DRN-4645469

The complaint

Miss H and Mr M complain that Target Servicing Limited delayed issuing a deed of postponement for their help to buy shared equity loan, which meant they lost out on the chance of re-mortgaging at a more favourable interest rate.

What happened

Miss H and Mr M have a help to buy loan – a form of shared equity mortgage – secured over their property by way of a second charge. They also have a first charge mortgage.

Although help to buy loans are unregulated loans, and the lender is not a regulated firm, the lender appointed Target to administer the loans on its behalf. In doing so, Target was carrying on a regulated activity which falls within the jurisdiction of the Financial Ombudsman Service. As such Target is responsible for answering this complaint.

In July 2022, bearing in mind that the fixed rate on their main mortgage would expire in a few months, Miss H and Mr M applied to a new lender I'll call N for a new mortgage at a new fixed rate.

N issued a mortgage offer and solicitors were appointed to deal with the conveyancing required. Miss H and Mr M were unhappy with the solicitors, however, and so a new firm was instructed. N issued a revised mortgage offer naming the new firm in November 2022.

Miss H and Mr M were advised that in order to complete their mortgage they would need to apply to Target for a deed of postponement – an agreement from the help to buy lender that its charge would rank behind the new first charge mortgage on completion.

Miss H and Mr M applied in late November. Target acknowledged their request in early December, saying that its usual timescales for issuing a deed of postponement are four to six weeks. However, that did not happen in this case.

Miss H and Mr M contacted Target to chase up the deed of postponement. They say that Target reassured them that it would be issued soon. But there was further delay. Based on the reassurance from Target, Miss H and Mr M obtained an extension to their mortgage offer – N agreed a final extension to 25 February 2023. They decided to wait for the deed of postponement even though it would mean going on to their previous lender's standard variable rate (SVR) in the meantime.

Miss H and Mr M kept chasing Target, without success. Eventually, they decided that there wouldn't be enough time to complete the new mortgage before it expired and took a new interest rate with their existing lender instead – I'll call this lender H. The new interest rate with H was higher than the rate they could have taken with N.

Miss H and Mr M complained. They said that Target hadn't issued the deed of postponement promptly. It had misled them about what was happening. It had caused them to miss out on the favourable interest rate with N – not only had they paid two months on H's higher SVR, they were now tied in to a higher fixed rate with H than they could have had with N for the next five years. They also said that they'd paid a fee to Target for the deed, and the fee should be refunded.

Target said that any delays were the lender's fault and it wasn't responsible for that. It agreed that it had suggested the deed of postponement would be issued soon when that turned out not to be the case. It offered £25 compensation for not managing their expectations appropriately.

Miss H and Mr M brought their complaint to us. Our investigator said that Target should refund the application fee and compensate Miss H and Mr M for the additional interest they'd pay, and pay them £200 compensation for the upset caused. Miss H and Mr M accepted that, but Target didn't. It said it hadn't done anything wrong and any delay was the fault of the lender.

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'll start by addressing the general point Target has made about its responsibility for this complaint. It was appointed by the lender as – to use the contractual term – its nominated agent to be responsible for administering the loan on its behalf and dealing with customers.

In doing so, Target was also carrying on a regulated activity – the regulated activity of debt administration. This is defined as "taking steps to perform duties under a credit agreement…on behalf of the lender, or to exercise or enforce rights under such an agreement on behalf of the lender". In carrying on a regulated activity, Target must have regard to the regulator's principles for business and act fairly and reasonably.

The loan terms and conditions say that Miss H and Mr M may re-finance their main mortgage, but only if doing so is approved in advance in writing by the lender and they don't take any further borrowing.

If a re-finance is approved, a deed of postponement is necessary to ensure that the help to buy loan remains a second charge loan ranking behind the new mortgage lender's first charge.

Under the terms and conditions, the lender has the right to consent to a re-mortgage, and the duty to give consideration to any such request.

The lender has appointed Target to administer the loan as its nominated agent. Miss H and Mr M did not, and could not, apply to the lender directly for a deed of postponement (which would also act as permission to re-mortgage). All customer contact was with Target. Miss H and Mr M applied to Target, paid a fee to Target, and dealt with Target. Target was taking steps to perform the lender's duty to consider a re-mortgage request and if agreed to postpone its charge, and it was taking steps to exercise the lender's right to consent to such a request.

Target was the nominated agent. Target was the party in contact with Miss H and Mr M. Target told them what timescales they could expect, Target was aware of the deadline for completion, and Target managed the administrative process of obtaining the lender's signature on the deed. If there was delay, in my view it's no answer for Target to say that any delay was the lender's fault and it's not responsible. Having accepted appointment as the loan administrator, Target had a regulatory obligation to ensure that Miss H and Mr M were treated fairly and that the lender's duties and rights were performed and exercised fairly and reasonably. I'm therefore satisfied as a matter of principle that if Miss H and Mr M were treated unfairly when they applied for a deed of postponement, that is a matter for which I can fairly hold Target responsible.

Having considered the facts of this case, I'm satisfied that Miss H and Mr M were treated unfairly. A deed of postponement is a routine straightforward matter for a second charge lender, and I don't think it's reasonable for it to take three months to issue.

Miss H and Mr M applied to Target for the deed of postponement on 28 November. On 6 December Target acknowledged their application, said that it had been sent to "our Head Office" for sealing, and that this could take four to six weeks, followed by up to a week for it to be posted out and received by Miss H and Mr M.

But in fact it took three months for the deed of postponement to be issued – it finally happened at the beginning of March. I don't think this was reasonable. I've noted the arguments that this period included the Christmas break, and also that there was more demand than expected because of recent rises in interest rates at this time. However, I don't think that makes a difference. The already generous timescale of five to seven weeks should allow for resource challenges caused by factors such as demand and holidays. I don't think those factors mean it was reasonable for it to take three months for the deed of postponement to be issued.

Even if Miss H and Mr M hadn't expressly told Target what the deadline for completion of their new mortgage was (though they did), Target ought to be aware that mortgage offers are time limited, and that unreasonable delay in issuing a deed of postponement is likely to result in a mortgage offer expiring – with, at a time of rising interest rates, the consequence that its customer will end up paying more. It should therefore have taken steps to ensure that the deed was issued within a reasonable time to allow Miss H and Mr M to complete on their new mortgage.

Target points out that Miss H and Mr M didn't apply for the deed until the end of November, even though their mortgage offer was issued in July. That's true. Miss H and Mr M have explained that this was because the solicitor initially instructed didn't progress matters appropriately, and they had to move to a new solicitor. Target isn't responsible for that, or for any delay that resulted from the failings of the first solicitor.

But I don't think that makes any difference here. Miss H and Mr M applied to Target at the end of November 2022 – which (after N extended the mortgage offer) gave them three months to complete. That was ample time for Target to issue the deed. And so notwithstanding the problems with the first solicitor, had Target ensured the deed was issued in good time Miss H and Mr M would still have been able to complete on their mortgage.

Target also says that Miss H and Mr M withdrew their application for the deed on 15 February 2023, even though their mortgage offer didn't expire until 25 February. But again I don't think this makes any difference. The deed wasn't issued until March, so regardless of what Miss H and Mr M said on 15 February they wouldn't have been able to complete by 25 February. And I've seen advice from their mortgage broker that N would not agree to a further extension and that time was now too short. And I've seen that by then Miss H and Mr M were struggling to pay H's SVR, having had to do so for two months already. They were concerned that if there was further delay they would have longer on the SVR. And if they missed the 25 February deadline and then applied to H, rates might increase further in the meantime.

In those circumstances, I don't think Miss H and Mr M's decision on 15 February to apply to H instead means that Target is not responsible for their losses. I think this was a sensible and reasonable decision by Miss H and Mr M, in light of the fact that time was passing and there was still no confirmation of when Target would issue the deed, to mitigate their losses.

Putting things right

For all those reasons I'm satisfied that Target's failure to ensure Miss H and Mr M were issued with a deed of postponement in good time caused the failure of their mortgage application to N, and led to them having to take a higher rate with H.

The mortgage with N was at a fixed rate of 3.5% until 30 November 2027, plus a product fee of £995, giving a monthly payment of £1,144.94.

Instead, Miss H and Mr M took a fixed rate of 3.98% until 30 April 2028, plus a product fee of £999, with H – giving a monthly payment of £1,214.01 – after a period on the SVR paying £1,732.98.

I'm satisfied it's fair and reasonable for Target to compensate Miss H and Mr M for the additional interest they've paid and will pay as a result. This includes the payment of the SVR to H in February 2023 – but not the payments on SVR in December and January, since those months were within the standard timescale for issuing a deed. It seems that it was the first solicitors, not Target, that were responsible for Miss H and Mr M not being able to take a new rate immediately following the expiry of the old one.

I also think that Target should refund the fee for the deed of postponement. It didn't issue the deed within a reasonable time, which meant that by the time it was issued it was no longer required. In the circumstances I don't think it's fair that Target retains a fee for a service it didn't provide in a fair and timely fashion such that Miss H and Mr M could make use of it.

And I'm satisfied that the delay caused Miss H and Mr M frustration and worry, as well as the inconvenience of having to repeatedly chase Target for updates. It also didn't handle their complaint well, with delays in responses and offering to consider their financial losses but then not responding when provided with evidence. In all the circumstances, I agree with our investigator that £200 compensation is fair.

To put things right, therefore, Target should:

- Pay Miss H and Mr M the difference between the February 2023 payment to H of £1,732.98 and what they should have paid to N of £1,144.94 – this is £588.04

- Pay Miss H and Mr M the difference between the payments to H on the fixed rate and what they should have paid to N – this is £69.07 per month from March 2023 to November 2027 inclusive. This should be calculated and paid as a lump sum now.

- Refund the deed of postponement fee of £115.

- Pay Miss H and Mr M £200 compensation, in addition to the £25 already paid.

Target should add simple annual interest of 8% on the £115 fee, running from the date Miss H and Mr M paid the fee to date of refund.

I don't require Target to pay 8% interest on the mortgage payments to date, because the benefit of having future losses refunded up front offsets the losses from being out of pocket for past losses.

However, Target must pay the full redress to Miss H and Mr M within 28 days of the date they accept this decision. If it does not make payments within 28 days, interest on the £115 fee will continue to accrue until payment is made. And if payment is not made within 28 days, Target should also then add simple annual interest of 8% on the refunded mortgage interest and the £200 compensation, running from the date they accept this decision to the date Target makes payment.

Target may deduct income tax from the 8% interest elements of my award, as required by HMRC, but should give Miss H and Mr M a tax deduction certificate so they can reclaim the tax from HMRC if they are entitled to do so.

My final decision

My final decision is that I uphold this complaint and direct Target Servicing Limited to put matters right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H and Mr M to accept or reject my decision before 6 May 2024.

Simon Pugh
Ombudsman