



Acting for Lenders and Prevention and Detection of Mortgage Fraud Guidance

Acting for Lenders Guidance

Checking Identity by Documentary Means

1. The identity of a Borrower can be verified by checking their identity against appropriate original documents provided to you 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 the [UK Finance Mortgage Lenders' handbook for conveyancers \(FLMHC\), July 2017](#) (Part 1, Clause 3.1.5) is likely to satisfy the Lender's requirements.
2. Care must always be taken to ensure that the extent of the evidence seen will also meet responsibilities for **client** identity verification under the Regulations and the expectations contained in the **CLC's** Anti-Money Laundering and Combating Terrorist Financing Code.
3. Clause 3.2 in Part 1 of the FLMHC prescribes requirements for safeguards and identity checks.

Checking Identity by Electronic Means

4. You 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 **CLC** considers verification of identity by appropriate electronic means to be acceptable, though urges caution. Electronic evidence obtained should provide you with a strong level of certainty that any individual is the person they claim 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.
5. Any system or product used must be sufficiently robust to provide the necessary degree of certainty. 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.

6. Before using a commercial agency for electronic verification, you must be satisfied that:-
 - 6.1 the information supplied by the data provider is considered to be sufficiently extensive, reliable and accurate; and
 - 6.2 the agency has processes which allow its users to capture and store the information that they have used to verify an identity.
7. The process should be cumulative and you may consider it appropriate to seek additional evidence (e.g. 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.
8. You may wish to consider whether the provider meets each of the following criteria, namely that it:-
 - 8.1 is recognised to store personal data through registration with the Information Commissioner's Office;
 - 8.2 uses a range of positive information sources that can be called upon to link an applicant to both current and previous circumstances;
 - 8.3 accesses negative information sources such as databases relating to identity fraud and deceased persons;
 - 8.4 accesses a wide range of alert data sources; and
 - 8.5 has transparent processes that enable you 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.
9. Data from more robust sources where inclusion is based on proof of identity (such as government departments) ought to be included (under paragraph 8.2). Negative information checks (under paragraph 8.3) minimise the risk of impersonation fraud.
10. It is also important for:-
 - 10.1 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.

- 10.2 You should ensure you understand the basis of the system you use in order to be satisfied that the sources of the underlying data reflect the **CLC's** requirements 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).

Transactional Considerations

- 11. 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.
- 12. 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.
- 13. 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.
- 14. 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.

Detection of Mortgage Fraud Guidance

1. Mortgage fraud may be perpetrated by one or more participants in a mortgage loan transaction, including the Borrower, or by multiple parties (a mortgage fraud ring) working dishonestly together (and often in a professional capacity).
2. Mortgage fraud is a criminal offence which can often result in imprisonment on conviction. Some conveyancers have been caught up unwittingly in a mortgage fraud, not because of any willfully fraudulent acts on their part but because they have failed to act in accordance with the relevant Codes and this Guidance, neglecting to check all details of the transaction and failing where appropriate to report to the Lender for whom they are also acting. They have not appreciated that the circumstances of the transaction might lead to or give rise to fraud.
3. Proceeds of mortgage fraud are criminal property. A conveyancer who assists in such a fraud will facilitate the acquisition, retention, use or control of criminal property contrary to s.328 of the Proceeds of Crime Act 2002. He may also aid and abet a fraud or be complicit in a conspiracy to defraud.
4. Mortgage fraud is likely to require a report to be made to the **National Crime Agency**.
5. Any attempt to deceive a Lender may expose you to civil action (e.g. breach of contract, breach of trust or negligence) and/or to disciplinary proceedings.

Linked Parties

6. You should always exercise caution if:-
 - 6.1 there appear to be links between a Buyer and Seller; or
 - 6.2 you are acting for both parties; or
 - 6.3 the Seller is a private **company** or the Seller has recently purchased from a private **company** and the names and addresses of the officers and shareholders of the **company** appear to be connected with the transaction, the Seller or Buyer.

Concerns of variations

7. It is in your interests to check whether:-
 - 7.1 the contract papers have incomplete or missing dates, incorrect descriptions or any sections (particularly the price) which have been left blank;

- 7.2 the price shown in the Contract and Transfer documentation differs from the amount actually being paid for the property;
 - 7.3 any fixtures and fittings included in the purchase price materially reduce the value of the property;
 - 7.4 the Seller is offering the Buyer any incentive(s) to buy the property unless these clearly fall within a FLMHC dispensation given by the Lender concerned;
 - 7.5 any allowances are made or any other sum is being set-off against the money payable by the Buyer to the Seller (e.g. for repairs to the property);
 - 7.6 the Buyer proposes to pay or has apparently paid a deposit direct to the Seller (except for a nominal reservation fee); or
 - 7.7 there is anything else that affects the price of the property or the amount actually being paid for the property, however small.
8. It is not advisable for you to determine whether any change is material. With your **client's** consent, you should make a report to the Lender. It is good practice to advise **clients** at an early stage that:
- (i) it would be regarded as fraud to misrepresent the purchase price or the existence of any incentives and inducements; and
 - (ii) you have a duty to inform a Lender of the true or underlying price actually being paid for a property.
9. It is good practice to include a term in the **Terms of Engagement** permitting the disclosure to Lenders of material facts relating to the property and the Borrower **client**.

Acting in the best interests of the Lender *client*

- 10. In the event of the circumstances detailed in paragraph 7 your safest course of action may be to cease to act for both the Lender and the Borrower **client**.
- 11. Where you cease to act for the Lender in such circumstances, you should return the mortgage instructions to the Lender merely stating that they are returned because of a conflict of interests (without giving any further explanation).

Valuations

- 12. It is good practice to check any valuation supplied by the Lender to check it is not:

- 12.1 higher than the actual price being paid for the property or higher than might be expected for a property of that type in the location in which it is situated; or
 - 12.2 considerably higher than the price paid for the property on any earlier sale or disposal within the last 12 months, taking into account any subsequent inflation or deflation in property prices since the date of that sale or disposal.
13. You are not a valuation expert and cannot be expected to advise on the accuracy of a valuation. Nevertheless, a valuation which is patently out of line with the apparent value of a property may be a ground for a suspicion of fraud, particularly where there is a possibility or risk of complicity between prospective Borrowers and Valuers.

Verifications of Signatures

14. This can be done by examination and comparison with signatures on any other available documentation.

Fraud schemes

15. Mortgage Fraud can take the form of fraud for property or profit (or both). It can be opportunistic e.g. parties misrepresenting their income or not declaring other debt obligations; or perpetrated by mortgage fraud rings e.g. organised crime syndicates overvaluing properties, 'professionals' not acting professionally, provision of fake IDs, fake firms, flipping, inflated, or low, property valuations, illegitimate source of funds etc. Criminal methodologies are continually evolving but fraud activities have previously included:
- a) criminals posing as the buyer's new lawyer obtain the mortgage advance instead of the real buyer;
 - b) usage of at least one 'professional' party to appear to verify the transaction's legitimacy and reassure other professionals within it;
 - c) fraud rings acquiring machinery which produces fake – yet undetectable as such – driving licences for ID purposes, creating fictitious nominated purchasers;
 - d) fictitious property or vacant land or non-developed property (particularly targeting property clubs);
 - e) selling property, at inflated values, between related private companies;
 - f) back-to-back sales where the first mortgage is not registered against the property (and not redeemed upon second sale completion; Equity Release Schemes where the client sells the property to a fictitious person or mortgage mule, who takes out an inflated value mortgage and on which it makes no payments (or where the person is vulnerable and does not understand the scheme's conditions and

implications);

- h) purchasing via auction a repossessed property and (usually within a year) seeking external funding against the property, or posing as a property developer seeking bridging loans;
- i) identifying deceased estates through local papers' notices sections, establishing identity as either the deceased person or a long-lost heir and seeking a mortgage over the existing equity; and
- j) applying for a County Court Judgement against the owner of a repossessed/unoccupied property concerning a non-existent debt.

Examples of linked parties and sub-sales schemes:

- 15.1 Sale at an inflated price to an individual by a company or other entity controlled or owned by her/him may be a device designed to raise additional finance for the company or other entity and be linked to larger-scale frauds involving tax, improvement grants, etc. Sale by a Borrower to an associate at an inflated price (known as roll-over fraud) can then enable the associate to obtain a higher mortgage. No repayments are made under the mortgage and before the Lender is able to repossess the property, it is sold to another associate for a higher price, and so on.
- 15.2 A Buyer at one price instructs his conveyancer that he will be selling on to a third party at a higher price where the Sub-Buyer is either one and the same person as the Buyer or an associated person where the Seller may or may not also be a party to the fraud. The Sub-Buyer third party obtains a mortgage based on the sub-sale price and secures an immediate profit. The balance between the original sale price and the higher sub-sale price is never paid or is said to be paid by the Buyer to the Sub-buyer or is allegedly set-off by the Buyer against money owed to him by the Sub-Buyer. These transactions often feature a simultaneous exchange of contracts followed by a quick completion, leaving the Lender left with a property worth the original sale-price as security for a much higher loan. A derivative of this fraud occurs where a Seller grants a lease to a Buyer at a ground rent and the Buyer then assigns the lease to a Sub-Buyer at a premium to provide the Sub-Buyer with a legal interest over which he can then obtain a mortgage.

Summary of Possible Warning Signs

16. The following are factors to be taken into consideration within **conveyancing** transactions. Where any of these factors are found the transaction should be approached with caution. That is not to say that in all circumstances listed below that mortgage fraud is likely, or is happening, but there may be increased risk to the **Code of Conduct's Outcomes**.

16.1 Mortgage / property type	a) Buy-to-let schemes (large-scale fraud can take the form of large-scale renovation projects, new-build apartment complexes, and on occasion commercial properties)
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	<ul style="list-style-type: none"> b) Sub-prime, self-certified, or 100% mortgages c) Where a Stamp Duty Mitigation Scheme is being used d) Seller or developer have provided incentives, allowances or discounts (especially if these were previously undisclosed) e) A lender which is not a mainstream bank, building society or similar institution f) Unencumbered property g) The property and mortgage do not seem consistent with your knowledge of the client's financial position and income sources h) Cases referred from investment clubs or sale and rent-back companies <p>The property has a history of being re-sold, or mortgages settled, quickly</p>
16.2 Transaction type	<ul style="list-style-type: none"> a) The property has a County Court Judgement against it b) Acting for both the borrower and the seller especially if involving corporate structures c) You are asked to complete the transaction and transfer the title in accordance with already exchanged contracts d) Finance is sought after the property has been registered in the buyer's name e) You are offered continued work at a higher margin to encourage less diligent checks* f) Following a court order, the land is transferred but no application for a mortgage is made until some time later g) There has been a recent transfer of land but no money has changed hands h) Variance in signatures i) Instructions to purchase in or transfer a property into the name or names of nominees j) Instructions from a Seller to remit the net proceeds of a transaction to someone other than the Seller k) Any instructions from a Buyer or Seller which do not correspond with the normal type of instructions you would expect to receive during the course of a standard residential or commercial conveyancing transaction l) Any transaction which is unusual insofar as it does not follow the normal course or pattern of a standard residential or commercial property transaction m) A deposit or the difference between the mortgage advance and the price is paid direct, or said to have been paid direct, to the Seller <p>Contract documents are not fully completed by the Seller's</p>

	representative, i.e. dates missing or the identity of the parties are not fully described or financial details are not fully stated
16.3 Client type	<ul style="list-style-type: none"> a) Borrower does not reside at the property b) 'Ideal' occupations and salaries e.g. earning £100,000 or working in a preferred occupation c) The seller is a private company, or has recently purchased the property from a private company d) Deposit paid by someone other than the purchaser e) First-time property investment of this scale f) Current owner has owned the property for less than six months; this may indicate flipping i.e. re-selling a property very quickly for a substantially increased price, usually involves back-to-back sales g) An existing Client asks you to rely on former identify checks i.e. 'reliance' exemptions h) The buyer is a corporate purchaser and it is unclear whether the transaction is at arms length i.e. the identity of the beneficial owner is not disclosed (or the names and addresses of office holders and shareholders at the company do not reflect those connected with the transaction) i) The client's credit history is not aligned to their age (it may be longer or shorter than might be expected) The 'owner' does not appear to be of the age to have held the property registered to them for the length of time stated
16.4 Remote Client	<ul style="list-style-type: none"> a) Where a client is introduced by a third party (e.g. a mortgage broker or an estate agent) who is not well known to the Authorised Person or the firm b) Where a potential client wishing to instruct the body for the first time does not live locally to it and has not been introduced by someone known to it and there is no obvious reason why they should place their instructions with it c) Where a client will be using the services of the body for the first time and persuades it to accept instructions from the other party, or the other party instructs the body
16.5 Secretive Client	<ul style="list-style-type: none"> a) Client declines to be met or come to the office and/or uses an intermediary to communicate with the body and/or asks the body to contact him at his business or another address rather than at his home address b) Client shares an address with one or more other parties to the transaction c) You suspect that a client is not being completely honest or transparent about any element of a proposed mortgage transaction
16.6 Other parties	<ul style="list-style-type: none"> a) Where another Authorised Person has previously been acting b) Person acting on the other side of the transaction is not a lawyer

	<p>(see Dealing with Non-Authorised Persons (third parties) Code & Guidance)</p> <p>c) Impatient parties putting pressure on you to complete the transaction quickly where the reason for urgency is not immediately apparent</p> <p>d) The deposit is paid by the buyer directly to the seller or developer</p> <p>e) Power of Attorney involved</p> <p>f) The details/final destination of documents do not match the contact details for the individual/firm provided in the directory of their regulatory/professional body</p> <p>g) A person claiming to be an Authorised Person is not registered with the relevant Approved Regulator</p>
16.7 Diligence	<p>a) Deed not signed in front of you (enhanced due diligence is required where you do not meet the client)</p> <p>b) Reliance on the diligence of another party</p>
16.8 Valuations	<p>a) You are requested to alter the value on the Certificate of Title*</p> <p>b) You are asked to enter a price on the title that is greater than you know was paid for the property</p> <p>c) Discrepancies in value recorded in documents (including the contract, transfer documents, mortgage instructions, certificate of title to lender, Land Registry forms)</p> <p>d) Adjustments to the purchase price, particularly in high percentage mortgage cases, or allowances off the purchase price, for example, for alleged works to be carried out</p> <p>e) The actual and true cash price to be paid is not the stated consideration in the contract and transfer and/or the price shown in the mortgage instructions and in the Certificate of Title submitted to the Lender</p> <p>*if the value is altered without the agreement of the lender, this is likely to be in breach of the CLC's Code of Conduct.</p>

16.9 In each case you should consider whether you have authority to make a report to the lender and/or whether you should cease acting for both the lender and the borrower.

16.10 The National Fraud Authority's indicator for UK mortgage fraud in 2012 was estimated at £1 billion. The way in which mortgage fraud is attempted is continually changing; the examples given above and the possible warning signs provided above, are not intended to list exhaustively all of the areas in which extra caution should be applied. You should remain alert to any transaction, or element within, or party to it, which is unusual or raises cause

for concern.

Good Practice

17. The following are examples of good practices which other firms have employed to help prevent, identify and mitigate fraudulent activities. You are not required to adopt these practices, they are provided for your consideration. It is acknowledged that a number the examples provided have been adopted by larger firms; you may wish to consider adopting/tailoring these practices to align with the size and client profile of your firm.

17.1 Due Diligence

- a) Ongoing management/review of relationships with third parties
- b) Open source internet searches against other firms and its staff, including adverse information published by any relevant regulatory bodies and credit-checking
- c) Scrutinising, clarifying and verifying the information received from parties connected to the transaction, considering risks presented by new mortgage products
- d) Systems for checking the identity of foreign clients
- e) Checking that deposit monies for a mortgage transaction appear to be from a legitimate source
- f) Considering whether property valuations appear to be reasonable
- g) If your **client** changes while you are acting on a transaction, contact both the old and the new **client** so you understand the reason for the change of **client** and are satisfied that it appears to be for a legitimate reason
- h) Electronic identification check with each **client** as soon as instruction is received; use a service provider accessing a unique system which matches identity of **client** using ID and verifying confidential information known only to **client** and provider

17.2 Staff - Fit & Proper

- a) Pre-employment screening of **employees**
- b) Staff required to disclose conflicts of interest stemming from their relationships with third parties
- c) Enhanced vetting methods - e.g. credit checks, criminal record checks, last 5 years employment
 - applied to different roles

17.3 Staff - Training

- a) Lawyers trained to review responses given on source of funding source e.g. does the information provided fit the age/ occupation/profile of

the client?

- b) Appropriately trained and experienced staff handle the process; training including mortgage fraud risks, potential risk indicators and the firm's approach to handling the issue
- c) Detailed mortgage fraud training for staff (may include scenarios and case studies)
- d) Mortgage Fraud Awareness Manual/Test, updated to reflect new mortgage fraud trends and types
- e) Mortgage Fraud 'champions' offer guidance or mentoring to staff and updates on new fraudulent methods
- f) Measure, motivate and reward staff in and the steps they take to prevent fraud
- g) All staff receive training on information security procedures

17.4 Systems/Controls – Risk Assessment Policies

- a) Staff are encouraged to report fraud under a clear whistle-blowing policy
- b) Allocate each **conveyancing** file a fraud/risk monitoring level
- c) Systematically consider how management information can be improved and used more effectively to mitigate the risk of fraud; systems/procedures/training evolve according to market intelligence/pressures (particularly concerning information security, fraud and risk information provided by lender **clients**), with company AML, Fraud and Risk Policies regularly updated, communicated and training provided
- d) System alerts if lawyer on other end of transaction changes or their bank account details
- e) Reviewing negative databases, such as a list of known fraudsters and the deaths register
- f) Standard Terms and Conditions include a clause that stating the lender **client** will be advised of any relevant information arising; the **client's** attention will be brought to the term and they have to sign their acceptance of this.

17.5 Systems/Controls - Authorisations

- a) Accounting functions and controls are separated from transactional **client** facing functions
- b) Money can only be taken from the **client** account when more than one person authorises the transaction

17.6 Systems/Controls – Quality Assurance

- a) Internal audit and compliance teams regularly monitor the adequacy of underlying client take-on arrangements or third party relationships
- b) A formal quality and audit framework to ensure daily quality assurance of key tasks undertaken and full compliance audits carried out on a rotational basis

17.7 Information Security

- a) Information security management systems certified by an accredited certificate organisation
- b) Information Security systems are compliant with the Department for Business Innovation & Skills Guidance
- c) The firm has a written information security policy which a senior member of staff oversees

17.8 Information-gathering

- a) Engage in cross-industry efforts to exchange information about fraud risks
- b) Dedicated Land Registry team producing company-wide management information