



Acting for Lenders and Prevention and 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.

Should you require information on how to meet your responsibilities under this Code, please see the **CLC’s** Acting for Lenders and Mortgage Fraud **Guidance**.