DRN-3844227

The complaint

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

What happened

Mr K and Miss M bought a flat in August 2015 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 K and Miss M'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.

Mr K and Miss M contacted Target in January 2020 as they wanted to understand the steps, they needed to take so they could repay the loan.

On 3 February 2020, Mr K wrote to Target and explained they had read the customer information pack they were previously given, and it stated that the surveyors they wanted to use to value the property, had to meet the requirements of Target. Their property was affected by cladding, so Mr K said he approached Target with a list of surveyors they wanted to use in order to get their approval.

Mr K and Miss M said they were chasing Target for approval since February 2020 and Target told them they were waiting to hear from Homes England, and once they did, they would be in touch. Mr K and Miss M said that Target promised to call them back on several occasions, but they didn't get back to them.

In May 2020, Mr K and Miss M complained to Target as they hadn't heard anything. Target then contacted Mr K and Miss M in September 2020 to let them know that they needed to obtain a valuation report based on the property and not the building. Target told Mr K and Miss M that they needed to submit this report for them to proceed with the repayment process.

Target acknowledged their service could have been better and offered Mr K and Miss M £75 to compensate them for any additional costs they might have incurred due to the delays they encountered.

Target asked Mr K and Miss M to instruct a surveyor which they did and submitted the valuation report to Target on 15 October 2020. This value of Mr K and Miss M's property at this time was £305,000 – based on the valuation report. On 20 October 2020, Target said they sent the valuation report to Homes England and they would provide a further update when they heard back from them.

Mr K contacted Target again in November 2020 for an update and he said Target said they were still waiting for further instructions from Homes England and that Homes England would instruct a surveyor.

Mr K and Miss M complained again telling Target that there wasn't anything in the customer information pack that stated that they would need to wait for Homes England to instruct a surveyor because of the cladding. So Mr K and Miss M felt Target were not complying with the terms and conditions set out for the repayment process.

Homes England arranged for a valuation to be carried out and sent the report to Mr K and Miss M in May 2021.The value came back at £375,000 which was more than the previous valuation. Mr K and Miss M were disappointed with the valuation report as they said the housing market had increased by a further 20% in their area, so they felt they had been disadvantaged financially because of the delays.

Mr K and Miss M believe they should have been given the correct information in February 2020 when they first enquired about the repayment process. They feel there have been delays in them trying to repay the loan and they said there isn't anything in the customer information pack that states a second valuation was necessary because of the cladding issues.

Mr K and Miss M brought their complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. Our investigator upheld the complaint and said that Target should allow Mr K and Miss M to redeem the loan based on the valuation report they obtained in October 2020. She said that Target should provide Mr K and Miss M the settlement figure within three months of the redemption date and arrange for the lender's charge to be removed from their property.

Our investigator asked Target to refund all interest and management fees applied to the loan from July 2020 because of the incorrect information given to Mr K and Miss M – until September 2020. In addition to that, she said Target should remove any missed payment markers that may have been recorded on Mr K and Miss M's credit file after July 2020 – if they missed any payments. And finally, she told Target to pay £725 compensation in addition to the £75 offered by Target due to the stress that this situation caused Mr K and Miss M.

Target disagreed. In summary they argued that while the Financial Ombudsman Service has jurisdiction to consider the complaint about how Target treated Mr K and Miss M, 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 K and Miss M experienced were the result of Homes England and not down to the administration of the account by Target. They referred to the clause in the contract where it states a valuer must be agreed by Homes England and the valuation in October 2020 was clearly reduced due to the cladding issues. The valuation that was later conducted in May 2021 had shown an increase in value, without the mention of cladding and Mr K and Miss M had the opportunity to redeem at that point but didn't do so.

Mr K and Miss M have since redeemed their help to buy loan after another valuation was carried out in March 2022. Mr K and Miss M were unhappy with the previous valuation from May 2021 as this showed an increase in value – hence another valuation being carried out.

The third valuation came back at £360,000 and Mr K and Miss M redeemed the help to buy loan on 1 July 2022.

As Target disagreed, they asked for the complaint to be reviewed by an ombudsman, so it was passed to me to decide.

My provisional decision

I issued a provisional decision on 11 November 2022. I said:

> I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
>
> Mr K and Miss M have told us that since their complaint has been with the Financial Ombudsman Service, they have since managed to redeem their help to buy loan. They said on 1 July 2022, Target approved the redemption of the loan. I've seen a letter dated 1 July 2022 which confirms that Target approved the redemption on a value of £360,000 so this meant that Mr K and Miss M paid around £72,000 to pay off the loan – based on borrowing of 20% of the property's value.
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> Mr K and Miss M have also given us a considerable amount of information as they believe they have suffered financial loss because of the actions of Target. They said they wanted to initially redeem their mortgage two years ago – since their enquiry in February 2020, and their plans were to pay off the help to buy loan, and let their property out. Mr K and Miss M said they would then have borrowed additional money to purchase a new property. They said they wanted to move to a different area so that their daughter could go to a good school but because they couldn't redeem the help to buy loan – they ended up renting a property rather than buying in the area where they wanted to live.
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> They have provided us with evidence that shows that from November 2021, they signed a tenancy agreement for 12 months and are paying £1950 per month. They also paid a deposit of £2,250. Mr K and Miss M said they also had to pay their council tax for that year which is £2,435.05. They have also provided us with evidence of their solicitor fees which increased by £127.20 from when they initially made enquires in 2020.
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> Mr K and Miss M are frustrated because had they been able to purchase a property earlier, when they first enquired about redemption in 2020, they would have been able to do so within their budget. But house prices have now increased so they feel they have lost out. They also said the stamp duty holiday would have helped them save money as a family, but they have also missed this opportunity because of the delays and actions of Target.
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> 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.
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> Target disagrees the Financial Ombudsman Service's jurisdiction to consider Mr K and Miss M's complaint. I'll explain why I think that the Financial Ombudsman Service does have jurisdiction to consider Mr K and Miss M's complaint. Then I will set out what I think Target needs to do in order to put things right for Mr K and Miss M.

Timeline of events

In February 2020, Mr K and Miss M enquired about redeeming their help to buy loan. Mr K and Miss M read the customer information pack so they could understand what steps they needed to take.

I have looked at the customer information pack and it 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.

Mr K and Miss M made enquires to redeem their loan in February 2020 and after months of delays, a qualified surveyor valued their property in October 2020. The valuation identified that there was cladding on the building. Mr K and Miss M sent this valuation to Target who then said the valuation report was with Homes England and they would provide Miss K and Mr M further updates when they heard from Homes England.

Mr K and Miss M continued to chase Target for a response, but Target said they were still waiting for further instructions from Homes England and they then said that Homes England would instruct a surveyor.

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 K and Miss M: 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 K and Miss M'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 K and Miss M 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 K and Miss M 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 K and Miss M 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.

The relevance of cladding to this complaint

Mr K and Miss M obtained a valuation in October 2020. The surveyor noted that cladding was present on Mr K and Miss M's 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.

The valuation

Mr K and Miss M eventually managed to get a valuation carried out on the property in October 2020 after spending months chasing up Target. They were keen to redeem their loan and made enquires from February 2020. Target acknowledged those delays and agreed to pay £75 for this.

The loan agreement sets out quite clearly what is supposed to happen when a borrower wishes to redeem their loan. Section 7 states:

7.1 If the Borrower wishes to redeem the loan before an event specified in clause 5 the following procedure shall apply:

7.1.1 The Borrower shall apply in writing to the Lender

7.1.2 Within fourteen (14) days of service of the notice as specified in 7.1.1, 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 such application and within five working days of receipt of such determination by the Valuer shall serve a Valuation Notice on the Lender.

7.1.3 At any time within three (3) months (or four (4) months if extended by the Valuer) of service of the Valuation Notice the Borrower may pay an amount equal to the Redemption Sum together with any reasonable costs and expenses incurred by the Lender pursuant to this Loan and together with any other sums payable and outstanding under this Loan.

7.1.4 As soon as reasonably possible after receipt of such payment the Lender will duly discharge this security 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 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 that 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

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

Following a request for redemption, Target sends out an information pack. There is nothing in the information pack that says they need to wait for Homes England to send out an additional surveyor. Homes England arranged a further valuation in May 2021.

Mr K and Miss M wanted to repay their help to buy loan. This means that in order to redeem the loan, Mr K and Miss M should apply to the lender, and then to the valuer. The valuer will determine the market value to be used for the redemption, and according to the terms and conditions the valuer's decision will be final. Mr K and Miss M then had three months to pay the redemption figure.

The agreement also says that the valuer is to be appointed by agreement between both parties, or if the parties cannot agree by the president of RICS. There is nothing in the agreement that gives either party the right to refuse to accept a valuation. Once a valuer has been appointed by agreement, their valuation is final.

In practice, although the loan agreement talks about the lender, this process is actually done by Target. It is to Target that the application to redeem the loan is made, and its Target that agrees the valuer and Target that communicates the redemption figure to the borrower following on from the valuation.

This is made clear in the customer information pack that Target produces. I've looked at this information pack and it shows that Target is in practice responsible for operating this process. All contact details given are for Target, not Homes England. And all queries are to be directed to Target. The pack says "*The Homes and Communities Agency (known as Homes England) has appointed Target Servicing Limited as its Loan Administrator to manage the redemption process".* The pack requires borrowers to obtain a valuation report and "*send the report to Target".* It says the process requires the borrower to send a Loan Redemption Form *"to Target"* and to make a payment to Target's bank account.

The information pack also confirms that Target is content for the borrower to appoint their own valuer, as long as the valuer is a properly qualified RICS surveyor. The pack says it reserves the right to agree specific appointments in advance in certain cases, such as where the building is affected by cladding. But subject to that, it's content to accept the borrowers' choice of surveyor.

The contact notes I have seen show that Mr K and Miss M first told Target of their plans to redeem the loan in January 2020 and they told Target that their property was affected by cladding.

In February 2020, Mr K and Miss M followed the process as outlined in the customer information pack. Target didn't get back to Mr K and Miss M until September 2020 even though Mr K and Miss M had been chasing them for an answer. Target asked Mr K and Miss M to appoint a surveyor of their own choice despite knowing that their property had cladding issues. Target therefore agreed to the surveyor that Mr K and Miss M intended to use before the surveyor was actually instructed. Although the information pack says Target reserves the right to agree a surveyor in advance, in this case it did not exercise that right – despite being on notice that the property was potentially affected by cladding. And while the terms and conditions say that the valuer has to be appointed by agreement, by telling Mr K and Miss M to instruct a surveyor of their choice – and not requesting agreement in advance – I'm satisfied this means that Target agreed to Mr K and Miss M's choice of valuer. In turn, this means that the valuer was an agreed valuer whose valuation was to be final in setting the repayment sum.

Although Mr K and Miss M didn't instruct the valuer within 14 days of notifying Target of their intention to redeem, I'm satisfied that this was because they were waiting for Target to respond to their queries about instructing a valuer. Once Target confirmed it would agree to their choice in September 2020, they instructed a valuer promptly. I don't therefore think it would be fair and reasonable to say that the valuer was not properly appointed because they weren't instructed within 14 days.

Mr K and Miss M instructed a RICS surveyor and the valuation was carried out by a RICS surveyor in October 2020. The surveyor said that the property was valued at £305,000 and said *"we have applied the following rationale; the unencumbered value of the property is considered to be in the region of £400,000. The property is considered un-loanable given the EWS1 form identifies combustible materials to the building which are considered a safety risk to the occupiers. We have therefore, applied a 'cash buyers' discount of 15% to the unencumbered value and we have also deducted £35,000 to reflect the potential leaseholder contributions towards the remedial works. Given assumptions with respect to remedial costs and lack of clarity with respect to the responsibility for undertaking the necessary remedials work to the building and there is no completion date for the works, our valuation is reported on the basis of material uncertainly".*

Mr K and Miss M sent this valuation report to Target on 15 October 2020 and Target's contact notes show that they sent the report to Homes England for further instructions and that a second valuation would be necessary.

The bank statements that Mr K and Miss M provided us show that they had sufficient funds since March 2020 to pay off the loan. They were therefore ready and able to pay off their loan as soon as Target set the redemption sum, and weren't dependent on re-mortgaging or selling the property to be able to do so. Mr K and Miss M continued to chase Target but it didn't give them any further specific information. Target hadn't approved the valuation and didn't provide Mr K and Miss M with a redemption statement to enable them to repay the loan.

The second valuation was carried out in May 2021 and the property was valued at £375,000 which Mr K and Miss M were unhappy about. They said house prices had increased significantly and this meant they would need to pay more than they would have done since the first valuation. This second valuation, carried out by surveyors appointed by Homes England, also reported that its valuation was based on "material uncertainty" as a result of the cladding issues with the property.

Target have said they are not responsible for the failure of Mr K and Miss M not being able to redeem their loan. They say they followed Homes England's instructions and that any delays – and losses that flow from them – are not due to Target or their 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 K and Miss M's shared equity loan on the lender's behalf, Target is carrying out the regulated activity of debt administration.

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.

I think that Mr K and Miss M did everything necessary to comply with their contractual obligations regarding the redemption of the loan. Target told them to appoint their own surveyor and they did so. That meant that surveyor's valuation was final and binding. Although it cited "material uncertainty", so did the later valuations – and this is a feature of the market for this type of property at that time. I don't think that this is a reasonable basis for disregarding the first valuation but not the later ones. And so Target should have issued Mr K and Miss M a redemption figure based on the valuation from October 2020 which their surveyor produced in accordance with the timescales set out in the loan agreement.

Having thought about everything that's happened, I don't think Target have treated Mr K and Miss M fairly. Mr K and Miss M wanted to redeem their loan and started the process in early 2020. Target delayed the process and didn't accept the valuation that they submitted in October 2020 – in line with their terms and conditions.

I'm satisfied in this case that the valuer was properly appointed in accordance with the terms and conditions of the loan agreement and the information pack. In particular, the loan terms require a valuer to be appointed by agreement. In the redemption information pack, Target told Mr K and Miss M they would accept a valuer of their choice provided they were a qualified RICS surveyor. And I can see from the contact notes that they also directly told Mr K and Miss M to go ahead and appoint one, which they did in September 2020.

Target were aware of the cladding issues to Mr K and Miss M's property. But it did not exercise the lender's right to agree the surveyor in advance – it agreed to Mr K and Miss M making their own selection. The surveyor that Mr K and Miss M appointed was therefore the agreed surveyor as set out in the contract. Target, acting on the lender's behalf, agreed to the valuer before Mr K and Miss M instructed them. This means the valuer was correctly appointed and the valuation was final for the purposes of the redemption of the loan.

While I accept that this process was designed before there was an understanding about the issues that cladding might cause, the loan agreement set out a contractual process for Mr K and Miss M to redeem the loan and they followed this process. Mr K and Miss M are therefore contractually entitled to have had the redemption proceed on that basis.

It seems Homes England at one point accepted this – it told Mr K and Miss M that their redemption could go ahead based on their valuation in March 2021. But it later retracted this as a "mistake". And then it instructed its own valuation.

From the contact notes provided by Target, I can see that Mr K and Miss M were still unhappy with the second valuation that was carried out in May 2021. The notes show that in June 2021, Target wrote to Homes England and attached a couple of emails that they had received from Mr K and Miss M. The notes suggest that Mr K and Miss M were not interested in challenging the figure given on the valuation report but Target advised Mr K and Miss M that they could involve the president of RICS due to the time that had been taken in trying to resolve the situation. It was noted that Homes England would instruct a third valuation on Mr K and Miss M's behalf but the third valuation would be binding for both parties. A redemption figure would then be based against the new valuation regardless of whether the market value increased or decreased and there would be no appeals process challenge available.

This valuation was carried out in March 2022 and the valuation came back at £360,000. Mr K and Miss M redeemed the help to buy loan based on this valuation and paid around £72,000 to redeem the loan. But Mr K and Miss M would have needed to pay less than this, had they been allowed to redeem the loan on the basis of the first valuation of £305,000, as I'm satisfied they should have been. I'm satisfied that in delaying their redemption until a later valuation at a higher price was carried out when the first valuation should have been binding, Target has not acted fairly and reasonably in all the circumstances. It is a regulated firm with obligations in its own right to ensure that the loan is administered in accordance with the lender's contractual obligations, and that did not happen. I'm satisfied that this resulted in financial loss as well as distress and inconvenience.

As Mr K and Miss M were not able to redeem the loan when they should have done, they have also ended up paying higher solicitor costs. I have seen evidence which shows me that they paid an additional £127.20 than they would have done if they were allowed to redeem the loan earlier. So Target should also refund this for Mr K and Miss M.

Putting things right

As I've explained Mr K and Miss M have now redeemed the loan, but this is after several months when they should have been able to do this much earlier than they did. There was a delay to Mr K and Miss M in being able to redeem the loan since February to September 2020. We were in the middle of a pandemic but it's reasonable that by July 2020, a valuer could have been appointed and this could have been approved by Target. This means that Mr K and Miss M could have paid off their loan sooner and wouldn't have had to pay the management fee, interest and any third party associated costs applicable to their loan after October 2020. I say that because if a valuation could have happened in July, it's reasonable to say Mr K and Miss M could have redeemed their loan by October. I've seen evidence they had the funds available to do so at this time.

Once it did agree to Mr K and Miss M instructing a surveyor, Target should also have allowed Mr K and Miss M to redeem the loan based on the valuation report from October 2020. Once this valuation was carried out, Target, as the lenders representative, should have allowed Mr K and Miss M to redeem their loan within three months at the agreed rate of 20% of the market value in line with the terms and conditions. As that didn't happen, Mr K and Miss M have now redeemed the loan based on a valuation of £360,000 and paid around £72,000 – which was more than they would have paid if the redemption figure was based on the valuation of £305,000 from October 2020.

Target should refund the difference between the redemption sum based on the October 2020 valuation – which is what they ought to have paid – and the redemption sum they actually paid based on the third valuation.

Although the property has also increased in value over this time, and therefore Mr K and Miss M have benefitted from increased equity, in the circumstances of this case I don't think it's fair to take that benefit into account or offset it from the refunded excess redemption sum. That's because Mr K and Miss M were not selling the property and therefore this is not a windfall gain they would not have otherwise had.

The delay in not being able to redeem the loan and the impact of Target not allowing Mr K and Miss M to redeem the loan when they should have done has caused significant upset and distress for them over a long period of time. This caused a lot of worry for Mr K and Miss M when this situation didn't have to be so stressful for them.

I therefore think that Target should pay Mr K and Miss M £1425 for the inconvenience they were caused. This is in addition to the £75 that Target previously offered.

I understand that Mr K and Miss M have said they suffered financial loss and are looking for their rental payments, deposit and council tax bills to be refunded. I have considered what Mr K and Miss M have said and while I appreciate this would have been a difficult situation for them, I don't think it would be reasonable for me to ask Target to refund these costs.

They said they wanted to relocate for their daughter's school which I understand would have been an important factor for them, but this was ultimately a choice that they wanted to make. They could have stayed at the property and continued to pay their contractual monthly payments rather than decide to move into rented accommodation. I am not making light of what they chose to do, as I acknowledge this would have been a priority for them, but based on these considerations, I won't be asking Target to refund these costs.

I have also considered what Mr K and Miss M have said about the fact that house prices have increased which has made it more difficult for them to find somewhere to purchase. It's not known at this stage whether Mr K and Miss M are still in fact renting or if they have since purchased another property.

This is a further complication as property prices may have well changed in the meantime. If the property values have increased since 2020 then there is a possibility that it could be more difficult for Mr K and Miss M to find somewhere to purchase now that is within their price range. However, I don't think I can fairly conclude that there is financial loss here. There's no guarantee Mr K and Miss M would have found a property sooner had they redeemed sooner, or that a property they might find now is comparable to one they would have found then. There's no basis on which I can make an award of quantifiable financial loss.

With regard to the stamp duty argument and the fact that Mr K and Miss M feel they have lost out on the stamp duty holiday, there is never a guarantee that they would have found somewhere to purchase and complete on time. There are 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 K and Miss M would have completed on a new property within the necessary timeframe to save on stamp duty. I therefore won't be asking Target to pay any costs with regards to this.

So in order to put things right, I intend to uphold this complaint and directing Target Servicing Limited to:

- Calculate what Mr K and Miss M would have paid if they were allowed to redeem their mortgage from the October 2020 valuation at £305,000 and refund them the difference based on what they did pay when they redeemed the help to buy loan using the third valuation at £360,000. Target should add 8% simple annual interest running from the date Mr K and Miss M redeemed their loan to the date of settlement

- Refund all the interest and management fees applied to the loan from October 2020 to the date they redeemed the loan due to delays that Mr K and Miss M encountered. They 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

- Remove any missed payment markers that may have been recorded on Mr K and Miss M's credit file after October 2020 – if there were any late payments

- Pay £1425 compensation in addition to the £75 Target already paid for the distress and inconvenience caused
- Refund the difference in their solicitor costs of £127.20 plus 8% simple annual interest from the date they paid these costs to their solicitor until the date of refund

Developments

Mr K and Miss M responded to the provisional decision, and they confirmed they didn't have any further comments to make.

Target hasn't responded to the provisional 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 I haven't been provided with any further comments to re-consider, I see no reason to depart from my provisional decision. My outcome therefore remains the same.

My final decision

For the reasons given in my provisional decision, I uphold this complaint and direct Target Servicing Limited to:

- Calculate what Mr K and Miss M would have paid if they were allowed to redeem their mortgage from the October 2020 valuation at £305,000 and refund them the difference based on what they did pay when they redeemed the help to buy loan using the third valuation at £360,000. Target should add 8% simple annual interest running from the date Mr K and Miss M redeemed their loan to the date of settlement
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- Remove any missed payment markers that may have been recorded on Mr K and Miss M's credit file after October 2020 – if there were any late payments
- Pay £1425 compensation in addition to the £75 Target already paid for the distress and inconvenience caused
- Refund the difference in their solicitor costs of £127.20 plus 8% simple annual interest from the date they paid these costs to their solicitor until the date of refund

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Miss M to accept or reject my decision before 3 January 2023.

Maria Drury
Ombudsman