

## **The complaint**

Mr C and Miss N don't think it's fair that Target Servicing Limited has charged them interest on their help to buy shared equity loan, and that it has prevented them redeeming it.

## **What happened**

Mr C and Miss N bought their flat with the aid of a mortgage and a help to buy loan. Help to buy is a government scheme to supplement mortgage lending, reducing the cash deposit a purchaser needs to find to buy a property. Help to buy loans are a form of shared equity loan – meaning that the borrower borrows a percentage of the property's purchase price. And to redeem the loan they must repay the same percentage of the value at the time of redemption, not the cash amount they borrowed. Help to buy loans are interest free for the first five years, but after that the borrower must pay monthly interest on the amount borrowed until the loan is redeemed.

Help to buy loans are not regulated by the Financial Conduct Authority. The lender, a government agency called Homes England, is also not a regulated firm. But the lender has appointed a regulated firm, Target, to administer the loans on its behalf. In doing so Target is carrying out a regulated activity. Its actions in administering the loan on the lender's behalf fall within the jurisdiction of the Financial Ombudsman Service and it is Target that is responsible for answering this complaint.

Mr C and Miss N took out their loan in September 2016, which meant it became interest bearing from September 2021. They borrowed 30% of the property's purchase price, around £145,000.

It's since come to light that the development which includes Mr C and Miss N's property is affected by combustible cladding which requires remediation. The remediation had not been completed at the time of Mr C and Miss N's complaint.

As a result, Mr C and Miss N haven't been able to sell their property, and haven't been able to repay the help to buy loan in any other way, for example by re-mortgaging to raise the funds. They therefore became liable for, and were charged, interest from late 2021 onwards. The initial interest payment was around £220 per month, though it has since increased in line with the terms of the help to buy loan agreement.

Mr C and Miss N asked Target to refrain from charging them interest because they were unable to redeem their loan because of circumstances beyond their control. Target said that it was charging interest in line with the terms and conditions and couldn't waive interest – though it would discuss forbearance options if Mr C and Miss N were in financial difficulty.

Mr C and Miss N brought their complaint to us. Our investigator didn't think Target had acted unfairly in collecting interest in line with the terms of the loan, noting that she didn't think there was evidence the interest was unaffordable for Mr C and Miss N. So they asked for an ombudsman to review their complaint.

## 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 I've said, this is an unregulated loan lent by an unregulated lender. I only have jurisdiction over the administrator, Target – and then only insofar as it is carrying on the regulated activities of debt administration and debt collection. That means that Target is responsible for administering the terms of the loan agreement on the lender's behalf – complying with the lender's obligations and exercising the lender's rights – as well as taking payment, but it's not responsible for the terms and conditions of the agreement itself. And while I can consider whether Target has acted fairly and reasonably in administering the loan, I can't consider whether the terms of the agreement itself are fair or not.

In this case, Mr C and Miss N's flat is in a block with significant cladding problems. I understand that there is no EWS1. But there is no dispute that there was substantial combustible cladding present requiring significant remediation works.

The terms and conditions of the help to buy loan agreement set out the redemption process. In summary:

- A borrower applies to Target to redeem.
- A valuer is appointed to value the property – the terms require a valuer to be appointed by agreement, but in practice Target is content to leave the selection to the borrower, so the borrower's selected valuer becomes the agreed valuer. The valuer must be an independent qualified surveyor.
- The valuer's valuation is binding and sets the redemption figure.
- The borrower sends the valuation to Target and pays the redemption administration fee.
- Target sends the redemption statement and associated paperwork to the borrower's solicitor.
- The loan is repaid.

Under the terms and conditions a valuation is necessary. That's because of the nature of the loan – as a shared equity loan the amount to be repaid is the same percentage borrowed (in this case 30%), but 30% of the value at the time of repayment, not at the time of purchase.

Mr C and Miss N say that the requirement for a valuation on redemption is arbitrary and irrational, a policy imposed by Target designed to prevent borrowers being able to redeem.

But I don't agree about that. The contract itself – entered into in 2016, before there was awareness of cladding problems – requires a valuation as part of the redemption process. It says the valuation must be carried out by a qualified valuer, defined as *“an independent qualified valuer appointed by agreement between the parties or failing agreement by or on behalf of the president for the time being of the Royal Institute [sic] of Chartered Surveyors on the application of either party”*.

So the requirement for there to be a valuation, and for the valuer to be a qualified surveyor, is contractual – not a later policy imposed by Target to frustrate redemptions. I don't think there's any distinction between the guidance Target has given that a “specialist valuer” is

required and the contractual requirement for a “qualified valuer”. A specialist valuer is a qualified professional authorised by their professional body to carry out property valuations – a qualified valuer.

The terms and conditions don’t require an EWS1 to be provided, so strictly speaking Target wouldn’t be entitled to ask Mr C and Miss N to obtain one as a condition of redemption. It’s likely that any valuer would want to see an EWS1 before valuing the property. But that’s a question of the guidance given to surveyors by their professional body, and is not a matter that falls within my jurisdiction, or a matter for which Target is responsible.

Mr C and Miss N have pointed to online guidance which says that Target is able to change help to buy agreements. This refers to making changes to an individual loan agreement – such as partial redemptions, re-mortgaging and adding or removing borrowers – rather than amending the terms and conditions of the lending, for example to allow a redemption without a valuation. Because, by its very nature, a shared equity loan is repaid by paying a proportion of the property’s value not a fixed sum, a valuation is necessary to define the amount to be repaid.

Mr C and Miss N say that Target’s policies prevented them obtaining a valuation of their property and redeeming their loan. But I’m not persuaded by this; I’ve set out above the contractual requirements for redemption. And Mr C and Miss N haven’t provided any evidence that they’ve tried to obtain a valuation or redeem their loan, or that they would have been able to finance doing so. I recognise the situation they’ve found themselves in – through not fault of their own – is very unfortunate and worrying for them. But Target isn’t responsible for that situation. Nor is it responsible for the terms and conditions of the loan agreement, and I don’t think it acted unfairly or unreasonably in applying those terms and conditions to redemption requests.

The terms also provide that interest is payable after the fifth anniversary of the loan, if it hasn’t been repaid in the meantime. I’ve explained that the fairness of the terms themselves is a matter for the lender, and the lender falls outside my jurisdiction. In carrying on a regulated activity, Target is required to exercise the lender’s rights and obligations in line with the terms and conditions of the loan.

The lender has the right to charge interest, and in collecting it on the lender’s behalf Target was not acting unfairly or unreasonably. I don’t think that changes because there have been problems with the property, any more than it would be unreasonable for a mainstream mortgage lender to decline to waive interest where a property has been damaged by issues such as fire, subsidence or flooding. There are always risks associated with property ownership; that there is a particular problem with Mr C and Miss N’s property doesn’t change their obligation to repay in due course the lending they used to purchase it – or their obligation to pay interest on that lending in the meantime.

If Mr C and Miss N were in financial difficulty and were unable to pay the interest due, then I would expect Target to show forbearance in how the interest is collected – for example, by coming to a payment arrangement. But mortgage forbearance doesn’t generally involve waiving interest altogether. And in any case, I’ve not seen any evidence that Mr C and Miss N are in financial difficulty or unable to pay the interest; their requests for forbearance were based on the situation with the property, not their finances.

### **My final decision**

My final decision is that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C and Miss N

to accept or reject my decision before 6 February 2024.

Simon Pugh  
**Ombudsman**