

The complaint

Mr B complains that Target Servicing Limited wouldn't allow him to redeem his help to buy shared equity loan without a valuation, even though he's been unable to obtain one.

What happened

Mr B bought his 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.

Mr B borrowed 40% of the purchase price of his flat. Since purchasing, Mr B has married and started a family, so decided to sell his flat and move to a larger property.

Mr B got in touch with Target to discuss redeeming his loan in May 2022. Target told Mr B he would need to obtain an up to date valuation of his property to set the redemption figure.

Mr B's flat is in a building which was affected by combustible cladding, and subject to remediation works. As a result he 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. He said Target had given him misleading information and caused delay. He said it wasn't his fault he couldn't obtain a valuation and as it was impossible, Target should waive the requirement and allow him to redeem.

Mr B said that as well as the upset and inconvenience – and the stress and impact on his wife's health during her pregnancy – he'd experienced financial loss. From July 2023 interest started to be charged on his loan – interest he wouldn't have had to pay if he'd been able to redeem his loan. He'd also had to pay mortgage interest he wouldn't have had to pay had he been able to sell the property, as well as ground rent and service charges. And while Target had allowed him to let the flat out, he 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 he'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 Mr B's loan couldn't be redeemed without one. But he did think Target had caused unnecessary delay and upset and said it should pay Mr B £200 compensation. Mr B 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 Mr B and his wife have faced. 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, Mr B's flat is in a block with significant cladding problems. I understand that there is no EWS1, or at least that if there is Mr B 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 Mr B and other leaseholders are or were in dispute with the freeholder. So he'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 Mr B 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 Mr B's block, and the more general problems with valuing cladding-affected unremediated property, Mr B was unable to find a surveyor willing to carry out a valuation. So he 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 Mr B'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 Mr B'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 Mr B to repay his 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 Mr B to redeem without a valuation.

That meant that to be able to redeem Mr B had to find a surveyor willing to provide a valuation, which he 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 Mr B in a very difficult situation. His personal and family circumstances were such that he needed to sell his property. That meant he needed to repay his help to buy loan. And that in turn meant he needed a valuation to be carried out. But he couldn't find anyone to value the property. He was stuck – unable to live in the property, and unable to sell it.

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

Putting things right

I don't think I can reasonably hold Target responsible for Mr B being unable to redeem his loan, or the increased costs he has faced as a result. It's not responsible for there being cladding on his 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 Mr B's property.

Target acted fairly and reasonably in requiring a valuation to be carried out before redemption, in line with the terms and conditions. Mr B has found himself 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 him to contact the President of RICS who could appoint a surveyor on his behalf. 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 Mr B, and in asking him to pay a fee (which wasn't actually paid) and raising his hopes only to disappoint them, Target compounded the upset he was already experiencing because of his wider situation. 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 Mr B £200..

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

Simon Pugh
Ombudsman