DRN-4302762

Financial Ombudsman Service

The complaint

Mr H and Mr V complain that Target Servicing Limited delayed the redemption of their help to buy shared equity loan.

What happened

Mr H and Mr V bought their property with the aid of a help to buy loan. A help to buy loan is a shared equity loan offered as part of a government scheme. Rather than a fixed sum, the borrower borrows a percentage of the property's purchase price, and to redeem must repay the same percentage of the value at the time of redemption. Mr H and Mr V borrowed 40% of the purchase price, completing in May 2016.

Help to buy loans are not regulated, and the lender, a government agency, is not a regulated firm within the jurisdiction of the Financial Ombudsman Service. However, the lender has appointed Target to administer the loans on its behalf. In doing so, Target – which is a regulated firm – is carrying on a regulated activity. Target does fall within the jurisdiction of the Financial Ombudsman Service, and Target is responsible for this complaint.

Mr H and Mr V say they tried to redeem their loan in 2020 without success. They tried again in 2022. Target told them to appoint a surveyor to value the property to determine the redemption amount. The surveyor reported in February 2022, valuing the property at £465,000. The surveyor noted that the property was a flat in a block affected by potentially combustible cladding and while there was a remediation plan in place, work had not started. The valuer said that once works had completed the property could be worth £575,000.

Mr H and Mr V sent the report to Target. Target did not respond, and the redemption did not go ahead. Mr H and Mr V complained.

Target said Mr H and Mr V had made three complaints, and it had responded as follows:

- A final response dated 7 March 2022, apologising for incorrect information given about the instructions to the surveyor and offering compensation.

- A final response dated 20 June 2022, responding to a complaint about delays in allowing the redemption to go ahead and the charging of interest on the loan in the meantime.

Mr H and Mr V made a further complaint in September 2022, but Target had not issued a final response to this complaint – instead advising Mr H and Mr V that they could bring their complaint to the Financial Ombudsman Service in the absence of a response.

Meanwhile, Mr H and Mr V were finally able to redeem their loan in 2023. But they have paid interest in the meantime.

Our investigator said that we couldn't consider anything that had happened before 20 June 2022, as that part of the complaint was out of time – because Mr H and Mr V didn't refer the complaint to us within six months of that final response. But we could consider anything that had happened after that date. She thought that Target had unfairly delayed the redemption of the loan and said it should refund interest since 20 June 2022, and pay Mr H and Mr V £500 compensation.

Mr H and Mr V accepted that. As Target didn't reply, 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.

I've said that this is an unregulated loan, lent by an unregulated lender. But it is administered by Target – which is a regulated firm. In doing so Target is carrying on the regulated activity of debt administration, which means it performs the lender's duties, and exercises or enforces the lender's rights, as set out in the loan agreement. In doing so it must comply with the terms of the contract and act fairly and reasonably in all the circumstances.

Most relevant to this case, the loan agreement sets out the process for redemption. It says that to redeem their loan a borrower should apply to the lender (in practice, to Target acting on the lender's behalf). The parties then agree to appoint a valuer, whose valuation shall be final and used to set the redemption price. The lender's duty is then to redeem the loan in return for payment of the redemption sum.

In this case, the valuation was carried out – and sent to Target – in February 2022. Target took no action until May 2022 when it raised a query about the valuation, which Mr H and Mr V responded to. A further query was raised and responded to in early June. Target acknowledged receipt on 14 June 2022 and told Mr H and Mr V that their redemption request was "under review". They were told the same thing at regular intervals, with no meaningful update, until a redemption quote was finally produced in February 2023.

I cannot consider whether Target acted fairly in this earlier period, because it is covered by the final response Target issued on 20 June 2022 in response to Mr H and Mr V's earlier complaint. Our investigator said that everything up to that point was out of time because of the rule requiring complaints to be referred to us within six months of the date of a final response (unless there are exceptional circumstances). Mr H and Mr V accepted that there were no exceptional circumstances and so this part of their complaint was out of time, and for completeness I say that I also agree that I cannot consider it.

I'll therefore focus on the period from 21 June 2022 onwards. But while I can't consider a complaint about the fairness of things that happened before that, events during that time are nevertheless part of the factual background and are important context for what happened later, and so I can take them into account as part of determining the fairness of Target's actions from 21 June onwards.

Mr H and Mr V obtained a valuation in February 2022. They agreed this, and agreed the specific valuer, in advance with Target. That means the valuation is binding on all parties and should have been used to set the redemption sum.

In May 2022 Target queried the qualification of the valuer – it was entitled to do this, since it had made it a condition of agreeing to the valuer, before the valuation, that the report was signed by a valuer of a particular level of qualification or higher. However, the copy of the report Target has provided shows that it was – it was signed by two valuers, one of whom had the qualification level required. So it's not clear why it raised this query in May.

In June 2022, Target asked for more information about the cladding and the remediation plan for Mr H and Mr V's building. Under the loan terms and conditions, it wasn't entitled to request this or delay the redemption until it was received and considered. The terms and conditions prescribe the redemption process and say that an agreed valuation is final and binding – so Target should have allowed the redemption to proceed once that had happened.

Both of those requests pre-date 20 June 2022, as does the valuation itself. But it's important for me to consider all that to decide whether it was fair and reasonable that the redemption had not taken place by, and was further delayed after, 20 June 2022. Having carefully considered what the loan terms and conditions say, what the lender's obligations under the terms (which, as the regulated administrator, Target was required to perform) were, and what actually happened, I can see no good reason why Target did not allow the redemption to go ahead once it received the valuation.

The valuation was binding in setting the final redemption sum, and Target ought to have allowed redemption to proceed. There was no contractual power to delay it, refer it for further consideration, or keep it "under review" – putting it in terms of the regulated activity, the lender had no right to delay redemption and by purporting to exercise a right the lender did not actually have, Target was not acting fairly and reasonably in all the circumstances.

By the period I can consider, therefore, from 21 June 2022 onwards, the loan should already have been redeemed. It follows that the whole period after that point until the actual redemption in 2023 is, in my view, unreasonable delay.

Putting things right

Mr H and Mr V have shown that they had sufficient funds in savings to redeem the loan when they made the request in 2022, as in fact they later did in 2023. Therefore if Target had, acting fairly and reasonably, allowed the redemption to go ahead it follows that the interest and administration fees Mr H and Mr V paid after 20 June 2022 would not have been incurred and should be refunded to them.

I don't require Target to refund the cost of the original valuation or the redemption administration fee, since these would always have been payable on redemption – though any fees Mr H and Mr V had to pay for an updated or second valuation should be refunded.

There's no loss on the actual redemption payment, since the amount paid to redeem in 2023 was the same amount it would have been had redemption gone ahead in 2022.

Finally, the delay caused Mr H and Mr V substantial upset, worry and inconvenience. They had to find substantial interest payments each month that they wouldn't have had to find otherwise. They had to keep chasing Target for updates. And they were worried about their wider situation and the impact of the delay on their family life – in particular, because their property wasn't suitable for the family they hoped to have.

I don't think Target is directly responsible for this, since Mr H and Mr V couldn't sell the property and move to a more suitable one because of the cladding remediation rather than because of anything Target did. They repaid the help to buy loan from savings rather than the proceeds of sale. But the delay and lack of meaningful response, and the resulting worry about when and if they'd be able to redeem their loan even once remediation was complete added to the stress of the situation they found themselves in.

In recognition of the distress and inconvenience all this caused our investigator recommended compensation of £500. Mr H and Mr V accepted that, and I think it's a fair award 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:

- Refund all interest and monthly management fees charged on the help to buy loan after 20 June 2022, adding simple annual interest of 8%* running from the date Mr H and Mr V made each payment to the date of refund;

- If Mr H and Mr V had to pay additional or supplementary valuation fees to redeem in 2023, refund those costs adding simple annual interest of 8%* running from the date Mr H and Mr V made the payment to the date of refund;

- Pay Mr H and Mr V £500 compensation.

Target Servicing Limited should pay redress in full within 28 days of the date we notify it that Mr H and Mr V have accepted my final decision, if they choose to do so. If payment is not made within 28 days, interest on the financial loss elements of my award will continue to run until payment is made. And in that eventuality Target should also then add simple annual interest of 8%* running on the £500 compensation award, running from the date of my decision to the date payment is made.

* Target may deduct income tax from the 8% interest element of my award, as required by HMRC. But it should give Mr H and Mr V a tax deduction certificate, if they ask for one, so that they can reclaim the tax from HMRC if they are entitled to do so.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H and Mr V to accept or reject my decision before 19 February 2024.

Simon Pugh
Ombudsman