

The complaint

Mr and Mrs D complain that Target Servicing Limited delayed the redemption of their mortgage causing them to miss out on a fixed rate product they'd successfully applied for with another lender.

What happened

Mr and Mrs D took a mortgage in 2010 to buy their home. They bought their home using a 'help to buy' type scheme – meaning that the purchase was partly – 30% – funded by a shared equity loan lent by the Home and Communities Agency (HCA), which was subsequently replaced by Homes England (HE). This type of shared equity loan is not regulated, and the lender is not within our jurisdiction. But the lender has appointed a regulated firm, Target, to administer the loan on its behalf. In doing so, Target is carrying on a regulated activity, and Target is responsible for answering this complaint.

In October 2021 Mr and Mrs D wanted to remortgage to borrow enough to repay both their existing mortgage with their existing lender and the shared equity loan they owed to HE. They secured agreement from a new lender to borrow approximately £181,000, on a fixed interest rate of 1.14% for five years. The mortgage offer was valid for six months – until 13 April 2022.

In order to repay a shared equity loan it's necessary to obtain a valuation. That's because the lending is based on a share of the property's value – 30% in this case – rather than a fixed sum. And so a valuation is needed to determine the amount to be repaid.

In this case, it became apparent that a 'restriction' was present on deeds that remained from the time of the original sale to Mr and Mrs D. Target has described this as a charge owned by the developers who appear to have had a share of the equity in relation to the equity loan. I'll continue to refer to that as a 'restriction' as that is what Mr and Mrs D and their solicitors have called it.

Target's system notes say a valuation and solicitor's form was received on 19 October 2021 and it produced a redemption quotation on 30 October 2021. On 1 December 2021 Mr and Mrs D's solicitor wrote to Target asking it to remove the restriction.

There followed a series of incidents that led to Mr and Mrs D's initial complaint to Target. Their complaint points were as follows:

- They were misadvised about a letter of authority (required for Target to deal with Mr and Mrs D's solicitor) during a telephone conversation on 3 December 2021.
- They'd previously – in an email dated 16 December 2021 – expressed dissatisfaction about Target's inefficiency. That complaint hadn't been addressed by Target.
- Target hadn't returned a call having promised it would.

Those complaint points were upheld by Target in its final response letter dated 23 March 2022, in which it also apologized for taking longer than the regulatory time allowed

for such a response.

Mr and Mrs D also complained that:

- Target had lost the initial letter of authority they'd sent.
- Their solicitors had not received any telephone contact for Target's legal department.

Target didn't uphold those complaint points saying it hadn't lost the initial letter of authority, it simply wasn't acceptable – though Target acknowledged that was because of incorrect information it had given to Mr and Mrs D in that regard. Target also said it wasn't its policy to make telephone contact with consumers' solicitors.

Overall, Target offered Mr and Mrs D £50 in respect of the complaint points it did uphold. Dissatisfied with Target's response, Mr and Mrs D asked us to consider their complaint.

Since bringing their complaint to us, Mr and Mrs D's request to Target didn't progress the way they would have liked. My understanding is, to date the restriction has not been removed and so they've been unable to redeem their mortgage and equity loan with Target. That also means they lost out on the fixed rate they were offered with another lender. And, because they wanted to fix their rate for the major part of their mortgage, they did so with their existing lender and still owe 30% of the property value to HE.

Our investigator considered the matter as a whole. He found:

- Mr and Mrs D had acted in good time – allowing Target a full six months to remove the restriction.
- On 5 January 2022 HE informed Target the matter should be treated as a normal redemption application. Target's usual timescale for that process is four to six weeks.
- Target made an error on the legal charge – stating HE's address incorrectly. After that was returned to it by HE, it made another error – that time stating the name of the lender incorrectly – so HE returned the document again for correction.
- The amendments of the legal charge appear to have been unnecessary in any event because both parts of the mortgage were to be redeemed. HE had said the process was to be treated as a normal redemption and Mr and Mrs D's solicitors had also said the restriction shouldn't be an obstacle for the same reason, in its letter to HE on 1 December 2022.
- HE accepted that document on 15 March 2022. But there appears not to have been any progress made between then and 28 March 2022 when Mr and Mrs D chased Target. A need for an 'RX4' materialized at that time and that was sent to HE on 8 April 2022. But HE appears to have taken no action until 28 May 2022 – well after the date Mr and Mrs D's mortgage offer expired.
- The evidence provided shows that Mr and Mrs D and their solicitors instigated regular contact with Target and directly with HE in efforts to push the matter forward in time for them to complete on the mortgage deal they'd been offered.

Our investigator went on to recommend redress that would compensate Mr and Mrs D for:

- Additional interest they'll pay either by sticking with their current mortgage or by restarting the redemption process and applying for a new remortgage.
- The loss they'll suffer if they redeem the 30% portion and their property has increased in value.
- Any incidental costs that were not otherwise payable by Mr and Mrs D.
- £500 in respect of the distress and inconvenience caused.

Target didn't agree. It said it still hasn't received the correct documentation to proceed with the redemption. It said it advised Mr and Mrs D's solicitors on 17 January 2022 once the redemption of the loan is finalised, it would require 'DS1s' in respect of its charge and that of the developer. It says it produced its redemption quotation after it received the requirements for the redemption and has not received any communication since.

As Target did not agree with our investigator's opinion, Mr and Mrs D's complaint has been passed to me for a decision.

Following my initial consideration of Mr and Mrs D's complaint, I was minded to reach a slightly different outcome to that of our investigator. So, I wrote to both parties with a provisional decision to give them an opportunity to respond. In my provisional decision I said:

To decide Mr and Mrs D's complaint, I've thought about whether Target's delays caused them to miss out on the fixed rate remortgage deal they were offered in October 2021.

Having considered all the evidence available, I agree broadly with our investigator's assessment of events. It's clear to me that Target caused delays because of errors in the documentation it submitted to HE. But I think it still could have removed the restriction – if that was actually necessary – so that Mr and Mrs D could have redeemed both parts of their mortgage in time to get the remortgage deal they'd been offered by another lender. What is unclear from the evidence available – aside from whether the removal of the restriction was actually necessary – is what caused the delay during the apparent periods of inactivity by Target.

Target said it still hasn't received the correct documentation to proceed with the redemption. It said it advised Mr and Mrs D's solicitors on 17 January 2022 once the redemption of the loan is finalised, it would require 'DS1s'. Again, I don't think that statement is clear. It reads to me that form DS1 would be required after the redemption figure is paid – "once the redemption of the loan is finalised." So, I'm unsure why such a form would have delayed the remortgage. Target's records show that message was sent to Mr and Mrs D's solicitor on 17 January 2022, but it was worded no more clearly.

According to the UK Government website, form DS1 is for the "cancellation of entries relating to a registered charge." So, I think the form would be drafted in advance but required at the same time/date the redemption was due to happen. That appears to be a standard requirement, so I think it's likely Mr and Mrs D's solicitors would have known that.

However, Target's message to Mr and Mrs D's solicitors of 17 February 2022 says "Once the redemption of the loan is finalised, we will require a copy of..." – indicating that the form DS1 will be required at a non-specified date in the future. So, I don't think it's reasonable for Target to rely on that message as notification the form was required then and its absence the reason for the delay. It appears from other evidence available that – subsequent to that message – there was other documentation required – some that, as outlined above was unnecessarily delayed by Target – before the redemption could have been finalised and the DS1 become necessary.

Due to the apparent lack of action at a time when it appears that Target should have been liaising with HE to make progress, and due to Target's suggestion that Mr and Mrs D's solicitor was responsible for the failure of Mr and Mrs D's plan to remortgage, I asked Target to answer the following specific questions:

- *What specifically needed to happen for Mr and Mrs D to be able to redeem their mortgage with Target?*
- *In Target's opinion, what happened to prevent Mr and Mrs D from being in a position to remortgage before the expiry of their mortgage offer on 13 April 2022?*
- *Which (if any) of the issues preventing Mr and Mrs D from being in a position to remortgage does Target feel are directly attributable to delays/failures of Mr and Mrs D or their solicitor? And please provide evidence to support your answer.*

Rather than answering my questions, Target merely referred me back to previous correspondence – that referring to form DS1 I've considered above. So, I wrote again asking for specific answers to my questions. Target did not respond and the deadline I set for a response has passed.

My role is to make a decision on whether Target has failed to act in reasonable time with regard to the redemption of Mr and Mrs D's mortgages. I think that should include the clarity with which it has communicated to the relevant parties involved. As I've said, based on what I've seen, I agree with our investigator that it hasn't acted in reasonable time and that its delays have meant Mr and Mrs D were unable to proceed with the remortgage deal they were offered by another lender. And I think, based on the evidence available, it isn't reasonable to have expected Mr and Mrs D to have acted any differently in the circumstances. There is evidence of them chasing Target, reminding Target of timescales they needed to work towards and even involving their local MP to push Target to meet their deadline.

So, based on the evidence available, I uphold Mr and Mrs D's complaint about Target.

Putting things right

To establish what Target needs to do to put things right, I've compared Mr and Mrs D's relevant circumstances to where they would have been had Target administered their request to redeem their mortgage in reasonable time.

- *Mr and Mrs D would have a single mortgage loan equivalent to the amount remaining on the main part of the mortgage as at April 2022 and the value of the 30% share held by HE at that time.*
- *They would have made repayments on that mortgage every month from then at a fixed rate (for five years) of 1.14%, rather than the amounts they've been paying for their mortgage and shared equity loan since then.*
- *The amount they owed to HE would have been capped at 30% of the value of the property in April 2022, rather than 30% of the current or any future value.*
- *Any plans they had that they could only proceed with after their proposed remortgage – for example, Mr and Mrs D have mentioned having planning permission to extend the property – have been put on hold.*

There are a number of possible ways forward depending on what Mr and Mrs D choose or are able to do. I'll outline what I think are the most likely:

1. *They choose not to repay the equity loan in the foreseeable future.*
2. *They choose to remortgage to repay the equity loan.*
3. *They choose not to remortgage but repay the equity loan from another source.*

When Mr and Mrs D reply to this provisional decision, they should give me a firm idea of their intentions so that I can finalise redress in my final decision.

I then went on to outline the likely appropriate redress for each of the given scenarios.

Mr and Mrs D responded to say they would choose scenario two – to remortgage to repay the equity loan. But they said they'd like me to consider the increased cost of the building work they'd planned for their property and provided two estimates from a builder – one dated 30 November 2021 and one dated 10 November 2023.

To date, Target hasn't responded to my provisional decision despite me giving a deadline of 3 November 2023 for responses.

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 target hasn't responded to my provisional decision, and the point for my consideration raised by Mr and Mrs D only relates to how they should be compensated, I see no reason to change the actual outcome outlined in my provisional decision. So, I'll not do so.

However, I have given consideration to Mr and Mrs D's assertion that their building costs have increased since they first received an estimate from their builder, and that they should be compensated for that increase.

As I've said above, Mr and Mrs D have provided estimates from a builder – one dated 30 November 2021 and one dated 10 November 2023. While not identical in terms of items listed, I can see from them that the likely cost of their proposed building work has increased over the time that has elapsed.

We asked both parties to confirm whether Mr and Mrs D had informed Target of their plans for building work. Target did respond to that question – it said it had no record of being informed of Mr and Mrs D's proposed building work. Mr and Mrs D also said they had no record of informing Target of that.

In my provisional decision – where I outlined my proposed redress – I included an amount for distress and inconvenience. And I said that, when thinking about that amount, I'd taken into account plans Mr and Mrs D may have put on hold such as building work. Mr and Mrs D have now asked for the actual cost increase of the delayed work, which is different – and substantially greater. I understand their reasoning on that point. But, having thought about that carefully, I won't add that cost to the redress I've previously outlined. I'll explain why.

Both parties have confirmed that Mr and Mrs D didn't inform Target of their proposed building work. I'm not suggesting they had to do that to expect a reasonable level of service from Target. Instead, I'm saying Target couldn't reasonably have foreseen that the level of service it provided would have resulted in the loss relating to the delayed building work – because it had no knowledge of Mr and Mrs D's building plans.

In addition, while I don't distrust Mr and Mrs D's assertion of their building plans, I can't

conclude from what I've seen that the building work outlined in the builder's estimate dated 30 November 2021 was more likely than not to have commenced promptly on completion of the mortgage (if at all).

Putting things right

In the interests of fairness to both parties, I think the most appropriate way to resolve Mr and Mrs D's complaint – where they choose to remortgage to repay their equity loan – is as outlined below.

- Target should communicate clearly and proactively with Mr and Mrs D's solicitor about what action needs to be taken to allow Mr and Mrs D to redeem their loan with HE and remove the restriction.
- Target should arrange for the repayment of HE's part of the mortgage at a cost to Mr and Mrs D of 30% of the value of the property in April 2022, according to valuation reports submitted at that time. If the amount required to repay the lender is more than this, Target will need to make up the difference.
- Target should pay Mr and Mrs D:
 - the difference between the amount they would have paid on the mortgage they had arranged to take from April 2022 on the one hand, and the mortgage they've actually been paying plus interest charged on the shared equity loan on the other hand. This compensates them for the difference between the cost of having paid back the shared equity loan using a new mortgage at a lower interest rate, and the cost of retaining the shared equity loan and the old mortgage at a higher rate.
 - Once Mr and Mrs D remortgage and repay the shared equity loan, Target should calculate the extra amount they will repay on this new mortgage compared to the mortgage they should have had in April 2022 for the period between the start date of the new mortgage and the end of the initial interest rate on the April 2022 mortgage. It should pay that amount to Mr and Mrs D as a lump sum.

In this situation, I don't require Target to pay 8% compensatory interest on the past monthly losses, as the impact of being out of pocket for this amount is offset by the benefit of receiving future losses up front.

- Target should pay any redemption charge that may be payable under their current mortgage which Mr and Mrs D are required to pay to remortgage to raise funds to repay the shared equity loan.
- Target should pay any product fees or valuation fees Mr and Mrs D have paid or will pay in relation to their remortgage or redemption of the equity loan to the extent those fees are in addition to those they have already.
- Target should pay any reasonable costs charged by Mr and Mrs D's solicitor in showing and evidencing any of the costs claimed by Mr and Mrs D as outlined above and any other costs charged by their solicitor in relation to dealing with this matter that they'd not have been charged had the April 2022 mortgage deal completed.
- To any additional legal costs already incurred by Mr and Mrs D, Target should add 8% simple interest* from the date the cost was incurred to the date Target makes payment.

- Target should pay Mr and Mrs D £750 for the distress and inconvenience caused by its delay, including the inconvenience of not being able to proceed with plans to extend the property.

*Interest is at the rate of 8% a year simple. If Target considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr and Mrs D how much it's taken off. It should also give Mr and Mrs D a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is I uphold Mr and Mrs D's complaint about Target Servicing Limited and it should follow my instructions in the "Putting things right" section above, if Mr and Mrs D accept my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 14 December 2023.

Gavin Cook
Ombudsman