



## **What to do if you wish to make a complaint**

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### **CUSTOMER GUIDE**

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## Contents

Section	Page number
Step by Step Process	4
A. Who can complain?	5
B. Qualifying criteria for complaints	5
C. Steps that should be undertaken before making a complaint to the Equity Release Council	5
D. What complaints can we investigate?	6
E. How we deal with complaints	6-7
F. Process for making a complaint to the Equity Release Council	7-8
G. Review of our policy	8
<b>Appendices</b> <ul style="list-style-type: none"> <li>• Limitations to the Equity Release Council Mandate</li> <li>• Date and time limits</li> <li>• Financial Conduct Authority rules and Financial Ombudsman Service jurisdiction</li> <li>• Additional contact details</li> </ul>	9-11



## **What to do if you wish to make a complaint**

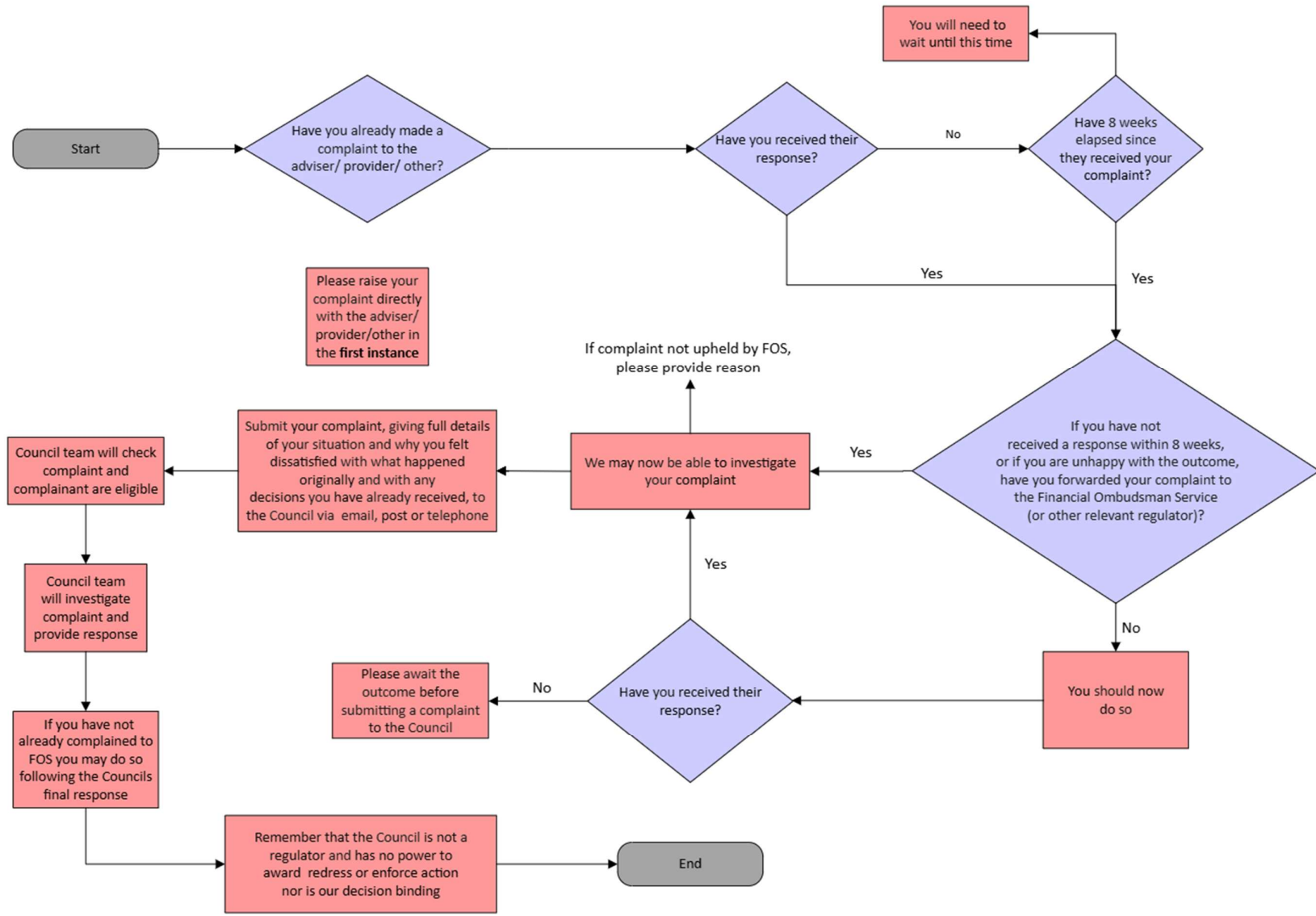
We hope that all your dealings with our members have been positive. However, sometimes things go wrong, and you may wish to make a complaint. Any expression of dissatisfaction, whether written or verbal, constitutes a complaint and should be investigated in line with regulatory and Equity Release Council (ERC) requirements. Please note that the Equity Release Council is **not** the regulator and does not, therefore, have required timescales within which to respond, although we make every endeavour to reply as quickly as possible. Our decision is not binding, nor do we have any powers to enforce action or award redress.

For clarity, this means we cannot award compensation, but we can review whether our standards have been followed and, if not investigate complaints against member firms where they are purported to have failed to adhere to our standards at the time the alleged failure took place. Copies of previous standards are available on request.

Full guidance on who can complain to the Council, the process from a Council perspective and the qualifying criteria for the Council to be able to consider the complaint follow after this page. Details of addresses and contact information can also be found at the end of this document.

We can also provide this process in large print or other accessible formats on request.

## Consumer – Step by Step Checklist



## **Making a complaint to the Equity Release Council**

### **A. Who can complain?**

Our service is free and can be used by anyone who believes they have suffered financial or other detriment as a result of a member failing to comply with Equity Release Council (ERC) Standards, (or those of its predecessor organisation, Safe Home Income Plans - SHIP) that were in place at the time of the alleged breach occurring.

If you are not able to make a complaint yourself, you can ask someone to make the complaint on your behalf. We will ask them to provide the ERC with written consent or authority from the person affected, to enable the ERC to investigate. (Further details in Section D)

If you face difficulties pursuing your complaint because of a vulnerability such as visual impairment, we will do what we can to make reasonable adjustments to accommodate your needs.

### **B. Qualifying criteria for complaints**

We need the person bringing the complaint to demonstrate how they believe the member failed to comply with the ERC Standards (or those of SHIP, our predecessor organisation) in place at the time of the alleged breach occurring.

It is very important that the person complaining can also demonstrate that detriment has been caused as a result of the member's or ERC's actions. This detriment could include both financial and non-financial detriment which typically covers distress, inconvenience, pain, suffering or damage to reputation. The complainant should explain to us how they believe our standards have not been adhered to and the impact that the actions of the member/ERC have had on them.

The ERC can only investigate complaints against firms who were members of the ERC (or its predecessor SHIP) at the time of the alleged breach took place.

There are also a number of important qualifying criteria and relevant time limits to consider, when making a complaint, and these are summarised within the appendices of this document.

### **C. Steps that should be undertaken before a complaint is raised with ourselves**

It is appropriate that our members have the opportunity to fully respond to complaints, and where possible put things right, before we consider them. If you wish to make a complaint about one of our members you must firstly complain to the member concerned, using that member's published complaints procedure.

Where the complaint concerns a lifetime mortgage or home reversion plan, or the advice received during the sale of the plan, complaints should normally be referred first to the provider or adviser concerned. Should this process fail to reach an acceptable conclusion, the complainant may then take their complaint to the regulatory process of the Financial Ombudsman Service (FOS).

Where the complaint concerns the advice or service provided by a solicitor or surveyor, it should be pursued first with the professional firm concerned and, failing an acceptable resolution, with the appropriate regulatory body, depending on the type of firm being complained about. (Further details are set out within Appendix 4 of this document).

#### **D. What complaints can we investigate?**

We can investigate complaints about equity release (lifetime mortgages and home reversions), from eligible complainants (as defined by the Financial Ombudsman Service and explained later in this section), which cannot be resolved by the member to the satisfaction of the complainant. These fall into the following categories:

1. A complaint made by a customer against a member firm of the ERC in specific relation to the way in which that member has interpreted or implemented the ERC's Standards;
2. A complaint made by a member firm of the ERC against the ERC itself in relation to the way in which the ERC has interpreted or implemented its own Standards
3. A complaint made by a member firm of the ERC against another member of the ERC in relation to the way in which their fellow member firm has interpreted or implemented the Standards.

For the purposes of the ERC's procedures, complainants may also include:

1. 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
2. Applicants who have complaints about firms which were members of the ERC or its predecessor organisation SHIP at the time when the event being complained about took place, but which are no longer members of the ERC.

We also appreciate that the complainant may not always be the customer, and to facilitate these circumstances we adopt the FOS rules on eligible complainants which are:

1. Executors (copy of Will & Death Certificate to be provided);
2. Persons holding Grant of Representation/Probate, Letters of Administration (copy of Will & Death Certificate to be provided);
3. Attorneys - EPA/LPA Registered with the Office of The Public Guardian;
4. 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 representative(s).

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

#### **E. How we deal with complaints**

For clarity, the Council can only investigate complaints against member firms where they were subject to our Standards at the time of the alleged issue. Copies of previous versions of our Standards are available on request.

We **aim** to acknowledge all new complaints within five working days of receipt. This may be longer during peak times and holiday periods.

If the complaint is in our jurisdiction, we will look at whether the complaint has already been put to the member organisation complained about, and a final decision provided by that organisation. If the complaint has not been put to the organisation, we will usually ask the complainant to raise it with that organisation first.

The complaint will be investigated by a member of the ERC's Risk, Policy and Compliance (RPC) team. This could include the involvement of an independent assessor, as circumstances dictate. To ensure

that we understand the circumstances surrounding the complaint and its background, the assessors will undertake research into the product, including reference to advisors, surveyors, lawyers and product providers, as appropriate, so that a review against all complaint points made by the complainant can be concluded.

A decision will be reached, after internal due diligence and a final response provided to the complainant, setting out our decision on the case, and what the next steps are, if appropriate.

We will set out in our final decision to the complainant the timescales within which we expect the organisation(s) to comply with our recommendation.

### **Escalation of complaints**

Decisions reached through this process are final. However, parties to the complaint may request a further review if they can show that one or more of the following criteria applies:

1. Where there is compelling new evidence that is likely to have a significant impact on the original decision;
2. Where it is alleged that there was a significant defect in the process by which our decision was made; and/or
3. Where it is alleged that our decision is not one we could sensibly have made having regard to all the relevant facts.

Escalation requests should be in writing and outline the reasons for requesting a review, referring to which of the criteria are relevant. The request should also provide any additional evidence being relied upon.

The request for an escalation must be made within four weeks of our decision. However, we will consider requests outside of this time limit in exceptional circumstances.

Should a valid escalation request be made, the complaint will be further investigated by the Equity Release Council Complaint Committee, rather than the initial complaint handler.

### **F. Process for making a complaint to the ERC**

Due to the complexity of many complaints we recommend that complaints should be submitted in writing via email or posted to the ERC, with copies of any documentation that is believed relevant to the complaint.

Complainants should note that the ERC may need to obtain and retain an appropriate amount of personal data to help assess and manage a complaint. This data may need to be shared with parties involved in the resolution of that complaint, and this may include independent external assessors, in addition to the ERC team. The ERC will manage the use of that data in line with GDPR requirements.

You may contact us through the channel of your choice as follows:

By email to	<a href="mailto:customeroutcomes@equityreleasecouncil.com">customeroutcomes@equityreleasecouncil.com</a>
By post to	Complaints Department Risk, Policy and Compliance Team Equity Release Council The Smithy Sutton Lane Dingley Market Harborough LE16 8HL
By telephone to	0300 012 0239

**G. Review of our policy**

We will undertake a formal review of the ERC’s complaint policy and process every three years.

Additionally, we will undertake a high level annual review, or indeed more regularly if circumstances dictate, to ensure the process remains relevant and appropriate.

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## **Appendices**

### **1. Limitations to the ERC mandate**

Our own mandate, in respect of policy start dates and complaint point timings, cannot exceed the Financial Conduct Authority (FCA) own complaints rules (known as DISP and defined in the next paragraph) or the FOS aligned guidelines, where such regulation aligns to the content of the complaint points made.

DISP rules can be found at <https://www.handbook.fca.org.uk/handbook/DISP/1/4.html> . These rules are complex and detailed and in summary require the following from regulated firms (providers and advisers):

1. To respond to the customer within 8 weeks of receiving the complaint,
2. If the customer is dissatisfied with the response received, he/she may refer the complaint to the Financial Ombudsman Service (FOS).
3. 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.

### **2. Date and time limits**

There are a number of relevant regulatory dates and time limits that set out when a complaint can be considered, which the council will recognise. These rules normally apply to all regulated firms, solicitors and surveyors.

#### **a. Time limits to complain**

There are regulatory limits as to how long a consumer has to raise a complaint. These are often known colloquially as the “time bar rules”.

The date of the occurrence relating to which the complaint is being made is also important when considering jurisdiction. Complaints cannot normally be considered if they are referred:

- i. more than six months after the date on which the respondent (firm) sent the complainant its final response; or
- ii. more than six years after the event complained of; or (if later)
- iii. three years from the date on which the complainant became aware (or ought reasonably to have become aware) that s/he had cause for complaint.

Unless the complainant referred the complaint within that period and has a written acknowledgement or some other record of the complaint having been received, the complaint is time-barred. These time limits may be waived in exceptional circumstances, for example if the complainant has been unable to pursue a complaint due to serious illness.

In exceptional circumstances we might consider a complaint that exceeds the timeline restrictions.

#### **b. Product start date**

Where a lifetime mortgage was taken out after 31st October 2004, or a home reversion plan was taken out after 6th April 2007 (whichever product is applicable), any complaint relating to the adviser or provider must be dealt with according to the procedures and rules laid down by the FCA in the DISP rules. These rules require firms (providers and advisers) to provide a final response to the customer within 8 weeks of receiving the complaint. If the

customer is dissatisfied with the response received, they may refer the complaint to FOS. 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. There are some exceptions to this:

If a lifetime mortgage was taken out before 31st October 2004, or a home reversion plan was taken out before 6th April 2007 (whichever product is applicable), the complaint will not come within scope of the DISP rules and there will be no automatic right to refer it to FOS. Some firms do subscribe voluntarily to the FOS Voluntary Jurisdiction, in which case no time limit applies (for the product start date) to the cases which may be considered, but this is a matter of choice for individual firms.

The Council is not able to adjudicate on complaints brought by customers which are not within FOS's scope, but will where possible assist customers to ensure that they have addressed their complaint to the appropriate party.

### **3. FCA rules and FOS jurisdiction**

The FCA, 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."*

ERC members who 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 FCA and in some cases additionally by the Prudential Regulation Authority (PRA). They are also required to handle complaints brought against them in accordance with rules set out within DISP which forms part of the FCA Regulatory Handbook.

Complaints which cannot be settled directly with complainants may, if the complainant(s) is/are eligible, be referred to FOS for investigation and adjudication.

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. Customers are not bound by any decision reached by FOS and are free to pursue their complaint in the courts if they so wish.

The majority of complaints made against FCA authorised firms will come within the FOS "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. The ERC considers that it is a matter for individual members to decide whether they wish to additionally subscribe to the voluntary jurisdiction.

#### 4. Additional contact details

If you are dissatisfied with the response received from a member firm, you may wish to refer your complaint to the appropriate regulatory body. This body will vary depending on the type of firm being complained about and for complaints about solicitors, the part of the UK relevant to the contract law of the transaction. Further details are set out in the table below.

Type of member	Part of UK	Organisation who deals with escalated complaints	Complaint details link
Adviser	All	The Financial Ombudsman Service	<a href="https://www.financial-ombudsman.org.uk/consumer/complaints.htm">https://www.financial-ombudsman.org.uk/consumer/complaints.htm</a>
Provider (Lender)			
Solicitor	England & Wales	The Legal Ombudsman	<a href="https://www.legalombudsman.org.uk/">https://www.legalombudsman.org.uk/</a>
	Scotland	The Scottish Legal Complaints Commission	<a href="#">Scottish Legal Complaints Commission</a>
	Northern Ireland	The Law Society of Northern Ireland	<a href="https://www.lawsoc-ni.org/making-a-complaint">https://www.lawsoc-ni.org/making-a-complaint</a>
Surveyor	All	The Royal Institution of Chartered Surveyors	<a href="#">Concerns (rics.org)</a>