

The complaint

Mr F complains that Target Servicing Limited wouldn't allow him to redeem his help to buy shared equity loan.

What happened

Mr F bought a property with the assistance of the help to buy scheme. This is a government scheme whereby a purchaser takes a shared equity loan to assist with the purchase of a property, alongside their main mortgage. The loan is for a share of the purchase price and in due course the same equity share must be repaid. The loan is secured by way of a second charge which sits behind the main mortgage. These are unregulated loans and the lender – Homes England, a government body – is not a regulated firm. But the lender has appointed Target to administer the loans. Target is a regulated entity and is carrying on a regulated activity in administering this loan. So Target is responsible for answering this complaint.

Mr F took his loan out in 2017, borrowing around £180,000 – which was 40% of the purchase price of his property. He also took a mortgage of around £245,000, paying the balance of the purchase price as a cash deposit. The property is a flat in a larger block.

Help to buy loans are interest free for the first five years. This means Mr F has been required to pay monthly interest since 2022.

In 2020, Mr F decided that he wanted to redeem his help to buy loan. He contacted Target, and Target sent him its customer information pack setting out the redemption process. It told him he would need to instruct a valuer to value the property, and the valuation would be used to set the redemption price. As he'd borrowed 40% of the purchase price, Mr F would need to pay 40% of the valuation to redeem his loan.

A valuation was carried out in June 2020. The valuer identified that there was a risk that the block's external walls might have combustible cladding. Buildings where there's a fire safety concern with the external walls – such as combustible cladding – can be assessed by a qualified fire safety professional who prepares an EWS1 form, rating the risk the building presents.

The valuer said that an EWS1 form had not yet been prepared for Mr F's block, and in the absence of the EWS1, the valuer was unable to value the property – but that it would be worth £475,000 if the EWS1 was positive.

Mr F sent the valuation to Target. He also completed the relevant forms and paid the administration fee.

Target told Mr F the valuation and his redemption request was under review. But the redemption didn't go ahead. In August 2020, Target told Mr F that the lender would instruct its own surveyor to value the property. Target says the surveying firm, which I'll call S, was actually instructed in November 2020, but it didn't actually visit Mr F's property or carry out a valuation, so in July 2021 Target instead asked Mr F's original valuer to complete a new declaration and update the valuation. Target says it's not responsible for the delay in this

period – the surveying firm is.

Mr F's valuer declined to sign the declaration and provide an updated valuation, saying that it wasn't able to comply with the requirements in the declaration and didn't think them appropriate. So no updated valuation was carried out.

Target then suggested that Mr F apply to the President of the Royal Institute of Chartered Surveyors (RICS) to appoint a valuer to value his property. But it then said this was not an appropriate way forward either. It said Mr F would need to provide a current valuation, either from his previous valuer or a new one, before his redemption request could proceed.

Meanwhile, an EWS1 form was completed in February 2021. It rated the block Mr F's property was part of as B2 – meaning that there are combustible materials in the external wall and the risk is such that remedial work is required.

Mr F complained that Target hadn't accepted his valuation in 2020 or allowed him to redeem. He complained about delays and poor communication since then. And he doesn't think that it's fair to expect him to pay for a new valuation or charge him interest on the loan. He got a mortgage offer to borrow the extra money needed to redeem his loan in 2022, but the redemption didn't go through. It's likely that a future mortgage offer will be at a higher interest rate.

Target accepted that there had been some delay and poor communication, though it said that some of that was because of delays by S, for which it wasn't responsible. It agreed with our investigator's suggestion that it offer £500 compensation. But it didn't agree it was responsible for Mr F being unable to redeem his loan or that it should compensate him for what might be higher interest rates on his mortgage borrowing if he borrows more money to do so.

My provisional decision

I issued a provisional decision setting out how I thought this complaint should be resolved. I said:

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.

Under 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 F was told to deal with Target at all times 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 F is 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 – 40% 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 F followed the appropriate process for redeeming his loan, by notifying Target and then – at Target's request – obtaining an independent valuation of his property. He then sent the valuation to Target.

However, the difficulty in this case was that the valuer was unable to value the property. The valuer said:

Attention needs to be drawn to the current issues regarding cladding on the building. We have been advised that [redacted] who are the original builders will be issuing the EWS1 form between 8th July 2020 and 30th September 2020. In the absence of the Form EWS1: External Wall fire Review, we can only issue a Nil valuation regarding the property.

A nil valuation does not mean the property is worthless – that it is worth £0. What it means is that the valuer cannot give an accurate valuation because of important information affecting the value which is not available – in this case an EWS1.

This means that the valuer was unable to value Mr F's property. He did say that without cladding issues, or with a satisfactory EWS1, it would be worth £475,000. But as it wasn't known if that was the case, he couldn't give an accurate value.

In fact, the EWS1 was only prepared in February 2021. And it gave a B2 rating – meaning that there was substantial risk requiring remediation. In August 2022, Mr F told our investigator that the developer had accepted responsibility for the costs of remediation of the cladding, but that leaseholders would have to contribute the costs of balcony remediation.

Neither set of works had started, and no dates had been agreed. None of this was known at the time of the valuation.

I don't think this valuation could have been used by Target to set a redemption figure. It didn't determine the market value of the property – it said what the value might be if there were no problems (which turned out not to be the case), but said without knowing that no value could be given. And in the absence of a valuation setting the current market value, there was no way of setting the redemption figure in line with the loan terms and conditions.

And in any case, even if Target could have set a redemption figure, I don't think it's more likely than not that Mr F would have been able to redeem his loan in 2020. He's provided us with a copy of his bank statements from the time, which show that he had around £32,000 in savings. But it's likely he would have needed much more than this to redeem – although there wasn't a valuation, he had borrowed £180,000 in 2017.

This means Mr F would have been dependent on raising the funds to redeem his help to buy loan by borrowing more money on his main mortgage. He's shown us that his mortgage lender was willing to offer him a further £184,000 in 2022. But that doesn't mean he'd have

been able to borrow this amount in 2020.

I'm aware from my knowledge of the wider mortgage market that at this time it was very difficult to raise mortgages on properties like this. Lenders were very cautious about whether properties with potential cladding risk were acceptable security. Mr F's building had concerns – but no EWS1 had yet been completed. His valuer for help to buy redemption was unable to value the property. And it's likely that a valuer for mortgage lending purposes would have reached the same conclusion, meaning his mortgage lender would likely not have agreed to further borrowing secured on it. I'm not persuaded that it's more likely than not that his lender would have been willing to have lent him a further £180,000 – on top of his existing mortgage – in 2020.

By 2022, things had moved on. Mr F's building had an EWS1, and had a remediation plan in place. The wider mortgage market had moved on too. And so I don't think the fact that Mr F's lender was willing to offer additional borrowing in 2022 means that it's more likely than not that it would have done so in 2020.

I've looked at the records of Mr F's contacts with Target throughout this period, from 2020 to 2022.

In 2020, when Mr F sent in his valuation, Target merely told him it was under review. It didn't give him any substantive updates for some time. In August it told him a new valuation would be arranged – which in fact never took place.

By mid-2021, when it was clear S would not be valuing the property, Target asked Mr F to get his valuer to sign a new declaration and provide an updated valuation. The valuer signed the declaration in September 2021, but in November 2021 told Mr F it wasn't willing to provide an updated valuation because it didn't think it could meet Target's requirements to take into account information about the remediation and the potential liabilities of leaseholders in its valuation.

Throughout this time, there were significant delays, and times when Target failed to communicate with Mr F or progress things in a timely way.

I've thought about the impact of this on Mr F and his attempts to redeem the loan. But while I've no doubt it was a frustrating and upsetting experience, I'm not persuaded that Target is ultimately responsible for Mr F being unable to redeem his loan.

I've said that the valuation he obtained in 2020 didn't in fact give a value for the property. Mr F obtained an update from his valuer in September 2020, but that update simply reiterated the previous valuation. And by November 2021, the valuer was no longer willing to act.

I've also found that even if the property's market value had been set, Mr F wouldn't have been able to redeem his loan at this time because he didn't have the funds to do so in place and likely wouldn't have been able to borrow them from his mortgage lender. It wasn't until around May 2022 that Mr F had the funds in place to be able to redeem his loan via an offer of further borrowing from his mortgage lender.

And so even if Target had not delayed, and had made clear to Mr F sooner than it did that he would need a new valuation setting the market value of his property, I'm not persuaded Mr F would have been able to redeem his loan. For that to happen, he needed both a valuation and to have the funds in place – and he did not have the funds in place. I therefore don't think I can fairly find that Target is responsible for Mr F not being able to redeem his loan.

Once Mr F did have the funds in place, from May 2022, a new valuation would be needed to set the market value of the property, and therefore the redemption price. Target did tell Mr F he needed a new valuation, and suggested contacting RICS to find a valuer able to value the property. Mr F didn't want to pay a fee to RICS on the basis that he'd already paid for a valuation, in 2020 – but, as I've said, that valuation wasn't enough to redeem because it didn't set a value for the property. So a new valuation was needed at this time.

Although Target did delay matters, and didn't communicate well at times, it's not responsible for Mr F not having a valid valuation in place, or for him not having funds to redeem in place before 2022. And therefore I don't think I can fairly hold Target responsible for Mr F not being able to redeem in 2020, or once he had the further borrowing offer from his lender – and I can't fairly hold it responsible if any future borrowing application Mr F makes, once there is a valuation in place, is at a higher interest rate.

Putting things right

I have much sympathy for Mr F and the position he finds himself in. He bought this property in good faith in 2017, before there was wide understanding of the risks associated with cladding and other fire safety matters. Through no fault of his own, he's ended up in an affected property with all the worry and uncertainty that brings. It's a very difficult situation for him.

But just as this couldn't have been known to him when he bought the property, it couldn't have been known to Target or the lender either. Target isn't responsible for his predicament, and I don't think it can fairly be expected to waive the requirement for a valuation – or stop charging contractual interest in the meantime.

In order to redeem his loan, Mr F will need to obtain an up to date valuation and send that to Target, which will use the valuation to set a redemption price. For all the reasons I've given, I don't think I can fairly hold Target responsible for the fact that Mr F has not so far been able to redeem. But I do think its delays in responding to him and explaining what was happening, and poor communication, caused him substantial further worry. And I'm satisfied £500 is fair compensation for that.

The responses to my provisional decision

Target did not reply to my provisional decision. Mr F replied, and set out why he didn't agree with what I'd said. Mr F said:

- He didn't think the compensation I proposed was enough – he said it was “symbolic” and wouldn't deter Target from acting the same way in the future. It amounted to only 51p per day of delay. And in the meantime Mr F has had to pay £1,700 interest on his help to buy loan.
- My provisional decision does not resolve his situation. It does not ensure that his redemption can be completed in a timely fashion.
- He does not agree that it's unlikely his lender would have been willing to lend the additional amount required. He said I have no evidence for saying that. His salary was stable throughout and so he would have been able to demonstrate affordability. His wife had received a decision in principle for a similar amount in 2020. His lender had told him that it didn't require an EWS1 for “existing liabilities”. In any case, Target had never asked him to secure funds, so he doesn't understand why I raised this issue now. He would never have applied for a mortgage offer until Target told him what he needed to pay to redeem the loan. He has never had a mortgage application

rejected, and there's no reason to suppose one would have been rejected in this case.

- He said that to fairly resolve the complaint, Target should accept the valuation of £475,000, allow him to redeem the loan without further costs, and refund all the interest he's been charged in the meantime.

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'm sorry Mr F is unhappy with my provisional decision. I can see he is in a frustrating and difficult situation, and I understand that he wants matters resolved so he can repay his help to buy loan.

I've thought very carefully about everything he's said. But I'm afraid I haven't changed my mind about what I think is the fair way to resolve this complaint.

As I said in my provisional decision, I don't think the valuation was one that could be relied on to set the redemption price. It didn't set out a firm and final value for the property – it said what the property might be worth if there were no issues with its construction, but as that wasn't known a firm value couldn't be given. That's why the valuer gave a "nil valuation" – reflecting that uncertainty.

As a redemption depends on a firm valuation of the property, therefore, I think there were reasonable grounds for Target not taking forward the redemption request at that time.

And in any case, I don't think Mr F would have been able to redeem the loan at this time even if there had been a firm valuation, or if Target had been willing to proceed on the basis of the possible £475,000 valuation.

That's because there was, at that time, material uncertainty about the condition of the building. There was no EWS1. When an EWS1 was carried out later, it rated the property as B2 – meaning that there were significant defects with the external walls which required remediation.

Target may not have asked Mr F for proof of funds at the time. But the reason I raised this as an issue is because if Target had issued a redemption figure Mr F would have needed to find the money to repay the loan. It's clear that he didn't have sufficient funds himself to do that, and needed to borrow the necessary amount by extending his existing mortgage.

That means it's highly relevant whether he would have been able to get further borrowing on his mortgage or not. If he could have done, he was in a position to pay off the loan once Target accepted a valuation and issued a redemption figure. But if he couldn't get further borrowing on his mortgage, it doesn't matter what Target did or didn't do – Mr F was not in a position to repay the loan without that further borrowing.

I have no reason to doubt that if he'd applied for a mortgage in 2020 Mr F would have passed affordability, just as he did when he actually applied in 2022. But that's not the issue here.

As well as the mortgage being affordable, a lender has to be satisfied that the property is good security for the loan. That means that before it would agree to lend, a lender would carry out a valuation of the property (instructing a surveyor to do so on its behalf) – and

would only agree to lend if the surveyor said that the property was good security for the increased borrowing amount, and if the property met the lender's lending criteria.

I know from other complaints and my wider knowledge of the mortgage market that at this time both a lender and a surveyor carrying out a valuation for a lender would have wanted to know about the cladding risk on Mr F's property. They'd have wanted to see an EWS1 form. And in the absence of one I think it's unlikely – based on my knowledge of how the mortgage industry operated at this time – that the lender would have been willing to lend on this property in 2020.

Mr F says his lender told him it wouldn't need to see an EWS1 for "existing liabilities". And that may well be the case for making a change to an existing mortgage – such as a rate switch. But I don't think that would have been the case for either a new mortgage, or for substantial further borrowing on an existing mortgage.

And I don't think Mr F's wife having obtained a decision in principle affects my conclusion here either. As I say, this isn't related to affordability – it's about the property the further borrowing would be secured on. I haven't seen the decision in principle and don't know if it related to the same property. And in any case, a decision in principle is the first stage of a mortgage application process. It's an initial check of the maximum a lender might be willing to lend based on the applicant's finances – but doesn't involve any checks of the property, and happens before a valuation takes place. So this isn't evidence that Mr F's lender would have been willing to lend an additional £180,000 secured on this property in 2020.

Putting things right

For all those reasons I remain of the view that even if the valuation had given a clear and firm final value, and even if Target had accepted that and set a redemption figure, Mr F would never have been able to repay the help to buy loan in 2020. He was dependent on further mortgage borrowing to do so, and I don't think that borrowing would have been available to him at the time.

It follows from that that I don't think I can fairly require Target to allow him to redeem based on that valuation, or compensate Mr F as if the redemption had happened in 2020.

By 2022, Mr F was able to fund a redemption – he's shown that his mortgage lender was willing to offer further borrowing at this point. That may be because, by then, there was a remediation plan in place. But redemption would still require a valuation to take place. I don't think it's fair to require Target to rely on the 2020 valuation – since it wasn't a firm valuation of the property, and in any case it expired before Mr F was in a position to raise the funds he needed to repay Target. A new valuation would need to take place for Mr F to redeem the help to buy loan. Target told Mr F that in 2022, and it remains open to him to restart the redemption process and obtain a new valuation.

I don't think it would be fair to require Target to refund the interest charged, either. Interest is properly chargeable under the terms and conditions until the loan is repaid. Mr F wasn't in a position to redeem the loan before 2022, when he was able to arrange a mortgage. So it wouldn't be fair to refund interest before that point. And in 2022 Target told Mr F he would need to obtain a new valuation and it would then restart the redemption process – which I think was fair.

However, I do think that Target's communication with Mr F throughout this period was poor. There were long delays and a lack of updates, and this contributed to the overall worry and upset Mr F experienced. I think £500 is fair compensation. I've taken into account what Mr F says about this. I note he's calculated this represents 51p per day. But that's not how our

compensation awards work – there's no daily rate, and in any case Target is (for the reasons I've explained above) not responsible for the fact that Mr F's loan has not been redeemed yet. Nor are our awards designed to be punitive or act as a deterrent. Rather, they are designed to reflect the impact on the complainant flowing from where the firm went wrong. Applying that approach, and looking at things in the round, I think £500 is fair compensation.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct Target Servicing Limited to pay Mr F £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 27 March 2023.

Simon Pugh
Ombudsman