

EQUITY RELEASE FINANCIAL PRODUCTS RULEBOOK  
CHAPTER 4 – COMPLAINTS HANDLING

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## REVISIONS LOG

| VERSION | DATE ISSUED | DETAILS |
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| 1.00    | xxxx        | xxxx    |
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## DEFINITIONS/GLOSSARY

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| <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>Authority</u>                                       | shall mean the Malta Financial Services Authority  |
| <u>Complaints Management Function</u>                  | shall mean the Function established by the Institution to handle the complaints management process or function in terms of Chapter 4 of this Rulebook  |
| <u>Complaints Register</u>                             | shall mean the register held by the Institution to register complaints of Consumers  |
| <u>Complainant</u>                                     | shall mean a Consumer who has filed a complaint with the Institution in relation to Equity Release Financial Products  |
| <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>Data Protection Legislation</u>                     | shall have the same meaning as that assigned to it in the Regulations  |
| <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:<br>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<br>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 both on an advisory or execution only basis   |
| <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)   |

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| <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;<br>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>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>Office of the Arbiter for Financial Services or Arbiter</u> | shall mean the office established in terms of article 10 of the Arbiter for Financial Services Act (Cap. 555 of the laws of Malta)  |
| <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 (S.L. [-] of the Laws of Malta)  |
| <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 4 Complaints Handling

### *Section 1 Complaints Management Policy*

- R.4.1.1 An Institution shall ensure that its existing complaints management policy is updated to cover the settlement of complaints from Consumers concerning their rights and obligations pursuant to the Regulations.
- R.4.1.2 The complaints management policy shall be defined and endorsed by the Institution's board of directors, who shall also be responsible for ensuring its implementation and for monitoring compliance with it.
- R.4.1.3 The complaints management policy shall be made available to all relevant Staff of the Institution through an adequate internal channel and adequate training must be provided.
- R.4.1.4 The Institutions' complaints management policy should include, as a minimum, procedure for:
- a) lodging a complaint with the Institution by any reasonable means (including complaints submitted by an authorised representative of the Consumer such as a family member or a lawyer) and confirmation that this is free of charge;
  - b) handling complaints received including deadlines,
  - c) ensuring the fair treatment of Complainants;
  - d) informing the Complainants of the services offered by the Office of the Arbiter for Financial Services and the contact details in relation thereto, should the Complainant not be satisfied with the resolution of the complaint by the Institution;
  - e) the proper treatment of a Complainants' information and personal data according to the applicable legal framework;
  - f) preventing, identifying and managing possible situations of conflicts of interest in complaints management;
  - g) the prompt, equal, fair and efficient management of complaints;
  - h) the adequate training of Staff participating in complaints handling within the Institution; and
  - i) internal reporting, follow-up and monitoring of compliance with the complaints management policy.

### *Section 2 Complaints Management Function*

- R.4.2.1 Institutions shall have in place a Complaints Management Function which shall enable them to investigate complaints fairly and to identify and mitigate any possible conflicts of interest.
- R.4.2.2 Institutions shall inform the MFSA of the identity and contact details of the individual or individuals, as the case may be, involved in the Complaints Management Function and any changes thereto.

R.4.2.3 Irrespective of the specific model that an Institution may have adopted for complaints handling, the Institution shall:

- a) appoint at least one senior manager with overall regulatory responsibility for the Complaints Management Function, as the Institution deems appropriate;
- b) ensure the necessary internal flows of information and reporting lines for complaints management, as the Institution deems appropriate; and
- c) control the effective and efficient treatment of complaints.

R.4.2.4 The set-up and composition of the Complaints Management Function shall be proportionate to the nature, scale and complexity of the Institution and its activities. Where the Institution is considered as small, it might not be possible for the Institution to structure its internal organisation in such a way that it has a separate Complaints Management Function handling the complaints management function or process and this may therefore fall within the remit of, for example, the compliance team. In any event, the Institution should still ensure that it operates in a manner that ensures that complaints are handled fairly and impartially and that they identify and mitigate conflicts of interest.

### *Section 3 Registration of Complaints*

R.4.3.1 Institutions shall register any complaints it receives in a Complaints Register, as soon as they are received, together with any action taken with respect to such complaints.

R.4.3.2 The Complaints Register may be maintained in the form of a secure electronic register.

R.4.3.3 Institutions shall include in the Complaints Register, for each complaint, the date of receipt and the date on which it was resolved.

R.4.3.4 Without prejudice to the provisions of the Data Protection Legislation, an Institution shall ensure that:

- a) the Complaints Register contains all necessary information in relation to the complaint and complainant, including, *inter alia*:
  - (i) the subject of the complaint;
  - (ii) data on the Complainant;
  - (iii) date of receipt, and replying to, the complaint;
  - (iv) result or outcome of the complaints handling procedure;
  - (v) the applicable rights and obligations of the Complainant under the Regulations; and
- b) documentation relating to the complaint is kept and archived in a secure manner for a period of five years

R.4.3.5 The MFSA may at any time require the Institution to provide it with a copy of the Complaints Register;

### *Section 4 Internal Follow-up of Complaints*

- R.4.4.1 Institutions shall analyse, on an on-going basis, complaints handling data to ensure that they identify and address any recurring or systemic problems, and potential legal and operational risks.
- R.4.4.2 Institutions shall carry out the analysis set out in Rule 4.4.1 of this Rulebook by, inter alia:
- a) analysing the causes of individual complaints so as to identify root causes common to types of complaint;
  - b) considering whether such root causes may also affect other Equity Release Financial Products or Equity Release Transactions as well as other processes or product, including those not directly complained of; and
  - c) correcting, where reasonable to do so, such root causes.
- R.4.4.3 An Institution shall have in place the following processes in order to comply with the proper internal follow-up of complaints:
- a) the collection of management information on the causes of complaints and the Products complaints relate to;
  - b) a process to identify the root causes of complaints and to prioritise dealing with the root causes of complaints;
  - c) a process to consider whether the root causes identified may affect other Equity Release Financial Products or Equity Release Transactions as well as other processes or product;
  - d) a process for deciding whether root causes discovered should be corrected and how this should be done; and
  - e) regular reporting of information on recurring problems to the Institution's senior management.

## *Section 5 Provision of Information*

- R.4.5.1 Institutions shall:
- a) on request or when acknowledging receipt of a complaint, provide written information to Consumers regarding the Institution's complaints handling process;
  - b) publish details of their complaints handling process in an easily accessible manner;
  - c) provide clear, accurate and up-to-date information about the complaints handling process, including:
    - (i) details of how to make a complaint; and
    - (ii) the process that will be followed when handling a complaint;
  - d) keep the Complainant informed about further handling of the complaint.



R.4.5.2 For the purposes of rule 4.5.1 paragraph (b) of this Rulebook, Institutions shall publish details of their complaints handling process in brochures, pamphlets, contractual documents or via the Institution's website.

For the purposes of rule 4.5.1 paragraph (c) (i) of this Rulebook, Institutions shall include the type of information to be provided by the Complainant and the identity and contact details of the person or department to whom this complaint should be directed.

For the purposes of rule 4.5.1 paragraph (c) (ii) of this Rulebook, Institutions shall provide information on when the complaint will be acknowledged, an indication of handling timelines, and the availability of the Office of the Arbiter for Financial Services and of alternative dispute resolution mechanisms in the case that a dispute remains unresolved.

## *Section 6 Procedure for Responding to Complaints*

R.4.6.1 Institutions shall:

- a) in writing, acknowledge receipt of any complaint upon receipt;
- b) where a complaint is made orally, the Institution shall make a summary of the complaint and request the Complainant to confirm in writing the said summary;
- c) seek to gather and investigate all relevant evidence and information regarding the complaint;
- d) communicate in plain language, which is clearly understood;
- e) provide a response without unnecessary delay, and in any event by not later than fifteen working days from when the complaint was registered. Where the investigation of a complaint is not completed within fifteen working days from the receipt of the complaint, the Institution shall:
  - (i) inform the Complainant about the causes of the delay; and
  - (ii) provide an indication as to when the investigation is likely to be completed.
- f) when providing a final decision in terms of Rule 4.6.1(e) above that does not fully satisfy the Complainant's demand, the Institution shall provide a thorough explanation of the Institution's position on the complaint:
 

Provided that if the Complainant is not satisfied with the way the complaint was resolved by the Institution in terms of this Rule 4.6.1(f), the Complainant may refer the complaint to the Office of the Arbiter for Financial Services. Such decision shall be provided in writing; and
- g) make use of the Maltese language when communicating with the Complainant, including, but not limited to, insofar as decisions in relation to the complainant are concerned, when so requested by the Complainant.

## *Section 7                      Reporting to the MFSA*

- R.4.7.1                      Institutions shall provide information on complaints and complaints handling to the MFSA as and when required in any format as required by the MFSA. This data shall, as a minimum, cover the number of complaints received on Equity Release Financial Product, and the cause of the complaint.
- R.4.7.2                      Without prejudice to Rule 4.7.1 above, where a complaint has been lodged with the Office of the Arbiter for Financial Services and the case has been resolved, the Institution shall immediately provide the MFSA with a copy of the Arbiter's final decision. The Institution shall also notify the MFSA immediately, in the event that an appeal from the decision of the Arbiter is lodged by the Complainant or by the Institution itself, in terms of the Arbiter for Financial Services Act (Cap.555 of the laws of Malta), and once such appeal has been decided by the Court of Appeal (Inferior Jurisdiction).

## *Section 8                      Unrelated Complaints*

- R.4.8.1                      Where an Institution receives a complaint about:
- a)                      activities other than those regulated by the MFSA ; or
  - b)                      the activities of another financial services provider for which the Institution has no legal or regulatory responsibility (and where those activities form the substance of the complaint), the provisions of this Chapter 4 of the Rulebook shall not apply to such Institution.
- R.4.8.2                      Notwithstanding the provisions of Rule 4.8.1 above, the Institution should where possible, explain its position on the complaint and/or, where appropriate, direct the Complainant to the relevant Institution or other financial services provider responsible for handling the complaint or to any other appropriate body which may deal with the complaint and/or seek independent professional advice.
- R.4.8.3                      Where an Institution complies with the requirement of Rule 4.8.2, it shall not be required to handle the complaints under Rule 4.1.1, Rule 4.2.1 and Rules 4.3.1-4.7.1 of this Rulebook.

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