



## **GUIDANCE NOTE 13 ACTING FOR LENDERS 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 13 – Acting for Lenders 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;”***

**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:***

**4.4.6** *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;*

**4.4.7** *comply fully with any undertaking given by him, the Recognised Body or any employee of that Recognised Body;"*

**Rule 4.6 of the Licensed Conveyancers' Conduct Rules 2009 states:-**

***"A Recognised Body must:***

**4.6.2** *ensure all Regulated Services are either carried out by or effectively supervised and directed by a Qualified Person."*

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

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

**This Guidance Note should be read in conjunction with  
Guidance Note 14 - Mortgage Fraud**

**General Principles**

1. When acting for a Lender, a Recognised Body must take all necessary steps to ensure that the conveyancing services provided by it and by everyone working within the Recognised Body do not fall below the standard expected of a reasonably competent conveyancer.
2. Where these apply, a Recognised Body should take all relevant steps to comply with the general and particular mortgage instructions contained in current edition of Parts 1 & 2 of the Lenders' Handbook for England & Wales issued by the Council of Mortgage Lenders ("the CML Handbook").
3. If it suspects a client of not being completely honest or transparent about any element of a proposed mortgage transaction, a Recognised Body must consider whether it should continue to act for the Lender and/or the client.
4. A Recognised Body's duty of confidentiality prevents it from disclosing confidential information to the Lender after it has ceased to act for a client.

**Identity of the Client**

5. A Recognised Body must always establish and obtain proof of the identity of its clients in line with the requirements of the CML Handbook and the Money Laundering Regulations ("the Regulations") and obtain proof of that identity and advise the Lender if a Borrower client is unable, reluctant or unwilling to provide this verification.

6. Clause 3B3.3 of Part 1 of the CML Handbook prescribes requirements for safeguards and identity checks.

*Checking Identity by Documentary Means*

7. The identity of a Borrower can be verified by checking his identity against appropriate original documents produced to a Recognised Body 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 3A3.3 of Part 1 of the CML Handbook is likely to satisfy the Lender's requirements.
8. Care must always be taken to ensure that the extent of the evidence seen will also meet the Recognised Body's obligations for client identity verification under the Regulations and the expectations contained in the Council's Guidance for the Prevention of Money Laundering and Combating Terrorist Financing ("the CLC Guidance").

*Checking Identity by Electronic Means*

9. The CLC Guidance has been updated to give guidance for making some identification checks electronically.
10. A Recognised Body 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 Council considers that verifying identity by appropriate electronic means is now acceptable. However, they should still be relied on with caution.
11. Any system or product used must be sufficiently robust to provide the necessary degree of certainty by using data from a range of multiple sources, and across time, or must incorporate qualitative checks that assess the strength of the information supplied. The evidence base and level of verification must be composite and comprehensive. 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.
12. Before using a commercial agency for electronic verification, a Recognised Body must be satisfied that:-
  - 12.1 the information supplied by the data provider is considered to be sufficiently extensive, reliable and accurate; and
  - 12.2 the agency has processes which allow its users to capture and store the information that they have used to verify an identity.
13. Electronic evidence obtained should provide a strong level of certainty that any individual is the person he claims 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.
14. The process needs to be cumulative and the Recognised Body may consider it appropriate to seek additional evidence (eg 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.

- 15 The Recognised Body may wish to consider whether the provider meets each of the following criteria, namely that it:-
- 15.1 is recognised to store personal data through registration with the Information Commissioner's Office;
  - 15.2 uses a range of positive information sources that can be called upon to link an applicant to both current and previous circumstances;
  - 15.3 accesses negative information sources such as databases relating to identity fraud and deceased persons;
  - 15.4 accesses a wide range of alert data sources; and
  - 15.5 has transparent processes that enable a Recognised Body 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.

Data from more robust sources where inclusion is based on proof of identity (such as government departments) ought to be included (under paragraph 15.2). Negative information checks (under paragraph 15.3) minimise the risk of impersonation fraud.

16. It is also important for:-
- 16.1 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.
- 16.2 a Recognised Body should ensure that it understands the basis of the system that it uses in order to be satisfied that the sources of the underlying data reflect the guidance 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).

## **Identity of the Property**

17. A Recognised Body should be certain that it has correctly identified the property which is to be mortgaged and that the documents of title with which it has been presented accurately relate to and reflect that property, particularly where its name or its boundaries or other significant features have been changed.

## **Transactional Considerations**

18. In registered title property transactions, Official Copies of the title and a copy of the Official Plan produced by the Land Registry must always be obtained.
  - 18.1 Whether acting for a Seller or Buyer, those Official Copies and Official Plan should always be carefully checked to ensure that no additional charges have been registered.
  - 18.2 When acting for a Seller, it is particularly important to check the Title Entries on receipt from the Land Registry and before issue to the Buyer's conveyancer or including them or allowing them to be included in a Home Information Pack to ensure that any additional charges are noted and addressed at the outset to avoid causing problems in discharging undertakings.
19. 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.
20. A Recognised Body must never complete a mortgage transaction without first obtaining the results of Land Registry, Land Charges or Company Searches, as appropriate.
  - 20.1 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.
  - 20.2 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.
  - 20.3 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.
21. A Recognised Body must always 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.
  - 21.1 Where an entry is revealed against the name of the Borrower (or the mortgagor or guarantor) the Recognised Body must certify that the entry does not relate to the Borrower (or the mortgagor or guarantor) if it is

able to do so from its own knowledge (paragraph 5.12.2.1 CML Handbook) or make a report to the Lender.

- 21.2 A search must be made against the names of all parties to any deed of gift or transaction at an apparent undervalue (paragraph 5.12.3 CML Handbook).
22. A mortgage for a registered title must be completed and the application for registration at the Land Registry lodged before the end of the priority period provided by his 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 existing priority period if another "hostile" application is revealed.
23. When completing a mortgage over an unregistered title, a Recognised Body must complete within the priority period provided by the Land Charges Searches. The application for registration at the Land Registry must be lodged within 2 months of the date of completion.
24. Where the Borrower is a Company the charge must be registered at Companies House within 21 days, which period may only be extended by order of the Court.

### **Mortgage Redemption**

25. To ensure compliance with the Council's Guidance Note 2 - Undertakings and with Clause 17 of Part 1 of the CML Handbook, a Recognised Body must:-
  - 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 his 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 that any discharge undertaking given meets the requirements of Paragraph 10(i) of Guidance Note 2 - Undertakings.

## **Mortgage Instructions**

26. A Recognised Body must always:-
  - 26.1 check the Lender's mortgage offer and instructions carefully and ensure that 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 the Recognised Body or the interests of the Borrower come into conflict with those of the Lender; and
  - 26.4 take note and act upon of Guidance Note 14 - Mortgage Fraud.