

## SUPPLEMENTAL INSTRUCTIONS AND GUIDANCE NOTES TO SOLICITORS

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Scotland

May 2019

### General

**You are instructed to act for us in accordance with the UK Finance Mortgage Lenders' Handbook for Scotland ("Handbook") and our Part 2 as supplemented by these instructions and guidance notes.**

**You are instructed to pay careful attention to our requirements and report your findings to us diligently and provide all the information and documentation we require in the manner and within the timeframe specified to avoid unnecessary delays in the transaction. We will not release funds until all of our requirements have been satisfied. You have no authority to release funds unless our instructions have been complied with. You will hold all funds to our order and on our behalf.**

### (A) Us and the loan

Each Loan must be secured by a first ranking and only Standard Security against the Property and a Floating Charge (if appropriate).

You must ensure that the Borrower understands fully the nature of the transaction, the Loan terms (our Offer, the Mortgage Conditions and the General and Special Conditions), and the basis upon which the Borrower charges the Property to us (the Standard Security and Mortgage Conditions - see definition of 'Secured Amount' in the Mortgage Conditions). This is of particular importance where the Borrower may have, either now or in the future, more than one loan with us with obligations in his own name, jointly with others or as a guarantor for one or more parties.

Where the Borrower is a limited company, personal guarantees and a Floating Charge (if requested in the offer of loan) are required from the persons named in the Offer.

As the Loan will be secured against a property which is/ or is to be let you must ensure that any tenancy agreement affecting the Property complies strictly with our Mortgage Conditions and the General and Special Conditions accompanying the Offer.

### (B) UK Finance Mortgage Lenders' Handbook

Our Part 2 replies are on the UK Finance website, [www.cml.org.uk](http://www.cml.org.uk), under Paragon buy-to-let mortgages (Scotland).

### (C) You and your firm

You must return these instructions to us unless you have signed a contract with us and have been appointed to our panel. If there have been changes to your firm or company since your appointment you must report these to us and await our further instructions.

You must quote your panel number on all correspondence.

You must abide by the terms of your panel appointment and, in particular, with reference to professional insurance.

You will make your complete file available for inspection should we so require at any time before or after completion.

You will keep the entire file(s) including the financial records and ledgers for a minimum period of six years from completion.

## (D) Reporting to us

1. You will promptly report any information or documentation which ought reasonably to be considered relevant or which might reasonably influence our decision to lend.
2. You will on request (whether before or within six years of completion) provide to us financial records and the ledger card and either the original or certified copy of the whole file (where you have kept a joint file) or a copy of each file (where you have kept a separate file for us and the Borrower). We are entitled to the entirety of the file(s) as the Borrower, in cases of joint representation, waives any duty of confidentiality or privilege which may otherwise exist in relation to the transaction as a whole.
3. If your Report on Title (ROT) is qualified in any way or you report separately upon any matters, you must ensure that receipt of your advice is acknowledged by us. You must not proceed to completion until you have received confirmation from us either (1) that we consent to proceed with the knowledge of the matters reported or (2) as to what further action is required.
4. Subject to normal precompletion searches, we require a minimum of seven working days from the submission of your ROT before funds may be released.
5. Your ROT must not be submitted unless:-
  - (a) you have in your possession originals of all of the documents which comprise our security including but not limited to:-
    - the Standard Security;
    - the Deed of Guarantee; and
    - the Certificate(s) of Confirmation of Advice (where applicable).These must be executed by the parties personally and not by powers of attorney.
  - (b) title to the Property is, or is to be, vested in the Borrower (or where there is more than one Borrower, in all of their names jointly) immediately prior to completion of the Loan.
  - (c) you have ensured that each and any tenancy agreement affecting the Property is in accordance with our Mortgage Conditions and the General and Special Conditions accompanying the Offer, or have reported to us if it does not comply.

## (E) Unacceptable types of security

You must report if the Property falls within either Category A or Category B.

Category A properties are not acceptable to us as security and accordingly you must report your findings to us and return our papers to us.

Category B properties may be acceptable. Please report your findings and await our further instructions.

### Category A

- Properties located other than in Scotland.
- Properties which remain subject to an existing charge whether postponed or not.
- Properties where a charge will be registered as a subsequent charge on completion.
- Leasehold properties.
- Properties designated as defective under any housing legislation.
- Properties subject to agricultural and/or other planning restrictions.
- Properties subject to notice of mineral extraction, or previous mining subsidence and land fill.
- Properties being purchased under the Right-to-Buy Scheme.
- Properties that are shared-ownership or were previously shared-ownership.
- Self-build properties and/or properties of a non-standard construction.
- Properties subject to restrictions relating to the sale or occupancy of the Property.
- Properties subject to options or rights of first refusal/pre-emption rights.
- Where the seller or a previous owner or any member of their respective families remain or will remain in occupation of the Property.
- Where the Borrower is an individual and the Borrower and/or a member of the Borrower's family, including but not restricted to the spouse, partner, civil partner, parents, grandparents, siblings, children or grandchildren, occupy or intend to occupy the Property at any time.
- Where the Borrower is a limited company and the Borrower, its directors, guarantors, shareholders and/or any related persons which includes their respective spouses, partners, civil partners, parents, grandparents, siblings, children or grandchildren, associated, subsidiary or parent company of the Borrower, occupy or intend to occupy the Property at any time.



- Where an employee of the Borrower occupies or intends to occupy the Property at anytime.
- Properties subject to occupation other than on terms permitted by us.

## Category B

- Properties within 20 metres of a mine entry.
- Properties subject to environmental issues.
- Properties that do not have a minimum E grade or above EPC rating, unless they have an applicable exemption.

## (F) Avoidance of fraud

We expect you to keep abreast of professional guidance and practice notes issued by UK Finance and the Law Society of Scotland. You are instructed to be vigilant and to undertake a full assessment of the transaction as a whole and report your findings to us promptly and diligently. The buy-to-let market may be prone to arrangements/schemes whereby the Borrower may not be entitled to the beneficial interest in the Property or acts as a nominee for a third party or whereby there is a difference between the sum payable to acquire the Property compared with the price stated in each of the offer, the contract and the disposition to the Borrower.

1. In all cases you must report to us if the Borrower holds or will on completion hold the Property as trustee or nominee for a third party.
2. In all cases we require you to report details of the name of the seller and, if different, the name of the registered proprietor and give details of any relationship between the parties.
3. You will report to us if the Offer is made on the basis of a remortgage and our Loan is to be used for any purpose other than for the repayment of any existing charge secured against the Property. Where there is an element of capital raising excess funds may be paid to the Borrower subject to any conditions specified in the Offer.
4. You will report to us if the Offer is made for the purpose of a purchase and our Loan is to be used for any purpose other than for the purchase of the Property specified in the Offer.
5. You will report to us (with details you know as to prices and the names and addresses of the parties involved in the various transactions) if:-
  - (a) the seller (or the Borrower in the case of a remortgage) is not the owner or the registered proprietor or has owned or been the registered proprietor of the Property for less than six months; or
  - (b) the Borrower is acquiring the Property under:- (i) a sale and sub-sale (ii) where the Property is leasehold, the creation and assignment of a leasehold interest (iii) a grant or assignment of a leasehold interest at the direction of a party other than the seller (iv) a back-to-back or other derivative transaction; or
  - (c) a seller or a previous owner or any member of their respective families is to remain in occupation on or after the date of completion of the mortgage; or
  - (d) the seller is related to or connected with the Borrower; or
  - (e) the seller is, or at any time in the preceding six months has been a guarantor; or
  - (f) the Borrower or any Guarantor is, or at any time in the preceding six months has been a director, shareholder or officer of the seller; or
  - (g) the Borrower has acquired, or will acquire, the Property other than on a bona fide arms length basis; or
  - (h) there is any kind of collusive behaviour between the seller and the Borrower and/or third party;
  - (i) you or your firm is acting also for the seller or acting in accordance with instructions received from a party other than the Borrower.

### 6. Terms relating to the acquisition of the Property

Unless instructed otherwise, you will report to us if:-

- (a) under the terms of the contract or terms agreed with the seller the sum payable to acquire the Property differs from that stated in the Offer;
- (b) there is a discrepancy between the sum payable to acquire the Property, the price stated in the contract/agreed terms of sale and the price to be recorded in the disposition to the Borrower;
- (c) the Borrower or any other party is to receive any discount, price reduction or cash incentive, contribution towards any mortgage payments or loans, or guaranteed rental income whether from the seller or a third party. You must complete and submit to us (and our valuer if we request) the UK Finance Disclosure of Incentives Form ([www.cml.org.uk/cml/handbook](http://www.cml.org.uk/cml/handbook)) prior to submission of your ROT;
- (d) there is any provision of any funds or benefit to the Borrower by the seller or at the seller's direction by another party connected with the transaction;



- (e) there is any apparent direct payment of any sum by the Borrower to the seller or any third party;
- (f) the Borrower is buying through or from an investment syndicate or club or any form of amateur or professional person acting as a locator of properties;
- (g) the Borrower is entitled to receive any moveables or other items of value including part exchange arrangements or deferment of any part of the purchase price.

*(Items of value could take many forms. Possible examples are payment of, or contribution towards, any mortgage or loan, interest or buildings insurance premium for a period, the payment of fees or disbursements by another or leaving part of the purchase money outstanding. Genuine fixtures form part of the Property and need not be reported).*

## 7. Purchase Moneys

You will report to us if:-

- (a) the Borrower is not providing the whole of the balance of the purchase price of the Property (after deducting the amount of our advance) from the Borrower's own resources, without recourse to further borrowing;
- (b) if any part of the purchase money will not be paid through your account or is being gifted;  
(In particular, if you are instructed that part of the price has been or will be paid directly to the seller or a third party)
- (c) our loan appears unlawful;

*(For example, where the Borrower is raising an element of capital consider s678ff Companies Act 2006, (financial assistance for purchase of own shares) and s197ff Companies Act 2006 (loans to directors and connected persons)).*

## (G) Corporate Borrowers

Where the Borrower is a limited company or a limited liability partnership, the following provisions apply:-

1. The Standard Security and Floating Charge (where required) must be submitted to Companies House within such period after the creation of the Standard Security and Floating Charge as is required by statute to ensure they are fully valid, binding and enforceable.
2. You must enquire whether the Borrower is registered other than in England and Wales or Scotland. If your enquiries reveal that the Borrower is registered in any other jurisdiction, please inform us immediately and await further instructions as to whether the matter may proceed.
3. You must make a search against the Borrower at Companies House, including the Memorandum and Articles of Association/Memorandum of Association, to verify:-
  - (a) that no notice of appointment of a liquidator, administrator, administrative receiver or receiver have been filed and that no resolution has been passed to wind up the Borrower;
  - (b) that the Borrower has the power under its Memorandum and Articles of Association/Memorandum of Association to carry on its existing business;
  - (c) that the purpose for which the advance is being made is consistent with the Borrower's main objects set out in the Memorandum and Articles of Association/Memorandum of Association;
  - (d) that the Borrower has the power under its Memorandum and Articles of Association/Memorandum of Association to borrow for that purpose;
  - (e) how the powers to borrow and give security are to be exercised;
  - (f) whether the Property is subject to a floating or other charge;  
(If it is subject to a floating charge you must report this to us, but in any event obtain any consents required (eg where the Borrower has given a negative pledge) and obtain a letter of non-crystallisation with effect at the date we complete our mortgage. All consents and letters of non-crystallisation must be included with the deeds);
  - (g) that there are no directors who are not named as Guarantors. In some instances the named Guarantors may not be directors as shareholders or other officers of the Borrower may be required to act as Guarantors.
4. The search at Companies House must be dated not more than one business day prior to the mortgage being completed.
5. You must not complete the mortgage unless you are satisfied that:-
  - (a) the board of directors of the Borrower has resolved to approve the transaction contemplated by the Offer and authorised a designated person or persons to sign all relevant documents and notices;
  - (b) the board meeting in (a) was duly convened and quorate in accordance with the Borrower's Articles of Association/Memorandum of Association;
  - (c) in entering into and performing the transaction contemplated by the Offer the Borrower will be acting intra vires and will not be in conflict with its constitutional documents.



6. You will report to us if our loan appears unlawful (for example, where the Borrower is raising an element of capital, consider s678ff Companies Act 2006 (financial assistance for purchase of shares) and s197ff Companies Act 2006 (loans to directors and connected persons)).
7. You must report to us immediately if at any time prior to completion any of the following occur:-
  - (a) a petition is issued against or steps are taken to wind up the Borrower;
  - (b) a petition or application is made for the appointment of a receiver/administrator or similar officer in respect of any part of the Borrower's business or assets;
  - (c) a scheme, composition or arrangement is made or proposed with the Borrower's creditors or a meeting of its creditors has been called or is proposed; or
  - (d) the Borrower is or becomes insolvent or is otherwise unable to pay its debts.

## (H) Guarantor requirements

Where our loan is to be guaranteed by a guarantor the following provisions apply:-

1. Interview with Guarantor
  - (a) Each Guarantor must receive advice from a solicitor who can provide independent legal advice. Such independent advice may be given to a Guarantor by a solicitor within your practice or a different office of your practice or any associated practice where you are satisfied that as the Guarantor will be a client of the advising solicitor there is no conflict or no significant risk of conflict between the interests of the Borrower and the Guarantor or any other Guarantors for whom you may act.
  - (b) If you are unable to provide the advice you must give each Guarantor a copy of our standard form Certificate of Confirmation of Advice together with a copy of the Offer and explain that he must obtain advice from a solicitor who is independent of the transaction.
  - (c) The solicitor giving the advice must sign and endorse the Certificate of Confirmation of Advice.
  - (d) A legal executive or licensed/registered conveyancer may not give such advice. Subject to the Law Society of Scotland Practise Rules 2011 on conflict, the same solicitor may advise one or more Guarantors.
  - (e) By signing the ROT you confirm that each Guarantor has received the appropriate independent advice in accordance with these supplemental instructions herein and that you are in possession of a Certificate of Confirmation of Advice for each Guarantor duly endorsed, dated and signed by the solicitor who has given the advice.
  - (f) The Deed of Guarantee must be signed by each Guarantor personally. The Deed of Guarantee may not be executed by an attorney or any other person acting for or on behalf of the guarantor.
  - (g) The Deed of Guarantee should be dated the same date as the corresponding Standard Security and the original returned to us with the deeds.
2. Each Guarantor must be interviewed personally by the solicitor giving the advice (in the absence of any other Guarantor or person interested in or connected to the transaction), who must advise him:-
  - (a) of the proposed transaction and the risks for him in accordance with the guidelines from the House of Lords in their decision Royal Bank of Scotland -v- Etridge (No 2)[2002] 2AC 773;
  - (b) that the purpose of many of the provisions of the Guarantee is to negative rights and protections which he/she might otherwise have enjoyed under the law so that in effect he is put as closely as possible in the position of being equally liable for the Borrower's obligations to us;
  - (c) of the amount of the loan;
  - (d) that all moneys due to us from the Borrower under or in connection with the corresponding mortgage will be covered by the Guarantee including any further advance and costs;
  - (e) that there is no cap on the Guarantor's liability and that there is no option to terminate liability;
  - (f) that if the Guarantor is giving the Guarantee on the assumption that other Guarantors will be giving, and be bound by, the Guarantee then he will still be liable for the full debt due from the Borrower even if the other Guarantors do not enter into the Guarantee or, if they do, they are not bound or are released by us;
  - (g) that if there are other Guarantors, the Guarantor will be jointly and severally liable with them and we have an absolute discretion in deciding which of them we pursue, when and for what amounts;
  - (h) that we do not have to exhaust any remedies against the Borrower or the other Guarantors before claiming against him under the Guarantee and that whilst money is outstanding to us from the Borrower the Guarantor cannot take or enforce any security from or against the Borrower;
  - (i) that the Guarantee includes an indemnity so that the Guarantor's obligations are valid even if the Borrower's are not;
  - (j) that the Guarantee will bind the Guarantor's estate;
  - (k) any other matter which the solicitor considers the Guarantor should consider having regard to the circumstances of the transaction and his personal circumstances.

## (I) Heritable / Leasehold arrangements

- (a) Your attention is drawn to the list of unacceptable property types listed in paragraph E of these Supplemental Instructions and Guidance Notes. Please note:-
- (b) Where the property is heritable and parts have been sold off on long leases you must confirm:-
- (i) that the sales were bona fide arms length transactions and do not adversely affect our security;
  - (ii) the insurance arrangements for the Property.

You should also advise the Borrower that any subsequent sale must comply with these conditions and all other relevant and applicable criteria must be met.

## (J) Separate representation

This section only applies when you are representing only us in the conveyancing transaction. You are instructed to act for us in accordance with Part 3 of the UK Finance Mortgage Lender's Handbook for England and Wales (making necessary amendments) and should note that the effect of Part 3 is to apply to your retainer Parts 1 and 2 of the Handbook (as amended by section (A) – (I) above) as amended by Part 3 and this section (J).

We do not have a standard letter or particular requirements in relation to paragraph 1.4 of Part 3.

We will remind you that your obligations in section (F) above apply notwithstanding that you may have no direct contact with the Borrower and would refer you to paragraph 2.1 of Part 3.

Section (H) above applies in full save that (H) 1.b shall read "You must give the Borrowers conveyancer a copy of our standard Certificate of confirmation of advice for each guarantor along with a copy of the Offer and require that the conveyancer explain to each guarantor the need to obtain advice from a solicitor who is independent of the transaction and that that solicitor must return to the conveyancer a Certificate of confirmation of advice completed and executed in accordance with this section (H).

We will provide you with our standard form security documentation relevant to a transaction [along with a copy of the Offer and valuation report] which you must forward to the Borrower's conveyancer. See paragraph 10 of Part 3.

**PARAGON** 51 HOMER ROAD, SOLIHULL, WEST MIDLANDS B91 3QJ

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