



## **FINANCIAL CONDUCT AUTHORITY – OUR FUTURE APPROACH TO CONSUMERS**

### **Response from the Equity Release Council**

#### **Introduction**

- The Equity Release Council is the industry body for the equity release sector. The Council represents over 650 members including providers, qualified financial advisers, solicitors, surveyors, intermediaries and other industry professionals. Every member is committed to The Council's Statement of Principles that aims 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 recent growth of the equity release industry indicates the significant potential behind using housing wealth to supplement retirement income, with annual lending surpassing £3 billion for the first time during 2017. The Council's [Autumn 2017 Equity Release Market Report](#) demonstrated continued growth in the sector: the average amount lent under an equity release policy in H1 2017 was £95,386 for lump sum plans, and £59,958 through drawdown plans with an additional £33,949 reserved for future use.

#### **Response to questions**

The Council would like to respond to the following questions:

***While having regard to the general principle that consumers should take responsibility for their decisions, do you agree that there are circumstances where consumers cannot be expected to take responsibility? What do you think these circumstances are? How could – and should – the FCA intervene in these cases?***

1. The Council is mindful of the need to take steps to assist potentially vulnerable consumers in making decisions about long-term financial products, such as equity release mortgages (ERMs). It is possible that a consumer may make a competent and fully informed decision to take out an ERM while in good health, and then later have their ability to make similar decisions impacted by poor physical or mental health, such as the onset of dementia. This can also make a consumer vulnerable to making a decision under undue influence from others. These issues are particularly acute for drawdown products, where a consumer can take additional sums from their equity at a later date.
2. The Council therefore welcomes the FCA's recognition that "Any consumer can become vulnerable at any time in their life, for example through serious illness, loss of income or bereavement."<sup>1</sup> However, it should be emphasised that vulnerability is not a fixed state and can lessen as well as increase with time, and so the FCA should ensure that intervention is proportionate and appropriate to the consumer's needs.

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<sup>1</sup> Future Approach to Consumers, p.9.

***Do you agree that firms have a responsibility to take reasonable steps to identify the signs of vulnerability, and to have processes in place to take appropriate action where they have identified a consumer with a particular need and at a particular risk of harm?***

3. We do agree that firms have a responsibility to take reasonable steps to identify signs of vulnerability. Council Members work to ensure that consumers can make fully informed decisions about utilising ERMs if appropriate, without external pressures affecting their decision. This is reflected in The Council's Statement of Principles, which requires Council Members to (among other things) act at all times in utmost good faith and exercise due skill, care and diligence in all that they do and uphold the standards set out by their professional bodies at all times.
4. Circumstances where equity release customers could be exposed to a particular risk of harm include a family member pressuring a customer to take out an equity release policy so they can access the money themselves, or conversely pressuring them to avoid taking out a product to protect their inheritance. In these circumstances we would hope that Council Members would recognise the potential influence of family members and attempt to speak to the client in confidence about how comfortable they are with their decision, and to terminate the product if the client is not entirely happy with their decision.
5. A further safeguard to identify consumers at risk of harm is the independent legal advice which all potential equity release customers must seek before agreeing to enter the plan, which ensures that the customer understands the rights and obligations which the plan entails.

***Which consumer issues do you think sit directly within the FCA's remit, and which are more a matter for Government? Are we right to commit our resources to working with other organisations, such as firms, other regulators, Government, courts, consumer groups etc., where improved consumer outcomes may require action that is not within the FCA's regulatory toolkit?***

6. It is arguable that the Government and FCA both have a role to play in regulating consumer issues, but where each partner has specialist expertise they should focus on that area. It is arguable that consumer issues, such as vulnerability or access to financial products to support interest-only mortgages which need to be repaid, should sit with the FCA rather than the Government, as a flexible approach should be taken to some issues which might not be possible if they were handled by Government. For example, the FCA issued a modification by consent in 2016 enabling equity release lenders to apply for a rule waiver enabling them to bypass affordability assessments for borrowers offering interest-charging lifetime mortgages that can be converted to roll-up products, which was then converted into a full rule change in 2017. This shows a flexibility that might take longer to transpire from Government, given other regulatory and political priorities. However, there also areas where the FCA should work with Government, such as the provision of financial guidance.
7. The Council has appreciated the FCA's engagement with industry groups on workstreams such as the Ageing Population Project, and this sort of collaborative approach could enable the industry, consumers and regulators to agree on solutions or compromises to bypass the need for intervention outside the FCA's remit.

***Do you agree with the aspirational vision and outcomes that we explore? Are there any further barriers or risks to us achieving it?***

8. We agree with the FCA's vision for a well-functioning market that works for consumers. We especially support the promotion of outcome 3, which is relevant given the long-term nature of an

equity release product; and outcome 4, which would help support the needs of consumers approaching retirement with little cash wealth but significant housing wealth who could benefit from an ERM.

***Do you agree with this framework? Would you like us to consider any additional or alternative factors in how we regulate: for all consumers; for the most vulnerable or excluded; and to meet the challenges of the future?***

9. While there are not necessarily additional factors that should be taken into consideration in the FCA's regulation, it should be ensured that all stages of the decision-making framework involve proportionate yet robust consultation with consumers and industry.

**Submitted by the Equity Release Council  
5<sup>th</sup> February 2018**