DRN-4133154

The complaint

Mr and Mrs N complain about how Target Servicing Limited has administered their HomeBuy Direct shared equity loan, leading to problems when they wanted to redeem.

What happened

Mr and Mrs N have a HomeBuy Direct loan, taken out in 2009. HomeBuy Direct loans are a form of shared equity loan, part of a government programme to support home ownership. It was a predecessor scheme to the help to buy scheme. In addition to their main mortgage, the borrower borrows a portion of the property's purchase price. And when the loan is repaid, they must pay back the same percentage of the property's then value as they originally borrowed. The repayment sum is determined by an independent valuation at the time of a redemption request. And while the loan remains outstanding it is interest free for the first five years – but interest is charged from year six onwards.

HomeBuy Direct loans are not regulated products, and the lender – Homes England, a government body – is not a regulated firm. But the lender has appointed Target to manage the loans on its behalf. Target is a regulated firm, and is carrying on the regulated activity of debt administration. Target is therefore responsible for answering this complaint.

Mr and Mrs N decided to redeem their loan and contacted Target. They obtained a valuation for their property and asked Target for a redemption statement. They say Target told them their loan was in arrears because they hadn't been paying the interest and the arrears would need to be cleared first.

Target agreed that the arrears could be included in the redemption amount. Mr and Mrs N say they were unaware of any arrears and complain that Target wrongly accused them of letting out their property. But in fact, the arrears had arisen because Target had been writing to the wrong address, and as a result Mr and Mrs N say weren't aware they needed to make payment. Mr and Mrs N therefore want Target to write off the arrears.

Mr and Mrs N complain that Target was writing to the wrong address, that it wouldn't agree to write the arrears off, that it didn't respond promptly to them, and that as a result their valuation expired.

Target agreed it had been writing to the wrong address. It offered £75 compensation, but didn't agree to write off the arrears. And it didn't think it had failed to respond promptly to Mr and Mrs N.

Our investigator said that the confusion with the address dated from before Target's involvement, and Target wrote to the address it had been given when it took over administration of the loan. She said that interest was payable under the terms of the agreement, and Mr and Mrs N would have known they were liable to pay interest, but they hadn't contacted Target or the lender either. So she didn't think it would be fair to write off the arrears. But she said Target ought to have agreed to include the arrears in the redemption sum and issued a redemption statement so Mr and Mrs N could apply to their mortgage lender. She said it should pay them £550 compensation.

Target didn't respond to the investigator's view. Mr and Mrs N didn't agree with the investigator. They said the correct address was in place from when the loan completed in 2009. So Target should have been using the correct address all along. And they said they'd had to pay more interest in the meantime because they'd been unable to redeem their loan. They'd also not been able to take a new fixed interest rate with their mortgage lender.

As no agreement could be reached, the case comes to me for a final decision to be made.

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.

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. Mr and Mrs N have been told to deal with Target at all times since it took over administration of their loan.

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.

We've asked Target to provide a copy of the loan terms and conditions. It hasn't done so – the terms and conditions it has provided relate to the later help to buy scheme, in place from 2014, not the earlier HomeBuy Direct scheme Mr and Mrs N are part of.

However, I don't think it's in dispute that interest is payable from five years after the loan is taken out. And it's not in dispute that a valuation is required for redemption – with the valuation expiring if the loan is not redeemed within three months. So in the rest of this decision I'll proceed on that basis.

Mr and Mrs N bought their property in 2009. It was a new build at the time, and they say that the local authority only confirmed the final postal address after the property was completed, and after they had started the loan application process. Their property is on a corner plot, and it was initially intended its address would be on street B, but ended up on street C. By the time their purchase was completed, that was confirmed, and street C is the address Mr and Mrs N have always used.

However, it seems Mr and Mrs N's account was set up with their address being recorded as street B. It's unfortunate that the wrong address was recorded on Mr and Mrs N's account. That's not something I can hold Target responsible for, since the address was wrongly recorded before Target was appointed to administer the loan, and it inherited the customer information it was given when it took over. To start with at least, Target had no reason to know the wrong address was recorded on Mr and Mrs N's account.

When it was appointed, Target noted that the account was in arrears. It wrote to Mr and Mrs N – at street B – but the mail was returned undelivered. According to its notes, it tried to trace Mr and Mrs N by looking them up in the phone book, but without success. It doesn't appear to have made any other efforts to trace them between 2017 when it took over and when the redemption request was submitted in 2021. Although Mr and Mrs N were in contact with Target in 2020, there's no note of an issue with the address – possibly because Mr and Mrs N were able to pass security with just their postcode.

When its letters were returned undelivered in 2017 and later, I think Target ought to have taken more steps to try and contact Mr and Mrs N. They had been living in the property throughout. As far as I can see from the contact notes, the only step Target took was to look them up in the local phonebook, without success. There are many other ways of tracing a customer it could have tried, but there's no evidence it did so. It just continued to send letters to the wrong address.

However, I don't think Mr and Mrs N were unaware of their obligations. It was made clear when the loan was taken out that interest was payable after five years, and they would have known they weren't making any payment.

I think Mr and Mrs N were aware of the loan agreement, and the need to make payments, even before the issue with the address came to light in 2021. I say that not just because of the information they were given when taking out the loan, but also because Mrs N contacted Target in June 2020 to explain that she'd been furloughed and to discuss the arrears on the account. At that time, Target had only been writing to the incorrect address and hadn't contacted Mr and Mrs N in any other way. So either Mr and Mrs N had been receiving at least some of Target's letters (possibly because they had been re-directed from street B, which was the next street), or they contacted Target because they were generally aware they should have been making payment. Either way, it doesn't seem Target's failure to trace the right address prevented Mr and Mrs N making contact in 2020, and so it's likely that wasn't the sole reason Mr and Mrs N didn't get in touch sooner.

I don't think it would be fair to write the arrears off or to direct Target not to collect the arrears. Interest is properly chargeable on Mr and Mrs N's loan. And while Target could have done more to trace them to their correct address, I'm not persuaded Mr and Mrs N were unaware they were incurring – but not paying – the interest. So I think it's reasonable that Target collects the outstanding interest when the loan is paid off.

In July 2021, after they'd obtained a valuation, Mr and Mrs N asked Target to add the remaining arrears to the redemption balance, but Target told them the arrears would need to be repaid before a redemption request could be processed. However, it then agreed it could consider adding the outstanding arrears to the redemption balance.

At this point, a further issue arose. Mr and Mrs N wanted a redemption statement they could show their mortgage adviser, as they'd been told their mortgage lender would want to see the redemption statement before agreeing to lend them further funds to repay the loan.

Target issued a redemption quotation showing the amount needed to redeem based on the loan balance. But it didn't include the outstanding arrears – and said it would only consider adding the outstanding arrears to the loan balance if Mr and Mrs N first provided a mortgage offer, showing they had the funds available to repay the loan.

If this was satisfactory, Target would then include the arrears in a separate document known as the authority to complete – which is sent to Mr and Mrs N's solicitor telling them how much is needed to be repaid to clear the loan balance.

Mr and Mrs N say this wasn't good enough, because they needed to show their mortgage lender evidence of the full amount – loan balance and arrears – before it would issue a mortgage offer. This left them in something of a catch-22; they couldn't get a mortgage offer without a notice from Target including the full redemption amount, and they couldn't get the notice without a mortgage offer.

In the circumstances, I think it would have been fair for Target to have issued confirmation of the full outstanding amount. Even if it wasn't willing to issue an authority to complete until it had seen a mortgage offer covering the full outstanding balance, it could – for example – have issued a redemption quotation for the repayment balance plus a letter showing the arrears. And Mr and Mrs N could then have shown these to their mortgage lender to confirm the full amount they needed to borrow.

However, I don't think this is what prevented Mr and Mrs N proceeding with their re-mortgage. Target issued the redemption quotation – without the arrears – on 20 July 2021. On 22 July, Mrs N complained about the outstanding arrears and said she expected them to be written off, not repaid, and had been advised that she was not liable for them.

I've already said that I don't think it's fair and reasonable to expect Target to write off the arrears. As Mr and Mrs N disputed this, and made clear they expected the arrears to be written off, I don't think Mr and Mrs N would have applied for a mortgage offer to borrow an amount including the arrears even if Target had included that amount in the redemption quotation – since they did not think they were liable for that amount. Rather, I think they would have continued to dispute whether they were liable to pay the arrears at all, as in fact they did do.

As a result, they may well still not have been in a position to complete on their new mortgage, or repay their help to buy loan, until the question of whether they were liable for the arrears had been resolved. And by that time, the valuation would have expired and Mr and Mrs N would need to obtain an updated one before they could redeem their loan. A valuation is only valid for three months.

Mr and Mrs N could also have paid or reduced the arrears – either in lump sums, or by increasing their monthly payments – since learning about them and before their redemption request. This would also have mitigated the problem at redemption.

Putting things right

I think it would have been fair and reasonable for Target to have given Mr and Mrs N complete information – either as part of, or alongside, the redemption quotation – of the total, including arrears, needed to redeem their loan. If Mr and Mrs N apply again to redeem their loan and there are still outstanding arrears, Target should give them full information about the total amount needing to be repaid, including any arrears.

But because I don't think it's more likely than not that the redemption would have gone through in any case, I don't think it would be fair to ask Target to repay the additional interest Mr and Mrs N have paid in the meantime.

While I can't hold Target responsible for causing the problem with their address – since that happened before Target's involvement – it should have resolved it sooner. I also think there is more it could have done to trace Mr and Mrs N's correct address, which might have contributed to the arrears not building up to the level they did. And it didn't give them complete information about what they'd need to pay, which made it more difficult for them to have applied for their re-mortgage. Taking all that into account, I agree with the investigator's recommendation that £550 compensation is fair to recognise the upset these failings caused

Mr and Mrs N.

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 and Mrs N £550 compensation (including the £75 it has previously offered); and
- Give Mr and Mrs N full information about the total amount needed to repay their loan, including any remaining arrears, should they make a further redemption request.

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

Simon Pugh
Ombudsman