
**Equity Release Council response to
GC18/2: Fairness of variation terms in financial services consumer contracts under the
Consumer Rights Act 2015
published by the Financial Conduct Authority, May 2018**

Introduction

The Equity Release Council is the industry body for the UK equity release sector. The Council represents over 750 members, including: providers, financial advisers, solicitors, surveyors, intermediaries and other industry professionals.

It leads a consumer-focused UK-based equity release market by setting authoritative standards and safeguards for the trusted provision of advice and products. Since 1991, nearly 420,000 homeowners have accessed over £22 billion of housing wealth via Council members to support their finances and homeowners. This is a growing market, with almost £1 billion in equity release unlocked in the second quarter of 2018 alone.

Every member is committed to The Council's Statement of Principles, its Rules and Guidance, which aim to ensure consumer protections and safeguards. In addition, the Equity Release Council works to boost consumer knowledge and increase awareness of equity release as a solution to financial challenges facing people over the age of 55 across the UK.

The Council welcomes the opportunity to respond to this consultation on the fairness of variation terms in financial services consumer contracts.

Consultation response

Overview

Through its Standards Board, the Council sets standards and principles which its members must adhere to. These standards ensure consumers are informed as well as protected.

- The right to remain in the property for life, or until moving into long term care.
- The right to move to a suitable alternative property, with a guarantee that there will be no rise in the rate of interest.
- Interest rates must be fixed or, if variable, which will be capped for the life of the loan.
- The product must have a *no negative equity guarantee*, so that the amount owed by the consumer that will be repaid by proceeds from the sale of a property, will never exceed the net proceeds of the sale.



The criteria set out in provider members' contract terms cannot be varied unilaterally, either by the provider member, or any person to whom the provider member may subsequently sell the loan or plan, unless the homeowner is in breach of the terms.

Equity Release Council approved *Product Standards*, mean that provider members may only indicate that a product meets Council standards if it meets *all* of the Council's product standards. Should an equity release product fail to meet this requirement, the provider must state prominently in both adviser and consumer-facing literature that the product does not meet all of the Council's standards. The provider must explicitly state which standards are not met and give an illustration of the types of risks this poses to a borrower.

Whenever a provider member introduces a new product, *or materially varies* an existing product, a Certificate of Compliance with the Products Standards must be completed. This ensures that, whenever a product feature variation term is initiated by a member, they must re-register the product as though new and submit a certificate to the Council.

- 1. Do consultees agree with the FCA's views on the factors that we consider relevant to determining the fairness of variation terms (see paragraphs 36 to 39)? If not, what are consultees' views on these factors?**

The Council generally agrees with the FCA's views on the factors relevant to determining the fairness of variation terms. The list provided is robust, but we believe that there may be other factors that should also be considered which may not be immediately apparent. External variables, such as legal and regulatory changes, may affect the use of variation terms. Businesses should not be unfairly penalised for circumstances beyond their control.

- 2. Do consultees agree with the FCA's views on the validity of reasons (see paragraphs 40 to 41)? If not, what are consultees' views on the validity of reasons?**

We agree with the FCA's reasoning.

- 3. Do consultees agree with the FCA's views on the examples of reasons used by firms (see paragraphs 42 to 49)? If not, what are consultees' views on the examples of reasons used by firms?**

Changes to technology and system

We agree with the view that changes to technology/other systems are generally a valid rationale for the use of variation terms in contracts. An important consideration however, is that while



technology or system developments may increase short term costs, in the long run, such facilities will often lead to efficiency savings.

New systems and functions are often not necessarily installed independently by firms and may be the result of changes in the broader marketplace, to ensure compliance with changes in legislation/regulation from relevant authorities.

Legislative and regulatory impact

Legislative and regulatory changes may also incur various costs in other ways and are part of a set of external variables which fall outside of the control of firms.

If legislation and regulation increase costs to firms and thus consumers, it is important that regulators, government, industry and consumer groups play their part in demonstrating the long term benefits of such changes and underlining that they are derived from the fundamental principle of consumer protection.

The cost of funding

Firms are unable to absorb *all* added costs to their operations and this is reflected in contractual agreements that consumers enter into. The Council does, however, have a number of safeguards in place designed to protect consumers from excessive costs including our *No Negative Equity Guarantee*, rate caps and drawdown features.

Remaining competitive

Firms may be unable to absorb all costs. Their robustness will determine the extent to which the firm can absorb any increased operational costs and in turn, manage the potential impact on their competitiveness. We do agree that contract terms and conditions should not be changed solely for the purpose of competition.

Indication of non-exhaustive reasons

We agree that being able to use a variation term in a contract “for any other reason” is not legitimate and should be discouraged. It should be made clear in any contract what reasons legitimise the use of variation terms to prevent misuse of variation terms for company benefit at the detriment of the consumer.

The Council strongly advocates high quality, clear financial advice. An adviser should inform their client of the product that is currently most suited to their needs, highlighting its features and terms, while underlining the potential for change during the lifecycle of that particular product and the potential impact of this on the customer. This enables consumers to be fully cognisant of the



positive and negative aspects of the plan or contract they are considering and make an informed financial decision accordingly.

Financial advice is also a key enabler for a competitive market, putting consumers in a position to compare competing, and often complex, financial products. Council members strive to help consumers navigate the fundamentals, recognising that consumers may not remember or calibrate every detail. Quality advice helps the consumer understand the implications of the contract they would be signing.

4. Do consultees agree with the FCA's views on transparency (see paragraphs 50 to 52)? If not, what are consultees' views on transparency?

The Council agrees with the principle of transparency. To help consumers make informed choices, the Council's standards determine that during the sales process customers and their families must have had a full discussion with a fully qualified financial adviser on the both the benefits and implications of a plan – having also duly considered alternative options for their circumstances and future aspirations and plans.

Unrushed decision making and clear understanding of product detail, will ultimately lead to better consumer outcomes as well as increased confidence in financial services.

5. Do consultees agree with the FCA's views on notice (see paragraphs 54 to 60)? If not, what are consultees' views on notice?

The Council agrees that consumers should be provided with reasonable notice.

6. Do consultees agree with the FCA's views on freedom to exit (see paragraphs 61 to 63)? If not, what are consultees' views on freedom to exit?

We agree with the FCA's draft guidance that, when variation terms are drafted, considerations should also be given to the ability for consumers to exit contracts should they not accept the new terms of agreement.

Traditionally, lifetime mortgages have not been designed with the expectation that borrowers switch regularly after a few years. However, there has been movement towards early repayment charge structures and amounts that in some instances, might make it more attractive to switch.



The concept of switching needs to be considered within the context of later life financial planning more generally and therefore, that consumers may wish to switch across different types of financial product in the later life market.

High quality advice from experts with a solid understanding of the later life market helps deliver better consumer outcomes. Advisers and providers may establish review periods with customers, to check if their financial status has changed and how any variations in contracts current or pending may influence their decision making.

**Submitted by the Equity Release Council
7 September 2018**

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