



## EQUITY RELEASE COUNCIL – PROCEDURES FOR DEALING WITH COMPLAINTS

1. This document describes how complaints are dealt with under the regulator’s rules and, where appropriate, by the Council. Members may find it useful to send a copy to any customers who raise complaints with them. The document covers:

- The definition of a “complaint”
- The DISP rules and Financial Ombudsman Service jurisdiction
- Eligible complainants
- Categories of complaint and how the Council will deal with them
- Record-keeping requirements

### Definition of a “complaint”

2. The Financial Conduct Authority, which regulates lenders and intermediaries, defines a “complaint” as being:

*“Any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service or a redress determination which:*

- (a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and*
- (b) relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products, which comes under the jurisdiction of the Financial Ombudsman Service.”*

### The DISP rules and FOS jurisdiction

3. Equity Release Council members which are product providers or advisers undertake “regulated activities” in relation to lifetime mortgages and home reversions, and are therefore required to be authorised by the Prudential Regulation Authority and/or Financial Conduct Authority. They are also required to handle complaints brought against them in accordance with rules set out in the DISP chapter of the regulatory Handbook (<http://fshandbook.info/FS/html/FCA/DISP>). Complaints which cannot be settled directly with complainants may, if the complainant(s) is/are eligible, be referred to the Financial Ombudsman Service (FOS) for investigation and adjudication.

4. Firms are obliged to co-operate with a FOS investigation and are bound by any decision reached by FOS at the end of the process, which may include a direction to take specified action and/or to pay redress (the maximum which the FOS can award is £100,000). Customers are not bound by any decision reached by FOS and are free to pursue their complaint in the courts if they so wish.

5. The majority of complaints made against authorised firms will come within the FOS’s “compulsory jurisdiction.” The FOS also operates a “voluntary jurisdiction” under which firms may agree to allow complaints about any of their activities to be referred to the FOS for adjudication.

ERC Council – Complaints Handling procedure –

ERC.22  
30.06.14

UNI.10  
30.06.14

The Council considers that it is a matter for individual members to decide whether they wish to subscribe to the voluntary jurisdiction.

6. Mortgage regulation began on 31 October 2004, when the MCOB rules came into effect. These covered lifetime mortgages. MCOB's scope was subsequently expanded to include home reversion plans and the rules covering these came into effect on 6 April 2007. The requirement for firms active in the equity release market to comply with the DISP rules in relation to complaints handling will therefore apply according to whether the complaint relates to a lifetime mortgage or a home reversion: if the lifetime mortgage to which the complaint refers was taken out before 31 October 2004, or the home reversion plan to which the complaint refers was taken out before 6 April 2007, the complaint will not come within scope of the DISP rules and there will be no *automatic* right to refer it to FOS.

7. There may however be some circumstances where a pre-31 October 2004 complaint relating to a lifetime mortgage may also come within the FOS's compulsory jurisdiction. This is because of transitional arrangements which were put in place when the MCOB rules relating to mortgages came into effect. Some firms will already have been subject to the FOS's jurisdiction, because they had previously been covered by either the Banking or Building Societies Ombudsman Schemes. When the mortgage industry introduced its voluntary Mortgage Code (in July 1997 for lenders and April 1998 for mortgage intermediaries) it required firms which were not covered by the FOS to comply with an external complaints process set up with the Chartered Institute of Arbitrators. The transitional provisions which applied at the time of transition from the Mortgage Code to MCOB required firms which had been covered by an alternative scheme to the FOS to refer complaints to the FOS even if the relevant events had taken place before 31 October 2004. No parallel provisions were made in respect of home reversions in 2007, because home reversions were not covered by the Mortgage Code, so complaints relating to events which occurred before that date are unlikely to be eligible for referral to the FOS.

8. The date of the occurrence relating to which the complaint is being made is also important when considering FOS jurisdiction. Under the DISP rules the FOS cannot consider a <http://fshandbook.info/FS/glossary-html/handbook/Glossary/C?definition=G197> complaint if it is referred –

- (a) more than six months after the date on which the respondent (firm) sent the complainant its final response; or
- (b) more than six years [http://media.fshandbook.info/Legislation/2011/2011\\_46.pdf](http://media.fshandbook.info/Legislation/2011/2011_46.pdf) after the event complained of; or (if later)
- (c) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the <http://fshandbook.info/FS/glossary-html/handbook/Glossary/R?definition=G2497> firm or to the FOS within that period and has a written acknowledgement or some other record of the complaint having been received. The FOS may waive these time limits in exceptional circumstances, for example if the complainant has been unable to pursue a complaint due to serious illness.

9. The factors which the FOS takes into account in assessing whether a complaint comes within its scope are therefore whether:

- (a) the firm (lender or intermediary) subscribed to the voluntary Mortgage Code between July 1997 (for lenders) or April 1998 (for mortgage intermediaries) and 31 October 2004 (when

lifetime mortgages became regulated under MCOB, and became directly authorised by the FSA with effect from 31 October 2004;

- (b) the complaint made is in respect of a breach of the Mortgage Code;
- (c) whether the complaint is in respect of a lifetime mortgage or a home reversion;
- (d) a lender carries out its own administration of its mortgage book or whether it outsources this activity to a third party administrator;
- (e) whether the complaint is in respect of an event which took place before regulation of lifetime mortgages or home reversions began (in October 2004 and April 2007 respectively);
- (f) whether the event complained of is time-barred according to the time limits set out in DISP;
- (g) whether there are any exceptional circumstance which might cause the FOS to waive the time-barring rules.

10. The table below gives some examples of where complaint might or might not come within scope of the FOS jurisdiction:

| Product sold | Complaint made | Concerning ...                                   | In Scope?  |
|--------------|----------------|--|--|
| 2000         | 2014           | Lifetime mortgage sales/terms and conditions     | <b>Yes</b> , if the lender or intermediary subscribed to the Mortgage Code and was directly authorised by the FSA from October 2004 <b>and</b> the complaint was about a breach of the Mortgage Code.<br><br><b>No</b> , if the lender or intermediary did not subscribe to the Mortgage Code prior to October 2004, or the lender or intermediary did not become authorised from October 2004, or the intermediary became and Appointed Representative (and was therefore not directly authorised). |
| 2000         | 2014           | Home reversion sales/terms and conditions        | <b>No</b> home reversions were not covered by the Mortgage Code so were not covered by any transitional provisions in 2007 when MCOB scope was extended to include home versions.  |
| 2000         | 2014           | Administrative failure which took place in 2003. | <b>Possibly</b> – if the lender is undertaking its own administration of its mortgage book – not if the administration is being undertaken by a third party administrator.   |
| 2000         | 2014           | Administrative failure which took place in 2013. | <b>Yes</b> – if the lender is authorised and undertaking its own administration.<br><br><b>No</b> - if the lender is not authorised (has ceased trading?) and administration is being carried out by a third party administrator.  |
| 2010         | 2014           | Sales or administration.                         | <b>Yes</b> – for lifetime mortgages and home reversion plans.  |

### Eligible complainants

11. FOS regards the following as “eligible complainants”:

- (a) Executors (copy of Will & Death Certificate to be provided);

ERC Council – Complaints Handling procedure –

ERC.22  
30.06.14

UNI.10  
30.06.14

- (b) Persons holding Grant of Representation/Probate, Letters of Administration. (copy of Will & Death Certificate to be provided);
- (c) Attorneys - EPA/LPA Registered with the Office of The Public Guardian.
- (d) Commercial organisations which have been authorised by the customer in a specific letter of authority, or the customer's representative. Such organisations might include Solicitors, Claims Management Companies and the like, acting on behalf of the customer, or the customer's(s') representative(s).

12. For the purposes of the Council's procedures, complainants may include –

- (a) applicants who did not proceed to purchase a product and therefore do not have a signed contract, but may have a complaint about their experience; and
- (b) applicants who have complaints about firms which were members of the ERC or SHIP at the time when the event being complained took place, but which are no longer members.

References to "customer" shall be taken as including all references to organisations or persons acting on the customer's behalf.

**Categories of complaint**

13. Complaints may fall into one of three categories: they may be –

- (a) made by a customer, or a customer's representative about an individual member or member firm of the Council in relation to an equity release contract which the customer has entered into;
- (b) made by a customer, or a customer's representative against an individual member or member firm of the Council in specific relation to the way in which that member has interpreted or implemented the Council's Rules & Guidance; or
- (c) made by a member of the Council against the Council (or member thereof) in relation to the way in which the Council or the other member has interpreted or implemented the Council's Rules & Guidance.

**Category (a): Complaints made by customers or their representatives about an individual member or member firm of the Council**

14. Where a customer contacts the Council directly with a complaint about a member of the Council, the Council will acknowledge the complaint within five working days. The content of the reply will depend on the nature of the complaint.

15. In general, complainants should in the first instance be advised to refer the complaint formally to the provider of the lifetime mortgage or home reversion plan, or to the adviser, surveyor or legal representative responsible for advising them throughout the process to take out the plan in relation to which they are bringing the complaint.

16. The DISP rules require authorised firms (providers and advisers) to respond to the customer within 8 weeks of receiving the complaint. If the customer is dissatisfied with the response received, he/she may refer it to the FOS. Where the complaint concerns the advice or service provided by a solicitor or surveyor, it will need to be pursued first with the professional firm concerned and, failing an acceptable resolution, with the Legal Ombudsman or the Royal Institution of Chartered Surveyors, or other professional regulatory body as is appropriate.

17. The Council is not able to adjudicate on complaints brought by customers which are not within

FOS's jurisdiction, but will where possible assist customers to ensure that they have addressed their complaint to the appropriate party.

**Category (b) - Complaints made by customers about a member's interpretation of the Council's Rules & Guidance**

18. Where a customer considers that a firm has acted in breach of the Council's Rules and Guidance (which incorporate the Code of Conduct and Statement of Principles), he/she may complain to the Council, which may refer the matter to the Equity Release Council Complaints Committee (ERCCC).

19. The Equity Release Council Complaints Committee (ERCCC) shall consist of the Chairman of the Standards Board, together with one other Independent member of the Standards Board and the Chief Operating Officer. It will assess whether the complaint is in fact about non-compliance with the Council's Rules & Guidance, or whether it relates to the nature of the contract between the customer and the provider, or to the advice given to the customer by an adviser (financial or legal), in which case the customer should be advised to refer the complaint to the relevant provider or advising firm. If the complaint is relevant to the Council's Rules & Guidance, the ERCCC will consider the facts, seeking information from the firm(s) concerned as appropriate. Firms are required to co-operate with any such enquiries by providing the information requested in a timely manner.

20. Where the ERCCC considers the firm to have been in breach of an aspect of the Rule & Guidance, it will contact the firm in question and ask for its response. If the firm does not acknowledge that there has been a breach, or cannot provide a satisfactory explanation as to why the breach may have occurred, the ERCCC may refer the matter to the Standards Board. The Standards Board will meet (and may need to exclude any Standards Board member from these discussions who is conflicted by the complaint) to consider the alleged breach and decide whether a breach has in fact occurred. If it does so decide, it may –

- (a) direct the firm(s) to take or cease specific action in order that such a breach will not be repeated;
- (b) direct the firm(s) to take action to remedy the situation for the customer(s) who brought the complaint;
- (c) request the firm to pay compensation to the customer, using FCA DISP rules as appropriate, requiring that the customer is put back into the position as if the error had not occurred. (NB - this does not deal with complaints against law firms as it is difficult to suggest something here as there are no specific rules to follow from the SRA. We would therefore expect a reasonable approach to be adopted.)

21. If the firm refuses to acknowledge that it has been in breach of the Rules & Guidance and declines to take any corrective action or to pay any compensation to the customer, the Standards Board will refer the matter to the Main Board for further consideration. If the Main Board upholds the decisions of the ERCCC and Standards Board, it will decide whether the firm in question should be required to comply with its decisions or to resign its membership of the Council. If the firm wishes to appeal against the decision of the ERCCC/Standards Board, such an appeal will be heard by a sub-committee of the Main Board, which will be convened for the occasion.

**Category (c) - Complaints made by members about the Council's interpretation of its Rules & Guidance or a fellow member's interpretation thereof**

22. From time to time firms which are members of the Council may dispute decisions made by the Council, or disagree with the Council's interpretation of its Rules & Guidance. Where a member firm wishes to complain about an issue, the following process should be followed:

ERC Council – Complaints Handling procedure –

ERC.22

30.06.14

UNI.10

30.06.14

- (a) The member should write to the Chief Operating Officer, setting out the nature of the complaint.
- (b) The Chief Operating Officer will send an acknowledgement within 5 working days, explaining the process to be followed and, where appropriate, seeking further information to clarify the issue being raised.
- (c) The Chief Operating Officer will arrange for the matter to be investigated, and the complainant will be provided with an update on progress or a written report within 10 working days.
- (d) The Chief Operating Officer will decide whether the matter can be resolved with the member or whether it should be referred to the ERCCC, which shall consist of the Chairman of the Standards Board, the Chief Operating Officer and another Independent member of the Standards Board.
- (e) If the Chief Operating Officer decides to refer the matter to the ERCCC, she will write to the member informing him/her. The meeting will be convened as soon as is feasible but no later than 28 days after the date of the COO's letter to the member.
- (f) The member will be invited to attend the meeting and make representations to the ERCCC. The ERCCC will decide whether to uphold the complaint or dismiss it. In the event that the complaint is dismissed, the member will have the right to appeal that decision to the Main Board, whose decision will then be final and binding on the member.

**Record keeping requirements**

23. Members are required to keep full records of all complaints, both made directly to them and to the Council concerning them, for six years from the date the complaint was received, and to make such records available to the Council on request. (ERC Rules and Guidance section 9.4.)

24. The Council will similarly retain documents relating to complaints for six years from the date on which the complaint was received by or referred to the Council. Where a customer has raised a complaint with the Council, and has been sent an acknowledgement together with a copy of this guidance, if nothing further is heard after a period of 40 days from the date on which the customer's communication was received, the case will be considered as closed (though it can of course be re-opened if any further communication is subsequently received from the customer).

**Version Control**

| Version and date                        | Amended by  | Loaded on to website | Notes  |
|---|-------------|----------------------|--|
| V1 – 6 <sup>th</sup> March 2014 (draft) |             |                      | Draft for discussion at 6 <sup>th</sup> March Standards Board.                                 |
| V2 – 14 <sup>th</sup> April 2014        | Jim Dredge  |                      | Draft for discussion at 13 <sup>th</sup> May Standards Board.                                  |
| V3 – 16 <sup>th</sup> April 2014        | Jim Dredge  |                      | Draft for discussion at 13 <sup>th</sup> May Standards Board. With ERSB Member feedback on V2. |
| V4 – 25 <sup>th</sup> April 2014        | Jim Dredge  |                      | Draft for discussion at 13 <sup>th</sup> May Standards Board. With ERSB Member feedback on V3. |
| V5 – 24 <sup>th</sup> May 2014          | Kate Davies |                      | Re-worked following SB discussion and sent to DB for comment/approval.                         |
| V6 - 30 June 2014                       | Kate Davies |                      | Draft finalised for website, incorporating DB comments.  |

ERC Council – Complaints Handling procedure –

ERC.22  
30.06.14

UNI.10  
30.06.14

ERC Council – Complaints Handling procedure –

ERC.22  
30.06.14

UNI.10  
30.06.14