



Dealing with *Non-Authorised Persons* (third parties) Code and *Guidance*

Dealing with *Non-Authorised Persons* (third parties) Code

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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. In the context of this Code the ***Non-Authorised Person*** refers to the party on the other side of a transaction.

Outcomes-Focused

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

- ***Clients receive an honest and lawful service; (Outcome 1.2)***
- ***Clients are provided with a high standard of legal services; (Outcome 2.1)***
- ***Client matters are dealt with using care, skills and diligence; (Outcome 2.2)***
- ***Each Client's best interests are served; (Outcome 3.1)***
- ***Clients are aware of any limitation or any condition resulting from your relationship with another party. (Outcome 3.5)***

Demonstrating probity in your dealings with ***Non-Authorised Person*** third parties helps you deliver these ***Outcomes*** and act in a principled way:

1. **Maintain High Standards of Work. (*Overriding Principle 2*)**
2. **Act in the Best Interests of your *Clients*. (*Overriding Principle 3*)**
3. You do not conduct yourself in a manner which may result in a breach of the law nor in any other manner which may bring the legal profession into disrepute. (**CoC P1c**)

4. You do not take unfair advantage of any person, whether or not a **Client** of the business. (CoC P1l)
5. You promote ethical practice and compliance with regulatory requirements. (CoC P2g)
6. You keep the interests of the **Client** paramount (except as required by the law or the **CLC's regulatory arrangements**). (CoC P3b)

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

7. You do not have dealings with any **Non-Authorised Person carrying on reserved legal activities** including conveyancing (unless there is clear evidence that person is an **exempt person** (see schedule 3 **2007 Act**).
8. You report to the **CLC** (without submitting your transaction file) where a **Non-Authorised Person** is **carrying on reserved legal activities**, including conveyancing, which appears to be or to have been a breach of s.14-16 **2007 Act**.

Dealing with Non-Authorised Persons

9. You :-
 - (a) avoid extending your duty of care to persons who are not **Clients** by seeking to ensure that, to your knowledge, you do not provide legal advice (in the circumstances provided by Hedley Byrne v Heller [1964] AC 465) on which they may seek to rely;
 - (b) not accept any undertaking which a non-Authorised Third Person may offer in the course of a transaction;
 - (c) incorporate special provisions into the draft contract to take account of the problems which arise because the other party has no **Authorised Person** acting (see below);
 - (d) ensure that any power of attorney is valid, properly granted and effective for all relevant purposes;
 - (e) advise the **client** in writing that you are dealing with a **Non-Authorised Person** Party and explain all the steps which are being taken to protect the **client's** position.

Acting for the Lender

10. You do not give the unqualified agent additional assistance in a way which might establish a **Authorised Person/client** relationship either with the **Non-Authorised Person** or with the borrower, or leave you open to a negligence claim either from your lender **client** or from the borrower.

11. You comply with s. 69 Law of Property Act 1925, by allowing mortgage advances to be paid only to those properly entitled to receive them.
 12. You ensure that on completion, any payments are sent to a named **bank** or **building society** account held by you, an **Authorised Person, licensed body** or their **clients**, and not to some intermediate party.
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Dealing with *Non-Authorised Persons* (third parties) *Guidance*

The Effect of s.14-16 *Legal Services Act 2007*

1. It is an offence for a person who is not an **Authorised Person** and is not an **Exempt Person** to carry out **Reserved Legal Activities**.
2. Where a **Non-Authorised Person** carries out **reserved legal activities**, the **Non-Authorised Person's client** is likely to be guilty of aiding and abetting the offence. The **Authorised Person** acting for the other party may also be guilty of procuring the commission of an offence by inviting or urging the **Non-Authorised Person** to provide a draft contract or transfer or to progress the transaction.
3. An undertaking offered by a **Non-Authorised Person** should not generally be accepted as it is not enforceable in the same way as an undertaking given by you or by another **Authorised Person**.

Checks

4. You should first check with the **CLC**, the Law Society or other **Approved Regulator** whether a person is an **Authorised Person** entitled to provide reserved instrument activities, as required by paragraphs A3.2 and B3.2 of the CML Handbook, or is otherwise an **Exempt Person** (schedule 3 **2007 Act**).
5. If unable to obtain that confirmation you should write immediately:-
 - (a) to the **Non-Authorised Person**:-
 - (i) asking for an explanation why the prohibition under s.14-16 **2007 Act** does not apply to them; and
 - (ii) stating that in the absence of such explanation you cannot enter into any dealings with him unless there is clear evidence that no offences will be committed. An example of clear evidence would be a letter from an **Authorised Person** confirming that he will prepare the relevant documents;

(b) to your own *client* explaining why you can not deal with the **Non-Authorised Person** unless clear evidence is forthcoming.

Conveyancing - Acting for the Buyer

6. You should consider the following and, if appropriate, amend the contract:-

(a) replies to the Property Information Questionnaire and all other preliminary enquiries and requisitions signed by the seller;

(b) the deposit must be paid to you as stakeholder. If the seller will not agree to this, it may be possible to agree to place the deposit in a deposit account in the joint names of you and the seller;

(c) either the seller must attend personally at completion, or an authority must be handed over on completion signed by the seller for the purchase money to be paid to his agent. The reason for this is that the protection provided by s. 69 Law of Property Act 1925 only applies when a document containing a receipt for purchase money is handed over by a **Recognised Body** or solicitor, or the seller himself;

(d) deeds and keys are given to the person entitled to receive them (the buyer). If an authority on behalf of the buyer is offered to you, it is for you to decide whether or not to accept it, bearing in mind that no authority, however expressed, can be irrevocable;

(e) The purchase money, including any deposit, is paid either to the seller or to the seller's properly authorised agent.

Conveyancing - Acting for the Lender

7. You are not obliged to undertake work which would normally be carried out by the borrower's legal adviser (such as drafting and preparation of the instrument of transfer). However, it is essential to the lender *client* that good title is transferred to the borrower.

8. Compliance with s. 69 Law of Property Act 1925 may mean that you require either that the borrower to attend personally on completion, or that a signed authority from the borrower in favour of his agent is received on completion.

9. On completion, title documents should normally be handed over to the borrower.