

## **The complaint**

Mr B complains that Target Servicing Limited, the administrators of his help to buy shared equity loan, won't agree to him taking out further lending secured against his property.

## **What happened**

Mr B bought his property with the aid of a mortgage and a help to buy loan in 2021. A help to buy loan is a form of shared equity loan – meaning it's secured by way of a second charge over his property, but that rather than repaying a fixed sum (plus interest) he's required to repay the same percentage of the property's then value as he initially borrowed.

Since buying his property, Mr B has taken out further unsecured debt. To reduce his overall outgoings, he decided to take out further borrowing on his first charge mortgage to consolidate the debt.

It's a term of the help to buy loan agreement that the lender must consent to any further secured lending or later charges over the property, even if they rank behind the help to buy loan, or even if the further borrowing is on the existing main mortgage. So Mr B applied to Target for permission for further borrowing on his mortgage. Target told him that permission had been refused.

Target is not the lender; the lender is Homes England, a government agency. Homes England is not a regulated entity which falls within the jurisdiction of the Financial Ombudsman Service. But Target is, and as Target has been appointed to administer the loan on the lender's behalf and is carrying out a regulated activity in doing so, this complaint has been brought against Target.

Mr B complained. He said he'd told Target that he was never told when he took out the loan that he wouldn't be able to take further borrowing. He said he had experienced personal and family difficulties as a result of the coronavirus pandemic which led to him accruing further debt. He was now struggling with the debt and feared being forced to sell his home. He said that his property had gone up in value substantially since he bought it, which meant he could take further borrowing on the main mortgage and still remain below the total 95% loan to value of the mortgage plus help to buy loan he'd started with.

Mr B said the payments on his unsecured lending were unsustainable and that because of the equity he'd built up other solutions such as bankruptcy would be very damaging to him. He said that he was accessing support with his mental health and was desperate to resolve his situation. And he'd been advised by debt advisers that using the equity in his home was the best option for him.

Our investigator didn't recommend upholding the complaint. Mr B didn't agree. He said it wasn't fair to refuse his request, as agreeing wouldn't cause the lender any loss. He referred to guidance on help to buy loans, which said "Advances for any other purposes [apart from repaying a help to buy loan] will considered on a case by case basis", and that extra borrowing could be agreed "to pay for other personal circumstances that you agree with us". He said that additional borrowing for debt consolidation is standard practice, and it was very

restrictive to refuse to agree it when there was a help to buy loan. He said that if the terms of the agreement prevented his request then the terms were unfair, and it wasn't right that a lender with only a 20% share of the equity in his property had a veto over the use of the other 80%.

### **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.

Although this complaint is against Target, Target isn't the lender. I have no power over the lender, since it isn't a regulated entity.

But as the regulated administrator, I'd expect Target to exercise its responsibilities fairly and reasonably in all the circumstances. As the regulated administrator, Target is required to comply with the lender's obligations and perform the lender's duties.

The lender's duties in situations like this are set out in the terms and conditions of the loan agreement. These are the terms and conditions Mr B agreed to, and signed as part of the deed agreeing to a charge over his property, when he took out the loan.

Section 4.15 of the terms and conditions says that the borrower covenants with the lender:

*... not to create or permit to subsist any Security Interest on the Property, save for:*

*... any Security Interest created with the prior written consent of the lender*

"Security interest" includes a mortgage or other secured lending.

Section 10.1 of the terms and conditions says

*This Mortgage shall have priority immediately after one (1) prior legal charge (including any further advances issued in accordance with that legal charge for the purposes below) securing an amount advanced to the Borrower by a lending institution which is a Qualifying Lender for the purposes of enabling the Borrower to*

*10.1.1 Acquire the Property; or*

*10.1.2 Fund improvements in the Property which have been approved by the Lender; or*

*10.1.3 Redeem a sum pursuant to Clause 7 or 8; or*

*10.1.4 Refinance an existing loan made in accordance with this clause 10.1*

*Provided that such legal mortgage (or any further advances) is approved in writing by the Lender and that capital sum advanced under such legal mortgage (or a further advance as applicable) does not exceed, where clause 10.1.1 applies, the sum equal to the Initial Market Value less the Contribution and any deposit paid by the borrower or where clause 10.1.2 applies, the amount payable in respect of such improvements or where clause 10.1.3 applies, the sum required to redeem a sum pursuant to clause 7 or 8 or where 10.1.4 applies, the amount originally borrowed under the existing loan (plus any further advances) as approved in accordance with this clause 10.1.*

What that means is that under clause 4.15, Mr B is not permitted to take out a further

secured loan (such as a third charge loan) without the lender's consent. And under clause 10.1, he can only take out a further advance on his main mortgage with the lender's consent, and then only to pay for home improvements or to fund repayment of his help to buy loan. The lender does not have to consent to further borrowing for any reason other than those set out in clause 10.1.

Mr B says that clause 10.1 means he can increase his main mortgage back to what it was when he bought the property – but I don't think it does mean that. The part he is referring to, that the sum advanced does not exceed the market value less the help to buy loan (the "contribution") and his deposit, only applies where clause 10.1.1 applies – in other words, it applies to the original purchase, and prevents him borrowing more than he needs to buy the property. Clause 10.1.4 allows re-financing – but this means shopping around for a new interest rate, not further borrowing with the existing lender.

Target says that in practice the lender generally only consents to further borrowing on the main mortgage in the following situations:

- Following a relationship breakdown, where one joint owner would be buying out another;
- To borrow more on the main mortgage in order to use the funds to reduce the borrowing on the help to buy loan; or
- To raise funds to make necessary adaptations to the property, for example to meet medical needs.

This broadly reflects what clause 10.1 says, except that it goes further to also allow further borrowing for necessary adaptations.

The guidance Mr B refers to doesn't override the terms of the contract – and in any case doesn't add anything to what the contract does, as it simply says the lender will consider a request. It doesn't say a request must be agreed.

I do sympathise with Mr B's position, and understand why he wants to take out further borrowing on his mortgage to help with his unsecured debts.

But that's not something that's permitted by the terms of his help to buy loan, which he agreed to when he took it out. It's understandable that the lender doesn't want to increase the size of the first charge mortgage, which takes priority over the help to buy loan, as that increases the risk there won't be enough equity for the help to buy lender to recover what it's owed.

Mr B says there's currently enough equity for this not to be a problem. But if property prices were to fall in the future, or the balance on the first charge mortgage were to increase further (for example through arrears), the amount of his debt to his first charge lender (which is a fixed amount) could exceed the original percentage loan to value. And given the help to buy loan is a percentage of the property's value not a fixed sum, if that were to happen there might not be enough left over to pay the help to buy lender's share after the main mortgage is paid off.

As I say, I have no jurisdiction over the lender. Under the terms and conditions, further borrowing isn't permitted without the lender's agreement, and then only in limited circumstances. The lender wasn't obliged to agree to Mr B's request.

My jurisdiction is over Target. Target is required to perform the lender's duties under the

contract – but the contract does not give the lender a duty to agree to Mr B's request. So I can't say that Target acted unfairly in not giving Mr B consent to take out the further borrowing. Acting fairly, Target should have put Mr B's request to the lender for its consideration. It did that, explaining Mr B's situation. As the lender wasn't required to agree, I can't fairly uphold a complaint that Target acted unfairly in not consenting on the lender's behalf in its role of administering the loan.

### **My final decision**

For the reasons I've given, 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 B to accept or reject my decision before 30 October 2023.

Simon Pugh  
**Ombudsman**