

The complaint

Mrs H complains that Target Servicing Limited wouldn't allow her to redeem her help to buy shared equity loan without a valuation, even though she's been unable to obtain one. She's represented in this complaint by her husband Mr B.

What happened

Mrs H bought her 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 – 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.

Mrs H took out her loan when she bought her flat in 2017. She borrowed 40% of the purchase price of the flat. Since purchasing, Mrs H has married and started a family. She decided to repay her help to buy loan with a view to renting her flat out and buying a larger property with her husband.

Mrs H's husband, who I'll call Mr B, got in touch with Target to discuss redeeming her loan in May 2022. Mr B separately owns his own flat in the same development and dealt with Target both on his own behalf and on behalf of Mrs H. Target told Mr B that Mrs H would need to obtain an up to date valuation of her property to set the redemption figure.

Mrs H's flat is in a building which was affected by combustible cladding, and subject to remediation works. As a result she was unable to find a surveyor who was willing and able to value the property.

Mr B explained this to Target. Target told him that he could apply to the President of the Royal Institution of Chartered Surveyors – RICS – who would appoint a surveyor to value the property. But RICS did not agree to this and no surveyor was appointed.

Mr B complained on Mrs H's behalf. He said Target had given them misleading information and caused delay. He said it wasn't Mrs H's fault she couldn't obtain a valuation and as it was impossible, Target should waive the requirement and allow her to redeem.

Mr B said that as well as the upset and inconvenience – and the stress and impact on Mrs H's health during her pregnancy – she'd experienced financial loss. From August 2022

interest started to be charged on her loan – interest she wouldn't have had to pay if she'd been able to redeem. And while Target had allowed her to let the flat out, she hadn't been able to buy a new property and was having to pay rent rather than a mortgage. When they do get a mortgage to buy a new property, it will probably be at a higher interest rate than they could have got if she'd been able to redeem in 2022. Finally, he said that it's likely the flat is worth significantly more now than it was, which means it will be more expensive to repay the loan.

Our investigator said that a valuation was necessary, and unfortunately Mrs H's loan couldn't be redeemed without one. But he did think Target had caused unnecessary delay and upset and said it should pay Mrs H £200 compensation. Mrs H accepted that – as Target didn't reply, the case comes to me for a final decision to be made.

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'm very sorry to hear of the difficulties Mrs H and Mr B have faced – and in particular the difficulties she experienced in her pregnancy, which she attributes to the stress this situation caused. I'm sure this has been an upsetting and frustrating experience for them. However, as our investigator explained, there's a limit to what the Financial Ombudsman Service can do to resolve matters.

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, Mrs H's flat is in a block with significant cladding problems. I understand that there is no EWS1, or at least that if there is Mrs H does not have a copy of one. But there is no dispute that there was substantial combustible cladding present requiring significant remediation works. I also understand that funding arrangements for the works are complex and Mrs H and other leaseholders are or were in dispute with the freeholder. So she's not been able to obtain an EWS1 form.

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 40%), but 40% of the value at the time of repayment, not at the time of purchase.

It's therefore fundamental to the nature of the agreement that a valuation is required to set the redemption figure. It's the only way of determining the amount to be repaid.

The terms and conditions don't require an EWS1 to be provided, so strictly speaking Target wasn't entitled to ask Mrs H to obtain one as a condition of redemption – though it's likely that any valuer would want to see an EWS1 before valuing the property. But in any case the key difficulty here is that because of the specific problems with Mrs H's block, and the more general problems with valuing cladding-affected unremediated property, Mrs H was unable to find a surveyor willing to carry out a valuation. So she couldn't give Target a valuation – and Target couldn't set the redemption figure.

Even where a property is to be sold, a valuation is still required – the redemption sum is the amount of the valuation, whether that is more or less than the agreed purchase price. This is to ensure that the lender recovers a share of the actual value of the property, and doesn't – for example – lose out because the borrower has agreed a below-value sale. There's no suggestion that was Mrs H's intention, but this is a general protection built into the loan agreement.

I can't consider whether or not the terms of the loan agreement themselves are fair, or whether – in light of situations like Mrs H's – the lender should have agreed to set aside or vary the terms and conditions, or consider alternative methods of reaching an agreed value and redemption sum. But the fact is that it didn't. And under the terms and conditions as they were and are, Target had to require a valuation be carried out before it could agree to set a redemption figure or allow Mrs H to repay her loan. Because it was acting in line with the terms and conditions, on the lender's behalf, I can't find that Target acted unfairly or unreasonably in not allowing Mrs H to redeem without a valuation.

That meant that to be able to redeem Mrs H had to find a surveyor willing to provide a valuation, which she was unable to do. I understand that finding a surveyor willing to act in this situation can be difficult, because of the complexities and difficulties of valuing cladding-affected property before remediation has been completed. But I don't think it would be fair to hold Target responsible for that.

I recognise this left Mrs H in a very difficult situation. Her personal and family circumstances were such that she needed to move to a different property. That meant she needed to repay her help to buy loan. And that in turn meant she needed a valuation to be carried out. But she couldn't find anyone to value the property.

I'm pleased to note that in light of this Target agreed to make an exception and allow Mrs H to let out the property. From her point of view this was far from ideal and didn't resolve the overall problem, but at least it meant she could move out of the property and not be concerned about the immediate impact on her new family of the cladding risk and remediation works.

Putting things right

I don't think I can reasonably hold Target responsible for Mrs H being unable to redeem her loan, or the increased costs she has faced as a result. It's not responsible for there being cladding on her block, or for the dispute with the freeholder or the need for remediation works. Nor is it responsible for the reluctance of surveyors to value Mrs H's property.

Target acted fairly and reasonably in requiring a valuation to be carried out before redemption, in line with the terms and conditions. Mrs H has found herself in a very unfortunate situation, but not because of something Target has done wrong.

However, I do think Target's customer service could have been better. In particular, it advised Mr B, on Mrs H's behalf, to contact the President of RICS who could appoint a surveyor for them. This wasn't correct. That process is to be used to arbitrate when a borrower and Target can't agree on which surveyor to be used – it's not for situations like this where there simply isn't a surveyor willing to act available. This is not something RICS could or would have resolved for Mrs H, and in asking her to pay a fee (which wasn't actually paid) and raising her hopes only to disappoint them, Target compounded the upset she was already experiencing because of the wider situation.

I've borne this in mind – but I've also borne in mind that even without this Mrs H would have been in an upsetting and difficult position at a time when she needed to avoid stress. I don't think I can fairly find that the poor customer service was a significant contributor, of itself, to the difficulties Mrs H experienced with her pregnancy or that I can fairly take that into account in determining compensation as a result. Taking everything into account, I think £200 compensation is fair in all the circumstances.

My final decision

My final decision is that I uphold this complaint, in part, and direct Target Servicing Limited to pay Mrs H £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 5 February 2024.

Simon Pugh
Ombudsman