or addition to the Property nor carry out any development or change of use on the Property within the meaning of any legislation for the time being relating to town and country planning without the previous consent in writing of the Lender such consent not to be unreasonably withheld.*

The HTB loan agreement says *“The Borrower intends to purchase the property described in the First Schedule to this mortgage (the Property)”*. The First Schedule gives the address of the flat, so we can see any reference to “the Property” in the contract relates solely to the flat that was bought using the HTB scheme (not the additional car parking space that Miss C bought later).

Miss C didn’t *“make or cause or permit to be made any alteration”* to the Property, nor did she *“carry out any development or change of use”*. Which leaves me to decide if the parking space could be considered an *“addition to the Property”* in the context of that clause.

Having considered clause 4.10 in its entirety it seems likely to me that its inclusion in the contract was generally to protect the interests of the lender in ensuring the security isn’t altered in such a way that could reduce its value or impact its potential saleability. That is entirely reasonable and as I would expect.

The parking space was bought by Miss C for her benefit whilst she lived in the flat and she sold it as part of the sale of the flat. But that doesn't automatically make it an "*addition to the Property*" in the context of that clause. The flat was on the 7<sup>th</sup> floor, and not only was the parking space on the ground floor, it had a completely different address and was separately registered at the Land Registry. Whilst it all formed part of the overall development area, that development area included multiple separate developments and the parking space in question wasn't immediately next to the entrance of the block of flats where Miss C's property was located.

The parking space had a separate address and a separate title at the Land Registry. Miss C could have opted to sell it separately, but that would have made things more complicated (and potentially more costly) for her, especially as she was moving overseas. It seems sensible that she sold them together, pricing the combined flat and parking space at a level that was higher than the Market Value of the flat – which we know was £540,000 as Miss C obtained a valuation to that effect – to keep her inconvenience down.

Having considered all the evidence and information provided, I don't think it can reasonably be said that the purchase of the parking space was an alteration or addition to the property in the context of clause 4.10.

In any event, Miss C says she obtained a verbal agreement when she bought the parking space that it wouldn't be included in the calculations when she came to sell the flat. It is unfortunate that she didn't follow that up and obtain the agreement in writing, as per clause 4.10, but I must also keep in mind that clause 4.10 says "*such consent not to be unreasonably withheld*". Having considered everything, I can see no reason why consent could have been reasonably withheld had Miss C requested it in writing at the time she bought the parking space. It follows that, had Miss C acted in line with clause 4.10, that it is likely consent would have been given and therefore the value of the parking space would have been excluded from the HTB equity loan redemption calculation.

As well as considering what the contract says, I've also thought more broadly about what's fair and reasonable in all the circumstances. And I don't think it can fairly be said that the parking space is part of the flat. It was bought separately and registered separately, continuing to be on a different title. Neither the flat nor the parking space are dependent on the other, and Miss C could easily sell them separately. The help to buy loan is not secured over the parking space. I don't think the mere fact that she has chosen to sell them together for convenience means that the parking space forms part of the flat or comes within the property over which Miss C has given security and whose value determines the redemption price.

For all the reasons given I'm not persuaded that the lender had the right to request a percentage of the value of the parking space, and so in collecting that higher amount (that the lender wasn't entitled to) I don't think that Target treated Miss C fairly and reasonably in all the circumstances.

For that reason I uphold this complaint and order Target to pay compensation to Miss C.

### **Putting things right**

Miss C was charged £7,200 more than she should have been when she redeemed her HTB equity loan. To resolve this complaint I order Target Servicing Limited to pay:

- £7,200 compensation to Miss C (that is, 36% of the value of the parking space), plus 8% simple interest† from the date the HTB loan was redeemed until the date of settlement.

- £500 to Miss C in recognition of the distress and inconvenience caused to her.

† Target may deduct tax on the 8% interest element as required by HMRC. But it should tell Miss C how much it has deducted so that she can reclaim the tax from HMRC if she is entitled to do so.

### **My final decision**

I uphold this complaint and order Target Servicing Limited to pay compensation as I've set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 10 January 2023.

Julia Meadows

**Ombudsman**