



FCA GUIDANCE CONSULTATION 19/3: GUIDANCE FOR FIRMS ON THE FAIR TREATMENT OF VULNERABLE CUSTOMERS

Response from the Equity Release Council – 4th October 2019

Introduction

- The Equity Release Council ('The Council') is the trade body for the UK equity release sector. The Council represents over 300 member firms and over 1,000 registered individuals, including: providers, regulated financial advisers, solicitors, surveyors, intermediaries and other industry professionals. Every member is committed to the Council's Statement of Principles and associated standards, rules and guidance, which aim to ensure consumer protections and safeguards.
- In addition, the 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. Since 1991, over 465,000 homeowners have accessed more than £26bn of housing wealth via Council members to support their finances.
- We welcome the opportunity to respond to this guidance consultation and make the following headline points, informed by our experience and member views:
 - The equity release market has extensive experience working with vulnerable consumers;
 - Since the Council's inception in 1991, we have been fully committed to safeguarding consumers interest. Our standards have embedded a high standard of consumer protections, which we believe, now demonstrate best practice across the financial service industry. We are currently in the process on consulting on the evolution of these standards, placing greater emphasis on consumer outcomes and principles and vulnerability;
 - The equity release sector places a significant focus on face-to-face advice; this ensures that consumers understand fully the products available to them;
 - Independent legal advice is a non-negotiable element of the equity release process for all Council member firms. This ensures that consumers fully understand the obligations and liabilities of the product they are taking out;
 - Because all equity release products are taken out under advice, customer outcomes are the priority regardless of their initial intended purchase, even if the solution is not in releasing equity from their homes;
 - The Council encourages open and honest family discussions around the equity release process; and,
 - regulatory data shows equity release receives the fewest complaints among home finance products, demonstrating the value in our consumer-focused safeguards and protections.

Equity release

Equity release refers to a range of financial products letting consumers access the equity tied up in their homes if they are aged over 55. They can take the money released as a lump sum or, in several

smaller amounts or as a combination of both. Equity Release products are regulated by the Financial Conduct Authority (FCA).

The industry's Q2 2019 data reveals the average size of new drawdown plans was consistent with the previous quarter in terms of customers' first withdrawal (£63,166 versus £62,416 in Q1), although customers reserved more modest amounts of housing wealth for future use (£35,903 compared to £37,069 in Q1). The average size of a new lump sum plan taken out in Q2 was also scaled back slightly to £93,712 (-4% on Q1). More than two thirds (67%) of new plans taken out between April and June were drawdown¹.

Drivers for the popularity of equity release

Equity release has increased in popularity over recent years. Drivers for the growth of this sector have been:

- **Meeting consumer needs.** The UK is ageing rapidly – currently 18% of people are aged 65 years old or over (which is estimated to grow to 25% by 2045 according to the ONS). With inadequate retirement savings, longer lives in old age with associated costs, people retiring with secured debt and unsecured debt – customers are increasingly using significant levels of property wealth to secure or enhance their quality of life in old age.
- **Innovation in the equity release sector.** There has been significant innovation in recent years by the UK equity release sector. As of autumn 2019, the range of product options that meet the Council's standards stands at 287. Top growth areas over the past year included options for sheltered or age-restricted accommodation, making regular interest payments, downsizing protection, inheritance guarantees and drawdown facilities.
- **The Equity Release Council.** The Council exists to promote high standards of conduct and practice in the provision of, and advice on equity release, which has consumer safeguards at its heart. In turn this creates confidence among consumers that equity release is safe. The Council is currently consulting with its members and key stakeholders including the FCA about the evolution of these standards. The focus of the standards review is to ensure that the standards keep pace and remain appropriate within an evolving marketplace and its regulatory landscape. We are working with our members to evolve these standards to focus on outcomes for consumers, including how products, services and interactions with consumers can more effectively address and meet the needs of consumers in vulnerable circumstances.

Standards

Our standards are additional to statutory regulation, which of course seeks to address vulnerability. We are seeking to significantly enhance our own standards and best practice guidance. All parties, throughout the life of the Equity Release transaction, have a responsibility to understand vulnerability and act accordingly at all points of contact. During the initial sales process independent Legal Advice is required, and the solicitor acting, has a unique opportunity to assess capability under the Mental Capacity Act, and also identify any duress or coercion of the applicant; perhaps from family, friends or even carers. This vulnerability is not actually highlighted within your consultation and might be an area for you to consider additional drafting.

¹ All figures taken from the Equity Release Council's Q2 2019 analysis of member activity, representing over 95% of the equity release market.

During the sales process, and indeed when processing further drawdown requests, care is taken to understand the purpose of the funds release and to try and identify any vulnerability factors and highlight the purpose of the release. This is to understand whether any unexpected factors are noted, perhaps highlighting an underlying problem such as duress, coercion or gambling. In addition to firms processes to ensure appropriate and compliant behaviour, provider firms also undertake additional compliance on the sales made by advisors. This framework of rules, guidance and compliance, at every contact point, helps identify vulnerability and allows appropriate actions to be taken.

Response

Below we answer those questions where we feel our input can add value to the work of the regulator.

Q1. Do you have any comments on the aims of the draft Guidance?

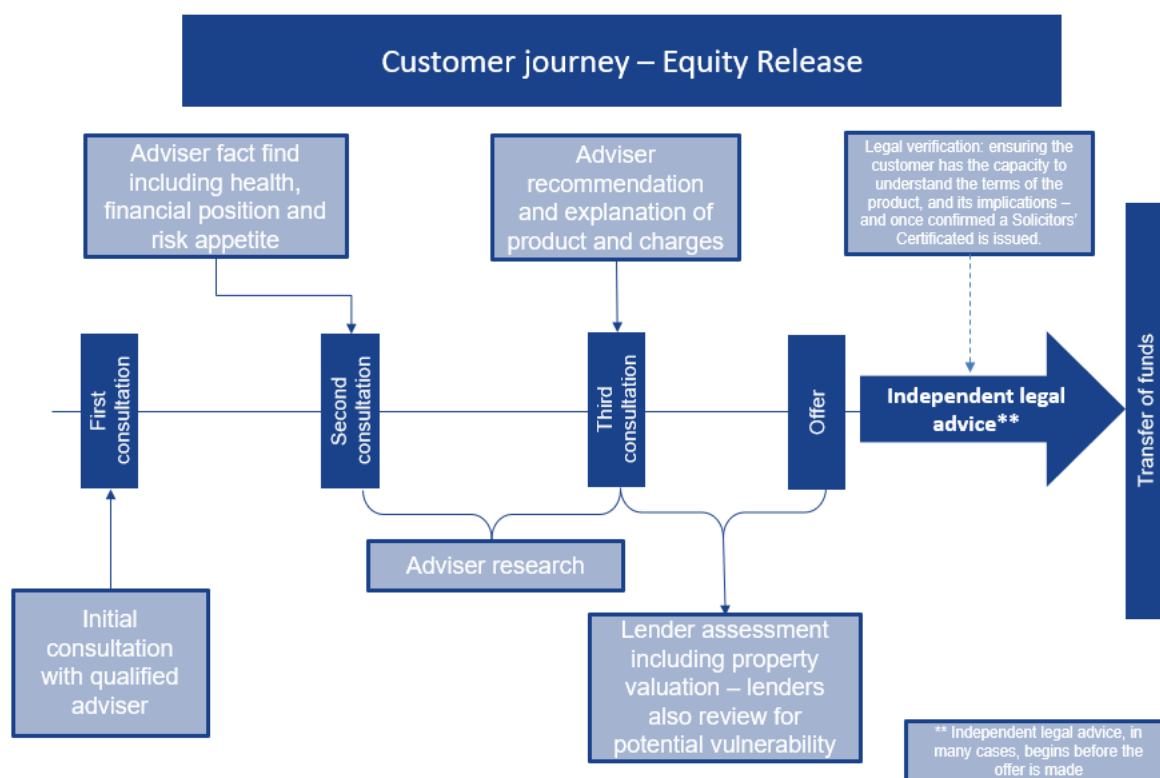
The Council welcomes the FCA's attention on the issue of consumer vulnerability, an area of focus for the Council since our inception in 1991. The Council exists to promote high standards of conduct and practice in the market – ensuring that our members always act in the best interests of their customers and treat customers fairly in all circumstances.

As a whole, the Council's view is that the guidance answers the right questions albeit at a high level. The guidance provides a useful outline of what the FCA expects of firms when they deal with vulnerable and potentially vulnerable consumers.

In the FCA's Mortgage Market Review that was undertaken in 2014, the FCA automatically categorised equity release customers as vulnerable. In fact, the requirement for all equity release customers to have independent legal advice long predates the Mortgage Market Review and was introduced in 1991. The industry took the initiative ahead of regulation being introduced on vulnerability to ensure that consumer protections and the fair treatment of vulnerable consumers was established as a key tenant of the sector. As a result, the equity release industry has a very thorough three-step process before any sale is completed: regulated financial advice, application, and independent legal advice.

This places the lifetime mortgage industry and equity release sector in a robust starting position in detecting vulnerability and understanding the appropriate steps necessary to deliver for vulnerable consumers.

The infographic below details the stages along the customers journey to purchase an equity release product. The multiple touchpoints and the guarantee of independent legal advice prior to completion demonstrate the market's focus on consumer protections.



The guidance makes clear that firms must take additional steps where a consumer may be vulnerable. However, the broad definition of vulnerability and potential vulnerability means that the entire population can be classified as potentially vulnerable at some point in their life. This in turn means that additional actions must be taken in relation to all consumer interactions to account for the inclusion of 'potential vulnerability' to guard against all eventualities. This has the danger of capturing non-vulnerable consumers, and those who do not wish to be deemed vulnerable, in processes that will extend the time taken to transact, causing additional cost both to the consumer and the firm where it is unnecessary.

All Council member firms apply by our Statement of Principles², which place consumer protections at the heart of the industry and guarantee consumer safe-guards and independent legal advice in the equity release process. Where certain sectors are deemed to be dealing with almost exclusively vulnerable consumers, the Council would like to see the FCA detail additional steps that all firms operating in these sectors must take, in a similar fashion to the standards, rules and guidance set down by the Council, to entrench consumer protections.

Overall the guidance regarding communications, training and quality assurance are very clear and provide a welcome guidance for firms to use. However, case study 5 (Annex 1, pg36) presents a clear conflict between the guidance and General Data Protection Regulations (GDPR), regulated by the Information Commissioner's Office (ICO). This example breaches GDPR and we have been advised a complaint from the consumer on the area would likely be successful. The Council believes that the area of 'special category data' requires further investigation from the regulator to provide clarity on the topic, particularly as it relates to the later life lending sector. The Council is keen to ensure that firms are not being caught between trying to do the right thing for a consumer while breaching a customer's rights under separate regulations.

² <https://www.equityreleasecouncil.com/about/standards/statement-of-principles/>

Further information and examples from the FCA around what does and does not constitute the processing of ‘special category data’ would be invaluable to clarifying the regulations.

We would also welcome guidance from the FCA regarding the handling of criminal convictions and the processing of special category data under article 10 of GDPR.

Q3: Do you have any comments on the distinction between actual and potential vulnerability (Annex 1, Section 1)? (Please note we are not seeking views on the meaning of vulnerable consumer because we have consulted on that previously.)

The drivers behind the FCA’s definition and the distinction between actual and potential vulnerability is logical and captures the key challenges that consumers face in these scenarios. However, the inclusion of potentially vulnerable could result in the guidelines being applied to the entire population who will, at some point in their life, be deemed potentially vulnerable when they themselves may not agree with the distinction.

Additionally, the logical conclusion of an increased scope regarding potentially vulnerable consumers, will result in processes having to be applied to all consumers to ensure that firms are appropriately analysing vulnerability where it might not be obvious. This will result in both positive and negative outcomes for consumers. Positively, as firms are more likely to capture vulnerability that might have been missed in the past. However, consumers who are not vulnerable will still be subject to additional processes which might not be appropriate or overridable, resulting in increases in transaction times and potentially increased costs which are not appropriate.

The regulator’s distinction will also impact how firms treat those consumers who they deem potentially vulnerable. The regulator needs to lay out whether being potentially vulnerable at one time in one’s life is maintained as a record on a consumer’s account and might then negatively impact that individuals’ future interactions with financial services organisations.

Q4: Do you have any comments on our view of what firms should do to understand the needs of vulnerable consumers (Annex 1, Section 2)?

The guidance is clear in what the regulator is expecting of firms in relation to dealing with vulnerable consumers. Council member firms are already bound by the Council’s Statement of Principles, which are specifically designed to ensure that consumers’ best interests are being served by member firms. Entrenching and promoting best practice in the industry is something that the Council is proud of and we believe the FCA will be able to find examples of best practice in the equity release sector in terms of serving vulnerable customers. In particular, how the standards and protections our members abide by can be applied to other sectors (e.g. requiring face-to-face independent legal advice and solicitors certificate demonstrating that the customer understands the terms and nature of the contract they have entered into, and encouragement that family members should also engage with this process).

Q5: Do you have any comments on our view of what firms should do to ensure staff have the necessary skills and capabilities when engaging with vulnerable consumers (Annex 1, Section 3)?

The FCA is right to place a great deal of importance on the role of staff, particularly front-line staff, when working with vulnerable consumers and the Council is fully supportive of the FCA’s attention. The Council also agrees that when staff are incentivised to find the best outcome for consumers, rather than being driven by speed and volume of sales, consumers are more likely to have a positive experience. Industry staff are trained to understand how to identify and engage with vulnerable

consumers. This is particularly important in the equity release sector due to the demographic of the market.

Some smaller Council members seek more specific information from the FCA on how they should approach this. For example, where might formal qualifications be appropriate, whether they should be desirable as a best practice or compulsory, and for which staff in an organisation. Many members work with charities including Dementia Friends (part of the Alzheimer's Society) and provide e-learning on customer vulnerability for their staff.

The Council is working with other financial services trade associations to consider how qualifications can evolve to enable advisers in the later life lending sector to support consumers. This is increasingly important given the changing nature of the advice pathway, away from traditional siloed advice, which is placing greater pressures on advisers to understand a myriad of options across markets. This will include discussion around how minimum standards of training for frontline staff can be embedded across the later life lending sector. This will hopefully enable a wider range of firms and colleagues to spot signs of vulnerability and understand the individual company's policy on vulnerability.

Q6: Do you have any comments on our view of what firms should do to translate their understanding of the needs of vulnerable consumers into practical action on product and service design, good customer service and communications (Annex 1, Section 4)?

The Council is supportive of the FCA's action on the areas of product and service design, customer service, and communications.

Council members place considerable focus on providing high quality advice to customers, by face-to-face consultations or over the phone. This ensures that consumers fully understand the obligations and details of the product they are interested in and the advisers can determine the best solution, even if this is via a different avenue than that which the consumer originally considered.

The Council's additional requirement for consumers to receive face-to-face independent legal advice means that customers have additional protections, so that no product is ever purchased without thorough consultation with an independent source, as detailed in the sales process infographic above. Additionally, but of great importance to members is that customers are encouraged to have open and honest conversations with their family members about their decision - family members are often invited to join conversations with advisers during the approval process. Customers are encouraged to share their intentions regarding the release of equity with family members.

In addition to providers and advisers, product valuers include vulnerability on their checklists and actively look out for potential customer issues.

The FCA already requires that firms' communications are clear, fair and not misleading, which the Council fully supports. Building upon this, the Council would welcome a minimum standard from the Regulator that requires all firms to provide communications in a range of alternative formats (braille, large font, hearing loops etc.). There is also a responsibility on firms to ensure their record keeping processes are in order so that consumers do not have to communicate a preference on multiple occasions.

Q8: Do you have any comments on how firms are expected to use and apply the Guidance?

The Council feels comfortable that our standards and protections require our members to meet the outcomes the FCA is seeking to achieve through its guidance. As a result of our members' experience working with vulnerable consumers to deliver optimal outcomes, we provide examples of best

practice which might be helpfully incorporated by other sectors engaging with vulnerable consumers and particularly those in later life.

9: Do you have any views on the extent to which the Guidance will enable firms to comply with their obligations under the Principles and achieve better outcomes for vulnerable consumers?

The Council is supportive of the aim of the guidance to demonstrate what good looks like to firms and to encourage firms to entrench best practice and consumer protections at the centre of their business. By their very nature, equity release products and services are designed for those aged over 55 years - a target market that includes at the upper end customers who could be deemed vulnerable. Due to this, the guidance will have a minimal effect on the sector when compared to a market where these considerations are not currently taken into account.

However, the Council does believe it is important to raise concerns that the somewhat ambiguous and broad nature of the definition of vulnerability and breadth of the Guidance could increase procedures and safeguards for all consumers and may have unintended consequences. Additional training and awareness campaigns may produce a number of false positives as a result of the purposefully broad definition. This, in turn, may cause an increased number of complaints regarding the post-sale barriers, intended to protect vulnerable customers and the firms that provide service to them.

Q10: To inform our cost-benefit analysis, do you have any comments on what costs firms may incur as a result of this Guidance?

The guidance details a significant number of processes for firms to implement and training programmes to be designed and rolled out across national firms. The equity release sector is in a fortunate position, in that lenders already have many of these consumer protections in place due to the nature of the market they serve and the products that our member firms offer. Therefore, there should not be a large additional cost for firms to ensure they are hitting the regulators requirements.

Firms in other sectors will undoubtedly introduce a robust training system to front-line and compliance staff in order to detect vulnerability, whilst also updating processes to allow additional flexibility in their approaches to consumers, enabling them to detect and work with vulnerability. A number of firms will already have these in place in order to meet the requirements under the Equalities Act. Those that do will be able to simply expand these policies to protect those not covered and to expand the process to include those deemed potentially vulnerable.

As mentioned above, smaller member firms have questions about these guidelines will affect their businesses including a disproportionate impact on smaller firms financially, who will be less able to utilise economies of scale and will most likely be forced to hire additional and specialist staff or consultants to ensure they are meeting the requirements of the FCA.

The true impact on smaller firms will be difficult to answer until there is greater clarity on what sort of changes some smaller firms will need to make. And, whether such changes are technology based - e.g. e-learning courses which could be expected to result in minimal additional costs. However, if more substantive changes were mandated that included, for example, system updates for recording of vulnerability, these would likely involve significant and disproportionate costs on smaller firms.

The guidelines may also result in additional costs being passed onto consumers, particularly where firms are unable to absorb costs into normal running processes.

Q11: Do you have any examples of activities or processes that are in place, or could be established, to ensure the fair treatment of vulnerable consumers?

The equity release industry has a three-step process before any sale is made: regulated financial advice, lender oversight at application, and independent face-to-face legal advice. This places the equity release industry in a robust starting position in detecting vulnerability and taking the appropriate steps. Feedback from member firms has indicated that advisers and salespeople are trained extensively on how to spot signs of vulnerability and the appropriate steps to take in these instances.

Member case study 1

One member described their processes as follows: they only accept applications from financial advisers authorised by FCA, all applications receive a 100% check by their operations management prior to issuing an offer and will not be allowed to complete until they are in possession of a Solicitors Certificate. During our written communications with customers throughout the life of the plan, their staff are empowered to personalise letters where for example standard process letters may not be getting a response. Where needed, customers are assisted with sourcing contractors for the repairs and maintenance that are required, including in some cases assisting customers with the financing of these repairs.

They also consider other ways in which they can respond to particular customer circumstances. In one recent example, a customer wished to sell their property subject to a home reversion plan and exit the scheme for a move to a more specialist property. The business effectively bought out the customer, paying full market value for the customer's equity share to facilitate an urgent home move. The business was made aware that the customer was severely disabled requiring specialist care his family were providing. An open market sale with the customer in situ was attempted but feedback from estate agents was that buyers were put off due to the make-shift hospital room set up in the master bedroom. The member worked with the customer to release the equity share at full market value, enabling the customer to vacate the property and funds were paid to enable him to move closer to family. The provider went on to sell the property successfully.

The Council supports all customer engaging staff undertaking a basic level of vulnerability training, combined with a thorough company policy. The Council is already aware of several e-learning courses on vulnerability that exist in the market. Undertaking some level of training on the subject should be as commonplace as undertaking training on data protection or financial crime subject matter.

The FCA already requires that firms' communications are clear, fair and not misleading, which the Council supports fully and expects our members to uphold. Building upon this, the Council would welcome a minimum standard from the regulator that requires all firms to provide communications in a range of alternative formats (large font, hearing loops etc.). There is also a responsibility on firms to ensure their recording keeping processes are in order so that consumers do not have to communicate a preference on multiple occasions.

Q12: Do you have any analysis you could share with us of the positive outcomes for vulnerable customers resulting from the implementation of activities or processes in place aimed at achieving better outcomes for vulnerable consumers?

The equity release sector places a great deal of weight on achieving good outcomes for our customers. Occasionally this even results in advisers determining that the original product a consumer desired is not suitable or they discover a more suitable way to benefit the consumer. This is testament to the

diligent work of member firms and advisers and the fact that consumer best interests are more important than sales.

Member case study II

A prime example of this was reported by a Council member. A consumer had approached to release equity from his property as he believed he was ineligible for a state pension. However, upon researching the customer's situation, the adviser discovered that the potential customer was due £133,000 from an unclaimed state pension. As a result, there was no need for the customer to release equity from his home and the application correctly did not continue.

The above case study showcases the prominence that Council members place on seeking to get good outcomes for their customers. In this example the consumer might not wish to be deemed vulnerable, but we can see that he meets one of the guidance's drivers of vulnerability – capability – as he thought he was ineligible for a state pension due to a lack of understanding of financial matters. The work of the adviser at the member firm showcases a very positive example of an adviser taking all of the necessary steps to understand a customer's circumstances (which includes assessing the impact of benefits) and achieving an optimal outcome.

Q17: Do you agree that proposing to issue guidance is the most effective means of achieving our aim at this stage?

The Council supports the FCA's focus on the issue of consumer vulnerability to ensure vulnerable consumers are treated fairly across the financial services industry.

The Council has been central to improving standards and leading a consumer-focussed equity release sector. Our member firms and advisers are required to comply with our standards and protections which in turn enables customers to be satisfied that equity release is safe and reliable. Our requirement for independent face-to-face legal advice means that consumers have an independent legal voice to explain and certify that they understand the product that they are purchasing.

The fact that the equity release sector has received the fewest complaints among home finance products is testament to the diligent and consumer-focused approach that our advisers and member firms take and the best practice that we have implemented in the market.

Submitted by the Equity Release Council

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