

The complaint

Mr V complains that Target Servicing Limited delayed the redemption of his help to buy shared equity loan, which meant he had to pay more to repay the loan.

What happened

Mr V bought his property with the assistance of a help to buy loan. Help to buy loans are a government scheme to support home ownership, where a borrower borrows an additional sum alongside their main mortgage to fund the purchase of the property. Help to buy loans are shared equity loans – which means the borrower borrows a percentage of the property's value, and must pay back the same percentage based on the value at redemption.

Help to buy loans are unregulated, and are lent by a government body – Homes England – which is not a regulated firm. However, the lender has appointed a regulated firm, Target, to administer the loans on its behalf. Target is a regulated firm carrying out a regulated activity, so is responsible for answering this complaint.

Mr V decided to redeem his help to buy loan and contacted Target. On 21 May 2021, Target referred Mr V to its redemption information pack, and following this Mr V instructed a surveyor to value the property. The valuation was carried out on 17 June. Mr V paid the administration fee on 23 June and sent the valuation to Target.

On 30 June 2021, Target told Mr V that it couldn't progress his loan redemption because the valuation said the property had fallen in value since Mr V purchased it, so the valuation would need to be sent "for review".

Mr V was unhappy about this, and complained. He said that a neighbour with a flat in the same block also had a help to buy loan and had been able to redeem with no problems. So Mr V didn't understand why there was an issue with his redemption.

At the end of July 2021, Target asked the valuer for further information, because the property valuation was based on comparable sales that were almost a year old. The valuer replied that there were no more recent comparable sales.

At the end of August 2021, Target told Mr V that the valuer would need to explain why the property had fallen in value. And it said Mr V would need to provide an EWS1 form before the valuation could be considered. An EWS1 form is a document produced by a qualified fire safety professional reporting on the state of a property's external wall system, and is often produced where there are concerns that a building might have, for example, combustible cladding on its walls.

Mr V said that there was no EWS1 form for his property – one wasn't necessary, because the block his flat was in was only four storeys high and did not have any cladding on its external walls.

In October 2021 Mr V provided a further valuation, and this time the valuation was accepted. Mr V redeemed his mortgage in November 2021.

Mr V complained about delays in progressing his redemption. He said that he'd had to pay a higher amount to redeem because the second valuation was higher than the first. He also said that because of the delay, he ended up having to pay more on his main mortgage because he couldn't take a new interest rate in the meantime. And he said that the delay also meant that he couldn't purchase a buy to let property – which he wanted to fund by raising money by re-mortgaging this property.

Target said that the first valuation said there was a concern with the property and a need for an EWS1, so it was reasonable to ask to see the EWS1 before agreeing the valuation. It also said that the valuation wasn't clear about what defects there might be with the property, or the impact that might have on the value. It also said that because the property was potentially affected by cladding, Mr V should have agreed the valuer with Target before going ahead.

My provisional decision

I issued a provisional decision in which 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 V was told to deal with Target at all times and Target was presented as being responsible for the management and administration of their 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 V 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 his 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. Where the property is being sold, the redemption figure will be based on the higher of the valuation or the sale price; otherwise, on the 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.

Target produces a customer information pack for redemption requests. Although it

hasn't given us a copy of the pack provided to Mr V, I've seen it in other cases and I'm aware of its content. It confirms that redemption applications are to be made to Target. It sets out the contractual process I've described above. And it says that where a borrower wants to redeem, they should instruct a surveyor to value the property, but says that where there are "novel issues... eg external cladding, we reserve the right, in accordance with the terms of the equity loan, to agree the RICS valuer you intend to use, with you, before you instruct them".

Therefore, a valuation is required to determine the market value of the property, and in turn the redemption figure. The valuation of a properly appointed valuer is binding. A valuer should be appointed by agreement between the parties. But in practice, Target tells borrowers to instruct a valuer of their choice – which, in my view, means that the appointed valuer is appointed by agreement.

When Mr V rang Target in May 2021 to enquire about redemption, it pointed him to the information pack on its website. Target hasn't give us the recording of this call, but there's nothing in its notes to suggest that it told Mr V that he needed to get agreement to a valuer in advance. I have listened to the call recording of 23 June 2021, in which Mr V asks to be reminded of the process, and there is no mention in that call that Target wishes to agree a valuer in advance – Mr V was simply told he needed to obtain a valuation. Although this is after the first valuer reported, it's nevertheless supporting evidence that this was Target's approach at the time.

The information pack does say that Target reserves the right to agree a valuer in advance where there may be cladding affecting the property. But this adds nothing to the contractual position which says a valuer is to be agreed between the parties. And while it may have reserved that right, it did not exercise it in this case. In my view, by referring Mr V to the information pack and telling him to instruct a valuer of his choice, Target agreed to Mr V's choice – and therefore that valuer was the agreed valuer whose valuation was binding. If Target wanted to agree a specific valuer, or restrict Mr V's choice, it should have made that clear in advance.

I don't think it makes any difference that both valuers suggested that there may be cladding issues with the property. Nothing in the contract gives Target, acting fairly on the lender's behalf, the right to refuse to accept an agreed valuation merely because there may be cladding on the property. If the presence of cladding meant that Target wanted to agree a specific valuer in advance, it should have done so in advance. It could have made enquiries before telling Mr V to go ahead and instruct a valuer, but it didn't do so.

I don't therefore agree with Target that simply because there was potentially cladding on the property, it was reasonable to "review" the valuation or delay redemption of the loan.

Target also said that it needed to review the valuation because it said that the property was worth less than the original purchase price. But again, there's nothing in the contract that allows a valuation to be queried, reviewed or rejected because the property value has reduced rather than increased. Once an agreed valuer has set the market value, redemption should follow. It's for the valuer to determine the market price, not Target.

However, I do think that there is force in the other argument that Target makes – that the first valuation Mr V obtained, in June 2021, was not clear and didn't set a definitive valuation.

I've looked carefully at this valuation. Although the valuer gives a value of £220,000, in the commentary he says that there are concerns with the external wall system, that an EWS1 should be obtained and reviewed and that costs associated with remediation works could affect the value of the property. The valuer says that the valuation has been withheld as a result.

I think it was reasonable for Target to be concerned about this. While the valuer did give a value, he appears to have qualified it and said that there were concerns, which he had not resolved, which could affect the valuation. An EWS1 was needed but hadn't been seen, and its contents might affect the value given. Further enquiries were needed to resolve this.

Getting a valuation ahead of a redemption is not just a technicality. Because this is a shared equity loan, the valuation determines the amount to be repaid – it sets the amount Target is entitled to collect on behalf of the lender. And while it's fair and reasonable that Mr V doesn't pay more than the property is worth, it's also fair and reasonable that Target collects a redemption amount based on a clear and accurate valuation. Any inaccuracies or uncertainties in the valuation can therefore have significant consequences.

I've said that the loan terms and conditions say that once a valuer is appointed by agreement and sets the market value, that's binding on both parties and should be used to set the loan redemption. However, having carefully considered the first valuation in this case, I think it was sufficiently unclear that it was fair and reasonable for Target to be concerned about whether it had in fact set a definite market value for determining the redemption figure.

In those circumstances, I don't think it was unreasonable that Target didn't immediately accept the valuation. It was fair that it wanted further clarity before doing so – so that Mr V's redemption could be based on a fair and final valuation of the property.

By October 2021 the valuation issue still hadn't been resolved. Target hadn't been clear with Mr V that the specific problems I've set out above existed. While it did ask the valuer for further information, it did so in a piecemeal fashion and didn't ask for specific clarification of the commentary I've referred to above.

This could have been resolved more quickly and more clearly. I don't think it needed to take several months to seek clarification, and I don't think it was done in a clear and helpful way likely to resolve the problems.

In the end, Mr V instructed a new valuation from a different valuer, which reported in October 2021. Target accepted this valuation – of £240,000 – and used it to set a redemption figure. The loan was paid back in November 2021.

The first valuation was for £220,000, the second for £240,000. This means that, using the second valuation, Mr V was charged a redemption figure £4,000 higher than it would have been based on the first valuation.

I don't think it would be fair and reasonable to say Target ought to have accepted the first valuation, though, for the reasons I've given above. And therefore it follows that it wasn't unfair that it didn't set the redemption figure using that valuation.

The second valuation gave a firm value, and the associated commentary explained how it had taken into account the potential cladding issues. I'm therefore satisfied

that it was fair and reasonable for Target to use this valuation, rather than the first one, to redeem the loan.

I also think it's unlikely that the property increased in value by 10% in four months. Valuing a property is not an exact science, and there's a margin of error. Given what I've said about the commentary in the first valuation, I think it's likely that the difference between the two valuations is due to a difference of opinion and approach between the two valuers, rather than an increase in value because of the delay. If that's right, and the second valuation represents an accurate valuation, then while Mr V has paid more to redeem, that's because his property is worth more. So the £4,000 difference doesn't necessarily represent a financial loss in any case.

For all those reasons, I don't think Target needs to refund the £4,000 difference in the redemption figures.

However, I do think Target should compensate Mr V for the poor service and communication, and the delay, in resolving this issue. I think £300 is fair in all the circumstances.

Finally, Mr V has said that he had to pay higher mortgage costs because of the delay. But I'm not persuaded of that. From the evidence he's given us, his mortgage payments didn't increase until February 2022, so I think there was still time between the redemption in November 2021 and February 2022 for him to re-mortgage. And I don't think I can fairly say that Target ought to compensate him for the loss of a buy to let property either. Mr V has given us evidence that he was viewing potential properties. But he hadn't found one, or had an offer accepted. And even if he had, there's no guarantee a sale would have gone through – and no evidence of what losses, if any, resulted from it not happening. I'm not persuaded there's enough for me to say that Mr V suffered any direct financial loss here, or if he did that it's possible to quantify it. I don't therefore intend to make an award for that.

The responses to my provisional decision

Target had no further comment to make. Mr V wasn't happy with my provisional decision. He said:

- He was disappointed and angered by my conclusions. He believes that Target is at fault, and its failings have caused financial loss and substantial emotional upset to him and his family.
- The first valuation was done in June 2021 and should have been binding and used to produce a redemption figure. Even if it wasn't happy with the valuation, Target should have responded more quickly. Its failure to do so delayed the redemption and meant Mr V kept the loan for longer than he needed to, paying more interest. Mr V had the money to redeem his loan and it's not fair that it took so long for him to be able to do so.
- Mr V had spent many hours on the phone trying to get answers from Target over several months. As he could only speak to Target during working hours, he had to work extra hours in the evenings and at weekends to make up the time. He doesn't think £300 is fair compensation for the impact of this.
- A neighbour had a valuation from the same firm that produced the first valuation, and which included the same wording. Yet Target accepted that valuation and allowed the neighbour to redeem their loan. Mr V believes he's been discriminated against

because Target wouldn't accept his valuation.

- At the time of the first valuation, the UK housing market was shut down by coronavirus lockdowns. After they were lifted, the market substantially increased. So in those circumstances it's plausible that Mr V's property value did increase by 10% over a few months. If Target had acted promptly, Mr V could have arranged a second valuation more quickly and settled the loan based on a lower redemption figure.
- The sum total of everything that has gone wrong has not only caused Mr V £4,000 in financial loss, it has caused considerable emotional distress to Mr V and his family for which he should be properly compensated.

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 V wasn't happy with my provisional decision. I've very carefully considered what he has to say, and reflected on my conclusions. But, having done so, I'm afraid I haven't changed my mind.

I'm afraid I'm not persuaded that Mr V's property valuation increased by 10% in four months. It's not the case that the property market was shut down because of lockdowns in 2021; the housing market was suspended in March 2020, but that was lifted in May 2020. Mr V's right that after this there was a general increase in property prices – due to factors such as suppressed demand, the stamp duty holiday, and so on. But this general increase didn't play out in all sectors or all locations – and was not the equivalent of 30% annual inflation, particularly for properties with potential cladding issues.

For those reasons, I still think it's likely that the difference between the two valuations was because of the variation resulting from a process reliant on professional opinion rather than an exact precisely knowable figure. The courts have said that a margin of error in a property valuation is to be expected. And I also bear in mind that the first valuation was qualified and not definitive. I don't think there's persuasive evidence that Mr V's property increased in value between the two valuations; rather, I think that Mr V's property value was actually somewhere around the figures both surveyors provided. And that given the issues with the first valuation, it was reasonable for Target to proceed to redemption based on the second valuation.

I'm not aware of what happened in the other case Mr V mentions, and I haven't seen the valuation produced for that case. I can't comment on that case – but it is for me to determine whether Target acted fairly and reasonably in respect of Mr V's case. And for the reasons I've already explained, I think it was fair that Target didn't accept the first valuation and instead relied on the second valuation. I've seen no evidence that this resulted from discrimination against Mr V; I'm satisfied it was because of reasonable concerns about the content of the first valuation.

Putting things right

I do agree that having to deal with Target over this period was difficult, time-consuming and frustrating. Target could have communicated better with Mr V – it was unable to give him meaningful updates when he did contact it, for example. But taking a step back and looking at things overall, I don't think in this case the delay was clearly excessive. A valuation is valid for three months, extendable to four, and redemption can take place at any time within that window. Mr V's first valuation was obtained in June and the loan was redeemed in

November, five months later, just outside the maximum permitted window for a redemption under the terms and conditions. I don't think it would be fair to ask Target to refund interest Mr V paid in this period – even if nothing had gone wrong with the first valuation, it might still have taken a few months for the loan to be redeemed during which time interest would be payable.

I've also taken into account what Mr V has said about the impact on him of having to deal with Target over this period. I accept that was difficult and frustrating and had an impact on him – and that in turn affected other matters, such as his work and time with his family. Some of that time would have needed to have been spent anyway, though Target made it more protracted and frustrating than it needed to be. I'm satisfied that £300 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 to pay Mr V £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 13 April 2023.

Simon Pugh
Ombudsman