



Mortgage Fraud

1. CLC response to Call for Evidence findings

This article and its attachment is our response to the feedback provided through the Mortgage Fraud Call for Evidence we launched earlier this year. The [summary of feedback](#) was published in August.

Responses and CLC reply

Guidance: several respondents suggested we provide updates of informal guidance on a semi-regular basis. The attached Practice Note gives information on the known activities of fraudsters, situations/ transaction types which are likely to require particular caution in light of these activities and good practice examples.

Representing both buyer and seller: one respondent suggested that entities regulated by the CLC should be prohibited from representing both the borrower and the seller in any transaction. The new CLC Handbook allows those we regulate to represent both parties only where they are confident that to do so does not present a conflict of interest. We consider the provision of arrangements allowing service providers the freedom to represent both parties - where there is not such a conflict - to be consistent with a regulatory approach focused on outcomes.

Focus regulation upon firms using unqualified and inexperienced staff: applicant bodies will need to demonstrate that they have appropriately qualified, experienced and supervised staff; successful applicant firms will be subject to a mortgage fraud thematic review. In this licensing year (November 2011-October 2012), Continuing Professional Development provisions will be targeted on mortgage fraud (both following monitoring/inspection activity which has identified issues and universally); where appropriate this will be extended to include any unqualified staff undertaking conveyancing work, and/or staff within the accounts department who deal with conveyancing matters.

Alert to firm takeover: under the Licensed Body (Alternative Business Structure) Licensing Framework a person seeking to acquire 10% or more material interest in an ABS, or someone already holding such interest who seeks to acquire an additional interest, must notify the CLC. We will then determine whether to approve such acquisitions. Recognised Bodies are required to notify us promptly of a change of ownership (10% for a non-lawyer) and again, we will need to approve this.

Limited information – i.e. not up-to-date and only individuals can be checked, not a practice - available on the CLC and Law Society websites: from 6 October 2011 we will be publishing formal determinations on our website. In addition, the Licensed Body (Alternative Business Structure) register will also be available on the website and will state whether the entity's licence is suspended or revoked (and the date on which suspension or revocation took place) as well as any enforcement action or sanction on the Licensed Body, its owner or any employee.

2. Update – Practice Note

Introduction

1. Due to the relatively large number of high value transactions the conveyancing market is particularly susceptible to fraud. In January 2011 the National Fraud Authority's indicator for UK mortgage fraud was estimated at £1 billion.
2. This Update is a supplement to the CLC's Acting for Lenders and Prevention and Detection of Mortgage Fraud & Guidance. It explains the CLC's current view of good practice and factors to be taken into consideration by the regulated community when seeking to deliver the following Code of Conduct Outcomes in conveyancing transactions:

- Clients receive an honest and lawful service (Outcome 1.2)
- Client money is kept separately and safely (Outcome 1.3)
- Client matters are dealt with using care, skills and diligence (Outcome 2.2)
- Appropriate arrangements, resources, procedures, skills and commitment are in place to ensure Clients always receive a high standard of service (Outcome 2.3)
- Clients' affairs are treated confidentially (except as required or permitted by law or with the Client's consent). (Outcome 3.6)

Fraud schemes

3. Mortgage fraud can take the form of fraud for property or profit (or both). It can be opportunistic e.g. parties misrepresenting their income or not declaring other debt obligations; or perpetrated by mortgage fraud rings e.g. organised crime syndicates overvaluing properties, 'professionals' not acting professionally, provision of fake IDs, fake firms, flipping, inflated, or low, property valuations, illegitimate source of funds etc. Criminal methodologies are continually evolving but previous/recent fraud activities include:

- 3.1 criminals posing as the buyer's new lawyer obtain the mortgage advance instead of the real buyer;
- 3.2 usage of at least one 'professional' party to appear to verify the transaction's legitimacy and reassure other professionals within it;
- 3.3 fraud rings acquiring machinery which produces fake – yet undetectable as such – driving licences for ID purposes, creating fictitious nominated purchasers;

- 3.4 fictitious property or vacant land or non-developed property (particularly targeting property clubs);
- 3.5 selling property, at inflated values, between related private companies;
- 3.6 back-to-back sales where the first mortgage is not registered against the property (and not redeemed upon second sale completion);
- 3.7 Equity Release Schemes where the client sells the property to a fictitious person or mortgage mule, who takes out an inflated value mortgage and on which it makes no payments (or where the person is vulnerable and does not understand the scheme's conditions and implications);
- 3.8 purchasing via auction a repossessed property and (usually within a year) seeking external funding against the property, or posing as a property developer seeking bridging loans;
- 3.9 identifying deceased estates through local papers' notices sections, establishing identity as either the deceased person or a long-lost heir and seeking a mortgage over the existing equity; and
- 3.10 applying for a County Court Judgement against the owner of a repossessed/unoccupied property concerning a non-existent debt.

Conveyancing transactions – factors to consider

- 4. The following are factors to be taken into consideration within conveyancing transactions which may be vulnerable to, or are indicators of, such mortgage fraud. (Please also see the [Mortgage Fraud Guidance](#) provided in the Handbook which sets out the static indicators). These transaction types should be approached with caution. This is not to say that in all of the circumstances listed below that mortgage fraud is likely, or is happening, but that there may be increased risk to the Outcomes:

Mortgage/property type

- 4.1.1 Buy-to-let schemes (large-scale fraud can take the form of large-scale renovation projects, new-build apartment complexes, and on occasion commercial properties)
- 4.1.2 Sub-prime, self-certified, or 100% mortgages
- 4.1.3 Where a Stamp Duty Mitigation Scheme is being used
- 4.1.4 Seller or developer have provided incentives, allowances or discounts (especially if these were previously undisclosed)
- 4.1.5 A lender which is not a mainstream bank, building society or similar institution
- 4.1.6 Unencumbered property
- 4.1.7 The property and mortgage do not seem consistent with your knowledge of the client's financial position and income sources

- 4.1.8 Cases referred from investment clubs or sale and rent-back companies
- 4.1.9 The property has a history of being re-sold, or mortgages settled, quickly

4.2 Transaction type

- 4.2.1 The property has a County Court judgement against it
- 4.2.2 Acting for both the borrower and the seller especially if involving corporate structures
- 4.2.3 You are asked to complete the transaction and transfer the title in accordance with already exchanged contracts
- 4.2.4 Finance is sought after the property has been registered in the buyer's name
- 4.2.5 You are offered continued work at a higher margin to encourage less diligent checks*
- 4.2.6 Following a court order, the land is transferred but no application for a mortgage is made until some time later
- 4.2.7 There has been a recent transfer of land but no money has changed hands
- 4.2.8 Variance in signatures

4.3 Client type

- 4.3.1 Borrower does not reside at the property
- 4.3.2 'Ideal' occupations and salaries e.g. earning £100,000 or working in a preferred occupation
- 4.3.3 The seller is a private company, or has recently purchased the property from a private company
- 4.3.4 Deposit paid by someone other than the purchaser
- 4.3.5 First-time property investment of this scale
- 4.3.6 Current owner has owned the property for less than six months; this may indicate flipping i.e. re-selling a property very quickly for a substantially increased price, usually involves back-to-back sales
- 4.3.7 An existing client asks you to rely on former identify checks i.e. 'reliance' exemptions
- 4.3.8 The buyer is a corporate purchaser and it is unclear whether the transaction is at arms length i.e. the identity of the beneficial owner is not disclosed (or the names and addresses of office holders and shareholders at the company do not reflect those connected with the transaction)
- 4.3.9 The client's credit history is not aligned to their age (it may be longer or shorter than expected)
- 4.3.10 The 'owner' does not appear to be of the age to have held the property registered to them for the length of time stated

4.4 Other parties

- 4.4.1 Where another lawyer has previously been acting

- 4.4.2 Person acting on the other side of the transaction is not a lawyer (see [Dealing with Non-Authorised Persons \(third parties\) Code & Guidance](#))
- 4.4.3 Impatient parties putting pressure on you to complete the transaction quickly where the reason for urgency is not immediately apparent
- 4.4.4 The deposit is paid by the buyer directly to the seller or developer
- 4.4.5 Power of Attorney involved
- 4.4.6 The details/final destination of documents do not match the contact details for the individual/firm provided in the directory of their regulatory/professional body

4.5 Diligence

- 4.5.1 Deed not signed in front of you (enhanced due diligence is required where you do not meet the client)
- 4.5.2 Reliance on the diligence of another party

4.6 Valuations

- 4.6.1 You are requested to alter the value on the Certificate of Title*
- 4.6.2 You are asked to enter a price on the title that is greater than you know was paid for the property
- 4.6.3 Discrepancies in value recorded in documents (including the contract, transfer documents, mortgage instructions, certificate of title to lender, Land Registry forms)

*if the value is altered without the agreement of the lender this is likely to be in breach of the Overriding Principles 1 'Act with Independence and Integrity' and 2 'Maintain High Standards of Work'.

- 4.7 In each case you should consider whether you have authority to make a report to the lender and/or whether you should cease acting for both the lender and the borrower.
- 4.8 The way in which fraud (particularly mortgage fraud) is attempted is continually changing; the examples given are not intended to list exhaustively all areas where extra caution should be applied. You should remain alert to any transaction (or to any element of, or party to, any transaction) which is unusual or raises cause for concern.

5. **Good Practice**

- 5.1 The following are examples of good practices which other firms have employed to help prevent, identify and mitigate fraudulent activities. They are provided for your consideration. It is acknowledged that a number the examples provided have been adopted by larger firms; you may wish to consider adopting/tailoring these practices to align with the size and client profile of your firm.

5.1.1 Due Diligence

- a) Ongoing management/review of relationships with third parties
- b) Open source internet searches against other firms and its staff, including adverse information published by any relevant regulatory bodies and credit-checking
- c) Scrutinising, clarifying and verifying the information received from parties connected to the transaction, considering risks presented by new mortgage products
- d) Systems for checking the identity of foreign clients
- e) Checking that deposit monies for a mortgage transaction appear to be from a legitimate source
- f) Considering whether property valuations appear to be reasonable
- g) If your client changes while you are acting on a transaction, contact both the old and the new client so you understand the reason for the change of client and are satisfied that it appears to be for a legitimate reason
- h) Electronic identification check with each client as soon as instruction is received; use a service provider accessing a unique system which matches identity of client using ID and verifying confidential information known only to client and provider

5.1.2 Staff - Fit & Proper

- a) Pre-employment screening of employees
- b) Staff required to disclose conflicts of interest stemming from their relationships with third parties
- c) Enhanced vetting methods - e.g. credit checks, criminal record checks, last 5 years employment - applied to different roles

5.1.3 Staff - Training

- a) Lawyers trained to review responses given on source of funding source e.g. does the information provided fit the age/ occupation/profile of the client?
- b) Appropriately trained and experienced staff handle the process; training including mortgage fraud risks, potential risk indicators and the firm's approach to handling the issue
- c) Detailed mortgage fraud training for staff (may include scenarios and case studies)
- d) Mortgage Fraud Awareness Manual/Test, updated to reflect new mortgage fraud trends and types

- e) Mortgage Fraud 'champions' offer guidance or mentoring to staff and updates on new fraudulent methods
- f) Measure, motivate and reward staff in and the steps they take to prevent fraud
- g) All staff receive training on information security procedures

5.1.4 Systems/Controls – Risk Assessment Policies

- a) Staff are encouraged to report fraud under a clear whistle-blowing policy
- b) Allocate each conveyancing file a fraud/risk monitoring level
- c) Systematically consider how management information can be improved and used more effectively to mitigate the risk of fraud; systems/procedures/training evolve according to market intelligence/pressures (particularly concerning information security, fraud and risk information provided by lender clients), with company AML, Fraud and Risk Policies regularly updated, communicated and training provided
- d) System alerts if lawyer on other end of transaction changes or their bank account details alter
- e) Reviewing negative databases, such as a list of known fraudsters and the deaths register
- f) Standard Terms and Conditions include a clause that stating the lender client will be advised of any relevant information arising; the client's attention will be brought to the term and they have to sign their acceptance of this

5.1.5 Systems/Controls - Authorisations

- a) Accounting functions and controls are separated from transactional client facing functions.
- b) Money can only be taken from the client account when more than one person authorises the transaction

5.1.6 Systems/Controls – Quality Assurance

- a) Internal audit and compliance teams regularly monitor the adequacy of underlying client take-on arrangements or third party relationships
- b) A formal quality and audit framework to ensure daily quality assurance of key tasks undertaken and full compliance audits carried out on a rotational basis

5.1.7 Information Security

- a) Information security management systems certified by an accredited certificate organisation
- b) Information Security systems are compliant with the [Department for Business Innovation & Skills Guidance](#)
- c) The firm has a written information security policy which a senior member of staff oversees

5.1.8 Information-gathering

- a) Engage in cross-industry efforts to exchange information about fraud risks
- b) Dedicated Land Registry team producing company-wide management information