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Equity Release

Quick reference Guide Chapter 10

By the end of this guide you will be able to describe the process for managing complaints and the main organisations which have been established to deal with them.

Complaints and compensation

Definitions

There are a number of terms that you need to be familiar with in relation to this chapter:

Lifetime mortgage

- The generic term that applies to a wide range of products targeted at elderly borrowers such as home income plans, cash plans, capital drawdown schemes and open-ended mortgages.

Home reversion plan

- Enables a homeowner to sell all or a proportion of their property to a reversion provider in order to raise funds, with the customer continuing to live in the property, as a tenant, until they die or it is permanently vacated.

Shared appreciation mortgage

- A plan that enables the customer to raise capital and make no payments. The lender foregoes interest completely but takes its income (profit) from a share in the increase in the property value that has occurred between creating the mortgage and the redemption date.

Purchased life annuity

- An income purchased with a lump sum, by a private individual, where part of the income is tax-free and which usually ceases on death.

Unit trust

- A trust formed to manage securities on behalf of a number of small investors giving the combined benefits of diversification, security and a sufficient weight of assets to ensure cost-effectiveness and merit the attention of leading fund managers.

Open-ended Investment Company (OEIC)

- A form of retail investment fund similar to a unit trust but its structure is that of a company.

There are also a number of abbreviations used as follows:

FOS	• Financial Ombudsman Service
FCA	• Financial Conduct Authority
FSMA	• Financial Services and Markets Act 2000
FSCS	• Financial Services Compensation Scheme

10.A Complaints

The minimum expectations of customers when making a complaint against a firm are that the:

- complaint will be acknowledged
- customer will be given some indication of who will be dealing with it and within what timeframe
- customer will be directed to an independent complaints scheme should there be no agreement.

10.A.1 Complaints procedures

Under the **Financial Services and Markets Act 2000 (FSMA)**, firms must establish formal complaints handling arrangements and be members of the **Financial Ombudsman Service (FOS)**.

FSMA rules require firms to:

- Inform customers of where to find details of complaints procedures at the start of the contract.
- If the complaint cannot be resolved by close of business on the day after the complaint was made, the firm must give a prompt acknowledgement that it is under consideration.
- The firm must keep the customer informed on progress made in resolving the complaint.
- Firms must aim to resolve complaints within eight weeks.
- They must inform complainants of their right to refer their complaint to FOS if dissatisfied with the outcome of an internal investigation.
- Firms are required to report to FCA on matters relating to complaints handling **every six months**.

Providers must have a **written policy** on handling complaints which should include:

- How complaints are dealt with initially.
- Acknowledgement of complaints and commitments to be made to the customer.
- Who deals with complaints.
- If a dedicated function is in place, the responsibilities of that function and its relationship with other departments.
- Individual mandates for dealing with complaints.
- Minimum acceptable time frames for dealing with complaints.
- Levels of complaint handling.
- Requirements to create documentary evidence of complaints and keep records.
- Complaints that must be referred to internal audit function.
- Complaints that must be referred to external bodies e.g. police.

10.A.2 Complaints handling in practice

When a complaint is made, a responsible individual at the firm should:

- Consider all information provided by the customer.
- Acknowledge the complaint.
- Record the complaint.
- Decide whether the matter can be addressed immediately.
- If not, give the customer information on how their complaint will be dealt with, by whom and within what period of time.
- Action the complaint through the organisations internal channels.

If appropriate, agree what action customer needs to take e.g. it may be necessary to request further information/documentation.

10.B The Financial Ombudsman Service (FOS)

An eligible complainant can be one of the following:

- A consumer
- A micro-enterprise, employing fewer than 10 people and has a turnover or annual balance sheet that does not exceed €2 million.
- A small business with an annual turnover of less than £6.5 million (or its equivalent in any other currency); and
 - Employs fewer than 50 people or
 - Has a balance sheet total of less than £5 million (or its equivalent in any other currency).
- A Charity with annual income less than £6.5 million
- A trustee of a trust which has a net asset value of less than £5 million.

The Ombudsman's office may take account of:

- Primary legislation such as FSMA
- Secondary legislation
- Voluntary codes and statements of practice
- Case law
- Previous Ombudsman decisions
- Other relevant circumstances

Approaching the Ombudsman can involve **mediation** or **conciliation**.

If the case is more complex, an adjudicator may make an **adjudication report**.

If either party does not agree with the adjudicator's findings, the adjudicator can be contacted again; if the matter is still unresolved, either party can request a review and final decision by the Ombudsman.

Complaints are resolved on the basis of what the Ombudsman considers **fair and reasonable**.

The Ombudsman may:

- Uphold the complaint.
- Partially uphold the complaint.
- Reject the complaint.

The Ombudsman is empowered to make awards, **which are binding** on both parties, if the consumer accepts the decision within the time limit.

If **not** accepted by the consumer, the **firm is not bound** but the consumer may take further action through the courts.

[10.C Financial Services Compensation Scheme \(FSCS\)](#)

FSCS introduced under FSMA and comes under supervision of FCA.

FSCS is a statutory fund of last resort, if a firm cannot meet the monetary claims against it.

The Scheme can consider claims relating to:

- Deposits
- Insurance
- Investment activities
- Mortgages, including lifetime mortgages
- Home reversion plans

10.C.1 Insurance

The FSCS applies to compulsory insurance, non-compulsory insurance, long-term insurance and general insurance.

Claims can be considered if a firm becomes insolvent and is placed in liquidation or if the company goes into administration.

The protection provided depends on the type of policy:

- For non-compulsory policies and long-term policies, FSCS pays 100% of the claim with no upper limit.
- For policies in default before 01/01/2010, if the policy cannot be continued, and the company is liquidated, the first £2,000 is paid in full, plus 90% of the remainder.

10.C.2 Investment Activities

This part of the scheme covers sales of long-term investments e.g. unit trusts, investment trusts, open-ended investment companies and purchased life annuities, so it could be relevant to equity release customers who have purchased an investment alongside the equity release product.

The FSCS covers two types of loss:

- where a firm becomes insolvent and cannot meet its obligations to its client
- where a firm has given bad advice or managed investments poorly.

Scheme pays 100% of the first £50,000.

10.C.3 Mortgages

The FSCS provides protection for business conducted from 31 October 2004 (when mortgage regulation became effective). Home reversion plans were included in the scheme from 6 April 2007.

The cover provided is 100% of the first £50,000.

10.C.4 Deposits

The compensation limit is £85,000 (£170,000 for joint account).

For those who have accounts with different banking institutions, that are part of the same marketing group, the maximum claim is £85,000 for each account relationship i.e. with different banking institutions.

For credit unions, the maximum level of protection for deposits is £85,000.

Equity Release Chapter 9 (ER09) – End of Module Test

Multiple Choice Questions

Question	Answer	
1 - Most customers who find that their complaints are not resolved through internal channels can refer their case to the:	A.	Financial Services Compensation Scheme
	B.	Financial Ombudsman Service
	C.	Financial Services and Markets Authority
	D.	Financial Conduct Authority
2 - A firm is required to report to the FCA on matters relating to complaints handling every:	A.	month
	B.	3 Months
	C.	6 Months
	D.	annually
3 - The FOS is available to a consumer and a charity with an annual income of less than:	A.	£2 million
	B.	£1 million
	C.	£6 million
	D.	£6.5 million
4 - Which of the following can the Financial Ombudsman Service NOT do?	A.	Uphold the complaint
	B.	Partially uphold the complaint
	C.	Reject the complaint
	D.	Refer the case to arbitration
5 - Complaints that are already subject to court proceedings at the time they are referred to the Ombudsman are:	A.	dismissed
	B.	upheld
	C.	not considered
	D.	deferred pending the court hearing
6 - The Financial Services Compensation Scheme provides protection for mortgage business conducted from 31 October 2004. The cover provided is:	A.	100% of first £30,000 and 90% of next £20,000
	B.	100% protection with no upper limit
	C.	100% protection with a limit of £75,000
	D.	100% of first £50,000

- End of Questions -

Answers

Question	Answer	
<p>1 - Most customers who find that their complaints are not resolved through internal channels can refer their case to the:</p>	B.	Financial Ombudsman Service
<p>2 - A firm is required to report to the FCA on matters relating to complaints handling every:</p>	C.	6 Months
<p>3 - The FOS is available to a consumer and a charity with an annual income of less than:</p>	D.	£6.5 million
<p>4 - Which of the following can the Financial Ombudsman Service NOT do?</p>	D.	Refer the case to arbitration
<p>5 - Complaints that are already subject to court proceedings at the time they are referred to the Ombudsman are:</p>	C.	not considered
<p>6 - The Financial Services Compensation Scheme provides protection for mortgage business conducted from 31 October 2004. The cover provided is:</p>	D.	100% of first £50,000