DRN-4303260

The complaint

Mr D complains that Target Servicing Limited caused unnecessary delays when he wanted to redeem his help to buy ("HTB") loan.

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 D's property was in England, and he 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 D'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 D bought his property in March 2017, borrowing £82,500 through the HTB scheme which was 30% of the £275,000 purchase price.

In 2022, Mr D notified Target of his intention to redeem, and Target told him to obtain a valuation to determine the value of the property and therefore the redemption amount.

After some trouble in finding a surveyor, Mr D obtained a valuation in August 2022. The valuation said the property was worth £160,000. It said that the building was affected by combustible cladding and this had been taken into account in setting the valuation.

Mr D provided all the information Target had requested (including the valuation with comparables) and Target's notes indicate it submitted it all to Homes England on 30 August.

Over the next month or so Mr D chased things with Target but was told the matter was under review and no timescale could be given.

In October 2022 Mr D raised a complaint. Once eight weeks had passed with no formal complaint response having been issued, Mr D referred his complaint to the Financial Ombudsman Service.

In January 2023 Target told us it was still waiting to hear from Homes England, and then in April 2023 Mr D told us he'd redeemed the HTB loan based on the £160,000 valuation figure, paying back £48,000.

In May 2023 our Investigator said she didn't think Target had treated Mr D fairly. She said Mr D had tried to redeem his loan and had met all the requirements to do so, so it wasn't fair Target hadn't allowed him to redeem. She said Target should refund the interest and management fees that Mr D had paid from October 2022 (plus 8% simple interest). She also said Target should refund any second valuation fee Mr D had paid due to the delay, and also pay £300 for the distress and inconvenience caused by the delay and poor communication.

Mr D accepted our Investigator's findings, including the redress she set out. Target acknowledged receipt of our Investigator's opinion and said it needed to seek guidance from Homes England on how it wished to proceed. Despite chasers from our Investigator no detailed response was received from Target. In the absence of a response from Target the case was passed to me to decide.

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.

Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

As I've explained in administering the loan on behalf of Homes England, Target is carrying out the regulated activities of debt administration and debt collection. In carrying out 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.

Under the loan terms and conditions, Mr D 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 – 30% 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 D followed the appropriate process for redeeming this loan, by notifying

Target and then – at Target's request – obtaining an independent valuation of the property. He then sent the valuation to Target.

The valuation said that the property's building was affected by cladding and the valuer took that into account in determining the valuation.

Target said the request was under review with Homes England and that no timescales could be given for that. But the terms and conditions of the loan agreement are clear. They say that a redemption request has to be followed by a valuation. The valuation is carried out by a valuer agreed between the parties, and their valuation is final. There's no provision for a valuation to be reviewed or challenged, or a redemption refused or delayed, following a properly completed valuation.

I think that Mr D did everything necessary to comply with his contractual obligations regarding the redemption of the loan. Target told him to appoint his own surveyor and he did so. That meant that surveyor's valuation was final and binding. Target raised concerns because there had been a drop in the value of the property, so they referred this to Homes England. But there is nothing in the terms and conditions that states this should happen.

It would have been open to Homes England to include a review mechanism in the terms and conditions had it wanted to do so – but there is no such mechanism. And in my view there are no grounds for Target, acting fairly and reasonably in its regulatory obligation to comply with the lender's contractual duties, to have delayed collecting the redemption payment from Mr D so that he could redeem his loan.

I'm satisfied from the evidence I've seen that Mr D had the funds available to redeem his loan at the time, and so it follows from that that had Target, acting fairly and reasonably, collected the redemption payment from Mr D and allowed him to redeem his loan, it would likely have been paid off by the end of September 2022.

Putting things right

In the absence of any arguments to the contrary from Target, I'm awarding redress on the same basis our Investigator set out. That is on the assumption that if the redemption had proceeded correctly from the valuation in August 2022, the redemption of the loan was likely to have happened by the end of September 2022.

That means it's not fair that Mr D should pay any interest or management fees since then. So Target should refund all interest and management fees paid from October 2022 until the date the loan was redeemed, adding simple annual interest of 8%* running from the date each payment was made to the date it is refunded.

It isn't clear if an additional valuation fee was incurred by Mr D (after the one he paid for the August 2022 valuation). If it was Target should refund that amount to Mr D, plus simple annual interest of 8%* from the date the valuation fee was paid to the date it is refunded.

The impact of the delay in not being able to redeem the loan and the poor communication from Target caused distress and inconvenience to Mr D over a number of months. It must have been incredibly frustrating for him. I do need to take into account that the loan is now redeemed, so the matter is resolved and this isn't still an ongoing problem. Having considered everything very carefully I agree with our Investigator that a payment of £300 is fair and reasonable in 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 as follows:

- Target should refund all interest and management fees paid by Mr D from 1 October 2022 to the date of redemption, adding simple annual interest of 8%* running from the date each payment was made to the date it is refunded.

- If an additional valuation fee was incurred by Mr D Target should refund that amount to him, plus simple annual interest of 8%* from the date the valuation fee was paid to the date it is refunded.

- Target should pay Mr D £300 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 November 2023.

Julia Meadows
Ombudsman