

## **The complaint**

Mr L and Miss L's complaint is about a 'Help-to-Buy' loan they had, and which was administered by Target Servicing Limited. They are unhappy about how Target handled their account when they were trying to pay it off, which caused them stress and anxiety. In addition, they have told us they were denied the ability to sell their home for the five years preceding its actual sale because Target would not allow them to do so. This resulted in financial difficulties, along with relationship and health issues. In addition, Mr L and Miss L are unhappy with the arrears balance they were asked to pay, as they are not sure the balance was correct and didn't think it was fair that Target had charged them so much interest.

## **What happened**

Mr L and Miss L took out a Help-to-Buy (HTB) loan in 2009 to assist them in purchasing their home. On the third anniversary of the loan advance, they were due to start making payments to the loan from the third anniversary of it starting. Mr L and Miss L started making payments at the beginning of 2012, but the last payment that year was made in November and no further payments were made until April 2017.

When Target took over administration of the loan in August 2016, the account was over £9,000 in arrears. Further periods of partial or no payments being made meant the arrears continued to increase. By the summer of 2022 when Mr L and Miss L were in the process of selling their home the amount of arrears was approaching £18,000.

In March 2017 Mr L asked Target about selling the property, but he was told that under the terms of the loan the arrears had to be cleared before a sale would be allowed. However, the lender changed its position on this issue the following year and from May 2018 arrears could be cleared as part of the redemption of the loan if the property was being sold. Mr L was told this on 30 April 2018. Subsequently, he mentioned selling the property on several occasions, and Target confirmed they could do so and pay the arrears as part of the loan redemption. It also advised Mr L and Miss L to take financial advice about what to do. In 2019 Mr L informed Target they could not sell the property until their credit files had improved.

At the beginning of May 2021 Mr L again called Target to discuss redeeming the loan. At this point Mr L suggested that they might re-mortgage the property to pay off the arrears and clear the loan. Target explained the lender's normal position was that if it was a re-mortgage, rather than a sale, the arrears needed to be paid off before the redemption of the loan would be approved. However, if Mr L wanted to re-mortgage and repay the arrears as part of that process, Target could refer the matter to the lender to see if it would be willing to allow it to happen.

Mr L was told that in order for the request to be considered, the lender would need to see what their financial situation was and so would require an income and expenditure form completed and some supporting evidence in the form of bank statements. Mr L said that he didn't want to complete an income and expenditure exercise and didn't want to send in bank statements. Although Mr L was not willing to provide the supporting information requested,

Target referred the matter to the lender to see if it would allow a re-mortgage to clear both the loan and the arrears. It doesn't appear that the lender responded to the request.

While Mr L mentioned waiting for this decision in August 2021, at which time he agreed to provide information about their financial situation, he and Miss L don't appear to have chased for a response to the enquiry after that time. They subsequently discussed the arrears with Target and started making payments toward them each month following Miss L returning to work in the autumn of 2021. By March 2022 Mr L and Miss L were again asking about repaying the loan because the property was being sold. No further mention of re-mortgaging was made. However, they raised a complaint about the arrears balance and asked that they be allowed to pay a lump sum and the remainder of the arrears balance be waived. They were also unhappy that they had to pay for a valuation to be able to pay off the loan. Target correctly dealt with this as a complaint, but there was a delay in it doing so. In the meantime, Mr L contacted this service in June 2022 complaining that they had not been told about the arrears and so interest had been accruing for a number of years without their knowledge.

The complaint was responded to in a final response letter of 1 August 2022. Target confirmed that the arrears balance consisted of the sum of the payments missed by Mr L and Miss L, and no fees, charges or additional interest had been added. It highlighted the section of the terms and conditions that set out what had to be paid and when. It was satisfied the amount owing was correct. In addition, Target highlighted that it had only administered the account since 2016 and it had constantly provided information about the arrears balance and agreed some payment arrangements to address it. In relation to a full valuation report being required, Target again confirmed that this was needed as part of the process to redeem the loan because it was an equity loan and so the current value of the property needed to be known to determine how much Mr L and Miss L owed under the contract.

On 18 August 2022 Mr L and Miss L sent Target and their own solicitors a partially completed redemption form. This confirmed they were selling their property and how much for. It also confirmed they anticipated the sale completing on 1 September 2022.

Target sent Mr L and Miss L's solicitors a redemption statement on 30 August 2022. This stated the loan represented a 41% equity share, which was incorrect, as it should have said 41.11%. This error meant that Mr L and Miss L were told they needed to pay less than they did in order to pay off the loan.

On 7 September 2022 Mr L and Miss L's solicitors wrote and emailed Target with confirmation that the loan would be redeemed on 30 September 2022. However, when it did so, it incorrectly stated the arrears balance was zero and so the amount it documented as payable was incorrect.

On 13 September 2022 Target emailed and wrote back to Mr L and Miss L's solicitors. The former asked the solicitors to telephone it as some of the information in its letter of 7 September 2022 was incorrect. The letter confirmed what Target would accept to settle the loan. This again documented the 41% equity share, but it added back in the arrears balance that the solicitors had omitted from its letter of 7 September 2022.

On 27 September 2022 Mr L called Target and told it that their solicitors had ceased to trade, and they needed to appoint a new firm. He commented that the solicitors had messed up the process so far. Target emailed Mr L the documentation that needed to be completed and a new solicitor form was returned the same day. As Mr L and Miss L's buyer needed to complete on the sale very quickly, Target prioritised sending out a new redemption statement – it was emailed to Mr L and Miss L's new solicitors the same day. The

redemption statement confirmed it was based on the valuation report of 26 July 2022 and detailed the repayment amount required, based on that valuation. It correctly detailed the equity share as 41.11%. The amount of the arrears, just under £18,000, was also documented and it was stated this amount had to be settled in full before or with the redemption.

Mr L and Miss L questioned the equity share, as it was higher than that detailed in the previous redemption statement. This meant the redemption amount was around £400 more than the figure given the previous month. Mr L told Target the additional £400 might mean they could not go ahead with the sale and repay the loan.

The solicitors responded to the redemption statement on 27 September 2022 and confirmed the loan would be settled. However, it used the incorrect equity share figure that had been quoted in the redemption statement of 30 August 2022. The solicitors also documented the arrears balance incorrectly as zero.

The following day Target wrote to the new solicitors and confirmed that repayment of the loan had been approved and set out on what basis that approval had been agreed. This detailed the correct equity share percentage and included the arrears balance.

On 4 October 2022 Target decided to honour the lower equity share percentage from the August 2022 redemption statement. It wrote to Mr L and Miss L's solicitors to confirm what it was willing to accept to settle the loan and confirmed that included an equity share of 41% being used. The amount of the arrears was also documented in the agreement letter and included in the total balance that needed to be paid. Target tried to call Mr L and Miss L's solicitors that day regarding the documentation needed for completion, but it was unable to speak to anyone. A voice message was left explaining the situation. It was not until 6 October 2022 Target was able to speak to the solicitors and tell it what it needed to do. A further reminder was given to the solicitors on 10 October 2022.

Mr L and Miss L's solicitors confirmed to Target on 10 October 2022 the loan would be repaid on 13 October 2022. However, when it set out what would be paid to do so, it detailed an incorrect equity share of 40%, rather than the agreed 41%, and didn't include the arrears. Target corrected the error in its agreement letter, but Mr L and Miss L's solicitors questioned this several times between 11 and 13 October 2022. The correct amount was eventually paid, and the loan account was closed with effect from 13 October 2022.

Mr L and Miss L complained to Target about the information it had provided regarding the loan redemption quote, the arrears on the account and the time it took for their complaint to be addressed.

Target responded to the complaint in its letter of 2 March 2023. It confirmed the August redemption quote had been incorrect due to an administrative error and so it upheld this aspect of the complaint. However, it highlighted that when Mr L and Miss L objected to the change in the redemption amount, it had agreed to settle the complaint based on the incorrect equity share figure. Target acknowledged that its mistake had resulted in Mr L and Miss L needing to contact it more often than they should have needed to. As such, it accepted that it had contributed to the stress and anxiety they had experienced during the redemption process, so it again upheld this part of the complaint.

In addition, Target confirmed that despite having been aware that Mr L and Miss L had sold their home, it had not checked their correspondence address and had issued complaint correspondence to their old address. In relation to the matter of the arrears on the account, Target said it had not made a mistake when calculating the balance. It also confirmed that it

had made Mr L and Miss L aware of the arrears balance from 2016 when it took over the administration of the loan.

Target apologised for its errors and offered them £150 for the error with the redemption statement and the stress this had caused, plus £50 for the mistake with the complaint correspondence.

Mr L and Miss L were not satisfied with Target's response, or the compensation offered. They asked the Financial Ombudsman Service to look into the complaint. When doing so, they told us they were unable to move home for over five years and when they did move, Target messed them around for months, which nearly caused them to lose their dream house and would have left them in thousands of pounds of debt. Mr L and Miss L also said that had they been allowed to sell the property in 2017 without having to repay the arrears first, they would have done so. This is because they were struggling to pay the main mortgage, HTB loan and council tax. In addition, they needed a bigger property as they were expecting another child at the time. They said they had just wanted to sell and move on.

One of our Investigators considered the complaint and recommended it be upheld. She considered the lender's policy, which Target had not evidenced, of requiring arrears to be repaid before a re-mortgage and found that it was unfair and unreasonable. As such, it was not reasonable for Target to apply that requirement to Mr L and Miss L's loan in March 2017 when they first enquired about selling the property to relieve their financial difficulties. She was satisfied that they would have sold the property at that time if they had been able to. As such, the Investigator concluded Mr L and Miss L should be placed in the same financial position as they would have been in had they marketed their property in March 2017 and sold it in September 2017. She also recommended Target pay them an additional £3,500 compensation.

Mr L and Miss L accepted the Investigator's recommendations, but Target did not. It provided documentation evidencing that until May 2018 the lender required arrears to be paid before the loan could be redeemed. In addition, it highlighted that Mr L and Miss L had been aware they could sell the property without having to repay the arrears first several years before they sold and chose not to do so as they wanted to improve their credit ratings. Target asked for the case to be referred to an Ombudsman for review.

The Investigator considered what Target said, but she was not persuaded to change her conclusions. As such, the complaint was referred for an Ombudsman's decision.

I issued a provisional decision on 11 January 2024 setting out my conclusions and reasons for reaching them. Below is an excerpt.

*'I will firstly comment on the matter of the administration of the loan redemption in 2022. Target has admitted that the first redemption statement it issued was wrong as it detailed an incorrect equity share and led Mr L and Miss L to believe they owed less than they did. However, in settlement of this part of the complaint Target allowed Mr L and Miss L to repay their loan based on the incorrect figure. I would explain at this point that when we consider redress we aim to place a borrower in the financial position they would have been in, but for the error. As such, Target did more than I would have required it to do, as it placed Mr L and Miss L in a better financial position than they should have been in.'*

*I note that there were other errors in the documentation that was produced during the redemption process. However, those errors were not on the part of Target, but rather Mr L and Miss L, and their legal representatives. I also note that they had to change their legal representatives at a very late stage. All of this would have caused stress and anxiety, along with that naturally associated with selling a property. As such, I consider the £150*

*compensation Target paid them for any stress or inconvenience they suffered because of its error, when the additional redress is taken into account, is sufficient in the circumstances.*

*In relation to the balance of the arrears, while this service does not provide a checking service, I have seen nothing that indicates the amount Mr L and Miss L was told was owed was incorrect. The balance was made up of the missed payments and it does not appear that any additional fees, charges or interest was added. So again, I can't find that Target charged anything that it should not have.*

*In relation to Mr L and Miss L not knowing about the arrears, I am satisfied that they were aware they had to make the payments, as they started to do so in 2012. As the payments were made manually, rather than by a direct debit or standing order, I am satisfied they would have known they had stopped making the payments. As for them not being made aware of the arrears that were building, I can only consider under this complaint the issue from the point Target took over the administration of the loan in 2016. I have examined the contact history following that and I am satisfied Target was in contact with Mr L and Miss L about the arrears throughout.*

*I now turn to what Target told Mr L and Miss L about the lender's requirements for them repaying the loan. While the lender may have had requirement for the arrears to be repaid before it would allow the property to be sold in 2017, Target as a regulated mortgage administrator was under an obligation to treat Mr L and Miss L fairly. In the situation where a consumer wanted to sell their property and the sale would not result in a shortfall situation, it would not be considered fair or reasonable to require the arrears to be cleared before a sale could be agreed. While the lender wanted that to be done, I do not consider that it was appropriate for Target to apply that requirement, given its result would be treating Mr L and Miss L unfairly. As such, I can only find that Target acted inappropriately in this regard and I need to consider what position Mr L and Miss L would have likely been in if they had been told they could sell the property to pay off both the main loan balance and the arrears in 2017.*

*It is clear from what Mr L said to Target when subsequently discussing the sale of the property and when speaking to the Investigator, that he and Miss L were hoping to use the significant amount of equity they would receive from the sale to purchase another property. That is unlikely to have been possible in 2017, as having years of missed payments recorded on their credit files they would have found it extremely difficult to find a new mortgage to enable them to buy. It is also likely that they may have struggled to be able to rent a property, as property letting agencies also tend to check credit records before agreeing a contract. I note that Mr L mentioned needing to improve their credit files from 2019 when he discussed the arrears and selling the property with Target. This does not persuade me that Mr L and Miss L would have put the property on the market in March 2017 if they had been told they could sell.*

*In addition, I note that in April 2018 Target told Mr L that the property could now be sold to clear the debt and arrears. I have seen no evidence that the property was marketed at that time or there was an intention of doing so. While it was around a year after Mr L and Miss L had been told they couldn't sell, the information we have doesn't indicate that their situation had changed significantly over that year. There were many conversations where the sale of the property was mentioned thereafter, and they were aware that they could do so, but they chose not to until 2022.*

*Considering all of the above carefully, I am not persuaded Mr L and Miss L would have sold their property in 2017 had they not been told by Target that the lender would not allow it to happen. As such, I can't conclude they suffered a financial loss due to Target's error. However, I do consider the incorrect information would have caused Mr L and Miss L*

*disappointment and upset. As such, I consider Target should pay them some compensation for this error.*

*Target made the same error in 2021 when Mr L and Miss L mentioned the possibility of re-mortgaging to clear the HTB loan. Again, if there was sufficient equity in the property to clear the entire amount owing, which there clearly was in this case, it was not appropriate for Target to tell Mr L and Miss L they could not re-mortgage. However, that said, it did say that the lender might allow this to happen anyway and explained the process that would need to be gone through. While Mr L declined to provide the information the lender would want to complete the review, Target did forward the appeal. The lender didn't respond and I consider Target could have done more at that time, I am not persuaded there is enough evidence to show that Mr L and Miss L's position would have been any different if they had been told they could re-mortgage. I say this as they didn't pursue the option further and shortly afterwards reverted to their previous position of wanting to sell the property. Given Mr L and Miss L's submissions to us that the property was too small for their growing family as far back as 2017, it would seem that this was simply an option they were considering rather than a definitive plan.*

*However, again, this would likely have caused Mr L and Miss L upset at being denied an option that they would have had with any other mortgage or secured loan. In addition, not receiving a response to the appeal would have been frustrating. As such, I again consider that some compensation is warranted for this situation. Taking the effect of both errors into account, I am minded to conclude that Target should pay Mr L and Miss L a further £500 compensation in addition to what it paid them for the error with the redemption statement.*

*Mr L and Miss L have raised concerns about the amount of time it took Target to deal with their complaints. It is clear that the complaints were not dealt with in the timescales usually expected and Target has acknowledged this and offered them £50 compensation in this regard.*

*Our rules set out the matters that we can look at as being: regulated activities, payment services, lending money, paying money by plastic card, and ancillary banking services. In addition, we can consider complaints about ancillary activities carried on in connection with the above.*

*The handling of complaints is not itself a regulated activity. It's something that the regulator requires financial businesses to do. However, that isn't enough to make it a regulated activity within the meaning of the rule; that is, one from the list of activities set out in the legislation from which we derive our powers.*

*We are able to consider concerns about complaint handling in some very limited circumstances, for example, if it is directly linked to the underlying complaint issue and we are upholding that issue. Here, however, I do not consider that the complaint handling Mr L and Miss L have complained about would be considered ancillary to any of their complaint points. As such, I don't have the power to consider Mr L and Miss L's concerns about how target handled the complaints. If they wish to accept the £50 offered in this respect, they should contact Target directly.'*

*Mr L and Miss L did not accept my provisional decision and said they thought I had missed the point in that Target had refused to allow them to sell the property in 2017, which they would have done. They said, at that time, they had the option to move in with relatives, or they would have rented. They acknowledged they had known they might have trouble renting and said they'd looked into rental agreements that required a deposit of six to twelve month rent, which they would have been able to pay from the equity. They had tried for a couple of years before 2021 for a new mortgage but had been advised that this would not*

have been possible with their credit scores. This was why they did not provide Target with income and expenditure information, as they were unable to buy a property. They also said that the reasons they had wanted to sell in 2017 were because Miss L had entered further education and only had a student loan as income, and Mr L was in a new job that involved training for four months. This meant that their financial situation deteriorated, and they could not keep up with their debts; Target refusing to allow them to sell meant they fell further into debt.

Mr L and Miss L said that when they were made aware the lender had changed its policy in 2018, they were in a different position. The option to move in with relatives was no longer possible. In addition, they told us that while they remained living together, they were considering separating. While this did not happen, they said they were not in a position to make a decision to sell the property. They confirmed that between 2017 and 2019 their credit scores and debt had deteriorated further, and they felt they had no other option but to remain in the property and work to improve their situation.

Mr L and Miss L also provided a copy of their credit reports from 2022. These showed that they were in arrears with their main mortgage from mid-2016 to mid-2019. Miss L had defaulted on a credit card in August 2017. They appear to have had two electricity accounts with the same provider from September 2016 and one of them was declared in default in October 2017. On the other there was a short period of arrears from the late summer of 2018, as there was with their gas account. There is no evidence of any other arrears issues with loans, utilities, or council tax on either report. Various items of credit were taken out from 2018 and payments appear to have been maintained on them. Mr L also took out some 'payday' loans which appear to have been repaid in six months or less. Target confirmed that it had nothing to add.

### **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.

My conclusions that Target should not have imposed the lender's requirements regarding the arrears on Mr L and Miss L's account in 2017 have not changed. However, in order to award redress, I need to be persuaded that Mr L and Miss L would have sold at that point.

They have accepted they wouldn't have been able to purchase another property in 2017 and would have had difficulty renting too. However, they have said they looked into rental arrangements and indicated they believe they could have done so with a large deposit, which they could have paid from the significant amount of equity that would have been released when the house sold. In addition, they have now introduced the concept that they could and would have moved in with relatives in 2017. This was not mentioned during Mr L and Miss L's submissions or conversations earlier in the complaint.

Mr L and Miss L have also stated they didn't sell thereafter as they felt they could not do so as the option to stay with relatives was no longer available, their financial situation had deteriorated further, and they were having relationship problems. The implication of this being that the fact they did not sell when they could from 2018, should not be taken to indicate they would not have in 2017.

Determining what a consumer would have done at a point in the past is always difficult. Recollections at a distance of time, while given in good faith, can sometimes be inaccurate or contradictory, or coloured by hindsight. As such, we tend to place reliance on earlier representations made and contemporaneous evidence.

It is not possible to evidence whether Mr L and Miss L had the option to live with family in 2017, whether they would have taken that option up, and whether that option was no longer available by the time they knew they could sell the property. However, based on information they have provided, their financial position had not materially changed by the time they knew they could sell and settle the account and any other outstanding debts. They chose not to sell at that time and didn't for several years more. In order to award redress, I must be persuaded that it is more likely than not that Mr L and Miss L would have sold in 2017 had Target allowed them to. Having carefully considered their further submissions and evidence, I am still not persuaded that is the case.

### **My final decision**

My decision is that I uphold this complaint in part. I order Target Servicing Limited to pay Mr L and Miss L a total of £650 compensation, including the £150 it had offered before the complaint was referred to the Financial Ombudsman Service.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr L and Miss L to accept or reject my decision before 19 February 2024.

Derry Baxter  
**Ombudsman**