



Mortgage Fraud Call for Evidence Thematic Summary of Responses

1. What types of bodies or profession, practises or systems, external issues/risks, do you consider present the highest mortgage fraud risk?

Mortgage lenders/brokers

Most frequently cited risk. Scenarios cited by respondents include:

- intermediary or lender representatives accepting applications and either 'cutting corners'- for example, not asking appropriate questions such as, who/what is funding the balance property e.g. family gifts, third party payments; reducing liabilities with no independent checks, and accepting self-assessment mortgage applications inflating income - due to time, targets, or commission; or perpetrating deliberate fraud;
- mortgage brokers who have direct contact with both the borrower and lender; they know the lenders' criteria and some appear adept in coaching the borrowers on how to circumvent them. They can bring huge amounts of pressure to bear on all parties to get the transaction progressed rapidly (sometimes bypassing the lenders' internal controls);
- the buy-to-let market seems unregulated and open to abuse; experience of brokers in this market who appear to pride themselves on their lack of qualifications and their ability to 'push' lenders into making offers on an expedited basis;
- groups promising to help investors obtain 100% or more mortgages i.e. the seller paying money back to the purchaser after completion; organisers of the scheme insist that all parties are represented by solicitors/conveyancers appointed by them (such solicitors/ conveyancers must be aware of the risks but choose to ignore them);
- lenders do not: i. ask for the correct information in the application forms; ii. take adequate steps to verify that information; and iii. take adequate steps to monitor the activities of intermediaries or their own representatives;
- where the lender is not a mainstream bank, building society or similar institution, they should be separately represented by a conveyancer and where the lender and borrower are related it is essential that they are separately represented (due to increased risk of income being concealed);
- Equity Release mortgage schemes involving the elderly should be treated with particular caution as some schemes have onerous conditions and implications which the lender may try to conceal in the small print;
- a firm of mortgage brokers completed an online mortgage application for an employee and misrepresented her salary to obtain a higher mortgage

advance. This was investigated by the building society's fraud department; as the firm was on the record as acting for the employee it suspended the firm from its panel until the matter was fully investigated. No enquiry was made of the firm to verify the employee's salary. The firm was only reinstated to the panel once it could confirm it had dismissed the employee (who pleaded that they were unaware of the wrong information the broker provided on their behalf, though there were doubts concerning their version of events). The broker was already under investigation by the building society.

Legal service providers

Scenarios cited by respondents include:

Conveyancing bodies:

- sole practitioners potentially lack a person of authority or equal standing to provide a check and balance and limited opportunity for PII recovery;
- bodies where there has been a recent material change of control (may result in less robust procedures in place);
- new start-ups (particularly where the managerial level of PQE is 3-5 years, or the backer is an ex-lawyer);
- large organisations where no-one is in charge of a case;

Conveyancing practices/systems:

- inadequate pre-employment screening of employees; absence of case management system or usage of an inadequate checks list or manual accountancy system;
- inadequate money laundering policies (or policies not implemented due to little or no staff training);
- little or limited information security procedures in place;
- conveyancers who deal entirely by post or email;
- unwilling to question clients as to the source of funds;
- not checking the vendor's offices against official records e.g. checking that letterhead fax/telephone details match branch office information);
- carrying out too few conveyancing cases and failing to keep updated on AML/fraud/risk changes;
- no segregation of client accounting and fee earners;
- systems where money can be taken from Client Account on a sole authorisation;
- practices without the skills and resource to check the identity of foreign clients (either based in UK or abroad);
- accepting clients with PO address boxes or only emails or mobiles;
- accepting or not questioning transactions being funded by companies (especially non-UK companies) in buy-to-lets;
- practices that do not allow a designated person the time and resources to be accountable for fraud/risk identification/assessments and to continually monitor industry developments; and

Transactions:

- sales/purchases of unencumbered property (particularly where the seller is not resident);
- sales/purchases of property where a Power of Attorney is used;
- sales/purchases of property that seem particularly cheap; substantial capital raising in a mortgage transaction (particularly in the case of unencumbered property);
- cases referred from potentially higher risk sources, such as investment clubs or sale & rent back companies (urges conveyancers to demonstrate caution, 'never make assumptions that the lender is fully aware of the facts if not evidenced in the mortgage offer');
- cases where another lawyer has previously been acting; and cases where a Stamp Duty Mitigation Scheme is being used;
- Other:

- The Law Society fails to keep up-to-date records which link in with the SRA e.g. a lender alerted the firm to a potentially fraudulent firm when Law Society records did not indicate an issue;
- Limit on information available to check lawyers e.g. websites without footers or information about the people in the practice.

Clients

- the borrower is the primary risk;
- parties introduced by unknown brokers or sources; non-local parties looking for a small practice to filter fraud funds through; and clients unwilling or reluctant to attend with identifications and evidence of source of funds etc.

Others:

- financial advisers, surveyors, estate agents and solicitors can all be involved; the highest risk comes from these persons coming together to commit a fraud;
- estate agents; particularly fraudulent valuations between the seller and the buyer, or as valuers for a lender;
- disreputable builders attempting to manipulate the purchase price through incentives, bonus scheme reductions etc. that require reporting to lenders;
- surveyors inflating valuations; and
- persons who purchase a property and let it out without paying the extra interest to the lender as they 'pretend' to live there.

2. How do you ensure you are preventing, identifying and mitigating fraud?

Practises cited include the following:

Identification:

- employ rigorous precautions so there is no doubt as to the identity of the client; several respondents declare it preferable for the client to be seen in person, attending offices at earliest opportunity – to verify ID, to ensure satisfaction that the mortgage transaction is legitimate and there is no reason to believe that the client is the subject of duress or does not have sufficient capacity to understand the nature of the transaction (should the conveyancer be in any doubt on this then a letter from the Client's doctor should be obtained) - and to sign documents in the office and in the lawyer's presence (or if unable to attend, arrange for a local reputable lawyer to certify identifications);
- make it an essential part of business to know the customer, speak to clients at length and have a lot of contact with them – often daily and certainly weekly – to get to know them and their transaction; where there are concerns, meet with the clients and review the entire transaction to understand the client's true agenda;
- wherever possible, act for local people, using local estate agents and preferably clients represented previously; if at all suspicious, decline the instructions;
- a first call is made to all clients to obtain information about them and the transaction – e.g. who is my client, how are they funding this transaction, what are they asking me to do? – backed by a written proforma;
- AML/anti-fraud processes are supported by an electronic identification check with each client as soon as the instruction is received; use a service provider accessing a unique system which takes ID simple data-matching, verifying confidential information known only to the client and the provider;

Checking:

- be aware of funding sources from the beginning of the transaction; and trust personal instinct;
- watch for indicators as identified on CLC and Law Society lists and use online identity checks.

- check the legal service provider being dealt with;
- clients complete a form setting out what the purchase price is and where this is coming from; this is checked against the purchase price quoted on the mortgage offer and contract; lenders must accept some responsibility for checking bank accounts etc., in making their offers;
- the conveyancer acting for a lender or borrower should check that any conveyancer representing the other party is an Authorised Person or a proper lending institution;
- lawyers trained to ask questions about provenance of money – do the answers fit the age/occupation/profile of the client?

Managing expectations:

- clear Terms of Business warning the client that if they tell the firm things they do not want the lender to know but which the firm considers relevant, it may have to stop acting for the lenders - and possibly for the client - and make a report to SOCA under Anti-Money Laundering legislation; also clearly state that the firm reserves the right to withdraw from acting for the client in a particular matter if their instruction might be considered unethical or illegal, the necessary trust has broken down due to action or omission, or a conflict of interest has arisen;

Oversight:

- all work is overseen by experienced/qualified lawyers supported by a resolution team in each centre as a point of contact for legal issues and a central compliance team for additional support and guidance;
- a formal quality and audit framework ensures daily quality assurance of key tasks is undertaken and full compliance audits carried out on lawyers on a rotational basis;

Employment arrangements:

- all new employees have basic CRB and financial checks, last 5 years employment references and original documents proving right to work in UK - all staff will be subject to the same checks in a future rolling programme - all work is monitored in the probationary period of new employees;

Systems:

- no monies are allowed to pass direct between buyers and sellers and all incentive gifts and back-to-back transactions are reported to lenders;
- no cash or third party payments accepted;
- all calls are recorded;
- clear whistle-blowing policy managed by a central HR department;
- financial and legal compliance represented at a director level;
- alerts if lawyer on other end of transaction changes or their bank account details alter;
- all in-coming post vetted by team managers to pick up any anomalies;
- dedicated land registry team producing company-wide management information (late registration considered a key element of fraud detection);
- team-based structure providing a consistent point of contact but no one person responsible for all actions on any one file;
- the case management system is customised for efficiency consistency/control supported by a central compliance department and standard operating procedures underpin key processes e.g. reporting allowances to lenders, not inflating stamp duty chattels etc.
- carry out enhanced due diligence and allocate each file a fraud/risk monitoring level;
- segregation of duties between client accounting staff and fee earners; no one person can authorise money from Client Account;
- subscription to lender monitor publishing changes to CML requirements;
- workflow managing the registration process within priority; and
- members of the AML Law Society Forum and of the CML;

Evolving:

- despite a very high rate of remortgage transactions the firm's insurers have never had to pay out a claim; it attributes this to the fact it is never complacent and evolves its systems/procedures/ training as market intelligence (particularly concerning information security, fraud and risk information provided by lender clients) requires; company AML, Fraud and Risk Policies are regularly updated, communicated and training provided;

Nil involvement:

- one firm will not become involved in: a) referring potential borrowers to intermediaries or lenders, or b) submitting applications from borrowers to lenders.

3. Are there any regulatory provisions which you consider need addressing?

A third of the respondents considered there to be sufficient regulatory provisions in place.

Improvement suggestions of other respondents included:

CLC regulatory arrangements:

- more personal contact with clients;
- focusing regulation upon firms using unqualified, inexperienced staff;
- more provisions concerning Information Security;
- provisions of a mortgage fraud check list, either as an aide memoir or in a more formal regulatory form if considered appropriate, identifying situations where the licensed conveyancer should exercise especial care e.g. where the borrower does not reside at the property or where the lender or borrower is elderly; would value information/guidance on the ways that fraudsters operate e.g. recently visited by an insurance rep who cited examples such as the acquisition by an Australian fraud ring of the machinery which produces fake - yet undetectable as such - drivers licences (as a result the practice changed its internal practices and requires a passport or second form of photo ID from all clients);
- greater care in ensuring certainty that mortgage deeds have been signed by the named borrower and not someone else. If the deed is not being signed in the presence of a conveyancer, the witness to the signature could be asked to sign a form confirming where and when it was signed - in addition to the usual witness details – as well as ID;
- supports the FSA's Thematic Review in so far as it refers to legal practices motivating and rewarding staff in their anticipation and prevention of fraud; all firms regardless of size, could adopt such practices.

Checking

- very limited information available on the CLC and Law Society websites i.e. basic check is available which is not up-to-date and where only individuals can be checked, not a practice;

Mortgage broker/lender regulation:

- recommends the prohibition of:
 - i. any lawyers or lenders acting for both the borrower and the lender in any transaction, due not only to inherent conflicts of interest but also lenders being represented by independent lawyers will minimise the risks of lawyer involvement in fraud;
 - ii. lenders (or their lawyers) trying to pass over any responsibility or obligation to them (other than the buyer's lawyer simply supplying copies of standard conveyancing documents or searches);
 - iii. lenders passing over to the borrower their legal fees for their own independent advice; and
 - iv. allowing the borrower's lawyer to perform any function other than the normal conveyancing functions; in particular, the borrower's lawyer should never be responsible for checking or vetting the mortgage application form; the lender should only ever be permitted to refer

truly 'legal' issues to the lawyer;

- greater control (by Statute etc.) of mortgage brokers;

Independent Financial Advisors:

- requiring IFAs to disclose more of their fact-finding results concerning the client, especially if they are an IFA that the conveyancer does not normally deal with;

Deeds:

- reinstatement of the deeds requirement – or some other form of protection – to ensure that persons who buy property (not buy-to-let) live in them (likens the current absence of this requirement to abandoning keys and leaving house doors open).