Working Together

An Industry Guide to Lender and Intermediary Accountabilities and Responsibilities in Mortgage Sales and Servicing

Issued: September 2016

A joint AMI, CML and IMLA paper

1. Introduction

This guidance is jointly produced by the Association of Mortgage Intermediaries (AMI) the Council of Mortgage Lenders (CML) and the Intermediary Mortgage Lenders Association (IMLA). It aims to set out what good practice should look today to deliver good customer outcomes. It is recognised that this guide will continue to evolve over time. This document was fully revised in September 2016 to reflect new obligations as a result of the implementation of the MCD on 21 March 2016. This guidance is aligned with the Financial Conduct Authority's (FCA) requirements and relevant Handbook rules – it sets out good market practice, which in some areas goes above and beyond the Handbook requirements. In producing this updated guide, our aim is that the relationships in which lenders and intermediaries are engaged deliver good customer outcomes.

This document aims to cover all types of customers, and apply equally to all mortgage sales. Following the implementation of the Mortgage Credit Directive (MCD) this document also applies to Consumer Buy to Let (CBTL). This document should be read in conjunction with the relevant MCOB rules (as updated by the MCD), the Perimeter Guidance rules (PERG), Principles for Businesses (PRIN), the Responsibilities of Providers and Distributor guidance (RPPD) and treating customers' fairly (TCF) Guidance. FCA discussion and occasional papers on a range of topics including vulnerability and ageing populations have also been taken into account. Where reference is made to customers, in all cases this refers to all customers in the transaction whether single or joint mortgage holders. While we recognise the customer has obligations in the successful purchase and servicing of their product, this is not within the scope of this document.

This document does not consider commercial relationships between lenders and intermediaries. These are the subject of separate legal agreements between the parties reflecting their own circumstances. This version of the guide does not apply retrospectively.

In setting out to develop this guide AMI, CML and IMLA take the view that the relationship between lenders and intermediaries is based on a number of key premises:

- A shared commitment to work effectively together and in the best interests of the customer.
- Responsibility for the quality of advice and the appropriateness of a recommendation in intermediary based sales lies with **the intermediary.**
- Responsibility for ensuring the product performs as explained in its product and policy documentation lies with **the lender.**
- Ultimate accountability for the affordability of a mortgage lies with the lender, although the intermediary is responsible for establishing affordability to make sure that, when advice is given, a particular mortgage is appropriate and in accordance with the lender's published criteria and taking into account the lender's affordability rules (or for execution only cases that the customer is aware of the regulatory protection foregone and has positively elected to proceed on that basis).
- Lenders lend responsibly in line with their responsible lending policies.
- Lenders and intermediaries can agree their own contractual relationships, payment mechanisms and service levels as long as these are in accordance with all legal and regulatory requirements, and align with the customers' interests.

The guide outlines the activities undertaken in the different stages of product and customer lifecycle and the accountabilities and responsibilities of both lender and intermediary, with a view to ensuring effective working between the two parties, which in turn will help ensure good outcomes for customers.

This guide is intended to cover relationships between lenders and all types of intermediary, whether paid by fee, commission or both; and whether regulated directly or as appointed representatives of a network.

For simplicity, the term ‘intermediary’ is used throughout this document when, in practice, the responsibility can lie with a firm, network, appointed representative or individual adviser.

2. How AMI, CML and IMLA members might use this document

Some companies may wish to read this document, undertake a gap analysis and consider whether they need to take any action to improve their own practices and procedures. Other lenders, notably new entrants, might wish to use this guide as a basic template for establishing their own system. The principal purpose of this document is to secure agreement on how providers and advisers can work together to achieve good customer experiences, to draw clearly defined responsibilities, and to comply with mortgage regulation.

3. Product and Customer Lifecycle

Lenders and intermediaries both recognise the importance of working with their customers' best interests in mind, at each stage of the product and customer lifecycle, and to work in partnership throughout to ensure good customer outcomes.

In developing this guide we have sought to ensure we cover the overarching Principles for Business (PRIN), PERG and MCOB rules throughout and as captured by the diagram below:

Customers can be confident that they are dealing with firms where the fair treatment of customers is central to the culture of the business. Customers are provided with clear information and are kept appropriately informed before, during and after the point of sale.

Pre-sale

Products and services marketed and sold in the retail market are designed to meet the needs of identified customer groups and are targeted and priced accordingly. Lenders will involve intermediaries in market testing and product design as appropriate. Lenders provide information and briefing to intermediaries on the new products they bring to the market. Financial promotions should be clear, fair and not misleading.

Point of sale

Where customers receive advice, the advice is suitable and takes account of their current and future needs and circumstances.

Post-sale

Customers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect.

Customers should be able to change product, switch provider, or make a complaint without encountering unreasonable barriers.

Intermediaries and lenders should help customers over the life of the mortgage as their circumstances and requirements change.

In drawing up the specific responsibilities for each stage of the product and customer lifecycle, the aim is to ensure both lenders and intermediaries are able to consider each other's involvement in each stage and through that shared understanding produce good outcomes for customers. All firms must act honestly, fairly and professionally in accordance with the customers' best interests.

The overarching responsibilities of the respective parties are:

Lenders

- Assess product suitability across target markets
- Inform intermediaries of the target market for their products
- Develop the product/ service proposition and the production of marketing literature and advertising
- Monitor general trends in sales
- Administer the product
- Generate regular statements (at least annually) for consumers
- Offer a proactive and reactive service contact as appropriate
- Deal with customer queries, claims and complaints
- Monitor the performance of products
- Ensure staff have the right skills and competences for their roles.

Intermediaries

- Work with individual customers or small groups
- Focus on the acquisition of customers, creating and maintaining customer relationship, and advising on the appropriateness of the product
- Take primary responsibility for monitoring individual sales for suitability
- Initial processing of product sale
- Service and consider ongoing borrowing requirements and alternative needs
- Deal with customer queries, claims and complaints.
- Provide timely and accurate information to lenders
- Ensure staff have the right skills and competences for their roles.

4. Pre-sale

This section focuses on pre-sale. It is therefore centred on responsibilities to the target market (i.e. types of customer the product is likely to be appropriate for) of customers in general rather than individuals. In addition to general adherence to the PRIN and MCOB rules, regulated firms will also consider a second TCF outcome; that products and services marketed and sold in the retail market and designed to meet the needs of identified customer groups are targeted appropriately.

Responsibilities of lenders to intermediaries and customers	Responsibilities of intermediaries to lenders and customers
A. understand customer needs in target market	
Lenders should: • Understand the financial needs and financial capability of target customer groups, using feedback from sales monitoring, intermediaries and customer research. • Clearly set out the parameters for more complex sectors such as CBTL, foreign currency and high net worth customers	**Intermediaries should:** • Undertake marketing and lead generation activities with full recognition of the target market for each of the lender's products and services offered. Identify customers who may fall within more complex criteria such as CBTL, foreign currency and high net worth. Understand lender criteria for different types of customer and recommend an appropriate lender.
B. Develop products and services	
Lenders should: • Identify the particular customer groups for which they are likely to be suitable (including via use of feedback from sales monitoring) and those groups that would/should be excluded. • Stress-test the product or service to identify how it might perform in a range of market environments and how the customer could be affected. • Consider whether to enlist intermediaries to support more general risk testing. • Have in place systems and controls (such as those in FCA Handbook section SYSC) to manage the risks posed by product or service design. • Consider the appropriate means of distribution, e.g. advisory, execution only, intermediary, direct, face to face, by telephone or via web, or which combinations are appropriate,	**Intermediaries should:** • Give feedback to lenders if products seem unsuitable for customer groups suggested by the lender. • Where appropriate, identify gaps in the market and feed back to lenders and participate in product design discussions. • Where appropriate make suggestions for product development and improvements.

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based on the characteristics of both the products and the target customer group.

Where a packager or specialist distributor is used, who may not be regulated, consider whether additional monitoring needs to be in place to ensure appropriate use of the product
Train advisers in (a) the use of lender online sales systems and (b) the completion of paper application forms
Ensure lender actions (such as presentations to advisers) are consistent with the nature of the product and the target market for which it was designed
Lenders should not structure or offer their commissions or procuration fees in a way that might create lender or product bias.
In developing products lenders should consider whether they are suitable for vulnerable customers and how this will be monitored.

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<th colspan="2">C. Deliver Pre-sale Product Literature</th>
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Lenders should:

ensure that:

Information intended for customers must take account of the financial capability levels of its target market
Information provided to the customer must not steer the customer away from receiving advice and/or towards an execution-only route
They take account of what information the customer needs to understand the product or service.

Produce pre-sale product literature that is fair, clear and not misleading to both intermediaries and customers.
Have in place systems and controls to manage the risks posed by providing information to customers and intermediaries.
Provide intermediaries with sufficient and appropriate information and

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Intermediaries should:

Consider whether it understands the information provided by the lender.
Deliver effective training and clear information to all customer-facing staff and their managers, to ensure they understand, at an appropriate level, each product and service offered to customers, its features and its risks to customers and where necessary provide feedback to the lender. Where required, ask the lender to provide additional explanation, training or material.
Not to distribute a product or service without sufficient understanding, especially if the intermediary intends to provide advice.
Intermediaries producing their own customer information should:

pay regard to the financial capability levels of its target market
take account of what

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training for their own use and to enable them to be able to give suitable advice (where advice is given). • Provide information which allows the intermediary to be clear about the target market for the product in question • Where information is aimed at intermediaries and is not intended for customers, this should be made clear. • Test key literature on customers and intermediaries.	information the customer needs to understand the product or service; and ○ must produce pre-sale product literature that is fair, clear and not misleading. • where information is provided to another distributor (such as a packager) the intermediary should consider what information the distributor requires, and how it will use the information. For example, whether it will be given to customers and the likely level of knowledge and understanding the distributor will have (and how the information should best be transferred). • consideration should be given as to whether another party holds the appropriate authorisations or licences
D. produce advertising and promotion	
Lenders should: • Produce marketing and promotional materials, as well as technical material and training for advisers, that are fair, clear, balanced and compliant which help the intermediary provide information and advice that explains the product and its performance and risk characteristics. • Ensure advertising and promotions for each product are aligned with their target market.	**Intermediaries should:** • Act with due skill, care and diligence when passing on a promotion created by a lender. Ensure information provided to customers is fair, clear and not misleading. When communicating a promotion produced by another person, providing the firm takes reasonable care to establish that another firm has confirmed compliance with the relevant detailed rules, it will comply with the financial promotion rules. • Promote products and services to customer groups for whom they are most likely to be suitable ("promote" in this context means general advertising, promotion and lead generation and does not equate to advice). • Have in place systems and controls to manage the risks posed by financial promotions. • Highlight any concerns it has with a lender's financial promotion and/or training material to that lender.

5. Point of sale

This section is focused on point of sale activities. Lenders and intermediaries should consider the remuneration policies in place and have controls to ensure that these deliver good customer outcomes rather than focus unduly on volumes of business[1].

The lender and intermediary must always act in the best interests of the customer. Following the introduction of the new MMR rules in April 2014, the majority of mortgage sales have been advised, and advice should be the default option at the point of sale. MCD creates a number of distinct categories of borrower such as high net worth individuals and consumer buy-to-let borrowers who have specific advice needs. Customers undertaking Right to Buy, Sale and Rent Back, debt consolidation and equity release sales, must always receive advice.

Consideration must be given to the needs of vulnerable customers.

Lenders must decide whether they will accept execution-only business from intermediaries, and intermediaries must decide whether they wish to operate the execution-only exceptions. Where customers choose to undertake and execution-only sale or contract variation (including where advice is rejected) the appropriate disclosures must be made to the customer, and the customer's positive election to proceed on an execution-only basis must be recorded and evidenced.

Aside from the business to business accountabilities and responsibilities, and the PRIN/MCOB rules, we would also emphasise the fourth and fifth TCF outcomes, i.e.:

- Advice given to customers must be suitable, and must take account of their needs and circumstances; and
- Customers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect.

Responsibilities of lenders to intermediaries and customers	**Responsibilities of intermediaries to lenders and customers**
A. agree customer relationships	
Lenders should: • Lenders must decide whether they will accept execution-only business from intermediaries. • Inform intermediaries of the basis and terms for ongoing contact with customers. Provide a description of the information customers will/will not receive. The detail of this is a matter for individual contracts.	**Intermediaries should:** • Decide whether they wish to operate the execution-only exceptions. • Agree with each customer the level and type of service that will be offered (advice or execution only), including status of intermediary, range of products covered and payment options. • Agree with each customer the nature and extent of ongoing service (if any) from the intermediary after the point of sale (including post sale service they can expect from the lender).

[1] The FCA published final guidance on Financial Incentives in January 2013 - http://www.fca.org.uk/static/fca/documents/finalised-guidance/fsa-fg13-01.pdf

B. Know your customer	
Lenders should: • Respond to requests from the customer or their intermediary appropriately, promptly and accurately, and explain any delays. If a query indicates the need for advice, recommend to the customer that they approach their intermediary. • Deal promptly and accurately with administration related queries and complaints raised by customers or the intermediary acting on their behalf.	**Intermediaries should:** • Identify the financial needs and circumstances of each customer, taking into account the customer's general financial awareness and attitude to risk. Gauge the understanding of financial issues in general and of risk in particular. • Obtain relevant information from the customer to assess the suitability of the product offered, including more complex sectors such as CBTL, foreign currency and high net worth customers. • Where the intermediary undertakes checks to confirm the identity of the customer and provides certified copy documentation to the lender, the intermediary will ensure compliance with the Joint Money Laundering Steering Committee guidance. • Consider the nature of the products or services offered by the lender and their suitability to the customer's needs, financial capacity and risk appetite. • Identify vulnerable customers and ensure that they are given appropriate assessment and guidance.

C. Deliver Product recommendation	
Lenders should: • Publish sufficient detail of their policies on identification, acceptable income types, affordability requirements, interest only, lending into retirement, debt consolidation, and product features to allow intermediaries to make informed decisions on whether an application will meet the lender's criteria. • It is good practice for lenders to provide their eligibility criteria in a structure that will allow intermediaries to evidence that they have met their obligations to only submit applications that meet those criteria, by including a date and/or a version number. • not structure or offer their commissions or procuration fees in a way that might influence intermediaries' advice.	**Intermediaries should:** • From the range offered, select and recommend an appropriate product based on knowledge of the customer. Firms must consider the following when assessing whether a product is appropriate to the customer's needs and circumstances: a) Are the customer's requirements within the lender's known eligibility criteria? b) Should the customer have an interest-only mortgage, a repayment mortgage or a combination of the two? c) Should the customer take out the mortgage for a particular term? d) Does the customer need stability in the monthly payments, bearing in mind the impact on the customer of

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significant interest rate changes in the future?
e) Is it appropriate for the customer to have their payments minimised at the outset?
f) Is it appropriate for the customer to make early repayments?
g) Is it appropriate for the customer to have any other features of a mortgage?
h) Is the mortgage appropriate based on the information provided by the customer on their credit history?
i) Is it appropriate for the customer to pay any fees and charges up front, rather than adding them to the mortgage?
• There are additional requirements where a customer requires advice in relation to debt consolidation or bridging loans.
• Sufficient evidence must be recorded to show how that product meets the customer’s needs and circumstances (and that the above criteria (a)-(i) have been considered) and why the firm has concluded that a particular mortgage is suitable for that consumer.
• Consider what impact the selection of a specific lender could have on the customer in terms of charges, ‘go to’/reversion rates, or possibly, where information is available to the intermediary, how efficiently and reliably the lender deals with the intermediary or customer at the point of sale (or subsequently, such as when queries/complaints arise or when the customer redeems the mortgage).
• Intermediaries should retain evidence to show that applications submitted meet the lender’s published criteria
• Ensure commission and other incentives do not encourage marketing or selling products to customers for whom they may not be appropriate.
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<td colspan="2">D. provide customer documentation</td>
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<td>Lenders should:
• Provide information destined for the customer that is fair, clear, balanced and not misleading. This should be in the</td>
<td>Intermediaries should:
• Consider when passing on lender materials to customers whether the information is understandable and</td>
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format of a key facts illustration (KFI+) or European Standardised Information Sheet (ESIS) • Take reasonable steps to ensure that the KFI + or ESIS is fair, clear, not misleading and accurate. • Clarify what information they expect, and what is acceptable, from the customer for income verification purposes. • Communicate and clarify what fraud controls are expected to be applied when verifying documentation.	complete. • Assist the customer to complete applications and gather supporting documentation, including evidence of income as requested by the lender • Employ appropriate anti-fraud controls • Ensure that the customer's consent is obtained before submitting the application, including any formal declaration required by the lender. • Review applications for completeness and ask customer to verify for accuracy before submitting to the lender. • Check whether the mortgage application information matches the information collected in the fact find. • Ensure the customer is aware of their disclosure responsibilities, including known changes to future income or expenditure, and the potential consequences if they do not disclose all information correctly. • Where the intermediary provides the KFI+ or ESIS it should include the items listed in the 'lender' column. • Provide adequate opportunity for customers to ask questions.
E. New business processing	
Lenders should: • State the information that is required to process an application and when additional information may be required, how this will be sought, and any costs. • Process completed applications promptly and tell the intermediary and customer of any additional information required, errors in the application or of any delays. • Quality and performance standards will be agreed on an individual basis between lenders and intermediaries and should be reflected in their contractual arrangements. • Quality in the intermediated mortgage market is most likely to be secured by an effective partnership approach between lenders and intermediaries.	**Intermediaries should:** • Help facilitate quick underwriting, including if necessary, collecting outstanding information or confirming the information supplied. • Quality and performance standards will be agreed on an individual basis between lenders and intermediaries and should be reflected in their contractual arrangements. • Quality in the intermediated mortgage market is most likely to be secured by an effective partnership approach between lenders and intermediaries.

F. Post Sale Analysis	

Lenders should:
• Review the practical relationship with the intermediary against the agreed terms of engagement. This includes:
  ○ collecting and analysing appropriate MI so the lender can analyse the sales made,
  ○ checking to ensure that the target market and distribution was as anticipated,
  ○ assessing the performance of the distribution channel(s)
  ○ using this information in future product design (this does not extend to assessing suitability of individual cases).
  ○ Assess overall performance of the intermediary
• Take action if it has concerns regarding a particular intermediary, e.g. ceasing to use a particular intermediary channel.
• If the lender chooses to remove a particular intermediary because of suspicion of, or proven involvement in fraudulent activity then lender should report the intermediary to the FCA via the Information from Lenders scheme.
• It is good practice for lenders to review the intermediaries on their panels on a regular basis and to have an appropriate appeals mechanism in place to deal with removals from panel. AMI and IMLA have set out a governance framework in their Lenders and Intermediaries' statement of shared principles to deal with this.
	Intermediaries should:
	• Conduct periodic checks, proportionate to the business, using MI to be satisfied that product sales are suitable and that agreed service commitments are being met.
	• Where the intermediary carries out ongoing monitoring of lenders and identifies poor customer treatment they may consider removing them from their panels and raise the issues with the FCA.
	• It is good practice for intermediaries to review the lenders they have on their panels and to have an appropriate appeals mechanism in place to deal with access to panels of lenders. AMI and IMLA have set out a governance framework in their Lenders and Intermediaries' statement of shared principles.

6. Post-sale

This section covers responsibilities for ongoing service and support after the point of sale. In addition to general principles and rules, regulated firms are also reminded of the sixth outcome of treating customers fairly: customers do not face unreasonable post-sale barriers imposed by firms to change product, switch lender, submit a claim or make a complaint.

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<tr><th>Responsibilities of lenders to intermediaries and customers</th><th>Responsibilities of intermediaries to lenders and customers</th></tr>
<tr><td colspan="2" align="center">A. provide ongoing information and service</td></tr>
<tr><td>Lenders should:
Provide customers with regular, accurate, timely, and understandable information (at least annually).
Periodically review products to ensure products are performing as expected. If not, consider what action to take such as whether or how to inform the customer of this, their option to seek advice and whether to cease selling the product.
Communicate contractual ‘breakpoints’ (such as the end of a long tie-in period) that could have a material impact on the customer and that the customer cannot reasonably be expected to know about or recall.
Communicate policy on post-contract variations particularly where lenders do not provide advice on post contract variations</td><td>Intermediaries should:
Comply with any contractual obligation to the customer, e.g. ongoing advice or periodic reviews.
Communicate contractual breakpoints that the customer cannot be expected to know about or recall.
Maintain contact and provide ongoing service to each customer as agreed at the outset.
Pass on any communications from the customer intended for the lender in a timely and accurate way.
Provide advice, and perform affordability assessments, on post contract variations as is required.</td></tr>
<tr><td colspan="2" align="center">B. query resolution</td></tr>
<tr><td>Lenders should:
Respond to requests from the customer or their intermediary appropriately, promptly and accurately, and explain any delays. If a query indicates the need for advice, recommend to the customer that they approach their intermediary.
Deal promptly and accurately with administration related queries and complaints raised by customers or the intermediary acting on their behalf.</td><td>Intermediaries should:
Respond to customers’ queries promptly and accurately, providing they are in the intermediary’s remit and act on their behalf in their dealings with lenders concerning administrative queries or complaints. Explain any delays.</td></tr>
<tr><td colspan="2" align="center">C. Handling complaints</td></tr>
<tr><td>Lenders should:
Establish, implement and maintain effective and transparent customer</td><td>Intermediaries should:
Establish, implement and maintain effective and transparent customer</td></tr>
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<tr><td>complaint-handling systems.
Where a customer’s complaint is against the lender, the lender should keep the customer informed and deal with the complaint promptly, accurately and fairly.
Where a customer’s complaint is against the intermediary, the lender should assist the customer by redirecting them, as appropriate, to the intermediary. The lender should provide any information they can to the intermediary which might assist in the investigation.</td><td>complaint-handling systems.
Deal with advice related complaints raised by customers promptly, accurately and fairly and keep the customer informed.
The broker should inform the lender if they have received a complaint from the borrower about the lender</td></tr>
<tr><td colspan="2">D. Mortgage redemption</td></tr>
<tr><td>Lenders should:
Act fairly and promptly if/when a customer wishes to redeem their mortgage. Keeping the customer and/or the intermediary informed of progress and explain any delays.</td><td>Intermediaries should:
Help facilitate the redemption by providing assistance to customers in contacting the lender if required.</td></tr>
<tr><td colspan="2">E. Mortgage arrears and possessions</td></tr>
<tr><td>Lenders should:
Possession is a last resort. Lenders must make reasonable efforts to contact customers in arrears and discuss forbearance options. Lenders should discuss appropriate options with customers based on their individual circumstances.</td><td>Intermediaries should:
Where contacted by the customer, consider appropriate available options, which could include:
Speaking to current lender to discuss options
Considering alternative financing options
Accessing government and local authority support schemes
Referring to debt counselling/adjusting specialist.</td></tr>
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7. Monitoring and Managing the Relationship to work toward good outcomes for customers

In support of these responsibilities and to establish and maintain an effective relationship through which a good service is provided to customers, each party (i.e. lenders and intermediaries) should consider:

1. The other party's approach to ensuring good outcomes for customers
2. Service Level Agreements for key mortgage sales processes
3. What management information may be shared to assist each party monitor its own effectiveness in serving customers and the quality of the relationship
4. How issues or problems identified by one party about the other, which affect delivery to customers, will be notified and escalated.
5. Agreeing what the contact with clients will be on cross selling rights and future business
6. That it is the intention of both parties to make best efforts to achieve good customer outcomes
7. The value of sharing information on performance and arrears with each other (and recognising that arrears were not necessarily reflective of advice but more likely to be around changes to personal circumstances).

8. Updating and revising the guidance document

The guidance document will be subject to regular review and, where applicable, will be amended in line with changes in the regulation of the mortgage industry. Any such changes will be subject to consultation with AMI, CML and IMLA members.

Revised September 2016