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.

Should you require information on how to meet your responsibilities under this Code, please see the CLC’s Dealing with Non-Authorised Persons (third parties) Code & Guidance.