



**Acting for Lenders and  
Prevention and Detection of Mortgage Fraud Code  
& Guidance**

**Acting for Lenders and Prevention & Detection of Mortgage Fraud Code**

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies providing **conveyancing services** regulated by the **CLC** must comply with this Code. You must not permit anyone else to act or fail to act in such a way as to amount to a breach of this Code.

**Outcomes-Focused**

The **Code of Conduct** requires you to deliver the following **Outcomes**:

- **Clients receive an honest and lawful service; (Outcome 1.2)**
- **Clients 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)**

Prevention and detection of mortgage fraud and acting properly in the interests of lenders helps you deliver these **Outcomes** and requires you to act in a principled way:

1. **Act with Independence and Integrity. (Overriding Principle 1)**
2. **Maintain High Standards of Work. (Overriding Principle 2)**

3. **Act in the best interests of your *Clients*. (*Overriding Principle 3*)**
4. You ***systematically*** identify and mitigate risks to the business and to ***Clients***. (***CoC P2f***)
5. You promote ethical practice and compliance with regulatory requirements. (***CoC P2g***)
6. You enable staff to raise concerns which are acted on appropriately. (***CoC P2h***)
7. You maintain proper governance, management, supervision, financial and risk management ***arrangements*** and ***controls***. (***CoC P2i***)
8. You keep the interests of the ***Client*** paramount (except as required by the law or the ***CLC's regulatory arrangements***). (***CoC P3b***)
9. You disclose ***client*** information only as you have been instructed (or as required by the ***CLC's regulatory arrangements*** or by law), keeping effective records of any disclosures you make. (***CoC P3e***)

You must also comply with the following ***specific requirements***:

#### **Part A – Acting for Lenders**

10. When acting for a Lender, you take all necessary steps to ensure that the ***conveyancing services*** provided by it do not fall below the reasonably competent standard which should be expected.
11. You take all relevant steps to comply with the general and particular mortgage instructions contained in the current edition of Parts 1 & 2 of the Lenders' Handbook for England & Wales issued by the Council of Mortgage Lenders ("the CML Handbook").
12. If you suspect a ***client*** of not being completely honest or transparent about any element of a proposed mortgage transaction, you must consider whether you should continue to act for the Lender and/or the ***Client***.
13. You do not disclose confidential information to the Lender after you have ceased to act for a ***Client***.

#### **Identity of the *Client***

14. You establish and obtain proof of the identity of ***Clients*** in line with the requirements of the CML Handbook and the ***Anti-Money Laundering Legislation and Combating the Financing of Terrorism Legislation***. You must advise the Lender if a Borrower ***Client*** is unable, reluctant or unwilling to provide this verification.
15. Any system or product you use must be sufficiently robust to provide the necessary degree of certainty and include data from a range of sources, across time and incorporate qualitative

checks that assess the strength of the information supplied. Your evidence base and level of verification must be composite and comprehensive.

### **Identity of the Property**

16. You are certain you have correctly identified the property which is to be mortgaged and that the documents of title with which you have been presented accurately relate to and reflect that property, particularly where its name or its boundaries or other significant features have been changed.

### **Transactions**

17. In registered title property transactions, you obtain Official Copies of the title and a copy of the Official Plan produced by the Land Registry.
18. You do not complete a mortgage transaction without first obtaining the results of Land Registry, Land Charges or Company Searches, as appropriate.
19. You carry out a Bankruptcy Search (which must be current at completion) in the registered names of and any other names used by a Borrower or by which he is otherwise known.
  - 19.1 Where an entry is revealed against the name of the Borrower (or the mortgagor or guarantor) you must certify that the entry does not relate to the Borrower (or the mortgagor or guarantor) if you are able to do so from your own knowledge or enquiries; or if, after obtaining office copy entries or making other enquiries of the Official Receiver, you are unable to certify that the entry does not relate to the borrower (or the mortgagor or guarantor) you make a report to the Lender.
  - 19.2 You obtain clear bankruptcy searches against all parties to any deed of gift or transaction at an apparent undervalue (paragraph 5.15.4 CML Handbook).
20. You complete a mortgage for a registered title and the application for registration at the Land Registry lodged before the end of the priority period provided by the Land Registry Search. Any search application to create a fresh priority must be made in sufficient time before the expiry of the existing priority period to enable a substantive application to be lodged within the appropriate period if another "hostile" application is revealed.
21. You complete a mortgage over an unregistered title within the priority period provided by the Land Charges Searches. You register your application with the Land Registry within 2 months of the date of completion.
22. Where the Borrower is a **Company** you register the charge at Companies House within 21 days (a period which may only be extended by order of the Court).

23. When acting for a Seller or Buyer, Official Copies and Official Plan you must check no additional charges have been registered.
24. When acting for a Seller, you check the Title Entries on receipt from the Land Registry (and before issue to the Buyer's conveyancer) to ensure that any additional charges are noted and addressed at the outset. This will avoid causing problems in discharging **undertakings**.

### **Mortgage Redemption**

25. To ensure compliance with the **CLC's Undertakings** Code and with Clause 17 of Part 1 of the CML Handbook, you:-
  - 25.1 ask a **client** at the outset of any sale or remortgage transaction whether there are any mortgages secured against the property and, if so, obtain details (including relevant mortgage account numbers);
  - 25.2 specifically ask those **clients** whether, in addition to the principal mortgage account, they have any other loans with different account numbers with the same Lender (which may be secured against the property) or any other mortgages with any other Lenders and, if so, obtain details (including relevant mortgage account numbers);
  - 25.3 request an illustrative redemption statement from the Lender at the outset of the transaction giving details of mortgage account numbers, and verify the outstanding amount(s) shown on those statements with your **clients**;
  - 25.4 when obtaining either an illustrative or a final redemption figure from a Lender, request a statement of the total amount required to redeem all loans and monies secured by the Lender's charge over the property. Failure to ask for details of all loans and monies secured by the Lender may mean that the redemption figure will only relate to those accounts where details have been provided;
  - 25.5 ensure any discharge **undertaking** given specifies both the identity of the lender and the date of each charge it is intended to discharge in reply to any requisitions on title or otherwise.

### **Mortgage Instructions**

26. You:-
  - 26.1 check the Lender's mortgage offer and instructions carefully and ensure that they match the details of the transaction exactly or otherwise report any discrepancies to the Lender, having first obtained instructions from his Borrower **client** so to do or, if the **client** refuses to consent, to cease acting for the Lender;
  - 26.2 question and clarify any unusual or uncertain instructions before proceeding;

- 26.3 cease to act for the Lender if his interests or the interests of anyone working within your body or the interests of the Borrower come into conflict with those of the Lender; and
- 26.4 comply with Part B - the Mortgage Fraud Code.

#### **Part B - Mortgage Fraud**

27. You immediately cease to act for a **client** in any circumstances where you are aware or suspect that the **client** is attempting to perpetrate fraud. If you decide to terminate the retainer, you must observe Principle 3 g) of the **Code of Conduct** unless to do so would constitute a "tipping off" offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
28. You maintain your duty of confidentiality to your **client** after ceasing 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.
29. In acting in the best interests of the Lender you may be required to pass on or report information to the Lender. Where 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. You must therefore cease to act for the Lender (and consider carefully whether you can continue to act for the Buyer).

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

30. You:-
- 30.1 establish the **client's** identity in line with the **CLC's** Anti-Money Laundering Code and the current Money Laundering Regulations, obtaining proof of that identity to establish that a **client** is who he says he is and that he lives at the address given;
- 30.2 advise the Lender if, in any case, a **client** is unable, reluctant or unwilling to provide this verification;
- 30.3 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;
- 30.4 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;

- 30.5 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
- 30.6 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 Transactions**

31. Having obtained the **client's** instructions to do so, you notify the Lender of any sub-sale or back-to-back element in any transaction and ensure you have the Lender's written consent before proceeding. If the **client** refuses to consent to that disclosure, you cease acting for the **client** and the Lender.

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

32. You check the identity of the **Licensed Conveyancers** or Solicitors acting for the other party by reference to the **CLC** or the Records Department of the Law Society of England & Wales respectively.

#### **Proceeds of Sale**

33. You pay particular attention to instructions given for the distribution of the net proceeds of a sale or remortgage:
- 33.1 If the property or the mortgage is held in joint names, the net proceeds of sale must be sent to an account in the joint names of all **clients** or a cheque must be written to all parties jointly.
- 33.2 The net proceeds are sent to all the parties except as otherwise instructed by all the parties in writing.

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

34. When acting for a Buyer and a Lender, you, with the **client's** consent, notify a Lender immediately where:-

- 34.1 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).
- 34.2 you become aware of any other information which you 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.
- 35. You do 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.
- 36. You establish and maintain proper systems, procedures, processes and internal controls for approval of Certificates of Title prior to submission to the Lender.
- 37. You remain mindful of your duty to act in the best interests of the Lender as your *client*.

#### **General**

- 38. You do not witness any signature unless the person signing does so in your presence. You ensure that any signed document which has been witnessed other than by a conveyancer has been properly signed in the presence of a witness.
- 39. You verify the signatures of *clients* (and any other interested parties) on all documents connected with a transaction.

#### **Warning Signs**

- 40. You question the probity of unusual instructions and are particularly circumspect if any one or more of the circumstances set out in the "Summary of Warning Signs" Guidelines apply to a transaction where you are acting

### **Acting for Lenders *Guidance***

#### **Checking Identity by Documentary Means**

- 1. The identity of a Borrower can be verified by checking their identity against appropriate original documents provided to you which appear to be authentic, are current and, where applicable, have been signed in the relevant place. A document or a series of documents meeting the expectations contained in Clause 3.1.6 of Part 1 of the CML Handbook is likely to satisfy the Lender's requirements.
- 2. Care must always be taken to ensure that the extent of the evidence seen will also meet responsibilities for *client* identity verification under the Regulations and the expectations contained in the *CLC's* Anti-Money Laundering and Combating Terrorist Financing Code.

3. Clause 3.2 of Part 1 of the CML Handbook prescribes requirements for safeguards and identity checks.

#### **Checking Identity by Electronic Means**

4. You must obtain "satisfactory evidence of identity", which must be reasonably capable of establishing (and does in fact establish to the satisfaction of the person who obtains it) that the potential **client** is the person he claims to be. The **CLC** considers verification of identity by appropriate electronic means to be acceptable, though urges caution. Electronic evidence obtained should provide you with a strong level of certainty that any individual is the person they claim to be and that a person of that name lives at the address given using the **client's** full name, address and date of birth as its basis.
5. Any system or product used must be sufficiently robust to provide the necessary degree of certainty. Data accessed from a single source (e.g. the Electoral Roll) will not normally be sufficient on its own. Some databases will offer a higher degree of confidence than others.
6. Before using a commercial agency for electronic verification, you must be satisfied that:-
  - 6.1 the information supplied by the data provider is considered to be sufficiently extensive, reliable and accurate; and
  - 6.2 the agency has processes which allow its users to capture and store the information that they have used to verify an identity.
7. The process should be cumulative and you may consider it appropriate to seek additional evidence (e.g. a copy of a document bearing a signature and a date of birth) in all cases or, at least, where any **client** poses a higher risk of identity fraud, money laundering or terrorist financing, or where the result of any electronic verification check gives rise to concern or uncertainty over the **client's** identity.
8. You may wish to consider whether the provider meets each of the following criteria, namely that it:-
  - 8.1 is recognised to store personal data through registration with the Information Commissioner's Office;
  - 8.2 uses a range of positive information sources that can be called upon to link an applicant to both current and previous circumstances;
  - 8.3 accesses negative information sources such as databases relating to identity fraud and deceased persons;
  - 8.4 accesses a wide range of alert data sources; and

- 8.5 has transparent processes that enable you to know what checks were carried out, what the results of these checks were and what they mean in terms of how much certainty they give as to the identity of the subject of the identity enquiry.
9. Data from more robust sources where inclusion is based on proof of identity (such as government departments) ought to be included (under paragraph 8.2). Negative information checks (under paragraph 8.3) minimise the risk of impersonation fraud.
10. It is also important for:-
- 10.1 the process of electronic verification to meet a standard level of confirmation before it can be relied on. In circumstances which do not give rise to concern or uncertainty, the standard level would be expected to be:
- (i) one match on an individual's full name and current address *and*
  - (ii) a second match on an individual's full name and *either* his current address *or* his date of birth.
- If the result of a standard verification check gives rise to concern or uncertainty over the **client's** identity, the number of matches required to provide reasonable satisfaction as to his identity should increase.
- 10.2 You should ensure you understand the basis of the system you use in order to be satisfied that the sources of the underlying data reflect the **CLC's** requirements and cumulatively meet the standard level of confirmation set out above as commercial agencies use various methods of displaying results (e.g. by the number of documents checked or through scoring mechanisms, etc).

### **Transactional Considerations**

- 11.1 For a registered title, the date from which the Land Registry search should be made is the date of issue of the Official Copies supplied or obtained at the outset of the transaction and the search should be made in the registered name of the Lender (and not its trading name) to avoid any conflict of priorities.
- 11.2 For unregistered land, searches must be made against all names and any variations on those names on the title documentation and, where an address has changed, a search should be made against any former address and/or counties.
- 11.3 For unregistered land, an Index Map Search must always be undertaken to ensure that the extent of the land to be conveyed is consistent with the title documentation and the Borrower's understanding.

12. In unregistered title property transactions, it is good practice both when acting for a Seller or a Buyer to make a Land Charges Search at the outset of the transaction to ascertain any entries details of which have not been supplied by the **clients** or are not revealed in the Abstract or Epitome of Title.

### **Mortgage Fraud *Guidance***

1. 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 this Code, neglecting to check all details of the transaction and failing 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. 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 you to civil action (e.g. breach of contract, breach of trust or negligence) and/or to disciplinary proceedings.

### **Linked Parties**

6. You should always exercise caution if:-
  - 6.1 there appear to be links between a Buyer and Seller; or
  - 6.2 you are acting for both parties; or
  - 6.3 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.

### **Concerns of variations**

7. It is in your interests to check whether:-

- 7.1 the contract papers have incomplete or missing dates, incorrect descriptions or any sections (particularly the price) which have been left blank;
  - 7.2 the price shown in the Contract and Transfer documentation differs from the amount actually being paid for the property;
  - 7.3 any fixtures and fittings included in the purchase price materially reduce the value of the property;
  - 7.4 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;
  - 7.5 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):
  - 7.6 the Buyer proposes to pay or has apparently paid a deposit direct to the Seller (except for a nominal reservation fee); or
  - 7.7 there is anything else that affects the price of the property or the amount actually being paid for the property, however small.
8. It is not advisable for you to determine whether any change is material. With your *client's* consent, you should make a report to the Lender. 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) you have a duty to inform a Lender of the true or underlying price actually being paid for a property.
9. 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*.

#### **Acting in the best interests of the Lender *client***

10. In the event of the circumstances detailed in paragraph 7 your safest course of action may be to cease to act for both the Lender and the Borrower *client*.
11. Where you cease to act for the Lender in such circumstances, you 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**

12. It is good practice to check any valuation supplied by the Lender to check it is not:
- 12.1 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
- 12.2 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.
13. You are 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.

#### Verifications of Signatures

14. This can be done by examination and comparison with signatures on any other available documentation.

#### Summary of Warning Signs

15. The list of circumstances outlined is not exhaustive but is provided as a guideline.

Remote <b>Client</b>	<p>Where a <b>client</b> is introduced by a third party (e.g. a mortgage broker or an estate agent) who is not well known to the <b>Licensed Conveyancer</b> or the Recognised or <b>Licensed Body</b>.</p> <p>Where a potential <b>client</b> wishing to instruct the body for the first time does not live locally to it and has not been introduced by someone known to it and there is no obvious reason why they should place their instructions with it.</p> <p>Where a <b>client</b> will be using the services of the body for the first time and persuades it to accept instructions from the other party, or the other party instructs the body.</p>
----------------------	--

<p>Secretive <b>Client</b></p>	<p><b>Client</b> declines to be met or come to the office and/or uses an intermediary to communicate with the body and/or asks the body to contact him at his business or another address rather than at his home address.</p> <p><b>Client</b> shares an address with one or more other parties to the transaction.</p> <p>You suspect that a <b>client</b> is not being completely honest or transparent about any element of a proposed mortgage transaction.</p>
<p>Nominee Buyers</p>	<p>Instructions to purchase in or transfer a property into the name or names of nominees.</p>
<p>Fictitious conveyancer</p>	<p>A person claiming to be an Authorised Person is not registered with the relevant Approved Regulator</p>
<p>Unusual instructions</p>	<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 you would expect to receive during the course of a standard residential or commercial conveyancing transaction.</p>
<p>Transactions which do not follow their normal course or a usual pattern of events</p>	<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	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.
Change to the purchase price	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.
A deposit or any part of a purchase price paid direct	A deposit or the difference between the mortgage advance and the price is paid direct or said to have been be paid direct, to the Seller.
Incomplete Contract Documentation	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.
Linked Parties Sale at an inflated price Roll-Over Fraud & Sub-sales	<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.</p> <p>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.</p> <p>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.</p> <p>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>
--	--