

EQUITY RELEASE FINANCIAL PRODUCTS RULEBOOK

CHAPTER 3 – SALES PROCESSES AND SELLING PRACTICES

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DEFINITIONS/GLOSSARY

<u>Advertisement</u>	shall have the same meaning as that assigned to it in the Regulations
<u>Advisory Services</u>	shall have the same meaning as that assigned to it in the Regulations
<u>Annual Percentage Rate of Charge or APRC</u>	shall have the same meaning as that assigned to it in the Regulations.
<u>Applicant</u>	shall mean a Credit Institution or Financial Institution that applies for registration in the ERS List
<u>Consumer</u>	shall mean any individual who has attained pension age, as defined in the Social Securities Act (Chap. 318 of the laws of Malta), and who is acting for purposes which are not related to and outside his trade, business, craft or profession
<u>Credit Agreement or Agreement</u>	shall mean an agreement whereby an Institution, grants or promises to grant credit in the form of an Equity Release Financial Product, and shall be distinct from the public deed of loan
<u>Credit Institution</u>	shall have the same meaning as that assigned to it in the Banking Act and which is licensed by the Authority in terms of Article 5 of the Banking Act
<u>Distance Contract</u>	shall mean any Credit Agreement concerning an Equity Release Financial Product concluded between an Institution and a Consumer under an organised distance sales or service-provision scheme run by the Institution, who, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded
<u>Durable Medium</u>	shall mean any instrument which: <ol style="list-style-type: none"> 1. enables the Consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information; and 2. allows the unchanged reproduction of the information stored
<u>Equity Release Financial Products or Product(s)</u>	shall have the same meaning as that assigned to it in the Regulations
<u>Equity Release Transaction</u>	shall mean a transaction involving Equity Release Financial Products
<u>ERS List</u>	shall mean the list of Institutions engaged in the provision of Equity Release Financial Products established and maintained by the Authority in terms of Rule R.1.1.2
<u>ERS Register</u>	shall mean the register established in terms of Rule R.1.2.2
<u>European Credit Institution</u>	shall have the same meaning as that assigned to it in the European Passport Rights for Credit Institution Regulations (S.L. 371.11 of the Laws of Malta)
<u>Financial Institution</u>	shall mean any person who undertakes the carrying out of activity 1 of the First Schedule to the Financial Institutions Act – lending – for the account and at the risk of the person carrying out the activity; provided that such person shall hold the necessary licence to carry out such activity in terms of Article 3 of the Financial Institutions Act, irrespective of whether it engages in the provisions of Equity Release Financial Products on a regular and habitual basis or otherwise
<u>Information</u>	shall mean any material provided to Consumers or potential Consumers by the Institution with the purpose of informing such Consumers or potential Consumers of any Equity Release Financial Product or aspect related thereto

<u>Information Document</u>	shall have the same meaning as that assigned to it in the Regulations
<u>Institution</u>	shall mean a credit Institution or Financial Institution to which this Rulebook applies
<u>MFSA</u>	shall mean the Malta Financial Services Authority
<u>Mental Capacity</u>	shall mean a Consumer's ability to make a decision in relation to Equity Release Financial Products, in particular whether or not a Consumer has the ability to understand, remember, and weigh up relevant information will determine whether the Consumer is able to make a responsible decision in relation to Equity Release Financial Products based on that information
<u>Personalised Information</u>	shall mean information of a personal nature, relating to the Consumer, required in order for the Institution to compare the Equity Release Financial Products available on the market, assess their implications and make an informed decision on whether to conclude a Credit Agreement
<u>Regulations</u>	shall mean the Equity Release Financial Products Regulations (LN 193 of 2019)
<u>Rulebook</u>	shall mean this Equity Release Financial Products Rulebook
<u>Social Media</u>	shall mean all websites and digital applications that enable users to create and share content or participate in social networking. The following is a non-exhaustive list: blogs, microblogs (Twitter), social and professional networks (Facebook, LinkedIn, Google+), forums, image and video-sharing platforms (YouTube, Instagram, Vine, Pinterest)
<u>Staff</u>	Shall have the same meaning as that assigned to it in the Regulations

Chapter 3 Sales Processes and Selling Practices

When selling Equity Release Financial Products to Consumers, Institutions have an obligation to act honestly, fairly and in accordance with the best interest of such Consumers. They must also behave with utmost good faith, integrity, due skill, care and diligence vis-à-vis Consumers.

Accordingly, Institutions are required to do everything which is possible to satisfy the demands and needs of Consumers, including by assessing the circumstances and limitations of the Consumers in question in accordance with this Chapter, and shall place the interests of the latter before all other considerations.

To this end, this Chapter regulates the sales processes and selling practices that Institutions shall adopt when engaging in Equity Release Transactions with Consumers. More specifically, this Chapter addresses the considerations that Institutions must make prior to selling Equity Release Financial Products to Consumers and details the requirements incumbent upon such Institutions depending on whether Advisory Services are being provided or otherwise. This Chapter further regulates the remuneration policies and procedures that Institutions must adopt in this regard.

Institutions must have regard to the requirements set out in this Chapter in the event of a variation in the terms of the Equity Release Transaction, including, but not limited to, changes in the parties to the Credit Agreement, changes in type of interest or in the methodology used for the computation of such rate.

This Chapter applies to all Institutions engaged in the provision of Equity Release Financial Products.

Section 1 General Principles

R.3.1.1 An Institution shall be deemed to provide Advisory Services for the purposes of this Rulebook if it provides a personal recommendation to a Consumer, either at the request of the Consumer in question or on its own initiative, with respect to one or more transactions related to Equity Release Financial Products.

R.3.1.2 For the purposes of Rule R.3.1.1, there are three main elements to a personal recommendation:

1. there shall be a recommendation;
2. the recommendation shall be presented as suitable or purported to be suitable for the person to whom it is made or based on the person's circumstances; and
3. the recommendation shall relate to taking certain steps in respect of one or more transactions related to Equity Release Financial Products.

R.3.1.3 Whether or not a personal recommendation is given depends in part on whether the Consumer is led to think that one is being given, or otherwise whether the Consumer is likely to perceive that the Institution is assisting him/her to make his/her own choice of Equity Release Financial Product. Therefore it is important for the Institution to clearly indicate whether it is providing an Advisory or Non Advisory Services to the Consumer.

If an Equity Release Financial Product was presented to a Consumer in some other way that would influence the Consumer to take a course of action in relation to a specific Equity Release Financial Product, this is likely to be an implicit recommendation.

A clear, prominent and understandable disclaimer stating that no Advisory Services are being provided or that no recommendation is being made is unlikely to be sufficient to avoid having presented a recommendation for the purposes of determining whether Advisory Services have actually been given. Accordingly, the fact that an Institution states that its Equity Release Financial Product would suit a particular Consumer's needs and includes a disclaimer saying that this did not constitute Advisory Services, would not necessarily change the basic nature of the communication and it may still constitute a personal recommendation and hence the provision of Advisory Services.

The difference between providing information and Advisory Services is the element of opinion or judgement on the part of the Institution. In making a personal recommendation, and hence providing Advisory Services, the Institution would need to make a judgement or assessment that would result in one or more Equity Release Financial Products being identified as suitable for a Consumer, whether as a result of information that Consumer provides or otherwise.

- R.3.1.4 The Institution shall explicitly inform the Consumer, in the context of a transaction relating to an Equity Release Financial Product, the nature of service being provided i.e whether an Advisory or non-advisory Service is being or can be provided to the Consumer.
- R.3.1.5 Institutions shall ensure and demonstrate to the Authority that Staff providing Advisory Services or simply information about Equity Release Financial Products to Consumers possess the necessary skills, knowledge and competence to fulfil their obligations under this Rulebook in accordance with the requirements set out in Chapter 1 of this Rulebook. Staff capabilities and training needs in this regard shall be commensurate to the respective roles and responsibilities, also depending on whether such Staff is involved in the provision of Advisory Services.
- R.3.1.6 Institutions are prohibited from using the terms 'independent advice' and 'independent advisor' or similar terms when Advisory Services are being provided by them to Consumers.
- R.3.1.7 Institutions shall give a strong recommendation to Consumers to seek independent professional advice in relation to the Equity Release Financial Product from a lawyer or accountant of the Consumers' choice, which lawyer or accountant is duly authorised to practice in Malta. Such advice should cover, *inter alia*, tax and succession implications as a result of the Consumer acquiring Equity Release Financial Products.
- R.3.1.8 An Institution must act honestly, fairly and professionally in accordance with the best interests of the Consumer. Examples of behaviour by or on behalf of an Institution which is likely to contravene this principle include:

1. targeting Consumers with Equity Release Financial Products which are unsuitable for them, by virtue of their indebtedness, age, health, disability or any other reason; and
2. subjecting Consumers to high-pressure selling, aggressive or oppressive behaviour, or unfair coercion.

R.3.1.9 When providing Equity Release Financial Products, an Institution shall:

1. at all times carry out their activities with utmost good faith, integrity, due skill, care and diligence;
2. do everything which is reasonably possible to satisfy the needs and requirements of its Consumers and place the interests of those Consumers before all other considerations.

R.3.1.10 An Institution must ensure that it abides by the following requirements:

1. review their business model and strategy on a regular basis;
2. place Consumers at the centre of their operations;
3. identify conduct risks and set up processes to ensure that such risks are measured, mitigated and monitored;
4. conduct risks are known to key personnel within the Institution, including the board of directors and Staff;
5. there are clear level of responsibilities, clear reporting lines, clear segregation of duties, clear establishment of target markets, appropriate distribution channels, and clear communication with Consumers;
6. they monitor the performance management, employee development and reward programmes incentivising Staff to ensure that the way an Institution remunerates or assesses performance of Staff does not conflict with its duty to act in the best interests of Consumers.

R.3.1.11 In order to comply with the requirements of this Rulebook, an Institution shall, *inter alia*:

1. seek from Consumers information relevant to the Equity Release Financial Product(s) requested in accordance with this Chapter;
2. in the completion of any document, make it clear that all the answers or statements regarding the Consumer's personal details and circumstances are the Consumer's own responsibility. The Consumer should always be required to assume responsibility for the completed document and be advised that, incomplete and/or inaccurate information may prejudice the Consumer's rights;
3. not recklessly, negligently or deliberately mislead a Consumer to the real or perceived advantages or disadvantages of any Equity Release Financial Product;
4. ensure that all instructions from or on behalf of a Consumer are processed properly and promptly;
5. have proper regard for the wishes of a Consumer who seeks to terminate any agreement with it to carry out business;

6. seek to avoid conflicts of interest;
7. not exert undue pressure or undue influence on a Consumer;
8. treat all information disclosed by a Consumer with complete confidentiality;
9. not request a Consumer to sign declarations to the effect that s/he has understood and accepts certain features of the Equity Release Financial Product or that s/he is relying on his/her own skill, judgement and expertise in order to purchase Equity Release Financial Products when it is the obligation of the Institution to assess the suitability of such Equity Release Financial Products vis-à-vis the Consumer. In this respect, the Institution should avoid stating, or giving the impression, that it is the Consumer who decides on the suitability of the Equity Release Financial Product.

R.3.1.12 Any information acquired by an Institution from a Consumer shall not be used or disclosed except in the normal course of negotiating, maintaining or amending an Equity Release Transaction for that Consumer or in accordance with the provisions of specific legislation, or otherwise unless the consent of the Consumer has been obtained.

R.3.1.13 In light of the nature of Equity Release Financial Products, an Institution shall not deal with a person who is acting for a Consumer under a power of attorney but shall only deal with the Consumer directly.

R.3.1.14 An Institution shall not:

1. make inaccurate or unfair criticism of any other Institution or any Equity Release Financial Product offered by such other Institutions;
2. make comparisons with other types of Equity Release Financial Products unless the differing characteristics of each Equity Release Financial Product are made clear; and
3. persuade or attempt to persuade a Consumer to terminate the credit agreement entered into in respect of Equity Release Financial Product which such Consumer may have already purchased, if such termination is not in the best interest of the Consumer.

R.3.1.15 An Institution shall explain to the Consumer words and expressions of a technical nature which are used in a document in either the Maltese or the English language depending on which language the Consumer understands better.

In particular, but not limitedly so, an Institution shall provide a clear explanation to Consumers on the effects of the compound nature of interest charges as well as variable interest charges, where applicable, and make the necessary disclosures in accordance with this Rulebook, including providing the necessary warnings as required by Chapter 2 of this Rulebook.

For this purpose, the MFSA is of the view that the levying of compound interest charges on Equity Release Financial Products goes against the aims and objectives of the Regulations. In this regard, and whilst acknowledging that the use of compounding of interest is not explicitly excluded by the Regulations, the MFSA strongly recommends that

Institutions do not apply compound interest rate charges to Equity Release Financial Products.

- R.3.1.16 An Institution shall ensure that Equity Release Financial Products are not promoted by means of cold calling and that it does not make unsolicited or unarranged calls to Consumers in order to sell Equity Release Financial Products.
- R.3.1.17 An Institution shall ensure that it retains full and complete records of, *inter alia*, policies, procedures, communications with Consumers, and other internal controls adopted by the Institution, for the purpose of demonstrating compliance to the Authority with its obligations in terms of this Chapter.

Section 2 Assessment of demands and needs

- R.3.2.1 Prior to the conclusion of a contract for the provision of Equity Release Financial Products, the Institution shall specify, on the basis of information obtained from the Consumer, the demands and needs of that Consumer and shall provide the Consumer with objective information about Equity Release Financial Products in accordance with the disclosure requirements specified in Chapter 2.
- R.3.2.2 Any Equity Release Financial Product proposed by the Institution to the Consumer shall be consistent with the Consumer's demands and needs.
- R.3.2.3 Where Advisory Services are provided prior to the conclusion of any specific contract, the Institution shall provide the Consumer with a personal recommendation explaining why a particular Equity Release Financial Product would best meet the Consumer's demands and needs.
- R.3.2.4 As part of this assessment, Institutions shall ensure that the Consumer has considered all alternative courses of action (including, but not limited to, selling his/her current residence and moving to a smaller residence, or renting out part of his/her current residence) that could deliver the Consumer's objective without recourse to Equity Release Financial Products.
- R.3.2.5 An Institution must base its determination of whether an Equity Release Transaction is appropriate to a Consumer's demands and needs on the facts disclosed by the Consumer and other relevant facts about the Consumer of which the Institution is or should be reasonably aware of.
- R.3.2.6 The Institution should also have regard to information of which it is aware at the time the assessment is carried out that may indicate that the Consumer is a vulnerable Consumer because:
1. the Consumer has physical limitations and may require assistance in the decision-making process (for example because s/he is hearing impaired or visually impaired);
 2. the Consumer has Mental Capacity limitations (see Sub-Section 1 of this Chapter); and/or

3. the Consumer is in, has recently experienced, or is likely to experience, financial difficulties (see Sub-Section 2 of this Chapter).

For the purposes of this Rule, the Institution would need to proactively recognise the potential vulnerabilities associated with older Consumers and act with appropriate level of care in accordance with the requirements of this Chapter. Further, the Institution may also have regard, where appropriate, to information obtained in the course of previous dealings with the Consumer. However, the Institution should also consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it.

R.3.2.7

In relation to vulnerable Consumers, Institutions should adopt more cautious practices in their operations. The following is an indicative list of what may constitute good practices to be adopted by the Institution in this regard, whilst also taking into consideration sub-sections 1 and 2 for more targeted guidance on Mental Capacity limitations and financial difficulties respectively:

1. offering of clear and straightforward Equity Release Financial Products which do not include any hidden surprises which might only surface in adverse situations;
2. employing marketing strategies which in no way exploit vulnerabilities;
3. having a number of available options for communication in relation to the method of communication and delivery of service. Such means should be designed in an inclusive manner to meet the needs of different Consumers with varying circumstances;
4. providing Consumers with tailored treatment in the event of a change in circumstances which would require a flexible approach;
5. having procedures in place for Staff to identify the consumer vulnerabilities and consider these vulnerabilities when determining whether the Equity Release Financial Product is suitable for the Consumer;
6. Having procedures in place to escalate vulnerability issues to someone who has the authority and discretion to adapt terms and conditions to a particular situation;
7. ensuring that vulnerable Consumers are given sufficient time in order to be able to assess and reflect upon the Equity Release Transaction that they are being sold, including any related terms and conditions.

Sub-Section 1 Guidance on the assessment of the Consumer's Mental Capacity

R.3.2.8

Amongst the most common potential causes of Mental Capacity limitations are the following examples: a mental health condition, dementia, a learning disability, a developmental disorder, a neurological disability or brain injury and alcohol or drug (including prescribed drugs) induced intoxication.

R.3.2.9

An Institution is likely to have reasonable grounds to suspect a Consumer may have some form of Mental Capacity limitation if the firm observes a specific indication (behavioural or otherwise) that could be indicative of some form of

limitation of the Consumer's Mental Capacity, and, shall refer the Consumer to the appropriate health specialist for proper certification where appropriate. Examples (amongst others) of indications might include:

1. where an Institution has an existing relationship with a Consumer, the Consumer making a decision that appears to the Institution to be unexpected or out of character;
2. a person who is likely to have an informed view of the matter, such as a relative, close friend, carer or family doctor raising a concern with the Institution as to the capacity of the Consumer to make a decision about acquiring Equity Release Financial Products;
3. the Institution understands or has reason to believe the Consumer has been diagnosed as having an impairment which led to the Consumer not having had Mental Capacity for similar decisions in the past;
4. the Institution understands or has reason to believe the Consumer does not understand what the Consumer is applying for;
5. the Institution understands or has reason to believe the Consumer is unable to understand the information and explanations provided by the Institution, in particular concerning the key risks and implications of entering into the agreement for the acquisition of Equity Release Financial Products;
6. the Institution understands or has reason to believe the Consumer is unable to retain information and explanations provided by the Institution to enable the Consumer to make the decision to enter into an Equity Release Transaction;
7. the Institution understands or has reason to believe the Consumer is unable to weigh up the information and explanations provided by the Institution to enable the Consumer to make the decision to enter into an Equity Release Transaction;
8. the Consumer is unable to communicate a decision to enter into an Equity Release Transaction by any reasonable means;
9. the Consumer being confused about the Personalised Information that the Institution requires, such as date of birth or address.

R.3.2.10 An Institution should document practices and procedures to set out the steps that it takes when it receives requests for Equity Release Financial Products from such Consumers. For this purpose, such practices and procedures should be designed to assist Consumers that Institutions understand have, or reasonably suspect of having, Mental Capacity limitations to overcome, the effect of the limitations and place them, to the extent possible, on an equivalent basis to Consumers who do not have such limitations, to increase the likelihood of Consumers being able to make informed decisions in relation to the acquisition of Equity Release Financial Products.

R.3.2.11 Where an Institution understands, or reasonably suspects, that a Consumer has or may have a Mental Capacity limitation the Institution should use its business

practices and procedures to:

1. assist the Consumer, where possible, to make an informed decision to enter into an Equity Release Transaction ;
2. ensure that such decision is informed and responsible in the circumstances and mitigates the potential risks to the Consumer; and
3. ensure that the Consumer is not provided with Equity Release Financial Products which the Institution knows, or reasonably believes to be unsuitable for the Consumer or otherwise does not meet the Consumer's demands and needs.

Sub-Section 2 *Guidance on the assessment of financial situation*

R.3.2.12 An Institution must establish, implement and maintain an adequate policy for identifying and dealing with Consumers showing signs of actual or possible financial difficulties.

R.3.2.13 The following matters, among others, of which an Institution is aware or ought reasonably to be aware, may indicate that a Consumer is in financial difficulties (where applicable):

1. consecutively failing to meet minimum repayments in relation to a credit card;
2. adverse accurate entries on a credit file, which are not in dispute;
3. outstanding court judgments for non-payment of debt;
4. inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the Consumer having to borrow further to repay existing debts, or the Consumer only being able to meet repayments of debts by the disposal of assets or security; and
5. consecutively failing to meet repayments when due on other borrowing arrangements.

R.3.2.14 An Institution should document practices and procedures to set out the steps that it takes when it receives requests for Equity Release Financial Products from such Consumers. For this purpose, such practices and procedures should be designed to assist Consumers that Institutions understand have, or reasonably suspect of having, financial difficulties to overcome, the effect of the limitations and place them, to the extent possible, on an equivalent basis to Consumers who do not have such difficulties, to increase the likelihood of Consumers being able to make informed decisions in relation to the acquisition of Equity Release Financial Products.

R.3.2.15 Where an Institution understands, or reasonably suspects that a Consumer has or may have financial difficulties the Institution should use its business practices and procedures to:

1. assist the Consumer, where possible, to make an informed decision to enter into an Equity Release Transaction, in accordance with the

requirements for the provision of Advisory Services contained in this Chapter;

2. ensure that such decision is informed and responsible in the circumstances and mitigates the potential risks to the Consumer; and
3. ensure that the Consumer is not provided with Equity Release Financial Products which the Institution knows, or reasonably believes to be unsuitable for the Consumer or otherwise does not meet the Consumer's demands and needs.

Section 3 Advisory Services

R.3.3.1 Where an Institution provides Advisory Services to a particular Consumer to enter into an Equity Release Transaction, or vary an existing Equity Release Transaction, it must take reasonable steps to ensure that the Equity Release Transaction is suitable for that Consumer. For this purpose, an Institution shall implement policies and procedures to enable it to collect and assess all information necessary to conduct a suitability assessment for each Consumer.

R.3.3.2 The suitability assessment should be performed in addition to the assessment of demands and needs set out in Section 2 of this Chapter. In this respect, an Equity Release Transaction will not be suitable for the Consumer unless that Equity Release Transaction is appropriate to the demands and needs of the Consumer.

R.3.3.3 No advice must be given to a Consumer to enter into an Equity Release Transaction if there is no Equity Release Financial Product which is suitable from the product range offered by the Institution.

R.3.3.4 When an Institution assesses whether the Equity Release Transaction is suitable to the circumstances of the Consumer, the Institution shall, as a minimum, have regard to the following factors and collect the necessary information from the Consumer in relation to such factors:

1. whether the benefits to the Consumer outweigh any adverse effect on:
 - (a) the Consumer's entitlement (if any) to means-tested benefits; and (b) the Consumer's tax position (for example the loss of any applicable tax allowances), provided that the Institution shall also issue the necessary recommendation in terms of Rule R.3.1.7;
2. the Consumer's financial situation, including income, savings, debts, liquidity, etc.;
3. whether the Consumer can resort to alternative methods of raising the required funds;
4. whether the Consumer is under pressure from any person to raise money for an ill-advised purpose, for which purpose, the Institution shall ascertain all relevant facts, including, but not limited to, details of family members and the Consumer's relationship with them as may be relevant. Factors which may alert the Institution's attention to the possibility of such undue influence would be when the Consumer is

borrowing money for the benefit of a third party, or to gift to a third party, and there are objective indications of pressure or influence from others (e.g. family members); when the Consumer has physical or Mental Capacity limitations; when the Consumer is dependent upon family members to look after their financial affairs; when there is family division, typically between the Consumer's adult children; and when the Consumer is in an inexplicable rush to complete the Equity Release Transaction ;

5. knowledge of that Consumer of Equity Release Financial Products;
6. whether the Consumer's requirements appear to be within the Institution's known eligibility criteria for the Equity Release Transaction in accordance with the provisions of this Rulebook and the Regulations;
7. the Consumer's preferences for his estate (for example, whether the Consumer wishes to be certain of leaving a bequest to his family or others);
8. the Consumer's health and life expectancy;
9. the Consumer's future plans and needs (for example, whether the Consumer is likely to need to raise further funds);
10. whether the Consumer has a preference or need for stability in the amount of payments; and
11. whether the Consumer has a preference or need for any other features of an Equity Release Transaction.

R.3.3.5 The Institution shall be entitled to rely on the information provided by the Consumer unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

R.3.3.6 The Institution shall, unless the Consumer has not already done so, strongly suggest that, prior to entering into the Equity Release Transaction , the Consumer:

1. reads all documentation and disclosure thoroughly and carefully;
2. seeks assistance from the appropriate Social Services Department in relation to the Consumer's entitlement to any applicable means-tested benefits and how this could be impacted by the Equity Release Transaction ; and
3. obtains professional and/or legal advice in relation to, *inter alia*, the tax and succession implications arising from the Equity Release Transaction in accordance with Rule R.3.1.7

R.3.3.7 If, for any reason, the Consumer:

1. declines to seek further advice in relation to the matters referred to in R.3.3.6; or
2. rejects the conclusion of an Institution that alternative methods of raising the required funds are more suitable;

an Institution can advise the Consumer (in accordance with the requirements of this Chapter) to enter into an Equity Release Transaction where there is an Equity

Release Transaction (or more than one Equity Release Transaction) that is suitable for the Consumer, but must confirm to the Consumer, in a Durable Medium, the basis on which the advice has been given.

R.3.3.8 When providing an Advisory Service to a Consumer on the suitability of an Equity Release Transaction, the Institution must explain to the Consumer that such suitability assessment is based on the Consumer's current circumstances, which may change in the future.

R.3.3.9 Before the provision of an Advisory Services, or, where applicable, the conclusion of a contract for the provision of an Advisory Services, the Institution shall provide the Consumer with the following information in a Durable Medium:

1. whether the recommendation will be based on considering only its own product range or a wide range of products from across the market;
2. where applicable, any commissions received or to be received by the Institution with respect to the provision of the Advisory Services; and
3. where applicable, the exact fee payable by the Consumer for the Advisory Services or, where the amount cannot be ascertained at the time of disclosure, the method used for its calculation.

R.3.3.10 For the purposes of Rule R.3.3.9 (1), where applicable, an Institution must consider a sufficiently large number of Equity Release Financial Products in its product range in providing Advisory Services to a Consumer.

R.3.3.11 Where the advice provided is based on a selection of Equity Release Transactions from a single Institution, the assessment of suitability should not be limited to the types of Equity Release Transactions which that Institution offers. An Institution cannot recommend the 'least worst' Equity Release Transaction where the Institution does not have access to products which are suitable for the Consumer. This means, for example, that if an Institution only has access to lump sum Equity Release Transactions it should not recommend or arrange one of these if approached by a Consumer requiring regular payments.

R.3.3.12 An Institution shall provide the Consumer with a suitability report in a Durable Medium, which shall be signed by the Institution. This shall, as a minimum:

1. specify the Consumer's demands and needs;
2. confirm that Advisory Services have been provided by the Institution to the Consumer;
3. provide an outline of the personal recommendation provided;
4. if applicable, explain why the Institution has concluded that the recommended Equity Release Transaction is suitable for the Consumer, including how it meets the Consumer's demands, needs and personal circumstances, and taking into account the factors listed in Rule R.3.3.4; and
5. if applicable, include a written warning when, considering the

Consumer's circumstances, an Equity Release Financial Product may include a specific risk for that Consumer.

- R.3.3.13 Institutions shall not create any ambiguity or confusion about their responsibilities in the process when assessing suitability in accordance with this Rulebook. When undertaking the suitability assessment, the Institution shall inform Consumers, clear and simply, that the reason for assessing suitability is to enable the Institution to act in that Consumer's best interest, so that Consumers understand the reason why they are asked to provide certain information and the importance of such information being up-to-date, accurate and complete. This shall also include a clear explanation that it is Institution's responsibility to conduct the assessment. Such information may be provided in a standardised format.
- R.3.3.14 Any disclaimers (or other types of statements) aimed at limiting the Institution's responsibility for the suitability assessment would not in any way impact the characterisation of the service provided in practice to the Consumer nor the assessment of the Institution's compliance to the corresponding requirements.
- R.3.3.15 Institutions may use questionnaires to collect information during discussions with Consumers. Institutions shall ensure that the questions they ask Consumers are likely to be understood correctly and that any other method used to collect information is designed to get the information required for a suitability assessment. When designing such questionnaires, Institutions should be aware and consider the most common reasons why Consumers could fail to answer questions correctly. In particular:
1. attention should be given to the clarity, exhaustiveness and comprehensibility of the questionnaire, avoiding misleading, confusing, imprecise and excessively technical language (for this purpose the use of vague language which could lead to different interpretations and the use of double negatives should be avoided, for example);
 2. the layout (including font and line spacing) should be carefully elaborated and should avoid orienting Consumers' choices;
 3. collecting information on a series of items through a single question should be avoided;
 4. consideration should be given to the order in which they ask questions in order to collect information in an effective manner; and
 5. the possibility not to reply should generally not be available in questionnaires.
- R.3.3.16 An Institution providing Advisory Services must make and retain a record:
1. of the Consumer information, including that relating to the Consumer's needs and circumstances and that obtained for the purposes of carrying out the suitability assessment in accordance with this Section;
 2. that explains why the firm has concluded that any personal recommendation given to a Consumer is suitable for that Consumer,

including copies of suitability statements provided to Consumers in terms of Rule R.3.3.12; and

3. of any personal recommendation which the Consumer has rejected, including the reasons why they were rejected and details of the Equity Release Transaction which the Consumer has proceeded with as an execution-only sale.

R.3.3.17 The records in required in terms of Rule R.3.3.16 must be retained for a minimum of five years from the termination of the Credit Agreement.

Section 4 *Execution-only sales*

R.3.4.1 An Institution may only enter into an Equity Release Transaction with a Consumer as an execution-only sale, i.e. without providing Advisory Services to such Consumer, if the Consumer has rejected the advice, identified the product s/he wishes to purchase and positively elected to proceed with an execution-only sale.

R.3.4.2 An Institution must not encourage a Consumer to reject advice received by him/her on Equity Release Transactions.

R.3.4.3 An Institution must not enter into an execution-only sale for an Equity Release Transaction unless:

1. the Consumer has rejected the advice given by the Institution and instead requested an execution-only sale of an Equity Release Transaction;
2. the Consumer has identified which particular Equity Release Transaction s/he wishes to purchase, and specified to the Institution at least the required additional information (where applicable), which additional Information may include, but shall not be limited to, the rate of interest, the interest rate type, and the sum that the Consumer wishes to borrow (including the amount of any lump sum, any regular drawdown or flexible facility or any combination of amounts the Consumer wishes to apply for), and the Institution has communicated such Information to the Consumer;
3. after providing the required Information in (2), the Consumer has been informed, clearly and prominently and in a Durable Medium, and that the Consumer will not benefit from the protection of the rules (in Section 3 of this Chapter) on assessing suitability:
 - a. in any case where the Institution has advised the Consumer that the Equity Release Transaction is unsuitable for the Consumer, that that is the case; and
 - b. in any other case, that in the provision of its services for the execution-only sale the Institution is not required to assess the suitability of that Equity Release Transaction ;and in either case that the Consumer will not benefit from the

protection of the rules (in Section 3 of this Chapter) on assessing suitability. In any case where there is spoken dialogue between the Institution and the Consumer at any point, the Institution must also provide this information orally; and

4. after the Consumer has been provided with the information in (3), in any case where there is spoken or other interactive dialogue between the Institution and the Consumer at any point, the Consumer has confirmed in writing to the firm that s/he is aware of the consequences of losing the protections of the rules on assessing suitability and is making a positive election to proceed with an execution-only sale. The written confirmation must be in the same document as the information in Durable Medium in (3), which must be separate from any other information and contractual documentation.

R.3.4.4 The condition in Rule R.3.4.3 (1) does not apply in the case of a variation of an Equity Release Transaction , provided that:

1. the variation would not involve the Consumer taking on additional borrowing beyond the amount currently outstanding under the existing Equity Release Transaction , other than to finance any product fee or arrangement fee for the proposed new or varied contract; and
2. where the variation will (in whole or part) change from one interest rate to another, the Institution has presented to the Consumer, in a Durable Medium, all products offered by it for which the Consumer is eligible. Examples of rate changes are: a transfer from a capped rate to a fixed rate; and a transfer from one fixed rate to another fixed rate.

Provided further that the reference to a variation in (1) of this Rule (and in all other provisions which cross-refer to this rule) must be read as including any new Equity Release Transaction which would replace an existing Equity Release Transaction between the Consumer (or, where there are joint borrowers, at least one of them) and the Institution (either as the original equity release provider or as the transferee of the existing contract).

R.3.4.5 The variation in Rule R.3.4.4 might involve the addition or removal of a borrower for joint Equity Release Transactions or a change in payment method. This list is not exhaustive.

R.3.4.6 Institutions are reminded that, if their presentation in Rule R.3.4.4 (2) has (either explicitly or implicitly) steered the Consumer towards any one or more of the products offered by them such as to constitute advice, the requirements of Section 3 of this Chapter will apply.

R.3.4.7 Where an Institution enters into an execution-only sale for an Equity Release Transaction in terms this Section, it must make and maintain a record of:

1. the information provided by and that provided to the Consumer in terms of Rule R.3.4.3; and

2. any advice from the Institution which the Consumer rejected, including the reasons why it was rejected, before deciding to enter into an execution-only sale.

R.3.4.8 The records required in terms of Rule R.3.4.8 must be retained for a minimum of five years from the termination of the Credit Agreement.

Section 5 ***Remuneration and performance management***

R.3.5.1 This Section does not apply to Credit Institutions and European Credit Institutions, since these Institutions are already subject to applicable rules on remuneration practices.

R.3.5.2 Institutions shall ensure that the manner in which Staff are remunerated does not impede compliance with the obligation to act in accordance with the Regulations and this Rulebook and, in particular, there should be no direct or indirect targets imposed on Staff which could be detrimental to Consumers. For this purpose, Institutions shall ensure that the remuneration structure of the Staff involved does not prejudice their ability to act in the Consumer's best interest and in particular is not contingent on sales targets. The board of directors of the Institution shall also define, approve and oversee a remuneration policy of Staff aiming to encourage responsible business, conduct, fair treatment of Consumers as well as avoiding conflict of interest in the relationships with Consumers.

R.3.5.3 An Institution must in relation to any risk of failure by the Institution to comply with its obligations arising from its remuneration or performance management policies, procedures and practices:

1. establish, implement and maintain adequate policies and procedures designed to detect this risk; and
2. put in place adequate measures and procedures designed to manage this risk.

An Institution must, when deciding how to comply with the above, take into account the nature, scale and complexity of its business, and the nature and range of services and activities undertaken in the course of that business.

R.3.5.4 Examples of measures and procedures which Institutions might introduce, where appropriate, to manage the risks to which this section applies, include:

1. defining and implementing remuneration policies and practices under appropriate internal procedures taking into account the interests of Consumers, and periodically reviewing such remuneration policies and practices;
2. undertaking monitoring of the nature of sales activities in relation to Equity Release Transactions;
3. collecting management information to enable the Institution to monitor and identify trends or patterns in Staff behaviour that could be used to detect these risks, including, but not limited to, via a review of Consumer complaints received in relation to the provisions of Equity

Release Financial Products;

4. establishing procedures to ensure appropriate actions are taken if a Staff member is found to have behaved inappropriately; and
5. maintaining arrangements to ensure the approval, oversight and regular review of remuneration and performance management arrangements by an appropriate remuneration committee or senior management.

R.3.5.5 When designing remuneration policies and practices, an Institution shall ensure that the ratio between the fixed and variable components of the remuneration is appropriate in order to take into account the best interests of Consumers. To this end, the remuneration policies and practices shall allow for the operation of a flexible policy on variable remuneration, including, where appropriate, the possibility to pay no variable remuneration at all.

R.3.5.6 An Institution's remuneration policies and practices shall define appropriate criteria to be used to assess the performance of Staff, which assessment shall not be solely or predominantly based on quantitative commercial criteria, but shall also be based on qualitative criteria encouraging Staff to act in the best interests of the Consumer, which criteria shall be clearly defined, recorded, and made available to Staff at the onset.

R.3.5.7 The board of directors of the Institution shall approve the remuneration policy, after taking advice from the compliance function. Senior management of the Institution shall be responsible for the day-to-day implementation of the remuneration policy and the monitoring of compliance risks related to the policy. The compliance officer of the Institution shall verify that the Institution's remuneration policies and practices comply with this Rulebook, and shall have access to all relevant documents for this purpose.

R.3.5.8 An Institution's remuneration policies and practices shall include and provide for the maintenance of measures to effectively enable it to identify where the Institution fails to act in the best interests of Consumers and to take remedial action.

R.3.5.8 An Institution shall set up and maintain adequate controls to ensure compliance with its remuneration policies and practices to ensure that they deliver the intended outcomes. Such controls should include at the very least monitoring calls with Consumers, sampling of Consumer files to check suitability in the provision of Advisory Services, and going through documentation pertaining to Consumer files on a regular basis.

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