



## **GUIDANCE NOTE 14 MORTGAGE FRAUD Issue 2**

**Issued by the Council for Licensed Conveyancers on  
30 March 2009**

**This Guidance Note came into force on 31 March 2009.**

**This Guidance Note supersedes Guidance Note 14 – Mortgage Fraud issued by the Council on 18 October 2007 which ceased to have effect on 31 March 2009.**

**Licensed Conveyancers, Managers and Recognised Bodies must at all times act in compliance with the Council's Rules in so far as they are applicable. In particular, Rule 3.2 of the Licensed Conveyancers' Conduct Rules 2009 provides:-**

**"A Licensed Conveyancer must:**

- 3.2.1**      **comply with the Guidance Notes unless he has good reason for not doing so in the particular circumstances;**
- 3.2.2**      **ensure that the Recognised Body of which he is a Manager complies with the Guidance Notes unless it has good reason for not doing so in the particular circumstances."**

**Rule 4.1 of the Licensed Conveyancers' Conduct Rules 2009 states:-**

***"A Licensed Conveyancer must***

- 4.1.1**            ***act with integrity and honesty***
- 4.1.2**            ***act with reasonable care, skill and diligence;***
- 4.1.3**            ***not take, and must not permit anyone on his behalf to take, any action which may bring disrepute to the profession;"***

**Rule 4.4 of the Licensed Conveyancers' Conduct Rules 2009 states:-**

***"A Licensed Conveyancer must when offering or providing Regulated Services through a Recognised Body:***

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| 4.4.6 | <i>not conduct himself in a manner which he knows or has reasonable grounds for suspecting will result in a breach by the Licensed Conveyancer of the law or of the Council's Rules;</i> |
| 4.4.7 | <i>comply fully with any undertaking given by him, the Recognised Body or any employee of that Recognised Body;</i>  |
| 4.4.8 | <i>never give false or misleading information relating to the provision of Regulated Services to any person;”</i>  |

**This Guidance Note adopts the definitions set out in the Licensed Conveyancers' Conduct Rules 2009.**

**This Guidance Note should be read in conjunction with  
Guidance Note 13 – Acting for Lenders**

**“Recognised Body”** includes, where the context permits, any Manager (including a Licensed Conveyancer who is a Manager) or employee acting for the Recognised Body.

**General Information**

1. A Recognised Body must be alert to the possibility of mortgage fraud to protect its clients, themselves and the legal profession. Mortgage fraud may be perpetrated by one or more participants in a mortgage loan transaction, including the Borrower, or by multiple parties (a mortgage fraud ring) working dishonestly together (and often in a professional capacity).
2. Mortgage fraud is a criminal offence which can often result in imprisonment on conviction. Some conveyancers have been caught up unwittingly in a mortgage fraud, not because of any wilfully fraudulent acts on their part but because they have failed to act in accordance with good practice. They have neglected to check all details of the transaction and have failed where appropriate to report to the Lender for whom they are also acting. They have not appreciated that the circumstances of the transaction might lead to or give rise to fraud.
3. Proceeds of mortgage fraud are criminal property. A conveyancer who assists in such a fraud will facilitate the acquisition, retention, use or control of criminal property contrary to s.328 of the Proceeds of Crime Act 2002. He may also aid and abet a fraud or be complicit in a conspiracy to defraud.
4. The Recognised Body must have appropriate Anti-Money Laundering and Combating Terrorist Financing procedures in place as required by the current CLC Guidance. Mortgage fraud is likely to require a report to be made to the Serious Organised Crime Agency.
5. Any attempt to deceive a Lender may expose the Recognised Body or conveyancer to civil action (e.g. breach of contract, breach of trust or negligence) and/or to disciplinary proceedings.
6. A Recognised Body must cease to act for any client immediately in any circumstances where it is aware or suspects that the client is attempting to perpetrate fraud. If it decides to terminate his retainer, it should observe the

requirements of Rule 5.3 of the Licensed Conveyancers' Conduct Rules 2009 unless to do so would constitute a "tipping off" offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

7. A Recognised Body's duty of confidentiality to its client continues after it has ceased to act for that client except where
  - a. a court orders such matters to be disclosed,
  - b. a warrant permits a police officer or other authority to seize confidential documents, or
  - c. there is compelling evidence that the client was using its services to further a criminal or fraudulent purpose, in which case disclosure should be made to the police.

### **Identity of the Client and Client's Circumstances**

7. A Recognised Body should always:-
  - 7.1 establish the identity of its client in line with the relevant guidance issued by the Council and the current Money Laundering Regulations and obtain proof of that identity to establish that a client is who he says he is and that he lives at the address given;
  - 7.2 advise the Lender if, in any case, a client is unable, reluctant or unwilling to provide this verification;
  - 7.3 identify all the other owners of the property and other persons who might have an interest in or rights over the property (if any) and ensure that the client's current co-owner/partner is, where applicable, the co-owner/partner referred to on the title of the property;
  - 7.4 obtain confirmation of instructions direct from the client (and from all other interested parties) wherever possible, particularly where he or they communicate through an intermediary and
    - (i) obtain detailed instructions ;
    - (ii) satisfy itself that the client is not subject to duress or undue influence and
    - (iii) satisfy itself that the client is entering into the transaction knowingly;
  - 7.5 be satisfied that the client's economic position, wealth and lifestyle correspond with the mortgage that he is proposing to enter into and there are no facts which suggest the potential for mortgage fraud (e.g. that he has not overstated his income in the mortgage application or that he does not have substantial arrears on an existing mortgage account); and
  - 7.6 check all signatures to reduce any risk of forgery of the signatures of other interested parties (e.g. a husband who forges his wife's signature).

### **Linked Parties**

8. A Recognised Body must always be careful if:-
  - 8.1 there appear to be links between a Buyer and Seller; or

- 8.2 the Recognised Body is acting for both parties; or
- 8.3 the Seller is a private company or the Seller has recently purchased from a private company and the names and addresses of the officers and shareholders of the company appear to be connected with the transaction, the Seller or Buyer.

### **Linked Transactions**

- 8. A Recognised Body must notify the Lender of any sub-sale or back-to-back element in any transaction and ensure that the Lender's written consent is held before proceeding, having first obtained its client's instructions so to notify the Lender. If the client refuses to consent to that disclosure, the Recognised Body must cease acting for the client and the Lender.

### **Identity of the other lawyers**

- 10. A Recognised Body must check the identity of the Licensed Conveyancers or Solicitors acting for the other party to the transaction by reference to the Council or the Records Department of the Law Society of England & Wales respectively.

### **Proceeds of Sale**

- 11. A Recognised Body must pay particular attention to instructions given for the distribution of the net proceeds of a sale or remortgage.
  - 11.1 If the property or the mortgage is held in joint names, the net proceeds of sale must normally be sent to an account in the joint names of all clients or a cheque must be written to all parties jointly.
  - 11.2 The net proceeds must be sent to all the parties except as otherwise instructed by all the parties in writing.

### **Variations in Price, Incentives and other Material Considerations**

- 12. When acting for a Buyer and a Lender, a Recognised Body must with its client's consent, notify a Lender immediately where:-
  - 12.1 there is an alteration to the purchase price or the details are different from the details set out in the mortgage offer (other than as permitted by the Lender).
  - 12.2 it becomes aware of any other information which it would reasonably expect the Lender to consider important in deciding whether, or on what terms, it would make the mortgage advance available to the Buyer.
- 13. In that context. a Recognised Body must check whether:-
  - 13.1 the contract papers have incomplete or missing dates, incorrect descriptions or any sections (particularly the price) which have been left blank;
  - 13.2 the price shown in the Contract and Transfer documentation differs from the amount actually being paid for the property;

- 13.3 any fixtures and fittings included in the purchase price materially reduce the value of the property;
  - 13.4 the Seller is offering the Buyer any incentive(s) to buy the property unless these clearly fall within a Part 2 CML Handbook dispensation given by the Lender concerned;
  - 13.5 any allowances are made or any other sum is being set-off against the money payable by the Buyer to the Seller (e.g. for repairs to the property):
  - 13.6 the Buyer proposes to pay or has apparently paid a deposit direct to the Seller (except for a nominal reservation fee); or
  - 13.7 there is anything else that affects the price of the property or the amount actually being paid for the property, however small;
- and must report any such matters fully to the Lender with the consent of the client. The Recognised Body must not complete the mortgage until the Lender has confirmed that it is happy to proceed and, if applicable, the terms upon which it is willing so to do.
- 14. It is inadvisable for the Recognised Body to determine whether any change is material. It must make a report to the Lender with the client's consent. It is good practice to advise clients at an early stage that
    - (i) it would be regarded as fraud to misrepresent the purchase price or the existence of any incentives and inducements; and
    - (ii) a Recognised Body is under a duty to inform a Lender of the true or underlying price actually being paid for a property.
  - 15. A Recognised Body must establish and maintain proper systems, procedures, processes and internal controls for approval of Certificates of Title prior to submission to the Lender.
  - 16. A Recognised Body must remain mindful of its duty to act in the best interests of the Lender as its client, and:-
    - 16.1 if to do so will require it to pass on or report any such information to the Lender but the Borrower client declines consent to its disclosure, a conflict of interest will arise between the duty of confidentiality to the Borrower client and the duty to act in the best interests of the Lender and it must therefore cease to act for the Lender and consider carefully whether it can continue to act for the Buyer, but the safest course of action for the Recognised Body to adopt may be to cease to act for both the Lender and the Borrower client.
    - 16.3 where it ceases to act for the Lender in such circumstances, the Recognised Body should return the mortgage instructions to the Lender merely stating that they are returned because of a conflict of interests without giving any further explanation.

## **Valuations**

- 17. It is good practice for a Recognised Body to check any valuation supplied by the Lender to check that this is not

- 17.1 higher than the actual price being paid for the property or higher than might be expected for a property of that type in the location in which it is situated; or
- 17.2 considerably higher than the price paid for the property on any earlier sale or disposal within the last 12 months, taking into account any subsequent inflation or deflation in property prices since the date of that sale or disposal.
18. A Recognised Body is not a valuation expert and cannot be expected to advise on the accuracy of a valuation. Nevertheless, a valuation which is patently out of line with the apparent value of a property may be a ground for a suspicion of fraud, particularly where there is a possibility or risk of complicity between prospective Borrowers and Valuers.

### **General**

19. It is good practice to include a term in the Terms of Engagement permitting the disclosure to Lenders of material facts relating to the property and the Borrower client.
20. A conveyancer must not witness any signature unless the person signing does so in his presence. The conveyancer must ensure that any signed document which has been witnessed other than by him has been properly signed in the presence of a witness and verify the signatures of his clients (and any other interested parties) on all documents connected with a transaction by examination and comparison with signatures on any other available documentation.

### **Warning Signs**

21. A Recognised Body should question unusual instructions and be particularly circumspect if any one or more of the circumstances set out in the Appendix to this Guidance Note ("Summary of Warning Signs") apply to a transaction where it is acting or if they become apparent as the transaction progresses. The list of circumstances outlined is not exhaustive but is provided as a guideline.

**Any failure to take account of Warning Signs or to observe this guidance and to take appropriate steps may be used in court as evidence against a Recognised Body, Licensed Conveyancer or other Manager in criminal or civil proceedings**

## APPENDIX

### Summary of Warning Signs

Remote Client	<p>Where a client is introduced to a Recognised Body by a third party (e.g. a mortgage broker or an estate agent) who is not well known to the Licensed Conveyancer or the Recognised Body.</p> <p>Where a potential client wishing to instruct the Recognised Body for the first time does not live locally to the Recognised Body and has not been introduced by someone known to the Recognised Body and there is no obvious reason why he should place his instructions with the Recognised Body.</p> <p>Where a client will be using the services of the Recognised Body for the first time and persuades the Recognised Body to accept instructions from the other party or the other party instructs the Recognised Body</p>
Secretive Client	<p>Client declines to be met or come to the office and/or uses an intermediary to communicate with the Recognised Body and/or asks the Recognised Body to contact him at his business or another address rather than at his home address.</p> <p>Client shares an address with one or more other parties to the transaction.</p> <p>Licensed Conveyancer suspects that a client is not being completely honest or transparent about any element of a proposed mortgage transaction.</p>
Nominee Buyers	<p>Instructions to purchase in or transfer a property into the name or names of nominees.</p>
Fictitious Solicitor or Conveyancer	<p>A Solicitor or Licensed Conveyancer acting for another party who is not known to you or who is not registered with the Council for Licensed Conveyancers or the Law Society of England &amp; Wales</p>
Unusual instructions	<p>Instructions from a Seller to remit the net proceeds of a transaction to someone other than the Seller</p> <p>Any instructions from a Buyer or Seller which do not correspond with the normal type of instructions that a Licensed Conveyancer would expect to receive during the course of a standard residential or commercial conveyancing transaction</p>
Transactions which do not follow their normal course or a usual pattern of events	<p>Any transaction which is unusual insofar as it does not follow the normal course or pattern of a standard residential or commercial property transaction</p>
Misrepresentation of the purchase price	<p>The actual and true cash price to be paid is not the stated consideration in the contract and transfer and/or the price shown in the mortgage instructions and in the Certificate of Title submitted to the Lender.</p>
Change to the purchase price	<p>Adjustments to the purchase price, particularly in high percentage mortgage cases, or allowances off the purchase price, for example, for alleged works to be carried out.</p>
A deposit or any part of a purchase price paid direct	<p>A deposit or the difference between the mortgage advance and the price is paid direct or said to have been paid direct, to the Seller.</p>

<p>Incomplete Contract documentation;</p>	<p>Contract documents are not fully completed by the Seller's representative, i.e. dates missing or the identity of the parties are not fully described or financial details are not fully stated.</p>
<p>Linked Parties Sale at an inflated price Roll-Over Fraud &amp; Sub-sales</p>	<p>Sale at an inflated price to an individual by a company or other entity controlled or owned by him which may be a device designed to raise additional finance for the company or other entity and be linked to larger-scale frauds involving tax, improvement grants, etc.</p> <p>Sale by a Borrower to an associate at an inflated price (known as roll-over fraud) to enable the associate to obtain a higher mortgage. No repayments are made under the mortgage and before the Lender is able to repossess the property, it is sold to another associate for a higher price, and so on.</p> <p>A Buyer at one price instructs his conveyancer that he will be selling on to a third party at a higher price where the Sub-Buyer is either one and the same person as the Buyer or an associated person where the Seller may or may not also be a party to the fraud. The Sub-Buyer third party obtains a mortgage based on the sub-sale price and secures an immediate profit. The balance between the original sale price and the higher sub-sale price is never paid or is said to be paid by the Buyer to the Sub-buyer or is allegedly set-off by the Buyer against money owed to him by the Sub-Buyer. These transactions often feature a simultaneous exchange of contracts followed by a quick completion, leaving the Lender left with a property worth the original sale-price as security for a much higher loan.</p> <p>A derivative of this fraud occurs where a Seller grants a lease to a Buyer at a ground rent and the Buyer then assigns the lease to a Sub-Buyer at a premium to provide the Sub-Buyer with a legal interest over which he can then obtain a mortgage.</p>
<p>Unusual transactions</p>	<p>Client has a current mortgage on two or more properties</p> <p>Client is using an alias</p> <p>Client is buying several properties from the same person or two or more persons using same conveyancer.</p> <p>Client is reselling property at a substantial profit for which no adequate explanation has been provided.</p> <p>Client does not intend to occupy property (unless Buy-to-Let mortgage offer issued).</p>
<p>Fraudulent Mortgage Application</p>	<p>Size of mortgage sought by a client does not correspond with his apparent economic position and lifestyle.</p> <p>Unemployed Client and/or gift letter produced.</p> <p>Substantial arrears on an existing mortgage account.</p>