DRN-3715716

The complaint

Mr H and Miss P complain that Target Servicing Limited ("Target") wouldn't allow them to redeem their help to buy shared equity loan, which caused them delays.

What happened

Mr H and Miss P bought a flat in August 2016 with the assistance of the help to buy scheme.

The help to buy scheme is a government scheme in place 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 that would be otherwise required. Mr H and Miss P's property is in England, and they took the loan out with Homes England, which was formally known as Homes and Communities Agency. They are 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 which is generally 25 years. But if the property is sold before then, it must be repaid on the sale of the property. A borrower can also elect to repay the loan at any time, even if the property is not being sold.

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.

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 to administer help to buy loans on their behalf. Target is a regulated firm within the jurisdiction of the Financial Ombudsman Service and is therefore the respondent to this complaint.

In May 2020, Mr H and Miss P contacted Target to find out what steps they needed to take so that they could redeem their help to buy loan. They said that Target told them they would need to instruct a surveyor to value their property and they would then need to send this to Target.

Mr H and Miss P instructed a surveyor and the valuation confirmed that there was cladding on the building. It said in the absence of the EWS1 (External Wall Fire Review), they could only issue a nil valuation for the property. The valuation report also said that if there were no issues regarding the cladding, or if a positive outcome was the conclusion of the EWS1 form, then the valuation would be in the region of £400,000. The EWS1 check was rated as B2. This means that the property was considered to have potentially risky combustible or other fire safety issues needing remedial work.

Mr H and Miss P submitted this valuation to Target in July 2020. Target said they referred this valuation to Homes England. Mr H and Miss P said they called Target on several occasions for an update but were told that there wasn't one.

In February 2021, Homes England instructed another surveyor to value Mr H and Miss P's property. This property was valued at £380,000 and following this, Mr H and Miss P moved forward to redeem the help to buy loan which was £76,000. The completion date for repayment was 22 September 2021 and Mr H and Miss P said they redeemed the loan by using their savings.

Mr H and Miss P are unhappy with the amount of time it has taken them to redeem their help to buy loan – from when they first enquired. They said they wanted to remortgage onto a buy to let mortgage and buy another property during the stamp duty free period – but were unable to do so because of the delays.

Target said Mr H and Miss P's property was affected by cladding so they couldn't provide updates.

Mr H and Miss P brought the complaint to the Financial Ombudsman Service where the complaint was looked at by one of our investigators. The investigator upheld the complaint and thought that Target had caused delays so thought it was unfair for them to charge Mr H and Miss P interest on the help to buy loan. So she asked them to refund that along with £500 compensation for the upset and inconvenient this caused Mr H and Miss P. She didn't however think that there was any loss of the stamp duty holiday, or any other financial loss incurred by Mr H and Miss P.

Target disagreed. In summary they argued that while the Financial Ombudsman Service has jurisdiction to consider the complaint about how Target treated Mr H and Miss P, we do not have jurisdiction to consider anything to do with the terms of the shared equity loan itself, given that it wasn't a regulated mortgage contract or a regulated mortgage agreement, given that Target is not the lender.

Target also said the delays in which Mr H and Miss P experienced were the result of Homes England and not down to the administration of the account by Target.

Target asked for the complaint to be reviewed by an ombudsman, so it has been passed to me to decide.

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.

Before I consider what I think is fair and reasonable in the circumstances of this case, I will address the jurisdiction concerns that Target have raised.

Target disagrees the Financial Ombudsman Service's jurisdiction to consider Mr H and Miss P's complaint. I'll explain why I think that the Financial Ombudsman Service does have jurisdiction to consider Mr H and Miss P's complaint. Then I will set out what I think Target needs to do in order to put things right for them.

Timeline of events

In May 2020, Mr H and Miss P enquired about redeeming their help to buy loan. The customer information pack which explains the process shows that Target is responsible for operating this process. The pack states that it requires borrowers to obtain a valuation and send the report to Target. It also confirms that the borrower should send a Loan Redemption Form to Target and make a payment to their bank account.

The information pack also confirms that borrowers should appoint their own surveyor as long as they are a qualified member of the Royal Institute of Chartered Surveyors (RICS). The pack states Target reserves the right to agree specific appointments in certain cases, for example, where the building is affected by cladding – as it is here – but subject to that, Target are happy to accept the borrower's choice of surveyor. In this case, Target did not exercise that right, but told Mr H and Miss P to appoint a surveyor of their own choice.

Mr H and Miss P made enquires to redeem their help to buy loan in May 2020 and in July 2020, they sent the valuation report to Target for them to consider. After months of chasing Target, the only response they got from Target was that there wasn't any further update – until they were told that Homes England had to instruct another surveyor – which was done in February 2021.

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 Financial Conduct Authority ("FCA") handbook and in legislation (including the Financial Services and Market Act 2000 (Regulated Activities) Order 2001 (the "RAO"). DISP says that we can consider a complaint where (among other things) both the firm and the activity complained about fall within our jurisdiction.

The Ombudsman can consider a compliant 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 FCA. Homes England is not authorised and regulated by the FCA 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 a regulated activity). In turn, the definition of *"regulated activities"* refers in the main, to the list of activities set out in the RAO.

Target doesn't dispute that they are carrying on (and authorised by the FCA to carry on) two regulated activities in relation to Mr H and Miss P: 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 the present purposes, Article 39F(1) of the RAO defines debt collection as:

taking steps to procure the payment of 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 response to the investigator's view, Target argued that the Financial Ombudsman Service doesn't have the jurisdiction to consider anything to do with the terms and conditions of (or processes relating to) Mr H and Miss P's help to buy loan because the loan "is not regulated". What I understand Target to mean by this is that 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.

I don't think this makes any difference to my jurisdiction. The definition I have 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 the Financial Ombudsman Service can consider a complaint about Target about their acts or omissions – what they did but also what they failed to do – in carrying on the regulated activities of debt administration and debt collection relating to the shared equity loan that Mr H and Miss P took out. In other words, we can consider not just the steps that Target took but also consider whether they should have taken steps but omitted to do so. And in considering that, I can have regard to all circumstances of this complaint – including the terms and conditions of the loan.

Now I've set out the extent of my jurisdiction on this complaint, I'll go on to consider what happened and what I think is fair and reasonable in the circumstances of this complaint.

Mr H and Miss P wanted to redeem their loan. I'll start by setting out some of the context in which this complaint arises, as well as what the valuation obtained by Mr H and Miss P said. I'll then move on to considering the contractual redemption process as well as considering the terms and conditions and whether Target failed to do what they should have done.

Mr H and Miss P obtained a valuation in July 2020. The surveyor noted that cladding was present on their property.

Following the Grenfell Tower tragedy in 2017, there was an increased awareness and risks 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. Or whether there are other non-cladding fire risks present, also have a significant impact on both sales and mortgage lending markets in the years since the Grenfell fire. Identification of risks on 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, that presence or potential presence of unremedied combustible cladding and other fire safety concerns can cause difficulty in valuing affected properties.

Target has provided us with a letter which they sent to Mr H and Miss P dated 4 June 2021 which stated that Mr H and Miss P failed to follow the redemption process because their property had cladding. And in these circumstances, the valuer had to be agreed between Mr H and Miss P and Homes England. Target said Mr H and Miss P didn't get their surveyor agreed which is what caused the delay. The letter also explained that Homes England couldn't accept a nil valuation and the help to buy loan required a valuation based on the price the property would fetch on the open market if there was a sale by a willing purchaser.

The customer information pack which was sent to Mr H and Miss P set out the process that they needed to follow to redeem the help to buy loan. The first step was to arrange a valuation. The information pack said that in order to produce a redemption quote, Target will need a valuation of the property that has been conducted by a RICS surveyor (The Royal Institute of Chartered Surveyors).

The pack also said that if the property was affected by novel issues in relation to the valuation (such as cladding), Target reserved the right, in accordance with the terms of the equity loan, to agree the RICS surveyor that Mr H and Miss P wanted to use before they were instructed.

I've listened to various calls that Mr H and Miss P had with Target, and I haven't heard at any point, them being told that they needed to get the surveyor approved before they were instructed. Target simply told Mr H and Miss P that they needed to get their own valuation and then send it to Target. I think it's unfair for Target to say that this is the reason for the delays.

The loan agreement says a valuer has to be agreed between the parties and the information pack say that Target reserves the right to require a valuer to be agreed in cases involving cladding. But in this case, I'm satisfied Target did not exercise that right. It simply told Mr H and Miss P to appoint a valuer of their own choice. And in doing so, it agreed to their choice – which means the valuer they appointed became the agreed valuer required by the loan agreement.

In any case, Mr H and Miss P submitted their valuation in July 2020, but their valuer wasn't able to set a value because of uncertainty around the cladding issue at that time. So while the valuer was agreed, there was no valuation that resulted that could be used to set a redemption figure.

However, Target didn't communicate any of this to Mr H and Miss P at this time. It wasn't until February 2021 that Homes England instructed a further surveyor. I don't think it was fair that Target didn't keep them updated during this time. Although I don't think it's fair to say that Mr H and Miss P failed to follow the proper process – I'm satisfied they did – in any case that's academic because their valuer didn't provide a valuation that could be used to redeem their loan.

The valuer did say that if the cladding was remediated, the property would be worth in the region of £400,000 but the redemption would be based on the current value of the property and not what it would be worth in the future.

Because of this, I don't think the redemption could've gone ahead on the valuation that Mr H and Miss P obtained because it didn't give a current valuation of the property. In that situation, I think it was right for Target to propose an alternative specialist surveyor. And that's in fact what happened, in February 2021. However, I don't think it should have taken them months to do this.

The valuation that was carried out in February 2021 gave a valuation figure of £380,000. This was a firm value which could be used for redemption. And it was less than the £400,000 estimate which the earlier valuer had said the property might be worth once the cladding was resolved, so I don't think there has been any financial loss to Mr H and Miss P as they redeemed their help to buy loan on the lower valuation. However, the delays that Mr H and Miss P experienced have caused them some stress and inconvenience.

Mr H and Miss P have told us that it was their intention to try and rent their property out so that they could buy a new property. They wanted to do this to try and save money during the stamp duty holiday window. They said they knew they wouldn't be able to sell the property due to the cladding issues, so renting it out as their only option.

Mr H and Miss P said they had spoken to a broker who told them that because they already had a mortgage on the property, it was likely they wouldn't have an issue converting their current mortgage to a buy to let one. Mr H and Miss P confirmed however that they didn't end up making an application to do this and they said that if their lender declined it, they would have looked at obtaining consent to let the property out until the remedial works had been completed on the property. However, I don't agree about that – I think they would have found it difficult to take a new mortgage until the remediation works had been carried out.

I understand that Mr H and Miss P are frustrated that the delays they encountered have meant they couldn't buy another property so in turn, have missed out on the stamp duty holiday window. But I think it's not that straightforward to be able to say that but for the delays caused by Target in allowing them to redeem, an application for a new property would have definitely gone through.

I accept Mr H and Miss P already had a mortgage on their property and they could have transferred this to a buy to let mortgage, but it's likely that their lender would've needed a new valuation to be carried out which would have brought the cladding issues to light. From my experience in dealing with complaints around cladding, I think it's likely that an application for a buy to let mortgage would not have been successful. This is because of the cladding issues that the property had, which means a buy to let lender might find the same problems in valuing the property – and would be likely to think that it wasn't suitable security.

In my experience it's very difficult to obtain a new mortgage for a B2 property. Mr H and Miss P didn't discuss consent to let with their existing mortgage lender either so it's difficult to say whether this would have been agreed. As remedial work needed to start on the property, it's also possible it might have been difficult to find a tenant depending on how disruptive the works were likely to be. Mr H and Miss P told us that they did look at some other properties but none where formal mortgage offers were made. There is never any guarantee that Mr H and Miss P would have found a suitable property to purchase and complete within the stamp duty holiday window even if – as I think unlikely – they were able to raise the funds to do so by re-mortgaging their existing property. There are also a number of outside factors that could cause an application to be delayed such as valuation issues, title issues etc, which would make it extremely difficult to suggest that Mr H and Miss P would've found a property and completed within the necessary timeframe to save on stamp duty. So I don't think it would be fair to ask Target to make any payment with regard to this.

I think that when Mr H and Miss P first sent their valuation to Target, it should have identified the problem with it and proposed a new valuation. I don't think it's fair that it waited eight months before doing so. And once that second valuation did take place, Mr H and Miss P should have been able to redeem their loan based on that valuation at the time – but there was a further long delay before they were able to do so. I don't think that delay was fair. I've noted that Target says that this was not its responsibility, it was caused by the lender. But I'm satisfied that as the regulated entity here Target has obligations independent of the lender. In carrying out the regulated activity of debt administration, Target is required to perform the lender's duties and obligations. And they have to act fairly and reasonably in all the circumstances.

Following the first valuation, Target should have been more pro-active in resolving the situation. And once the second valuation had been carried out, it should have ensured Mr H and Miss P were able to redeem their loan promptly based on that valuation. It failed to do that and I don't think that was fair and reasonable in all the circumstances.

It's evident in this situation Target did cause delays and should have allowed Mr H and Miss P to redeem much sooner than they did. So I think it's unfair that Mr H and Miss P ended up paying interest on their help to buy loan because of the delay – I therefore think that Target should refund the interest payments to Mr H and Miss P. Had the redemption gone through in good time, it would have happened before interest began to be applied to their loan.

This process has been very drawn out and lengthy for Mr H and Miss P. It's clear from the telephone calls that I have listened to, how frustrated Mr H and Miss P were. They called on numerous occasions to try and find out what was going on and it took several months for them to be able to get to a place where they were able to redeem their help to buy loan. This has caused them a great deal of stress and inconvenience so I also think that Target should pay them £500 in recognition of this.

My final decision

For the reasons given above, I uphold this complaint and direct Target Servicing Limited to:

- Refund all interest applied to the loan that Mr H and Miss P have paid to the date they redeemed the loan. Target should add 8% simple annual interest on each payment to be refunded running from the date they made each payment up until the date of the refund
- Pay £500 compensation for the distress and inconvenience caused to Mr H and Miss P

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Miss P to accept or reject my decision before 27 December 2022.

Maria Drury
Ombudsman