



# Vulnerability Vigilance

Insights from the Equity Release  
Independent Legal Advice Process

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# Introduction

While older customers are not necessarily more vulnerable due to their age, they are more prone to being vulnerable. Vulnerability takes a variety of different forms with the Financial Conduct Authority<sup>1</sup> (FCA) identifying four different drivers – namely health, life events, resilience, and capacity.

Given the fact that the average equity release customer is almost 70-years<sup>2</sup> old and they are taking a long-term product, the Equity Release Council (the Council) stipulates all customers should receive independent legal advice. The advice should be delivered by a qualified legal professional of the customer's choice and as part of that legal service, a face-to-face meeting must be conducted. This needs to confirm amongst other things that the customer has sufficient capacity and is acting free from any external pressure or undue influence. The independent legal representative is therefore responsible for representing the client's interests rather than any other party in the transaction.

While all specialist financial advisers are trained to identify vulnerable customers and provide them with the support they need, this independent legal advice provides additional safeguards. It ensures that customers are well informed of the risks and implications and have the capacity to fully understand their rights and responsibilities.

As part of the assessment of a customer's capacity, particular attention is paid to Section 1 of The Mental Capacity Act of 2005. This states that a person must be

assumed to have capacity unless it is established that they do not and that they should be supported to retain the ability to make decisions by use of all practicable steps.

To avoid any conflicts of interest, the provider has separate legal firm acting on its behalf. It is responsible for ensuring that any rights or interests affecting the property title are identified and dealt with and that the provider receives a clear legal title.

Any significant vulnerabilities identified which include capacity issues, health concerns and signs of duress are managed on a case-by-case basis and may require additional input from experts such as a GP, mental capacity assessor or a language translator. Ultimately, the focus is on ensuring the client makes the right choice for their individual circumstances.

The Council has worked with members of its legal forum to collate 316 cases where independent legal advice has identified a customer with vulnerable characteristics in 2023.

This research highlights the challenges facing some customers as well as providing advisers, solicitors and providers with additional insight into the support that older homeowners may need.

The Council has also launched the [Legal Guide to Equity Release](#) which is designed to support legal firms as they help ensure customers fully understand their rights and responsibilities when it comes to these long-term products.



# Typical Independent Legal Advice Process

This is the basic outline of how independent legal advice takes place as part of the equity release process in England and Wales. The approach is adapted to operate in Scotland and Northern Ireland based on their legal requirements.



Once the customer's chosen law firm has received an instruction and has received an equity release offer from the provider, a face-to-face appointment is then booked with the customer. At this point, they will be sent written legal advice and the accompanying documents. If the provider has identified somebody else (not party to the offer) living at the property, a separate Occupier Waiver will be sent to that person, along with a requirement to obtain independent legal advice.



The solicitor meets the client at a time convenient to them and checks that the client understands equity release, the implications of their choices, has capacity and is not under duress/undue influence. Legal documentation is completed with the solicitor and certified copies of their ID will also be taken.



The documents will then be returned to the customer's solicitor's office and checked. Any areas of concern will be identified, including issues around duress or questions on mental capacity



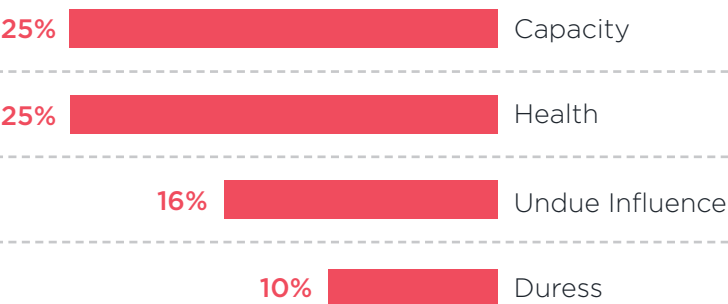
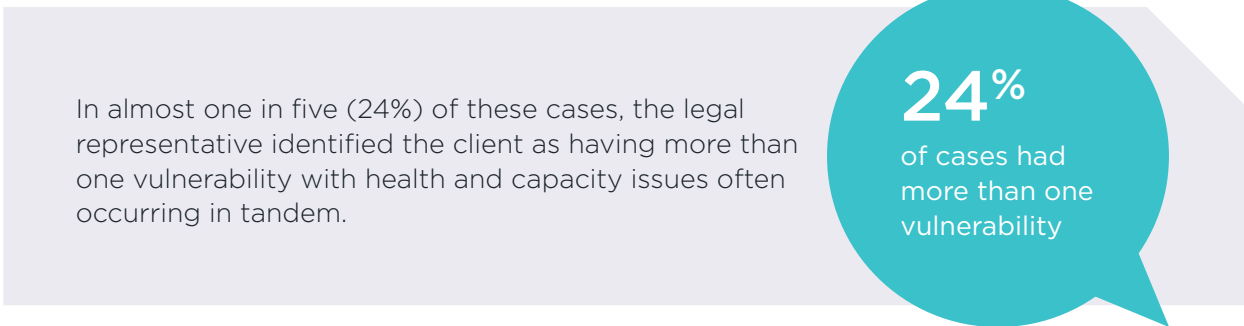
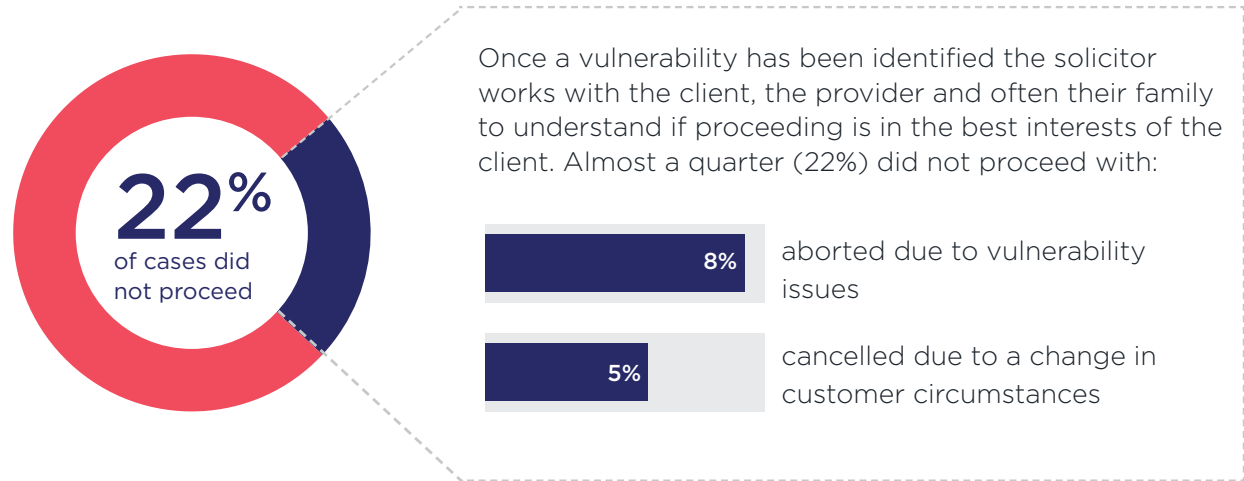
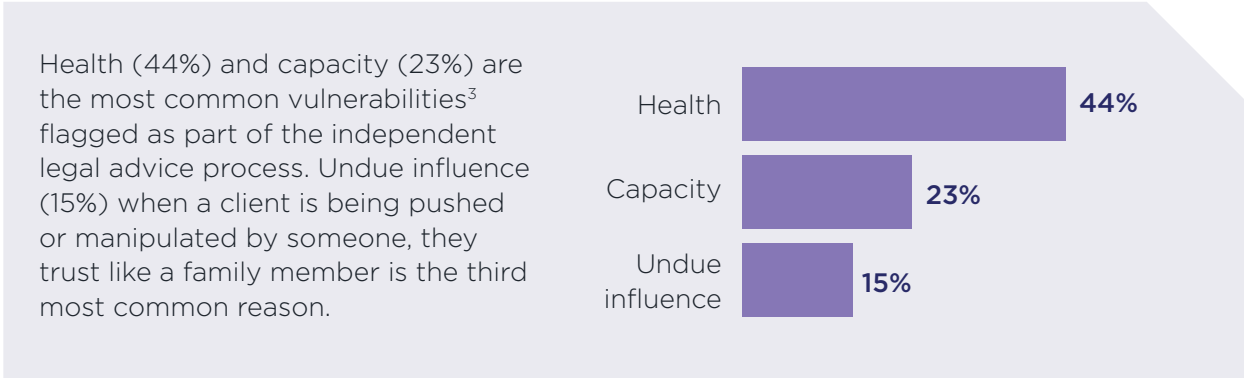
If no vulnerabilities are identified, they then proceed to chase any outstanding documents and forward the pack when completed to the providers solicitor. They will then obtain any additional information the provider's solicitor may require and resolve any title or other issues.

Should vulnerabilities be identified, they will be highlighted to the adviser to understand how and if the case should proceed.. This may include further visits, requests for additional information or cancellation.

- ✓ Once completion has been set, the provider's lawyer will confirm completion date with all parties and prepare completion paperwork. Should it be necessary, the firm representing the client will obtain any additional information needed.
- ✓ They will also contact the customer by telephone to run through the completion figures and ensure they are comfortable and happy to complete BEFORE the completion date.
- ✓ On the completion date itself, any existing secured charge will be redeemed and the provider's solicitor will attend to the registration of the product against the customer's title deeds thereafter.
- ✓ The register is sent to the customer's solicitor who provide copies to the customer.

# Key findings

Of the 316 cases of vulnerability reviewed:



When a case failed to complete due to vulnerability concerns being flagged, health (25%), capacity (26%), duress (16%) and undue influence (16%) were the most common issues.

# Detailed Findings

## Most Common Vulnerabilities Identified

The Council worked with members of its legal forum to collate 316 cases where independent legal advice identified a customer with vulnerable characteristics in 2023 and these are the detailed findings of this research.

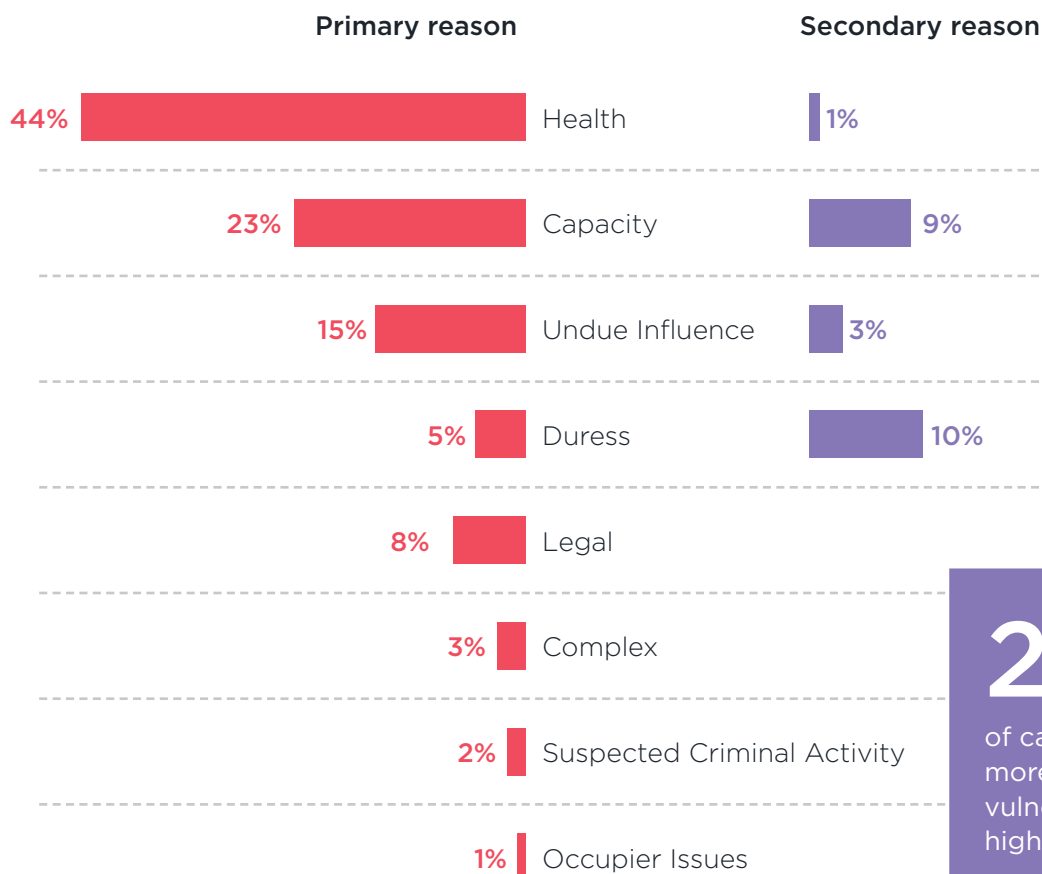
Issues relating to poor health (44%) – often due to older age – are the most common vulnerability identified by the legal representatives followed by capacity (23%).

While both undue influence (15%) and duress (5%) refer to a client being encouraged to proceed against their wishes. Undue influence suggests this pressure is from someone they trust like a

family member while duress is more broad coercion. Independent legal advice is key in identifying if clients are under pressure.

It is interesting to note that in 24% of cases there is more than one vulnerability highlighted. Duress (10%) and capacity (9%) were the most common additional vulnerabilities picked up.

### Most Common Vulnerabilities<sup>3</sup> Identified



24%

of cases have more than one vulnerability highlighted



## Impact on Equity Release Process

When a vulnerability is flagged as part of the independent legal advice process, the adviser is contacted to highlight the issue. A careful discussion is then held with the customer to alert them to the concerns and decide how they wish to proceed.

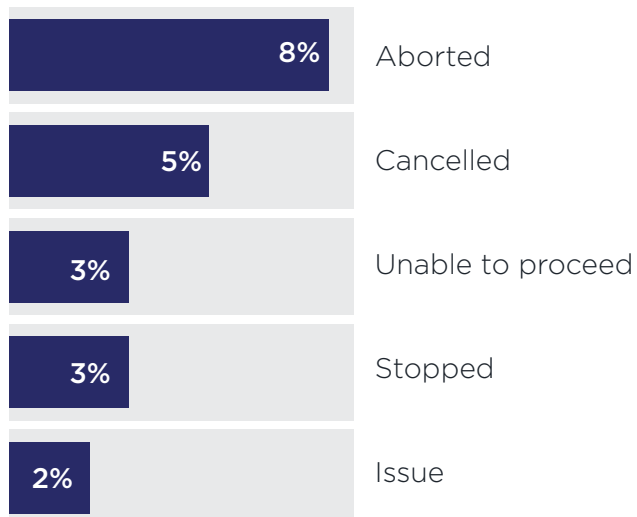
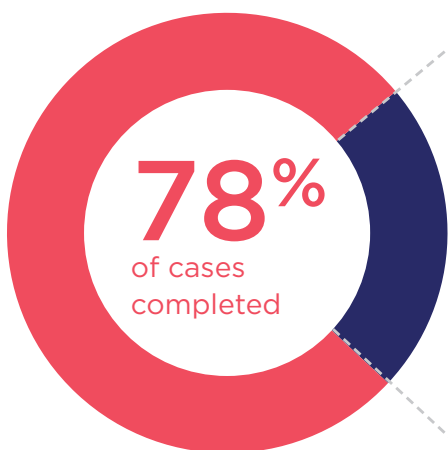
A client being identified as being vulnerable does not necessarily mean that they can't take out equity release but rather that additional care and support is needed to help them make the right choice for their individual circumstances.

This may involve customers receiving larger print documents or the solicitor reading through documentation with customers and answering questions. To ensure that customers are able to voice any concerns and that they truly understand the nature and long-term effect of

the equity release contract, they must always meet their legal representative privately without third parties present. This allows time and opportunity to ask the questions they want to cover and ensure the absence of external pressure. In certain circumstances where practicable steps cannot be taken, it may be necessary to halt the process if irregularities are discovered.

Of the cases where vulnerability was identified, 78% went on to complete while 8% were aborted (i.e. did not proceed due to vulnerability issues) and 5% were cancelled (i.e. a change of circumstances stopped transactions). In certain cases, issues were identified which caused the provider to withdraw from the process (3%) or a material point was highlighted by the solicitor which stopped proceedings (3%).

### End Result for Customer





## Impact on Case Completions

To better understand the impact of a specific type of vulnerability on the likelihood of a case completing, the 'end result' data was overlaid with the type of issue identified by the solicitor.

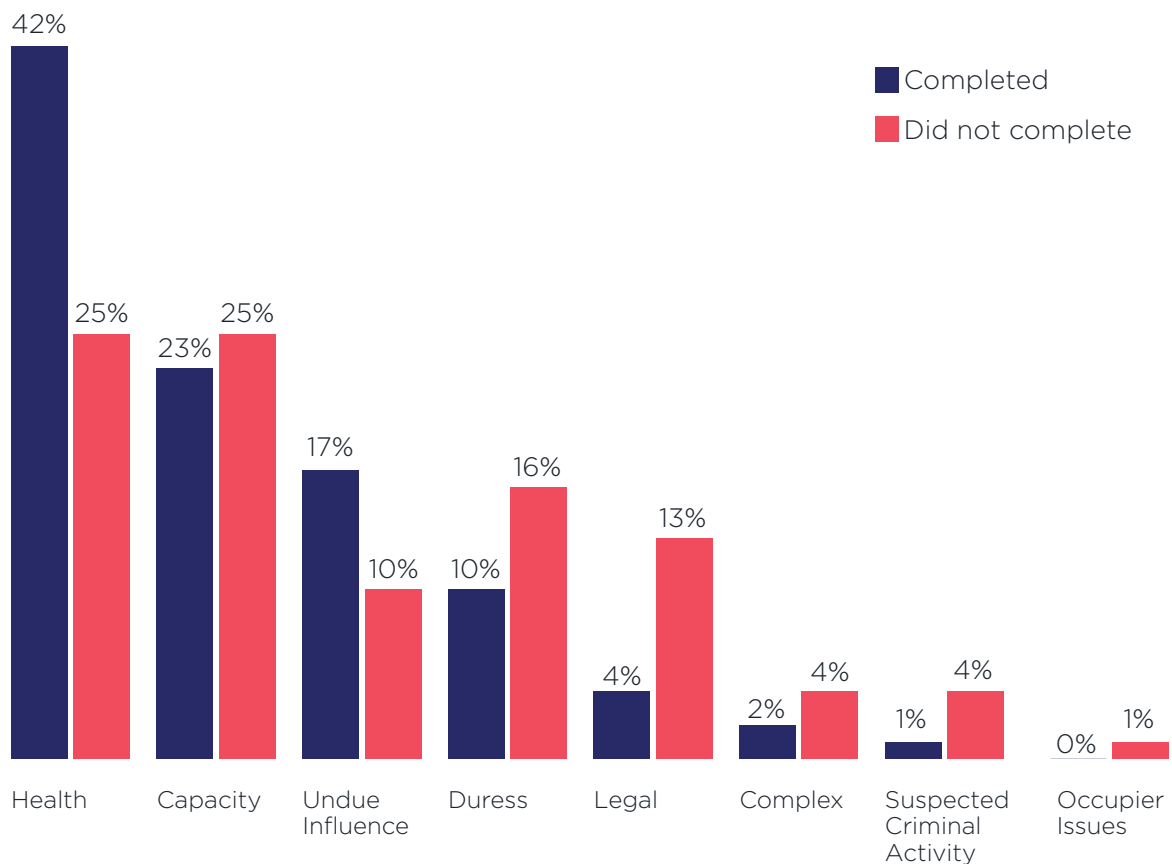
In the cases that completed, health (42%) was the most common vulnerability flagged followed by capacity (23%), undue influence (17%) and duress (10%).

Health concerns which can cover anything from the customer having a recent medical issue such as a stroke to concerns around short-term

memory or hearing loss are relatively easy to manage. However, undue influence and duress are more difficult.

The Council encourages customers to involve their families in the advice process to ensure common understanding and avoid upset in the future. However, the firm providing legal advice needs to clearly identify if – for example – the person helping the customer to read the documents is doing so as a supportive family member or as a beneficiary who is exercising undue influence to ensure the process completes.

**Vulnerabilities in cases that completed vs those that did not**



# 63%

of health cases that did not complete were cancelled due to a change of circumstances

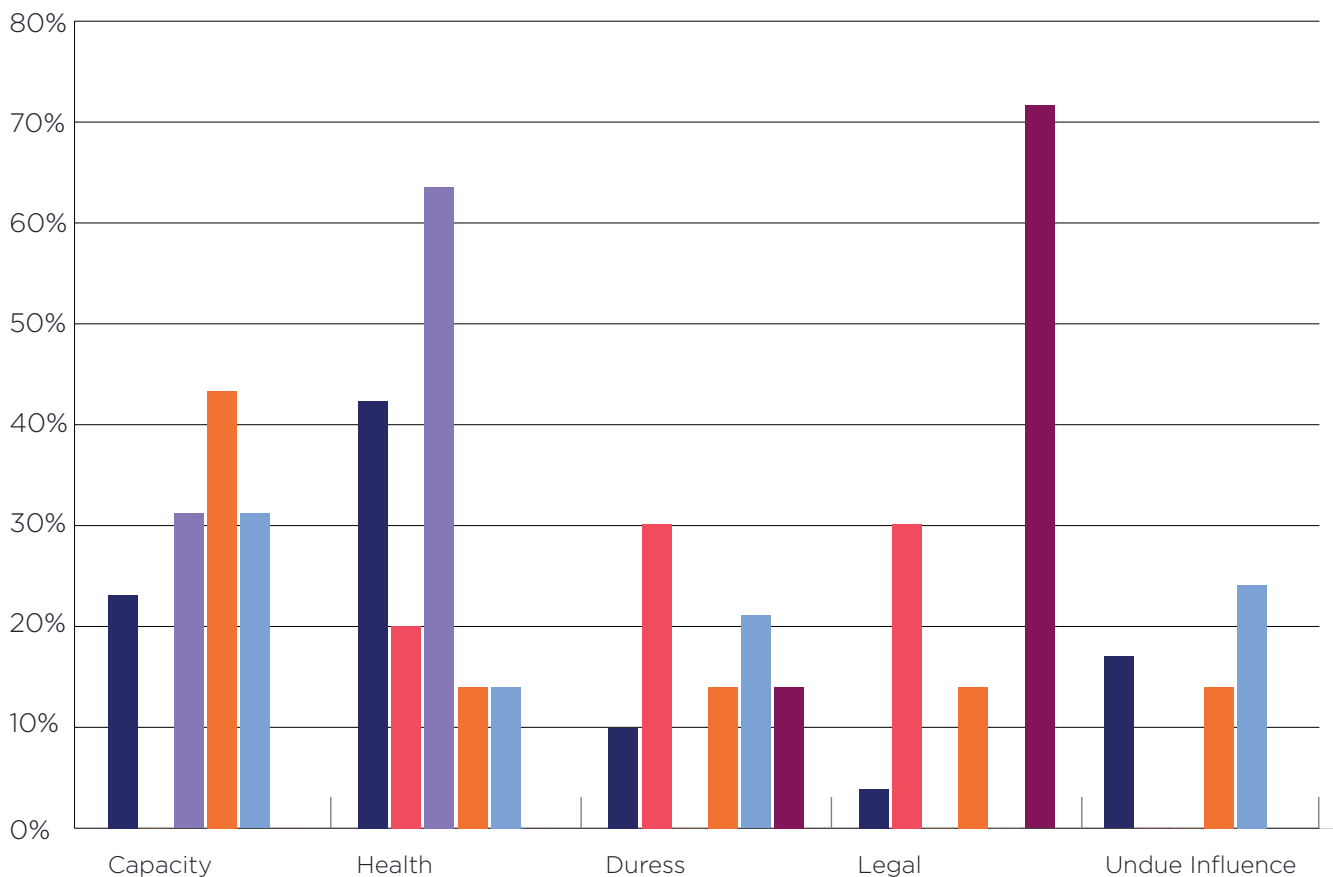
Of the cases that did not complete, health (25%) and capacity (25%) were most commonly raised followed by duress (16%).

Given the fact that cases do not complete for a variety of reasons, a more in-depth look was taken at the underlying data to see how the type of vulnerability impacted the reason a case did not conclude.

Of those cases that were aborted (i.e. did not proceed due to vulnerability issues), 21% were due to duress and 24% due to undue influence which suggests that this worrying issue is being picked up and dealt with.

Given the age group, it is perhaps unsurprising that health was identified as an issue in 63% of the cases that were cancelled due to a change in circumstances.

### Impact of the top five types of vulnerability on the likelihood of case completion



■	<b>Completed</b>
■	<b>Unable to proceed</b> (i.e. client keen but provider unable to proceed)
■	<b>Cancelled</b> (i.e. change of circumstances stopped transaction)
■	<b>Issue</b> (i.e. communication / process broke down thus unable to proceed)
■	<b>Aborted</b> (i.e. did not proceed due to vulnerability issues)
■	<b>Stopped</b> (i.e. the solicitor highlighted a material point which stopped proceedings)

# Case Studies

With the Financial Conduct Authority identifying that 47% of UK adults have one or more vulnerable characteristics, the Council has provided some case studies to illustrate the different 'levels' of vulnerability. These case studies are fictional and not based on any specific person.

47%

of UK adults have one or more vulnerable characteristics



## Low Vulnerability

Alex is 80 and lives in his own home in Enfield close to his large extended family. Having been married to Maria for 60-years, she sadly passed away recently in a local care home having suffered from Alzheimer's.

Alex is determined to remain in his home for as long as possible and while his daughter helps him with things around the house, it is challenging as she has grandchildren to look after as well.

Having realized how much his house is worth, Alex is keen to use equity release to pay for care at home but also to enjoy time with his grandchildren and great grandchildren.

## Medium Vulnerability

Kirsty and Gary have a beautiful home in Radcliffe, two gorgeous grandchildren and an outstanding interest-only mortgage. Gary did consultancy work up until recently, which is how they managed to make the payments, but his arthritis meant he had to stop work and they are struggling.

It could not have come at a worse time as their daughter is finally pregnant with her first after several rounds of IVF and Kirsty is determined not to burden the family with their financial concerns. Gary has always managed the finances and he seems to be muddling up things more and more.

It is not really a problem, but Kirsty worries that it might be the start of something more concerning and is pushing him to get an appointment with the doctor.

Downsizing has been discussed but Gary seems to be really against it as the house is familiar and he knows where everything is. Their financial adviser has suggested they consider equity release, and they are relieved they could repay the mortgage and have a little money over to make adjustments at home and treat the grandchildren.

## Significant Vulnerability

Sarah was married to Bob for over 30 years before he announced that he wanted a divorce. She never imagined that she would find herself alone at 70 or that he had made such a mess of their finances. Her eldest son is disabled, and she was a stay-at-home mum as she refused to send him to a group home.

While she insisted that her national insurance contributions were paid to give her access to her state pension, she has little other pension provision. To keep her son at home, she fought to keep the family home in the divorce but even with carers allowance she is struggling. Her younger son is keen to buy a property and pointed out that if she takes out equity release on her property in Hove, she could boost her income and help him.

Finance has never been her strong suit, but he has introduced her to a friend of his who is an adviser. Her son has kindly talked her through all the documents and her options as she struggles with her short-term memory. He has even spoken to the equity release company to help things along.

She is unsure she wants to do equity release, but everyone seems certain it is the right thing for her and she is just so emotionally exhausted that it might just be the easiest option.

# Methodology

This research is based on 316 cases in 2023 where vulnerability concerns were highlighted by the independent legal representative. All figures have been reviewed and checked but as is standard with research reports some columns may add up to just under or over 100% due to rounding protocols.

The Equity Release Council represents 81 law firms which provide independent legal advice to customers who choose to take out one of these products.

## Footnotes

1. The Financial Conduct Authority (FCA) recognises the following characteristics associated with the four drivers of vulnerability as outlined in FG21/1 Guidance for firms on the fair treatment of vulnerable customers – February 2021

Health	Life events	Resilience	Capability
Physical disability	Retirement	Inadequate (outgoings exceeding income) or erratic income	Low knowledge or confidence in managing finances
Severe or long-term illness	Bereavement	Over indebtedness	Poor literacy or numeracy skills
Hearing or visual impairment	Income Shock	Low savings	Poor English language skills
Mental health condition or disability	Relationship Breakdown	Low emotional resilience	Poor or non-existent digital skills
Addiction	Domestic Abuse (including economic control)		Learning difficulties
Low Mental Capacity or cognitive disability	Caring responsibilities		No or low access to help or support
	Other circumstances that affect people's experience of financial services e.g. leaving care, migration or seeking asylum, human trafficking or modern slavery, convictions		



2. Source – Equity Release Council – Autumn 2023 Report – Average customer age at time of application is 68 years and one month.

3. Building on these four drivers of vulnerability, the report has broken the vulnerabilities identified by the legal advice process into the following general categories to ease tracking:

<b>Health</b>	The client may have a physical disability, health, or cognitive impairment.
<b>Capacity</b>	The client may have low knowledge, literacy, or ability to manage finances, little support for the community/family.
<b>Undue Influence</b>	The client is being pushed/manipulated by a person they trust. For example, this vulnerability may be flagged if a child who is due to benefit from the proceeds of equity release is reluctant to allow direct contact with their parent or answers for them in the advice meetings.
<b>Duress</b>	A client is being coerced into deciding against their will. For example, this vulnerability may be flagged if when the solicitor speaks to a couple who own a property jointly, the wife repeatedly expresses reluctance, but her husband insists on proceeding.
<b>Legal</b>	This is typically a matter of property or inheritance law when for example a charge is held against the property and will take time to unwind thus putting additional stress on the client.
<b>Complex</b>	A client's personal circumstances/wishes add significant complexity such as when a former spouse listed on a deed cannot be located thus taking time and putting additional stress on the client.
<b>Suspected Criminal Activity</b>	A criminal legal matter such as potential fraud.
<b>Occupier Issues</b>	A tenant or joint-owner objects.

## About the Equity Release Council

The Equity Release Council is the representative trade body for the equity release sector. The not-for-profit organisation was first established in 1991 when it was known as Safe Home Income Plans.

The Council uniquely represents the entire value chain, including funders, providers, advisers, lawyers, surveyors and other professionals. It acted as an independent voluntary regulator prior to the regulation of the mortgage market by the then Financial Services Authority, in 2004.

The Council seeks to lead a consumer-focused market by setting authoritative standards and protections that enable customers to trust that equity release is reliable and safe. At the heart of these standards are our five core product safeguards:

- ✓ A no negative equity guarantee.
- ✓ Rates that are fixed or capped for life.
- ✓ The right to remain in the property for life or until residential long-term care.
- ✓ The right to move to another property.
- ✓ The right to make voluntary penalty-free repayments.

These safeguards are underpinned by the requirement for independent legal advice. Combined with statutory Financial Conduct Authority regulations this sets the highest standard of consumer protection for any property-based loan on the market.

## About Equity Release

Equity release is the umbrella term for products that provide consumers with a way of releasing the wealth tied up in their property, without necessarily having to sell it and move to another home.

The most popular type of equity release is a lifetime mortgage which makes up more than 99% of today's market.

Lifetime mortgage customers borrow against the value of their homes and can choose whether to make repayments. The outstanding debt, plus interest, is paid from the sale of the home when the customer dies or goes into long-term care.

If no repayments are made the interest will compound, meaning there will be less for the customer to pass on to their beneficiaries.

The other main form of equity release is a home reversion which involves selling all or part of your home to the provider. However, these have been less popular in recent years.



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