

The complaint

Mr and Mrs D complain that Target Servicing Limited hasn't allowed them to redeem their help to buy shared equity loan.

What happened

Mr and Mrs D bought their property with the assistance of the help to buy scheme. This is a government scheme that lends additional funds to purchasers, alongside their main mortgage, to assist with buying the property. It's a shared equity loan, which means that a percentage of the sale price is lent, and the same percentage of the eventual value of the property must be repaid. If the loan is outstanding for more than five years, interest is payable in the meantime.

The lender is Homes England, a government body. Homes England has appointed Target to manage and administer the loan on its behalf. Although neither the loan nor the lender is regulated, Target is a regulated firm and in administering the loan on the lender's behalf is carrying on a regulated activity. Target is therefore responsible for answering this complaint.

Mr and Mrs D bought their property in 2017, borrowing 20% of the sale price. In 2021, Mr and Mrs D notified Target of their intention to redeem, and Target told them to obtain a valuation to determine the value of the property and therefore the redemption amount. They obtained a valuation in April 2021 and sent it to Target shortly thereafter. The valuation said the property was worth £225,000. It said that the building was affected by combustible cladding but this had been taken into account in setting the valuation. An external wall system (EWS1) form was available, which rated the property as B2.

On 6 July 2021, Target wrote to Mr and Mrs D's solicitors accepting the valuation and setting the redemption figure at £45,000. But then Target told Mr and Mrs D that this letter should not have been issued and their loan could not be redeemed as it was "under review". Target asked for the surveyor Mr and Mrs D used to sign an additional declaration; this was done and returned to Target.

In October 2021, Target told Mr and Mrs D that their valuation had expired and an updated desktop valuation would be needed. Mr and Mrs D obtained this at a cost of £150. On 8 November, after receiving the desktop valuation, Target told Mr and Mrs D that their redemption request was being reviewed. In December 2021, Target asked for an update on remedial works to the building their property was in, and Mrs D gave it an update.

There was no further contact from Target and in April 2022 Mr and Mrs D again asked for an update as they were about to start paying interest on the loan. In the following months, there were problems with Target collecting the interest payments. But there was no further communication about the redemption of the loan until August 2022, when Target told Mr and Mrs D that they needed a new valuation and may be able to apply to the President of the Royal Institute of Chartered Surveyors to find a surveyor.

The loan was not redeemed, and Mr and Mrs D complained to us. They didn't think it was fair they hadn't been able to redeem their loan despite doing what was required of them. And

they didn't think Target had handled things appropriately – it had failed to tell them what was going on, had made repeated mistakes with their contact details and the property address, hadn't collected payments properly and had caused them a lot of stress and difficulty at an already stressful time in their lives.

Target accepted it had made a series of errors in not correcting the property address on its systems, using incorrect contact information, not setting up the direct debit to collect payments properly and delaying in responding to Mr and Mrs D's complaint. It offered £100 compensation. But it didn't think it had unfairly delayed their redemption, and said Mr and Mrs D would need to commission and pay for a new valuation if they still wanted to redeem. And it said they would be required to pay interest to the loan in the meantime, in accordance with the terms and conditions.

Our investigator didn't think Target had acted fairly. She said Mr and Mrs D had tried to redeem their loan and had met all the requirements to do so, so it wasn't fair Target hadn't allowed them to redeem. She said Target should pay for a new valuation to allow the redemption to be restarted, and should compensate them for any increase in the redemption figure in the meantime, as well as the costs they've incurred as a result of the delay. And she said it should pay £650 compensation for the stress and upset caused by the delay and its various mistakes.

Mr and Mrs D accepted that. But Target didn't. It said the existence of cladding, and a B2 rating, on Mr and Mrs D's property's building represented a "novel issue" which meant that it was reasonable to review the valuation and redemption request, and that there was no timescale for that review to take place. So it didn't think it had unfairly delayed or prevented a redemption. However, it said it would increase its offer of compensation from £100 to £250. Target asked for an ombudsman to make a decision. Following that, Mr and Mrs D also asked for the £650 compensation to be reviewed – they said they had accepted the investigator's view to bring matters to a closure, but they didn't think it fairly reflected everything they'd been through.

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.

In carrying out 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". Mr and Mrs D were told to deal with Target and Target was presented as being responsible for the management and administration of the 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 in its own right, Target is the appropriate firm to respond to this complaint. As a regulated entity carrying out a regulated activity, it has an obligation to act fairly and reasonably in performing the lender's duties.

Under the loan terms and conditions, Mr and Mrs D are entitled to redeem the loan at any time, either by selling the property or by repaying in some other way (such as from savings, or by taking further borrowing on the 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.

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.

In this case, Mr and Mrs D followed the appropriate process for redeeming this loan, by notifying Target and then – at Target's request – obtaining an independent valuation of the property. They then sent the valuation to Target.

The valuation said that the property's building was affected by cladding and had a B2 rating on its EWS1. The valuer took that into account in determining the valuation.

Target says this presents a "novel issue", which means the valuation and redemption have to be reviewed, and that there's no timescale set for such a review to take place – which means Mr and Mrs D's valuation hasn't been unreasonably delayed.

But I don't agree about that. The terms and conditions of the loan agreement are clear. They say that a redemption request has to be followed by a valuation. The valuation is carried out by a valuer agreed between the parties, and their valuation is final. There's no provision for a valuation to be reviewed or challenged, or a redemption refused or delayed, following a properly completed valuation.

The redemption information pack Target sent Mr and Mrs D when they first enquired about redemption does say that where there is a "novel issue" such as cladding, Target reserves the right to agree the choice of valuer in advance.

But that doesn't take the matter any further. The information pack is not a contractual document. And in any case, it merely restates the contractual position – which is that the identity of the valuer is to be agreed in advance. But Target did not exercise that right. It merely told Mr and Mrs D to instruct a surveyor and obtain a valuation. I'm satisfied that this meant Target agreed to Mr and Mrs D's choice of valuer and therefore that the valuer was properly instructed and, according to the terms and conditions, their valuation is final.

In any case, I note Target has not sought to suggest that the valuation was not properly obtained, or that Mr and Mrs D have not followed the proper process. Rather, it has said that because of the cladding issues on the building, the valuation and redemption request need to be "reviewed".

But as I've explained, there is no power under the contract for that to happen. Once a valuation has been obtained, Mr and Mrs D are entitled to redeem their loan. It would have been open to the lender to include a review mechanism in the terms and conditions had it wanted to do so – but there is no such mechanism. And in my view there are no grounds for Target, acting fairly and reasonably in its regulatory obligation to comply with the lender's contractual duties, to have delayed collecting the redemption payment from Mr and Mrs D's solicitors so that Mr and Mrs D could redeem their loan.

I'm satisfied from the evidence I've seen that Mr and Mrs D had the funds available to redeem their loan – they cashed in investments and had the funds waiting in a savings

account.

And so it follows from that that had Target, acting fairly and reasonably, collected the redemption payment from Mr and Mrs D and allowed them to redeem their loan, it would have been paid off by the end of July 2021 – three months after the valuation.

Putting things right

In order to put things right, Target should compensate Mr and Mrs D for the delay in allowing them to redeem, as well as the consequences that flow from it.

Had Mr and Mrs D been allowed to redeem in around May 2021, when they obtained their valuation, the redemption price would have been £45,000 – as Target itself confirmed in the July 2021 redemption letter it later withdrew.

Target now says that if Mr and Mrs D want to continue with their redemption, they will need to obtain a new valuation. I don't think that's fair, since they should have been able to redeem in 2021. Target will therefore need to consult with the lender about this.

If Mr and Mrs D can now redeem using the April 2021 valuation, Target should put that process in place and issue them with the relevant paperwork so they can instruct their solicitor to begin the process.

If, however, Target maintains that a new valuation is required, then Target should arrange and pay for the new valuation. I think that's fair because had, acting fairly, Target processed their redemption in 2021 no new valuation would now be required. And so the need for a new valuation is because of Target's failings rather than because of anything Mr and Mrs D did or did not do. And then once a new valuation has been obtained, Target should put the redemption process in place and issue them with the relevant paperwork so they can instruct their solicitor to begin the process.

If redemption proceeds based on the April 2021 valuation, Mr and Mrs D will not have suffered any financial loss in respect of the redemption figure itself. If, however, a new valuation is required and that produces a different redemption figure, then there may be financial loss. If the new valuation is higher, producing a higher redemption figure, Target should pay Mr and Mrs D the difference between the two redemption figures at the same time as it issues the redemption paperwork so that Mr and Mrs D can use the compensation to top up the savings they have in place to cover the April 2021 valuation redemption figure. But if the new valuation produces a lower valuation figure, then the saving Mr and Mrs D will have made on redemption can be offset against the other compensation Target should pay which I set out below (though not the compensation for distress and inconvenience, since this is not related to whether overall they have suffered a net financial loss).

Because redemption should have happened no later than July 2021, in my view it's not fair that Mr and Mrs D have had to pay interest and management fees since then. So Target should refund all management and administration fees paid between 1 August 2021 and the date it makes payment to Mr and Mrs D.

While the new redemption process goes ahead, it wouldn't in my view be fair to expect Mr and Mrs D to pay further interest and management fees in the meantime either – since had they redeemed in 2021 they would not now need to pay these sums. Again, Target will need to consult with the lender about this. If the lender does not agree to waive these sums in the meantime, Target will need to pay them itself and not collect them from Mr and Mrs D. This should run until Mr and Mrs D redeem their loan or until three months after Target issues redemption paperwork to their solicitor, whichever comes first.

However, I don't think it would be fair to expect Target to cover the ongoing costs associated with Mr and Mrs D continuing to own the property – since they were not intending to sell it at the time of the aborted redemption in 2021, they would always have gone on to incur these costs. I understand it might be difficult for them to sell the property pending remediation of the cladding problems – but that of itself is not Target's responsibility. Target is responsible for the failure to redeem this loan, but it's not responsible for the condition of the property or difficulties in selling it.

Nor do I think Target should be required to compensate Mr and Mrs D for lost investment growth after they cashed in their investments to repay the loan in 2021. Had things gone right, they would have used that money to pay off the loan and would not have benefitted from future investment growth. My redress is intended to put them back in the position they would be in had they redeemed in 2021 – as far as it's possible to do so – and so it wouldn't be fair to give them the benefit of investment growth they would never have obtained.

There are further consequential losses it would in my view be fair for Target to refund. Had Mr and Mrs D been allowed to redeem by July 2021, they would not have needed to pay for an updated desktop valuation in October 2021, so this cost should be refunded. Target should also refund the solicitor's costs associated with the abortive redemption. But costs associated with the new redemption, when it goes ahead, should be borne by Mr and Mrs D, since they would always have had to pay solicitors' fees once – but not twice.

Finally, I haven't gone into detail about the poor communication and administrative mistakes Target made, since those are not in dispute – though I do need to decide fair compensation. Target has offered £250 compensation, but in my view this doesn't go far enough. These mistakes themselves were deeply frustrating. The ongoing delays, lack of updates and poor communication compounded this. And the impact of all this, and the impact of being unable to redeem their loan, on Mr and Mrs D was substantial in light of the other issues they were facing at this time. I'm satisfied that £650 is fair compensation in all the circumstances.

My final decision

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

- Target should start a new redemption process for Mr and Mrs D's help to buy loan.
- If a new valuation is required to progress the redemption, Target should arrange and pay for the valuation to take place within 60 days of acceptance of this decision.
- If a new valuation is required and the resulting redemption figure is higher than £45,000, Target should pay the difference between the two redemption figures to Mr and Mrs D within 14 days of receiving the new valuation. If payment is not made within 14 days, it should add simple annual interest of 8%* to the payment, running from the date of receipt of valuation to the date of refund.
- If a new valuation is required and the resulting redemption figure is lower than £45,000, Target will be entitled to offset the difference between the two redemption figures from the other compensation – other than the £650 distress and inconvenience compensation – payable to Mr and Mrs D set out below.
- Target should refund all interest and management fees paid by Mr and Mrs D from 1 August 2021 to date of refund, adding simple annual interest of 8%* running from the date each payment was made to the date it is refunded.

- Target should not collect from Mr and Mrs D, or add to the loan balance, further interest or management fees until three months after the redemption paperwork is sent to their solicitor or the date the loan is redeemed, whichever comes first. If the lender does not waive these sums, Target will need to pay them on Mr and Mrs D's behalf.
- Target should refund to Mr and Mrs D:
 - £150 for the October 2021 desktop valuation; and
 - £418.20 solicitor costs

In each case, Target should add simple annual interest of 8%* running from the date Mr and Mrs D made each payment to date of refund.

- Target should pay Mr and Mrs D £650 compensation. Payment should be made within 28 days of the date we notify Target Mr and Mrs D have accepted this decision, if they do. If payment is not made within 28 days, Target should add simple annual interest of 8%* running from the date we notify it of Mr and Mrs D's acceptance to date of payment.

** Target may deduct income tax from the 8% interest elements of my award, as required by HMRC. But it should tell Mr and Mrs D 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 Mr D and Mrs D to accept or reject my decision before 31 March 2023.

Simon Pugh
Ombudsman