

The complaint

Mr and Mrs T are unhappy about the fact they had to instruct – and pay for – a solicitor to redeem their Help to Buy (HTB) shared equity loan when they sold their property. They also say Target Servicing Limited initially told them in January 2021 that a solicitor wasn't needed, only giving them the correct information about a month later.

What happened

I issued my provisional decision in December 2022, the findings of which said:

"I acknowledge that the 'Equity Mortgage – Help to Buy' document doesn't say that a solicitor would be needed to redeem the loan upon the sale of the property, but equally it doesn't specifically say a solicitor won't be needed either.

Mr and Mrs T have quoted from clause 7, but that doesn't relate to the redemption of the loan when the property is sold, in fact it expressly excludes that reason for redemption "If the Borrower wishes to redeem this mortgage before an event specified in clause 5..." with clause 5 explaining that the sale of the property would be considered a redemption event. The relevant section for the redemption of the loan due to the sale of the property is clause 6.

That said, neither clause states a solicitor is not required, just that the Borrower will be paying the funds – which they would be whether that is direct or via a solicitor.

Mr and Mrs T provided a document entitled 'Information for Solicitors/Legal Representatives' saying that doesn't mention the need for a solicitor at redemption. But that document is the information the solicitors/legal representatives needed for when the loan was being taken out – not for the later redemption of the loan, so I wouldn't expect it to cover that process in any detail as it simply isn't what the document was intended for.

Mr and Mrs T have questioned whether the need for a solicitor upon redemption is something that has been added since they took out the loan in 2019 and therefore shouldn't be binding on them. But that's not the case. The solicitor's pack setting out this process is entitled 'Redemption Information for Legal Representatives Help to Buy' and the date of publication for that document was July 2018 – so the year before Mr and Mrs T took out their HTB shared equity loan.

Mr and Mrs T have said that they weren't told about this when they took the loan out. A HTB shared equity loan is not a financial product regulated by the Financial Conduct Authority. And Homes England is not a regulated firm within the jurisdiction of the Financial Ombudsman Service. Homes England has appointed Target to administer HTB 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.

That means we can consider a complaint about Target about their acts or omissions in carrying on the regulated activities of debt administration and debt collection relating to the shared equity loan. However, that doesn't extend to what Mr and Mrs T may or may

not have been told before they took the loan out – that's because what happened before the loan was taken out doesn't come under the activity of debt administration or debt collection. We also can't consider a complaint about Homes England as that firm doesn't come under our jurisdiction. All together that means I've no power to consider a complaint against either Target or Homes England in respect of what Mr and Mrs T were – and weren't – told before they took this loan out about the need for a solicitor to be used at redemption.

The loan redemption process that was in force both at the time Mr and Mrs T took out the loan, and when they came to redeem it upon the sale of their property, required them to instruct a solicitor as part of the redemption process and the cost for that was Mr and Mrs T's to bear. For that reason I don't think Target did anything wrong in not varying that procedure for Mr and Mrs T.

Following our investigator's recommendation Target agreed to pay £100 to Mr and Mrs T in recognition of the misinformation they were given in the January 2021 call and having considered everything I'm satisfied that is a fair and reasonable outcome for this complaint."

Target didn't respond to my provisional decision. Mr and Mrs T responded saying, in summary:

- It wasn't a redemption with sale, therefore clause 7 is the correct one. As there was no sale occurring, there would be no expectation that a solicitor would be needed.
- There is a requirement for any contractual obligations to be clearly stated.
- Whilst they acknowledge the Solicitors Instructions document is provided when the property is purchased, they were highlighting that it contains supplementary information about redemption.
- The Equity Mortgage Lender's Handbook for Conveyancers was published in 2021 which was after the purchase. They don't think the Redemption Information for Legal Representatives Help to Buy document was provided to either them or their solicitor when they took out the loan, therefore would not modify the terms of the loan.
- The process that was published online has no legal weight, and the loan agreement they signed in 2019 detailed the redemption process. As Target was performing the function of Nominated Agent then we should be able to consider the complaint in the context of whether Target complied with the terms of the loan agreement, as administration of the loan must include adherence to the terms of the loan agreement.
- If I can't consider whether or not Target has complied with the terms of the loan agreement as part of this complaint, they want my final decision to make clear that it is only addressing the misinformation that they were given in the January 2021 phone call, as otherwise it could limit their ability to make a joint claim against Target and Homes England in court.

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.

I've considered Mr and Mrs T's response very carefully, but I won't be answering each of the points raised. Although I've read and considered everything, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome. This service is impartial between, and independent from, consumers and businesses. What this means is that we don't represent either party, and I don't act under either's instructions or take directions on how a complaint will be looked at.

For that reason, my decision won't just be addressing the January 2021 call, as that complaint can't be decided without also deciding the context around it; that is, what the redemption process actually is. I'll explain why.

Mr and Mrs T said that the outcome they wanted for this complaint is for Target to cover their solicitor's fees, but I could only award that in compensation if I was to decide that those fees weren't fairly charged. I couldn't award that in compensation just for Mr and Mrs T being told in error in a call that they wouldn't need a solicitor. That's because this is what we call a misrepresentation; that is, Target gave incorrect information to Mr and Mrs T about the need for a solicitor.

When we're looking at complaints about misrepresentation we consider the appropriate remedy is to place the consumer in the position they would be in if the incorrect information hadn't been given. We don't put them in the position they would be in if the misinformation had been correct (that is, a solicitor wouldn't be needed). Mr and Mrs T are already back in the position they would have been in had they been told in the call that a solicitor would be needed, as that information was later correctly given to them. They could never have been in the position where they could redeem their shared equity loan without instructing – and paying for – a solicitor.

I apologise for the misunderstanding in my provisional decision about which clause is valid, however that doesn't change what I said immediately before and after that paragraph:

- *"I acknowledge that the 'Equity Mortgage – Help to Buy' document doesn't say that a solicitor would be needed to redeem the loan upon the sale of the property, but equally it doesn't specifically say a solicitor won't be needed either."*
- *"That said, neither clause states a solicitor is not required, just that the Borrower will be paying the funds – which they would be whether that is direct or via a solicitor."*

It may be Mr and Mrs T didn't expect to have to instruct a solicitor, but that doesn't mean their expectation was correct. The process has always been (since before Mr and Mrs T took out their shared equity loan) that a solicitor was needed to redeem the loan irrespective of whether that was upon the sale of the property, or by other means. That is the case for all HTB shared equity loan customers, as it is part of the underlying process for redemption. As there's nothing in the agreement that specifically says a solicitor wouldn't be required, then it wouldn't be reasonable for me to say that Target didn't comply with the agreement.

The Financial Ombudsman Service is an informal alternative to the courts. It may be the courts would look at this matter differently, but we're not bound by what a court may - or may not - do. If Mr and Mrs T feel their claim has merit, then they can test that in court if they wish. However, I would urge them to get good independent legal advice first.

We're not the regulator, and I've no power under our terms of reference to comment on, or otherwise determine, how financial businesses operate in general terms. I have to consider this complaint by reference to this particular situation. When I do that, I'm satisfied Target didn't treat Mr and Mrs T unfairly. There's nothing in any of the paperwork that says a

solicitor wouldn't be needed and all HTB shared equity loan customers have to instruct a solicitor to redeem the loan, so it didn't treat Mr and Mrs T any differently to all those other customers.

Mr and Mrs T don't have to accept my conclusions, and if they don't, then neither they nor Target will be bound by my final decision. Subject to any time limits or other restrictions a court might impose, Mr and Mrs T's right to take legal action against Target over the subject matter of this complaint won't have been prejudiced by our consideration of it.

My final decision

I uphold this complaint in part, but only insofar as I order Target Servicing Limited to pay £100 compensation to Mr and Mrs T in recognition of the misinformation they were given in the January 2021 phone call. I don't uphold any other part of this complaint or make any further order or award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 23 February 2023.

Julia Meadows

Ombudsman