

## **The complaint**

Mr J and Miss R have complained to Target Servicing Limited that their Help to Buy (“HTB”) shared equity loan wasn’t redeemed which meant the charge remained secured on the property despite them having sold it.

Mr J and Miss R are represented in this matter by the firm of solicitors that was involved in the sale of their property. Any reference to Mr J and Miss R in this decision should be taken to mean their representative where appropriate. For ease I’ll refer to the firm of solicitors as “the solicitor” and that should be taken to mean either the firm, or the individual dealing with matters as appropriate.

## **The HTB scheme**

The HTB scheme was a government scheme in place to support home ownership. In addition to the usual mortgage from a regular lender, a borrower took a shared equity loan funded by the government to reduce the amount of cash deposit that would be otherwise required. HTB shared equity loans are secured by way of a second charge over the property, ranking behind the main mortgage.

Mr J and Miss R’s property was in England, and they took the shared equity loan out with Homes England, which was formally known as the Homes and Communities Agency. Homes England isn’t regulated by the Financial Conduct Authority (FCA) but it appointed Target to administer the loan on its behalf. Target is regulated by the FCA.

The rules which set out the complaints our service can consider are found in the Dispute Resolution (DISP) section in the FCA’s handbook. DISP 2.3 says that our service can consider a complaint if it relates to an act or omission by a firm carrying on a regulated activity.

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 sets out the list of regulated activities referred to in DISP. Among the regulated activities listed is debt administration and debt collection.

Having considered the activities that Target was carrying out in relation to Mr J and Miss R’s agreement, I’m satisfied that the event complained about is an activity that forms part of administering the loan or collecting payments, and therefore is a matter we can consider against Target.

## **What happened**

Mr J and Miss R had separated and were selling their jointly owned property that they’d bought through the Help to Buy scheme in 2014.

On 27 September 2019 Target sent a redemption quotation and legal pack to the solicitor.

On 10 October Miss R and the solicitor both contacted Target to say that the sale wouldn't be completing on 18 October as planned, and to ask what would happen about the valuation as it was due to expire on 19 October.

The solicitor was told a desktop valuation would be required, and that was provided to Target on 25 October. Target issued an updated redemption quotation to both Mr J and Miss R and the solicitor.

In November the property was sold, and the solicitor sent funds to Target to redeem the shared equity loan, but these were returned on 13 January 2020 as the solicitor hadn't completed the correct steps for redemption.

On 16 January Mr J called to say he kept getting phone calls and was querying why. Target explained the account was in arrears because the solicitor hadn't completed the process correctly and so the funds had been returned. Mr J said he would contact the solicitor and let them know.

Target called on 7 May and 8 June about the arrears, and again explained that the account hadn't been redeemed and the funds had been returned to the solicitor.

On 8 June the solicitor called Target as Mr J had been in touch with them to say the loan hadn't been redeemed. Target explained it didn't receive the letter of undertaking ("LOU") and therefore it didn't issue the authority to complete ("ATC") document back in November 2019. Target said it would need the LOU form filled in and a completion statement. The person calling from the solicitor said she'd never had to complete a LOU before, and she didn't understand what she needed to do. Target said it would send the legal pack again with the LOU for completion. It said once it had that it would issue an ATC, and then the solicitor could transfer the funds.

The solicitor called Target again on 18 June saying they didn't understand why the funds had been returned back in January. They said the staff member concerned had left and they were trying to resolve things. Target said it needed the LOU, with the solicitor again asking what that is. Target said it had sent the legal pack out again on 8 June but hadn't received anything back. The solicitor said they would try to get the LOU sent over that afternoon, and Target provided an email address for it to be sent to. Target also confirmed the level of arrears on the account.

On 5 August the solicitor called Target and was again told why the funds had been returned, and what process needed to be followed. The solicitor said they'd been out of conveyancing for a while and was just helping out, and queried whether the LOU was a normal procedure and whether a law firm would know to do it. Target confirmed that had always been the process to redeem HTB shared equity loans. The person calling from the solicitor asked how they'd know what needs to be in the LOU and whether there was a template to work from. Target said the template for the LOU was included in the legal pack that was sent with the redemption quotation. Target also said that a new valuation and new administration fee would be needed. It was agreed that a desktop valuation could be used, rather than a physical valuation. Finally Target said the solicitor authority form would expire the following month, and a new one would need to be provided, a copy of which could be found on its website.

The solicitor called Target again on 12 August to confirm which form they needed to complete. They asked if there was a word version of the LOU form (rather than the PDF which was part of the legal pack) as the person calling didn't have time to copy it into a word document themselves. Target explained that it didn't want the form at that time as it needed

the updated valuation report first, and then it would respond with a fresh pack enclosing the relevant forms and paperwork.

On 17 August an email was sent to Mr J setting out what needed to be done, including the need for an updated valuation report. The solicitor was also told about this requirement.

On 23 September Target called Miss R to try to discuss the situation, but she wouldn't complete the security checks as she said she no longer had a HTB loan so the call couldn't be undertaken. Target then spoke to Mr J and he was told the loan still hadn't been repaid and the valuation had expired. He said he'd been told by the solicitor that they would sort it out and that they would cover the arrears due to the issues. He said he'd contact the solicitor and would call Target back in a few days.

The solicitor emailed Target on 23 September about the valuation report, explaining the original staff member (that had dealt with matters in 2019) had left which is why it hadn't been followed up sooner, and they wanted to get things resolved. The solicitor enclosed a copy of the desktop valuation report dated 19 October 2019, a mortgage redemption statement from November 2019, and a LOU that was incorrectly completed as it had the date of completion as 20 November 2019 rather than the date the solicitor was now proposing to repay the HTB loan.

On 14 October the solicitor called Target. Target said it couldn't discuss anything with the solicitor because the solicitor authority form had run out over a month earlier. The person calling from the solicitor said it was ridiculous because Target was harassing the clients and the solicitor was trying to resolve things. They asked what needed to be done now, and Target said the clients needed to complete a new solicitor authority form. To help resolve matters, Target agreed – just for the purposes of that call – to use the out-of-date solicitor authority form so it could discuss the account. The solicitor admitted the staff member who dealt with things originally had got things wrong, which is why the redemption had failed. The solicitor said they hadn't had a response to their email of 23 September about the valuation report. Target checked on what was happening and said the desktop valuation report that had been provided hadn't been signed. The solicitor checked their copy and agreed that it hadn't been signed, so said they would get the surveyor to sign it. Target said it would then send the desktop valuation to Homes England to see if it would accept it, but Homes England might insist on a full valuation due to the time that had passed since the last one had been carried out.

The solicitor provided the signed desktop valuation to Target on 16 October, and Target sent it to Homes England. Homes England approved the valuation on 20 October, so Target emailed Mr J to ask for the information it needed from him (an updated solicitor authority form as the previous one had expired, and the administration fee).

On 4 November the solicitor called Target. It was confirmed that Homes England had agreed to the desktop valuation and so matters could proceed. The person calling from the solicitor said they didn't know the process as the colleague that dealt with these redemptions wasn't there at that time. Target emailed the new redemption quotation and legal pack directly to the solicitor that was dealing with this whilst on the phone. The solicitor asked if completion was possible for 6 November and was told it was. The Target staff member said they needed the LOU, and that she could prepare the ATC so it was ready to be issued once the LOU was received from the solicitor. She said - if completion was to be on the 6th – Target needed the LOU, which she explained was appendix 1, to be filled in and sent back on the 5th and for the solicitor to phone in once they had emailed the LOU over so it could be picked up and dealt with.

The solicitor sent the funds to Target on 5 November, again without completing the required stages of providing a correctly completed LOU and receiving the ATC before the funds were paid. This meant there was a shortfall in the funds, with the solicitor sending £33,492.20 whereas the amount needed to redeem the loan was £33,676.24 (as shown by the retrospective ATC that was issued on 19 November for 6 November).

On 12 November the solicitor phoned Target. She said she had been sent the pack again on 4 November, asking her to complete appendix 1, which she felt was nonsense. She said she had sent an email with the memorandum of sale, the DS1 form and completion statement. She said because the figures were wrong she included what she thought were the right figures in the email, and she sent the funds over on 5 November but hadn't heard anything back. Target said it had sent the redemption quotation on 4 November, which the solicitor said she hadn't received although she said she had received something else that day (which from her description sounds like it was the redemption quotation). There was a discussion about the figures, and Target said it still hadn't received the LOU. The solicitor said that had been sent a long time ago, way back when the property was sold. The solicitor sent the LOU over whilst they were on the phone, but it sounds like it had been completed incorrectly as it had the date of completion as 20 November 2019, rather than 6 December 2020.

Target said it needed a correct up-to-date LOU, once it received that it could issue the ATC, and then once that was sent to the solicitor then the solicitor could send the funds to Target. The solicitor sent the updated LOU to Target – for a completion date of 13 November – whilst they were on the phone, but unfortunately it couldn't be processed because the valuation had expired on 6 November. It was agreed that the solicitor would send a further LOU for a completion date of 6 November, and then Target would refer that onwards within the business. The solicitor said they'd been told on 4 November 2020 just to send the funds over. They also said it is only now a year down the line from the property sale in November 2019, that they'd been told the process hadn't been completed correctly back then.

On 19 November Target issued the ATC to the solicitor. It was for a completion date of 6 November 2020 and said the total due was £33,676.24.

On 23 November the funds that had been sent on 5 November were returned to the solicitor.

On 1 December the solicitor phoned Target. They were told there was no valid solicitor authority form on file as it had expired so nothing could be discussed about the account. The solicitor wanted details of the complaints procedure, and it then raised a complaint with Target by email on 27 January 2021. In the meantime Mr J had called again on 16 January and was told the account was in arrears due to the failed redemption. He said he'd contact the solicitor to discuss it. Miss R also called on 19 January but didn't complete security.

Target issued a letter to the solicitor on 22 March, not upholding the main thrust of the complaint, although it said it should have emailed the solicitor (rather than just speaking to Mr J) when the funds were returned the first time. In that letter Target set out again the process that needed to be followed for the loan to be redeemed:

*“On both occasions, an Authority to Complete had not been produced so funds should not have been sent. As you sent the funds before the Authority to Compete [sic] had been produced, the amount you sent was incorrect as you did not have the final redemption sum required.*

*To complete redemption, you need to send us all the required documentation so we can then produce an initial Redemption Quotation. This is not the final sum that needs to be paid, so you should not be sending us funds following this letter. Once we have sent the Redemption Quotation, you need to complete the Letter of Undertaking with a completion*

*date in the future. From this, an Authority to Complete will be produced that will have the final sum payable for redemption and provide confirmation of what date to send the funds. If this process is not followed the funds will be rejected and returned.*

*To progress with the redemption of this account, please call our customer services team to find what documentation is now required. Please complete the process in the correct order so that the redemption can be processed promptly.”*

In June 2021 the solicitor said they hadn't received the complaint response letter, so a copy was emailed to them.

One of our investigators looked at the complaint and felt it should be upheld in part. They said Target should have contacted the solicitor directly when the loan couldn't be redeemed in November 2019, and had that happened then the process could have been completed at that time. They said, to put things right, Target should pay £500 compensation, and the arrears on the loan should be written off. They also said Target should contact the solicitor directly to discuss redeeming the loan.

Target didn't agree. It said it was willing to pay £250 compensation, but the delay was because the solicitor didn't follow the correct procedure, and still hasn't.

I asked our investigator to contact the solicitor to find out the current status of the account and we were told it still hasn't been redeemed as Target is insisting on completing the ATC step of the process, but the solicitor has said Target had previously said it would waive that.

I issued a provisional decision earlier this month, the findings of which said:

*“Target sent a booklet entitled “Redemption Information for Legal Representatives” with the redemption quotation in September 2019. That set out the steps that needed to be completed by the solicitor. That said:*

- *“You must provide a Legal Undertaking to Target by email at least 15 working Days prior to the expected completion date of the transaction.”*
- *“Within five working days of receipt of the legal undertaking referred to in paragraph 4.1 above [...] Target will issue an Authority to Complete confirming that the transaction can complete.”*
- *“On receipt, the redemption monies will be validated against the figures stated on the Authority to Complete (ATC). If the amount received corresponds with the ATC, Target will in the case of: [...] Full Redemption, issue a notice to Land Registry to release Homes England's charge and confirm the same to the Borrower's legal representative”*

*The pack included a copy of the LOU that needed to be completed, and that said:*

*“We hereby undertake to Target Servicing Limited and to Homes England as follows: [...]*

*4. Not to complete the Disposal until this firm is in receipt of an Authority to Complete”*

*The covering letter giving the redemption quotation figure also said that an ATC must have been issued by Target. And further information about the process was provided in a separate letter and booklet that was sent to Mr J and Miss R, with a link to the customer information booklet included in the details provided to the solicitor.*

*The solicitor received the redemption quotation and legal pack but didn't send the LOU to Target or receive the ATC back, instead just sending the funds across on the day the property was sold. It doesn't seem to be in dispute that the solicitor got things wrong in November 2019. The solicitor admitted as much in phone calls with Target in 2020, accepting that they hadn't followed the correct process to redeem the HTB loan, which led to the funds being returned and the loan continuing to run despite the fact the security property had been sold.*

*Target has said that it should have contacted the solicitor directly to let them know it had returned the funds in January 2020, and I agree. But I don't agree this case turns on that to the extent our investigator thought. I'll explain.*

*Mr J and Miss R were Target's customers, and Mr J was told by Target on 16 January that the loan redemption had failed. He said he'd speak to the solicitor, and Target had no reason to believe that wouldn't happen - so the customers were notified that completion hadn't happened. In addition, the funds would have been returned to the solicitor's client account and under the Solicitors Regulation Authority's account rules, at least every five weeks a reconciliation should be carried out of the funds in the account. This means by mid-February, at the latest, the solicitor should have been aware the funds had been returned.*

*There were calls from the solicitor in June and August, and in those Target explained that completion had failed because the correct process hadn't been followed. It also explained what needed to be done to redeem the HTB loan.*

*Unfortunately, the desktop valuation provided by the solicitor dated 6 August wasn't signed by the surveyor; it wasn't acceptable until it had been signed and it appears Target received the signed version in October. By then the solicitor authority form had expired, something the solicitor had been warned about in August 2020 when they were told it would be expiring the following month. The solicitor was told that would be required and that it could be downloaded from Target's website. Despite that a new solicitor authority form wasn't provided. Although it didn't have an updated form, Target agreed to speak to the solicitor on a couple of occasions as it was keen to move things forward, but that was just a gesture to try to help, it wasn't an agreement that the requirement for a current solicitor authority form would be waived.*

*A further completion was attempted in November 2020 but again the correct process wasn't followed, and insufficient funds were sent by the solicitor. In the call of 4 November the solicitor was told that it needed to provide the LOU on 5 November and then phone Target once they had emailed the form over. That way Target could pick it up and issue the ATC the same day which would allow the funds to be paid on 6 November. But the solicitor didn't follow that process and instead just sent funds on 5 November, and those were around £185 short.*

*The solicitor sent the funds to Target on 5 November without completing the required stages of providing a LOU and receiving the ATC document before the funds are paid. This meant there was a shortfall in the funds, with the solicitor sending £33,492.20 whereas the amount needed to redeem the loan was £33,676.24 (as shown by the retrospective ATC that was issued on 19 November for 6 November). Because the process hadn't been correctly followed the funds bounced back again on 23 November 2020.*

*We recently asked the solicitor what the status of the account is and were told it still hasn't been redeemed. The solicitor has said that's because Target is insisting on issuing an ATC, but I can't see why that has been a barrier to this matter being settled over the last two years as that is a normal part of the process that is needed to redeem a HTB loan. It is*

*unusual here in that the property was sold over three years ago, but Target agreed to accept a desktop valuation to move things forward as Mr J and Miss R no longer have access to the property.*

*Having considered everything I'm satisfied Target issued the paperwork to the solicitor on more than one occasion setting out what needed to be done and explained this in the various phone calls. It has been consistent in its communications with the solicitor since June 2020 that completion failed because the correct process hadn't been followed, and what the process is. Until that process is correctly followed this loan won't be redeemed.*

*I agree Target should have contacted the solicitor in January 2020, but for the reasons given I don't think that would have changed anything bearing in mind Mr J – Target's customer - was aware, the solicitor should have noticed they had received the funds back, and despite being told on many occasions since June 2020 what they needed to do, the process still hasn't been completed correctly.*

*I also agree Target didn't always respond promptly to emails from the solicitor, but equally the solicitor could have phoned Target, and the process is clear and just needed to be followed in the right order. I'm satisfied there were some small delays caused by Target but when considered as part of the wider picture covering over three years, they were fairly minimal.*

*Target offered £250 in response to our investigator's view, but I feel £300 compensation is more appropriate to take everything into account.*

*However, the most important thing now is to get this resolved for Mr J and Miss R. To do so, Target should:*

- Allow matters to progress using the August 2020 desktop valuation report rather than needing a further valuation report to be obtained.*
- Allow the £200 administration fee and the arrears balance to be paid as part of the redemption funds.*

*Mr J and Miss R need to instruct the solicitor to follow the process in the correct order allowing sufficient time for each stage to be completed. The solicitor can find the process in the legal pack that is issued with the redemption quotation, or in the customer information pack which can be found at:*

*[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/848009/RFI2519 - Annex B.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/848009/RFI2519_-_Annex_B.pdf)*

*Mr J and Miss R will need to arrange with the solicitor to sign a new solicitor authority form and instruct the solicitor to provide it to Target. This can be found at the above link and is entitled 'Form A - Loan Redemption Form with House Sale'.*

Once that form has been provided to Target the process will be:

- Target will issue the redemption quotation letter to the solicitor and Mr J and Miss R.
- At least 15 working days prior to the expected completion date (by that we mean the date the solicitor will send the funds to Target to redeem the HTB loan), the solicitor must provide a LOU to Target by email. The date given as the completion date on that document should be the date the funds are going to be sent to Target (not the date the property was sold). The template for the LOU can be found in the legal pack that was provided to the solicitor with the redemption quotation.
- Once Target has received the LOU from the solicitor it will issue the ATC document. That will contain the exact sum that needs to be paid (the redemption quotation is only an estimate).
- Only once the solicitor has received the ATC should the funds be sent to Target, and the exact amount quoted on the ATC should be sent on the right day.

*I've no reason to believe that if those steps are correctly followed in the right order then this loan won't be redeemed and then the charge can be removed from the property. If anything goes wrong with that process then that is a new complaint that can be made at the time by Mr J and Miss R, but I've no reason to believe that will be the case.*

*This was a joint loan so my award of compensation would normally also be joint. But as Mr J and Miss R have separated that wouldn't be appropriate in this case. I ask Mr J and Miss R, in their response to this provisional decision, to both individually confirm how that money should be split. In the absence of an agreement being received then it will be split £150 each."*

Target didn't make any further submissions. Miss R and the solicitor both responded.

Miss R said that she was disappointed the amount of compensation that our investigator had recommended had been reduced. She said she had over three years' worth of harassment, which caused her a lot of stress and upset.

The solicitor didn't raise any new points that go to the heart of whether or not this complaint should be upheld. I won't repeat everything the solicitor said in its response, but some of the broad points were, in summary:

- They didn't receive any correspondence from Target when the funds were returned the first time, and they are perplexed as to why Target persisted in contacting Mr J and Miss R rather than them.
- A team manager at Target confirmed he would amend the system at its end so the redemption could be completed in late 2020. It didn't happen and the solicitor was unable to speak to that person again.
- The email from Target on 4 November didn't request a new LOU as the redemption quote had already been provided.
- They don't think that if they submit the LOU with the 2020 desktop valuation that Target's systems will let the process complete unless the member of staff dealing with it has knowledge of the case and what needs to be done.

## What I've decided – and why

I've carefully considered everything the solicitor has said but no new material information or evidence has been provided that I hadn't already considered when reaching my provisional findings.

I acknowledged in my provisional findings that Target should have notified the solicitor that the funds had been returned originally, but I also explained why I didn't think that altered the overall outcome of this complaint. For completeness I'll quote here what I said:

*“Mr J and Miss R were Target's customers, and Mr J was told by Target on 16 January that the loan redemption had failed. He said he'd speak to the solicitor, and Target had no reason to believe that wouldn't happen - so the customers were notified that completion hadn't happened. In addition, the funds would have been returned to the solicitor's client account and under the Solicitors Regulation Authority's account rules, at least every five weeks a reconciliation should be carried out of the funds in the account. This means by mid-February, at the latest, the solicitor should have been aware the funds had been returned.*

*There were calls from the solicitor in June and August, and in those Target explained that completion had failed because the correct process hadn't been followed. It also explained what needed to be done to redeem the HTB loan.”*

So even though Target didn't notify the solicitor, it did tell its customer – Mr J – and the solicitor ought to have been aware the funds had been returned to their client account.

Even if the team manager did say he would amend the system, the fact remains that when that didn't happen there were no barriers to the solicitor completing the process correctly. There were also no barriers to the solicitor completing the process correctly before then. I understand there were issues with valuation expiry dates, but again none of those were due to mistakes by Target.

The solicitor has said that the email of 4 November 2020 didn't *“request a new LOU as they had already provided the redemption quote to us.”* But the LOU comes *after* the redemption quote in the process, not before, and that is clearly covered in the various legal packs that were issued to the solicitor over the process (and was covered in my provisional decision).

It was also clearly covered in the phone call of 4 November with the call handler saying they needed the LOU from the solicitor, and once she had that she could produce the ATC. The Target call handler also clearly said that if completion was to be on 6 November then the solicitor needed to email the LOU over on 5 November and that the solicitor also needed to phone Target as soon as it had been emailed so the ATC could be produced and sent to the solicitor. Because that phone call wasn't made, the ATC wasn't produced and sent over, and the solicitor paid the wrong amount, causing the redemption to fail.

Whilst I understand the solicitor says they spent many hours on the phone, and the calls were difficult, I've listened to the calls and Target gave correct information as did the legal packs. Had that process been followed as set out I've no reason to believe redemption wouldn't have happened.

The solicitor has said that they don't think that if they submit the LOU with the 2020 desktop valuation that Target's systems will let the process complete unless the member of staff dealing with it has knowledge of the case and what needs to be done. I've no reason to believe that would be the case, but as a way to ensure the background is clear I would

suggest that the solicitor also provides a copy of this decision – along with Mr J and Miss R’s acceptance (as this decision is only binding if accepted) - with the paperwork.

In terms of Miss R’s point about the amount of compensation being reduced, I’m sorry to see the impact this has had on her over the years, that can’t have been easy. Unfortunately, as I explained in my provisional decision, I can only award compensation for things I’m satisfied that Target did wrong. The reason there were so many calls, and it has taken so long, is that the correct redemption process hasn’t been followed.

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having done so - and having considered the full file afresh including what Miss R and the solicitor said in response to my provisional decision - I see no reason to depart from my provisional findings.

### **My final decision**

I uphold this complaint in part and order Target Servicing Limited to:

- Pay £300 compensation. We didn’t receive confirmation from Mr J and Miss R how this should be paid so, as I set out in my provisional decision, this should be split £150 each.
- Allow matters to progress using the August 2020 desktop valuation report rather than needing a further valuation report to be obtained.
- Allow the £200 administration fee and the arrears balance to be paid as part of the redemption funds.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr J and Miss R to accept or reject my decision before 24 April 2023.

Julia Meadows

**Ombudsman**