

## **Non Face-to-Face Solicitor Appointment Guidance Notes**

During these unprecedented times of social lockdown, due to COVID-19 (Coronavirus), the Equity Release Council has agreed to temporarily revise Rule 8 of the Rules and Guidance (“the Rules”) to enable cases to complete **without a physical face-to-face meeting with a solicitor**. This is a short-term amendment to the Rules and will only apply during HM Government’s requirement to “Stay at Home”. Once this has been lifted, there will be a further update from the Equity Release Council.

This guidance note is intended to be read alongside and supplement the process flowchart outlining the four mandatory contact points. It is hoped that it may be useful to have some context and additional guidance during this period of uncertainty.

### **Background**

Since 2014, it has been a mandatory requirement for a solicitor to have at least one face-to-face meeting with their client during the equity release process to ensure that:

1. The client’s identity has been fully established;
2. The client has mental capacity to enter into an equity release contract;
3. The client is not under duress or coercion to enter into the equity release contract; and
4. Where there is more than one party, both agree to enter into the equity release contract.

These meetings have not been permitted to take place via Skype/FaceTime or other video call as it is widely accepted that it is not possible to verify points 1-4 above as robustly as they can be when a meeting **in person** takes place. Meetings in person have therefore taken place either at the offices of solicitors OR in clients’ own homes.

Not only is a face-to-face physical meeting regarded as best practice, it also achieves the physical witnessing of the mortgage deed, which cannot be done remotely (eg, via video call) by virtue of s1(3) Law of Property Act (Miscellaneous Provisions) Act 1989 and Yuen v Wong (2019).

### **The Current Situation**

It is not currently possible for clients to visit solicitors’ offices and we are operating during a period of social distancing, whereby solicitors may not be able to travel to clients’ homes. As such, in order to be able to complete equity release cases, the Equity Release Council agreed to a temporary revision to Rule 8, following consultation with its members on 20<sup>th</sup> March 2020. This will enable the remote provision of legal services during this period of restricted movement and social distancing.

Solicitors should be aware that fraud, duress and coercion are all more likely in the current climate, especially given that so many people have lost their jobs in the wake of COVID-19. As such, extra care must be taken to ensure that clients are taking equity release of their own free will and are not being pressured to do so by family members. Similarly, identification checks should be robust. Reasons for the loan should be cross-referenced with the client’s financial adviser.

A non face-to-face process for solicitors has been deliberately designed to be multi-layered and to require several **mandatory** contact points with the client in order to verify, as thoroughly as possible, Points 1-4 in the Background Information above. It is extremely important that the Mandatory Contact Points are made with the client, to ensure compliance with revised Rule 8, as lenders will place strong reliance on this in agreeing to complete. It is important to note that this process is not an “execution only” process. It requires all parties to the equity release contract to be spoken to at least four times and it is recommended for you to establish who, if anybody, has any potential interest in whether the equity release proceeds (or does not proceed) and whether or not the client has spoken to immediate family members about their plan to take equity release. If they have not, you should establish why not.

As you will be unable to physically witness your client's signature to the mortgage deed, you must establish (ideally at the outset) who the client would like to use as a witness. You must carry out an identity check against the witness and make enquiries as to their relationship with the client to establish that they are able to corroborate that the client is the person signing the deed. The witness must be an independent adult who is not benefitting from the equity release or the client's estate. In terms of ID for the witness, two forms of Government issued ID (such as passport and driving licence) and/or an electronic ID check are recommended.

Given that you will not be meeting the client in person, you must provide your legal advice in writing and then follow up with video/telephone calls (either recorded for playback or via detailed attendance note) with all parties to the equity release. You need to determine whether a conflict of interests exists.

If you are satisfied at this point, you will need to send the mortgage deed to the client. The client can then arrange for their witness to attend in person to sign the deed but should be reminded to observe social distancing protocols and to follow strict hygiene protocols with the witness (eg, not shaking hands/sharing pens/remaining two metres apart at all times). The client will then need to make arrangements to return the mortgage deed to you by post or courier.

It is important to reiterate that this process *can ONLY be used whilst HM Government has directed the public to stay at home in response to COVID-19* and by agreement from the Equity Release Council. Once restrictions on movement have been lifted, the aim is to return to the full face-to-face legal process, using the original Solicitor's Certificate, with immediate effect. It may not be possible to carry out sufficient checks against the client using the Stay at Home process to allow completion to take place. If this is the case, you should not proceed but put the client's equity release on hold until such time as it is possible to return to face-to-face. In addition, clients may prefer to delay until such time as they do not have to invite a witness into their home.

For the avoidance of doubt, a Power of Attorney should only be used in any of these scenarios if the client has lost mental capacity and you are holding evidence of this.

**\*\*Even if you are familiar with the usual equity release process, you must read the instructions from lenders' solicitors during this period of lockdown as their requirements will vary and you will be required to give new declarations and undertakings.\*\***