

Summary of amendments to the Lenders' Handbook for the Isle of Man

Below is a summary of all of the amendments made to **Part 1** of the Lenders' Handbook for Isle of Man. If you require certainty as to the format of Part 1 in force at any given time it is recommended that a cross check is made against the Conveyancing Handbook which annexes the Lenders' Handbook. This particularly applies if your query relates to the Professional Consultants Certificate.

Amendments made on 1 July 2017

Amendments were made to Part 1 clause 1.1 and clause 6.3.1 to replace references to Council of Mortgage Lenders or CML with UK Finance, as a result of the merger of CML into UK Finance on 1 July.

A minor amendment was made to clause 6.6.4 relating to the qualifications of the professional consultant, to reflect that the Architecture and Surveying Institute qualifications are no longer offered. The following has been inserted (in italics) under the bullet points for qualifications:

- fellow or member of the Architecture and Surveying Institute (FASI or MASI) (*only if in conjunction with a FCIOB or MCIOB qualification*);

Amendments made on 1 November 2003

General

Paragraph 1.5

Reference has been added to Practice Rule 7 of the Advocates Practice Rules 2001, as amended from time to time.

Paragraph 1.16

This is a new instruction that reiterates the conveyancer's duty to the borrower client.

Communication

Paragraph 2.3

This paragraph now makes it clear that if a conveyancer does need to refer a matter to the lender, certain information must be provided. This includes identifying the issue and the extent to which it is not covered in the Handbook, a concise summary of the legal risks and a recommendation on how the lender should protect its interests. This should help streamline the process and make it transparent as to what information is required. Lenders have seen many cases where an issue is covered in the Handbook but this has not been identified by the conveyancer.

Paragraph 3.3

With regard to identity checks, the list of documentary evidence has been updated to include the new UK and Isle of Man Photo-card driving licence.

Searches and Reports

Paragraph 5.2.3

This instruction now requires all searches (except where there is a priority period) to be not more than six months old at completion. The earlier instruction adopted a two-pronged approach requiring searches to be not more than three months old at exchange and not more than six months old at completion. This had led to cases where searches met one part of the criteria but not the other. This amendment should result in a more straightforward

approach.

Paragraph 5.2.4

In recent years, there has been an expansion in the number of third party organisations offering services whereby they will undertake “personal searches” of local authority search information. This invariably involves an individual going to the local authority offices and searching the registers for the necessary information. While we understand that this is not yet the case in the Isle of Man where the information is obtained direct from the primary source, the Handbook has been updated to reflect this position should these services be offered in the near future. Lenders will be able to indicate whether they will accept personal searches in Part 2.

Planning & Building Regulations

Paragraph 5.3

This paragraph has been updated so that the conveyancer not only has to look at potential breaches of planning and building consents but also to check that the property has the benefit of any necessary planning consents to begin with.

Good and Marketable Title

Paragraph 5.4.2

The layout and text has been updated to clarify when good leasehold title will be acceptable.

Flying Freeholds, Freehold Flats and other Freehold Arrangements

Paragraph 5.5

This paragraph has been updated to incorporate some of the many different freehold flat arrangements that arise in different areas. Many of the examples refer to properties split into not more than four flats. In some areas, there may be properties with more than four flats. In this scenario, the conveyancer should refer the matter to the lender in accordance with paragraph 2.3.

Restrictive Covenants

Paragraph 5.7

The text in paragraph 5.7.1 has been amended to cross-refer to paragraph 5.7.2 and the circumstances where indemnity insurance would not be required where there is an enforceability risk on the breach of a restrictive covenant.

Leasehold Property

Paragraph 5.10.2

This amendment reiterates the fact that a lease must not allow for forfeiture on the insolvency of the tenant or any superior tenant.

Paragraph 5.10.4

The layout has been amended to split earlier paragraphs in the Handbook that had been very long.

Paragraph 5.10.6.3

This has been amended to make it clear that lenders only require enforceability covenants where one or more of the tenants in the building are responsible for the insurance, maintenance and repair of the common services.

Paragraph 5.10.9

Lenders can now stipulate in Part 2 whether they will accept indemnity insurance to remedy

a defect in a lease. We do not expect many lenders to amend their existing lending policies on this issue, as indemnity insurance has provided an effective form of recourse in such circumstances and has assisted the mortgageability of these properties.

Paragraph 5.10.11

In some cases, conveyancers are unable to obtain receipt of the notice of the mortgage as served on the landlord. In such cases, then as a last resort, suitable evidence of service of

the notice can now be provided.

Management Company Paragraph 5.11.1

In recognition that many management companies may not have a formal interest in a property, the Handbook has been amended to refer to a "legal right to enter" to maintain and repair the common parts. This should allow greater flexibility.

Paragraph 5.11.2

This paragraph has been updated to confirm that a conveyancer must check that the Management Company is registered at the Companies Registry and obtain the last three years' published accounts or the accounts from inception if it has only been formed in the last three years.

Insolvency Considerations Paragraph 5.12.3

This paragraph deals with deeds of gift or transactions at an apparent undervalue within the previous 10 years period. Where this is the case, the conveyancer will need to be satisfied that the lender will acquire its interest in good faith and be protected at law. Where the conveyancer is not satisfied that this is the case, indemnity insurance must be arranged.

Powers of Attorney Paragraph 5.13

The paragraph confirms that in the case of joint borrowers, neither borrower can appoint the other as their attorney.

New Properties Paragraph 6.6

The layout has been amended and divided into two sections. The first deals with new properties built or converted under a new home warranty scheme. The second deals with new properties built or converted under the supervision of a professional consultant. If additional new home warranty schemes are launched in the future, lenders can now set out in Part 2 those they accept (see paragraph 6.6.1.2). The Handbook has also been amended to allow lenders to set out in Part 2 (paragraph 6.6.2) what new home warranty scheme documentation should be sent to them. With more lenders pursuing the dematerialisation of documentation relating to a mortgage transaction, it is clear that lenders' requirements will differ.

The paragraphs on the supervision of work by a professional consultant (paragraph 6.6.4) have been changed to reflect amendments to the names of the professional building organisations. The Consultant's Certificate has also been updated in consultation with these professional bodies.

Roads & Sewers Paragraph 6.7.3

This paragraph has been added to provide that where there is an agreement between the developer and the lender whereby the lender will not require a retention in connection with roads and sewers, the conveyancer should seek confirmation from the developer that this is

still in position. In practice, the developer's conveyancer will put together the developer's title package and so will have this information.

Insurance
Paragraph 6.13.6

Some lenders no longer require conveyancers to check the individual risks contained in a policy and it is expected that more lenders will pursue a similar approach in the future. This paragraph has been made a Part 2 issue, to reflect this change in lenders' requirements. The list of risks remains largely unaltered, however accidental breakage of glass and sanitary ware has been removed and coverage of professional fees, demolition and site clearance costs has been added.

Loan and Certificate of Title
Paragraph 10.2

This paragraph now provides additional information so that the conveyancer can identify how the mortgage will be paid, whether by cheque or electronically and the minimum number of days notice required. Lenders will also set out in Part 2 whether there are any standard deductions made from the mortgage, so the position is clear to the conveyancer.

Title Deeds
Paragraph 14.2.1

Reference to the schedule of title deeds being in "triplicate" has been deleted reflecting changes in lender practice.