Equity Release Council response to

CP 21/13: A New Consumer Duty

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About the Equity Release Council

The Equity Release Council is the representative trade body for the equity release sector with 617 firms and over 1500 individuals registered, including providers, regulated financial advisers, solicitors, surveyors and other professionals.

It leads a consumer-focused UK based equity release market by setting authoritative standards and safeguards for the trusted provision of advice and products. Since 1991, more than 580,000 homeowners have accessed over £37bn of housing wealth via Council members to support their finances.

The Council also works with government, voluntary and public sectors, and regulatory, consumer and professional bodies to inform and influence debate about the use of housing wealth in later life and retirement planning.

Every member is committed to the Council's Statement of Principles, its 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 aged 55 and over in the UK.

The Council welcomes the opportunity to respond to this consultation on the Financial Conduct Authority's proposed New Consumer Duty.

To discuss any aspect of this response please contact Kelly Melville-Kelly (Head of Risk, Policy and Compliance) at kelly.melville-kelly@equityreleasecouncil.com

Summary

The Council's overall aim is to create a supportive and robust standards framework that supports member firms in delivering good customer outcomes. It was with this in mind that the Council recently updated its advisory checklist and guidance, published its Competency Framework and enhanced the existing Adviser Guide. All initiatives were designed to underpin the existing set of Standards that have become the bedrock of the Council's work and form the cornerstone of our mission and values.

We believe that our Standards enhance requirements set by the regulator and members are required to confirm adherence on an annual basis. This means that much of what would seem to be proposed under the New Consumer Duty will already be undertaken as "normal practice" by Council members.

During 2019/20, the Equity Release Council's Standards were comprehensively reviewed to ensure that any overlap with statutory regulation was eliminated and that any gaps – including in respect of drawdown provision and customer vulnerability - were addressed. At the same time, the Standards completed the transition from a rules-based approach to a more consumer outcome focused approach, reflecting changing customer needs in later life.

Following this development, the Council commissioned an oversight review.

This review included a recommendation that we should establish a Risk, Policy and Compliance Team to oversee the further development of the Standards and ensure compliance, while also anticipating any future conduct risks. The team provides a major oversight function, while developing information and recommendations to the Council's Standards Board and committees.

Work continues to review the Standards and ensure there is a constant review of Customer Outcomes.

Firms will respond individually to the consultation but, on behalf of all our members at the Equity Release Council, we welcome the focus the Financial Conduct Authority is giving to the equity release market and support all efforts to improve equity release communications, ensure products and service are fit for purpose, enhance customer service and represent fair value. As the New Consumer Duty relates to **all** financial services providers and advisers it should here be noted that the Council can only consider and respond in relation to the equity release market which it represents. Our responses, therefore, relate only to this specific market.

The Council has conducted member consultations both in terms of workshop and questionnaire engagement. The response from our members favoured promoting good practice and initiatives which support these new proposals from the Financial Conduct Authority. Overwhelmingly, the view from members was that far more detail will be needed to provide a full perspective of members' views. Some of the proposals have a cost implication for both intermediaries and manufacturers and again more clarity will be needed around these.

Precis responses to Consultation Paper questions are as follows:

Q1: What are your views on the consumer harms that the Consumer Duty would seek to address, and/or the wider context in which it is proposed?

There was general support for this initiative covering all financial services, and in particular the consumer harms that the Consumer Duty is looking to address. However it was noted that the equity release sector believes that it is already addressing many aspects raised and working hard to ensure good customer outcomes. This is especially so for Equity Release Council members, who are required to adhere to our Standards, which go beyond Financial Conduct Authority requirements.

Respondents believed that Consumer Duty is inherent in good business practices and should be adopted as a matter of routine.

Q2: What are your views on the proposed structure of the Consumer Duty, with its high-level Principle, Cross-cutting Rules and the Four Outcomes?

As with Q1, there was general support for this, and respondents await further information about the proposals.

Q3: Do you agree or have any comments about our intention to apply the Consumer Duty to firms' dealings with retail clients as defined in the FCA Handbook? In the context of regulated activities, are there any other consumers to whom the Duty should relate?

Inclusion of Buy to Let products (although not currently "retail") was suggested, also SMEs and one respondent felt that more family involvement should be encouraged or required.

Q4: Do you agree or have any comments about our intention to apply the Consumer Duty to all firms engaging in regulated activities across the retail distribution chain, including where they do not have a direct customer relationship with the 'end-user' of their product or service?

Respondents desired more clarity on responsibilities they would be required to undertake. This was accompanied by a general agreement that Consumer Duty is sensible and brings all areas of financial services together. Cohesion and consistency across all markets would build consumer understanding and confidence.

Q5: What are your views on the options proposed for the drafting of the Consumer Principle? Do you consider there are alternative formulations that would better reflect the strong proactive focus on consumer interests and consumer outcomes we want to achieve?

There was a general preference for Option 1 ("Good Outcomes") amongst respondents as we are used to referring to outcomes and this term is already in common usage.

Q6: Do you agree that these are the right areas of focus for Cross-cutting Rules which develop and amplify the Consumer Principle's high-level expectations? A feeling that the Cross-Cutting Rules are too "high level" prevailed – again the desire for more clarity and definition was highlighted, eg. what are "reasonableness" and "foreseeable harm", precisely?
Q7: Do you agree with these early-stage indications of what the Cross-cutting Rules should require? Once again, the need for more clarity was highlighted but there was a consensus approving the Consumer Duty's aims. It was felt that the Cross-Cutting Rules as they stand are open to wide interpretation and that these need to be clearer.
Q8: To what extent would these proposals, in conjunction with our Vulnerability Guidance, enhance firms' focus on appropriate levels of care for vulnerable consumers? Respondents felt that within the equity release sector these would seem to be an extension of our existing responsibilities. However, more guidance and information are needed before final comments can be made.
Q9: What are your views on whether Principles 6 or 7, and/ or the TCF Outcomes should be disapplied where the Consumer Duty applies? Do you foresee any practical difficulties with either retaining these, or with disapplying them? Overall respondents felt that this would be a good opportunity to "tidy up" the Handbook and incorporate the Consumer Duty. The overall preference would be for the Handbook to be reviewed and streamlined. There were mixed views on disapplying PRIN.
Q10: Do you have views on how we should treat existing Handbook material that relates to Principles 6 or 7, in the event that we introduce a Consumer Duty? Agreed as in Q9 above. Overall respondents felt that this would be a good opportunity to "tidy up" the Handbook and incorporate the Consumer Duty. The overall preference would be for the Handbook to be reviewed and streamlined. There were mixed views on disapplying PRIN.
Q11: What are your views on the extent to which these proposals, as a whole, would advance the FCA's consumer protection and competition objectives? Respondents felt that it will depend on what the Financial Conduct Authority plans to do differently – how will success and effectiveness be measured and how will the FCA monitor?
Q12: Do you agree that what we have proposed amounts to a duty of care? If not, what further measures would be needed? Do you think it should be labelled as a duty of care, and might there be upsides or downsides in doing so? Overall respondents were comfortable with this in theory, but questions were asked about what the definition of "duty of care" is and how this will be monitored and reported. Is this more typical of being a legal term?

Q13: What are your views on our proposals for the Communications outcome?

There is general approval and support for the proposals for the Communication outcome, noting the emphasis moves away from "clear, fair and not misleading" and a feeling of "taking things up a notch" overall – which is supported, and conscious that the equity release sector is already committed and doing much of what is being proposed.

There was a suggestion that PRIN 7 should be removed as Consumer Duty supersedes it.

Q14: What impact do you think the proposals would have on consumer outcomes in this area?

As Q13.

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There was a suggestion that PRIN 7 should be removed as Consumer Duty supersedes it.

Q15: What are your views on our proposals for the Products and Services outcome?

Respondents indicated general approval of the proposals and felt that it is in line with current market practices, albeit raised some concerns around product and stress testing which may alter the market due to innovation across financial services as a whole.

Q16: What impact do you think the proposals would have on consumer outcomes in this area?

As Q15.

Respondents indicated general approval of the proposals and felt that it is in line with current market practices, albeit raised some concerns around product and stress testing which may alter the market due to innovation across financial services as a whole.

Q17: What are your views on our proposals for the Customer Service outcome?

It was felt that enhanced requirements are good and support customer understanding and ongoing suitability.

Q18: What impact do you think the proposals would have on consumer outcomes in this area?

As Q17.

It was felt that enhanced requirements are good and support customer understanding and ongoing suitability.

Q19: What are your views on our proposals for the Price and Value outcome?

Overall respondents were pleased to see formalisation of previous requirements but need more clarity around what the Financial Conduct Authority is really looking for. It was felt that there is an implication that early repayment charges and fees are under scrutiny and respondents recognise need for customers to understand both of these. How is fair value going to be measured?

Q20: What impact do you think the proposals would have on consumer outcomes in this area?

As Q19 – a view was expressed that any costs should not be passed on to customers.

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Q21: Do you have views on the PROA that are specific to the proposals for a Consumer Duty?

Concerns were expressed on the full consultation and in particular there was an impression that the PROA could possibly push firms to become more risk averse and potentially increase costs. It may also stifle innovation.

Q22: To what extent would a future decision to provide, or not provide, a PROA for breaches of the Consumer Duty have an influence on your answers to the other questions in this consultation?

As Q21.

Concerns were expressed on the full consultation and in particular there was an impression that the PROA could possibly push firms to become more risk averse and potentially increase costs. It may also stifle innovation.

Q23: To what extent would your firm's existing culture, policies and processes enable it to meet the proposed requirements? What changes do you envisage needing to make, and do you have an early indication of the scale of costs involved?

Updates to customer conduct risk policies, management information and processes may be needed which could have uncertain cost implications. More detail is needed to undertake a fuller cost benefit analysis. Language/terminology will also need to be aligned with Consumer Duty.

Q24: [If you have indicated a likely need to make changes] Which elements of the Consumer Duty are most likely to necessitate changes in culture, policies or processes?

Customer communications, processes and management information will need review – it is difficult and unrealistic to comment further without fuller details of proposals. Council members are largely already adhering to higher standards and so for many of our respondents, a Consumer

Duty is a welcome formalisation of what they are already doing and recognition that they are largely conducting their businesses in line with the Consumer Duty already.

Q25: To what extent would the Consumer Duty bring benefits for consumers, individual firms, markets, or for the retail financial services industry as a whole?

As Q11.

More information is required. It is felt that proposals to standardise language would drive up consumer trust as it would provide a consistent approach. This would lead to a better culture for consumers in time, coupled with the removal of process barriers.

Q26: What unintended consequences might arise from the introduction of a Consumer Duty?

Concerns are expressed that confusion may arise with PRIN and TCF remaining in place. Also, that conflicting regulatory explanations could lead to additional confusion. A common theme of a need for more clarity was emphasised. System changes may, it was felt, delay current work in progress. The current timeline would not allow for much time to make necessary changes after full publication in December 2021.

Respondents (all from the Lifetime Mortgage sector) believe that our sector is already taking the extra steps required (pending further clarity of course) and so do not foresee major changes for the equity release market.

One member also expressed the concern about the possible withdrawal of products due to increased risk and cost, especially concerns about PROAs and class actions years after the event.

There was also concern that, while the major players genuinely do their best for customers under TCF, a duty of care would not be observed by less scrupulous firms anyway, further tilting the playing field.

There was also concern that Duty of Care may be little more than an enhanced TCF, adding to costs and administration but not greatly enhancing customer outcomes.

Q27: What are your views on the amount of time that would be needed to implement a Consumer Duty following finalisation of the rules? Are there any aspects that would require a longer lead-time?

Respondents felt that with additional final information proposed in December, implementation in July 2022 would be ambitious, especially if MI changes are needed. Overall a 12-month implementation period following final guidance in December 2021 would seem more realistic.