

The complaint

Mr and Mrs P complain that Target Servicing Limited failed to issue a deed of postponement for their help to buy shared equity loan within a reasonable timescale. This delayed them re-mortgaging and they lost out on lower interest rates. They ask for compensation.

What happened

Mr and Mrs P 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.

Mr and Mrs P wanted to re-mortgage. They received a mortgage offer in early November 2022 which expired on 25 December 2022.

In order to complete their re-mortgage Mr and Mrs P needed 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. They applied to Target on 7 November 2022.

The following day Target said it had passed the deed to the help to buy lender for sealing. It said this can take up to four to six weeks, plus three working days for its team to post the deed and three to five days for delivery. If this timescale had been met, Mr and Mrs P's solicitors would have received the deed between mid and late December 2022.

In mid-December 2022 Mr and Mrs P's broker contacted the lender to ask it to extend the mortgage offer. The lender provided a 28-day extension which expired on 22 January 2023.

Mr P says they chased Target and it was aware of their deadline. Mr P emailed Target in January 2023 asking it to escalate the matter due to the tight time constraints. He says their solicitor didn't receive the deed of postponement until 25 January 2023, after their mortgage offer (and 28-day extension) had expired. Mr and Mrs P applied to their existing lender for a new product. The interest rate (4.71%) was higher than if they'd been able to take out the new mortgage (2.54%).

Target said the delays were caused by the help to buy lender. It said it's unable to speed up the process once the documents are with the lender and the lender didn't respond to requests for updates. It said Mr and Mrs P had applied too late, and hadn't allowed a realistic amount of time for the deed of postponement to be issued before the mortgage offer expired.

I sent a provisional decision to the parties. In summary, I said Target was responsible for delays that meant Mr and Mrs P weren't able to re-mortgage at the 2.54% interest rate and spent about six weeks on their lenders standard variable rate. I said Target should compensate Mr and Mrs P for the additional interest they paid, refund the fee they paid for the deed of postponement and pay £300 compensation. My findings were substantially as set out below.

Both parties agreed. Mr and Mrs P provided evidence, including copies of the mortgage offer issued in November 2022 and the product switch offer issued in January 2023, and of the interest rate applied to their mortgage between 15 January 2023 and 28 February 2023.

Target provided calculations of the compensation. While these will need to be updated to the date of the refund, this should ensure that all parties understand the compensation and avoid any further dispute or delays. Mr P said he was satisfied with the calculations.

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.

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

Target was appointed by the lender as 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 the regulated activity of debt administration. In carrying on a regulated activity, Target must have regard to the regulator's principles for business and act fairly and reasonably.

Mr and Mrs P 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. Mr and Mrs P 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 party in contact with Mr and Mrs P. It told them what timescales they could expect, it knew there was a deadline for completion, and it 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 Mr and Mrs P 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 Mr and Mrs P 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 think Mr and Mrs P were treated unfairly. A deed of postponement is a routine straightforward matter for a second charge lender. I don't think it's reasonable for it to take nearly three months to issue.

Mr P says Target was aware of the deadline for completion of their new mortgage. But in any event Target ought to be aware that mortgage offers are time limited, and any unreasonable delay in issuing a deed of postponement is likely to result in a mortgage offer expiring. At a time of rising interest rates, the likely result is 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 Mr and Mrs P to complete on their new mortgage.

Target asked why Mr and Mrs P didn't apply sooner and said they left it too late. Mr and Mrs P applied on 7 November 2022. Completion by 23 December 2022 (the last working day before the mortgage offer was due to expire) would have been possible – although I agree it was cutting it fine if Target had taken the full six weeks to deliver the deed of postponement.

But in any case, the mortgage lender agreed to extend the mortgage offer to 22 January 2023. That was ample time for Target to provide the deed in good time for Mr and Mrs P to complete on their mortgage.

I've seen advice from Mr and Mrs P's mortgage broker that the lender would not agree to a further extension. So Mr and Mrs P applied to their existing lender for a new product.

Putting things right

I'm satisfied that Target's failure to ensure Mr and Mrs P were issued with a deed of postponement in good time was the reason their mortgage didn't proceed on the basis of the first mortgage offer. This led to them having to take a higher rate.

I think it's fair and reasonable for Target to compensate Mr and Mrs P for the additional interest they've paid and will pay as a result.

I also think it's fair to require Target to refund the fee for the deed of postponement. It didn't issue this within a reasonable timescale and Mr and Mrs P didn't receive it in time for their re-mortgage to complete.

Mr and Mrs P were on their lender's standard variable rate (SVR) during this time. If Target had provided the deed of postponement without unreasonable delays – even if this was at the latest point within its own stated timescale and taking into account the holiday period – I think Mr and Mrs P would have re-mortgaged by mid-January 2023 at the latest. So they were on their lender's SVR for about six weeks longer than ought to have been the case. I think Target should fairly compensate them for the additional costs of this.

I think the delay caused Mr and Mrs P frustration and worry, as well as the inconvenience of having to chase Target for updates. I agree with our investigator that £300 compensation is fair.

To put things right Target should:

- Pay Mr and Mrs P the difference between the interest they paid between 15 January 2023 and 28 February 2023 while on their lender's SVR and what they would have paid if they'd re-mortgaged at the 2.54% rate in the mortgage offer on 15 January 2023.
- Pay Mr and Mrs P the difference between the payments they have or will make at the 4.71% fixed rate and what they would have paid at the 2.54% rate from 1 March 2023 to 31 August 2027 inclusive. This should be calculated and paid as a lump sum now.
- Refund the fee for the deed of postponement. It should add 8% simple annual interest to this from the date the fee was paid to the date of the refund.
- Pay Mr and Mrs P £300 compensation.

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 Mr and Mrs P within 28 days of the date they accept this decision. If it does not make payments within 28 days, Target should also add simple annual interest of 8% on the refunded mortgage interest and the £300 compensation, running from the date Mr and Mrs P 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 Mr and Mrs P a tax deduction certificate so they can reclaim the tax from HMRC if they are entitled to do so.

My final decision

My decision is that I uphold this complaint and order Target Servicing Limited to calculate and pay the compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 9 October 2024.

Ruth Stevenson
Ombudsman