



## **Equity Release Council - Complaints and Disciplinary Process**

### **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 ERC rules and guidance (or those of its predecessor organisation, 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 adequate consent and a written 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 disability, we will do what we can to make reasonable adjustments to accommodate your needs.

### **B. 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 someone has a complaint about one of our members they 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.

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).

### **C. Qualifying criteria for complaints**

We need the person bringing the complaint to demonstrate that the member had broken the ERC (or its predecessor organisation, SHIP) rules and guidance 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 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.

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

We can investigate complaints about equity release, 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 Rules & Guidance;
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 Rules & Guidance;
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 Rules and Guidance.

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 or 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(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**

We aim to acknowledge all new complaints within five working days of receipt.

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.

If a complainant has received a response from the organisation and the matter remains unresolved, or if a complainant does not receive a response within eight weeks, we will usually investigate.

After logging, and acceptance, the complaint will be progressed by an appropriate member of the ERC 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.

### **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 relevant 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:admin@equityreleasecouncil.com">admin@equityreleasecouncil.com</a>  |
| By post to      | The Chairman of the Standards Board, Equity Release Council, The Old Rectory, Church Lane, Thornbury, Northants, NN66 8SN |
| By telephone to | 0300 0102 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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## **Appendixes**

### **1. 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 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. What dates and time limits might be relevant to the complaint?**

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, if the complaint indicates a reputational risk for the industry.

b. Product start date

Where the lifetime mortgage was taken out after 31st October 2004, or the home reversion plan was taken out after 6th April 2007, 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 the lifetime mortgage was taken out before 31st October 2004, or the home reversion plan was taken out before 6th 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. Some firms do subscribe voluntarily to the FOS Voluntary Jurisdiction, in which case no time limit applies (for the policy 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.

c. FOS acceptance of a complaint

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

- i. the firm (lender or intermediary) subscribed to the voluntary Mortgage Code between 1<sup>st</sup> July 1997 (for lenders) or 30<sup>th</sup> April 1998 (for mortgage intermediaries) and 31st October 2004 (when lifetime mortgages became regulated under MCOB, and became directly authorised by the FSA with effect from 31st October 2004;
- ii. the complaint made is in respect of a breach of the Mortgage Code;
- iii. whether the complaint is in respect of a lifetime mortgage or a home reversion;
- iv. whether a lender carries out its own administration of its mortgage book or whether it outsources this activity to a third party administrator;
- v. whether the complaint is in respect of an event which took place before regulation of lifetime mortgages or home reversions began (on 31<sup>st</sup> October 2004 and 6<sup>th</sup> April 2007 respectively);
- vi. whether the event complained of is time-barred according to the time limits set out in DISP;
- vii. whether there are any exceptional circumstance which might cause the FOS to waive the time-barring rules.

### **3. Background to the 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. Who to complain to, if you are dissatisfied with the response received from the member firm?**

The appropriate regulatory 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.

| <b>Type of member</b> | <b>Part of UK</b> | <b>Organisation who deals with escalated complaints</b> | <b>Complaint details link</b>   |
|-----------------------|-------------------|---|---|
| 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="https://www.scottishlegalcomplaints.org.uk/about-slcc.aspx">https://www.scottishlegalcomplaints.org.uk/about-slcc.aspx</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="https://www.rics.org/uk/footer/contact-us/complaints/">https://www.rics.org/uk/footer/contact-us/complaints/</a>                   |