

# Terms of Business for Intermediaries

Effective from May 2018

## Loughborough Building Society Terms of Business for Intermediaries

The following are the general terms of business for intermediaries upon which the Loughborough Building Society intend to rely.

When you submit an application you will be deemed to have complied with them. Should you fail to comply The Loughborough Building Society reserves the right to remove you from its intermediary panel, irrespective of any other action taken.

### 1. Interpretation

In these Terms, the words 'we', 'us' and 'our' refer to Loughborough Building Society in relation to applications for our mortgage products (as applicable). The following definitions shall apply

**'Applicable Regulations'** means all laws, Regulations, Orders, directions from Regulators, including but not limited to, FSMA, the FCA Handbook, the CCA (to the extent applicable), the DPA, the Money Laundering Regulations 2007, the Terrorism Act 2000, the Proceeds of Crime Act 2002, the Bribery Act 2010 and the Mortgage Credit Directive Order 2015.

**'Applicant'** means a person or persons applying for any mortgage product or mortgage related service offered by Us.

**'Application'** means an application for a mortgage product or mortgage related service which has been completed by the Applicant and sent to Us, either by You or otherwise, for assessing and processing in accordance with these Terms of Business.

**'Appointed Representative'** means a person who has a contract with an FCA or a PRA authorised person (the **'Principal'**) which permits the Appointed Representative to carry on Regulated Activities for which the Principal has accepted responsibility.

**'Business Day'** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**'BTL Statement of Practice'** means the CML's Buy to Let Statement of Practice (as amended from time to time), a copy of which is available at [www.cml.org.uk](http://www.cml.org.uk).

**'CCA'** means the Consumer Credit Act 1974.

**'CML'** means the Council of Mortgage Lenders.

**'Complaint'** has the same meaning given to it within the FCA Handbook.

**'Complaints Procedure'** means each party's complaints processes and procedures for dealing with Complaints in compliance with DISP.

**'DISP'** means the dispute resolution: complaints sourcebook contained within the FCA Handbook.

**'DPA'** means the Data Protection Act 2018.

**'Fair Processing Notice'** means Our fair processing notice, a copy of which is available on our website and which You are required to acknowledge and agree to when you complete the Online Intermediary Registration and / or on each and every occasion that You submit an Application to Us.

**'FCA'** means the Financial Conduct Authority and any successor thereto.

**'FCA Handbook'** means the FCA's handbook of rules and guidance made pursuant to FSMA.

**'FSMA'** means the Financial Services and Markets Act 2000.

**'Illustration'** has the same meaning given to it within the FCA Handbook or if applicable, has the meaning given to 'Lending Illustration' within the Mortgage Credit Directive Order 2015.

**'MCOB'** means the Mortgages and Homes Finance: Conduct of Business sourcebook contained within the FCA Handbook.

**'Panel'** means persons, whether they be acting as introducers, intermediaries, Appointed Representatives or otherwise, whom are registered on Our panel for the purposes of submitting Applications on behalf of Applicants.

**'Permissions'** means authorisations, permissions, licences or consents required by Applicable Regulations, including, but not limited to, permission to carry on Regulated Activities under FSMA.

**'Personal Data'** has the same meaning as set out in the DPA.

**'PRA'** means the Prudential Regulation Authority and any successor thereto.

**'Regulated Activities'** has the same meaning given to it within the FCA Handbook.

**'Regulated Mortgage Contract'** has the same meaning given to it within the FCA Handbook.

**'Regulator'** means the FCA or the PRA or the Information Commissioner's Office or any other authority or regulator of activities carried on by You or Us.

**'Us'** or **'Our'** or **'We'** means Loughborough Building Society.

**'You'** or **'Your'** means you, whether you are acting as introducer, intermediary, Appointed Representative or otherwise and whether you are acting as principal or as agent (whether on behalf of an Applicant or otherwise) in accordance with these Terms of Business.

**1.1** A **'person'** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

**1.2** A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

**1.3** A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

**1.4** A reference to **'writing'** or **'written'** includes fax and e-mail.

**1.5** Any words following the terms **'including'**, **'include'**, **'in particular'**, **'for example'** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. Introductions**

**2.1** The Intermediary will not act as our agent when promoting our mortgage products or when introducing mortgage applicants to us and the Intermediary acknowledges and accepts that it does not have the authority to act on our behalf or to bind us in any way. The Intermediary will ensure that it informs any applicant for our mortgage products of this fact as soon as the Society is mentioned in discussion.

**2.2** Nothing in the Terms shall constitute an exclusive arrangement or appointment as between the parties and nothing shall prevent the Society from accepting mortgage Business from any other Intermediary, Business, person or organisation in any area, or from appointing any other business, person or organisation as Intermediary, as the Society shall from time to time see fit.

**2.3** Nothing in the Terms is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, nor authorise either party to make or enter into any Commitments for or on behalf of the other party.

## **3. Applications**

**3.1** Before submitting any Application to Us you will:

(a) verify the Applicant's identity in accordance with all Applicable Regulations and ensure that the Application has been fully and properly completed;

(b) provide your Privacy Notice, which complies with current DPA law, to the applicant and inform them that We will provide them with a copy of Our Privacy Notice when their application is received by Us.

(c) take all reasonable steps to ensure that the information the Application contains is in every material respect accurate, correct and not misleading and forward to Us any relevant documentation We require, as notified to You, from time to time; and

(d) ensure that all information, whether provided to the Applicant orally or in writing, including, but not limited to, any marketing literature, product and / or service information, whether such literature or information is provided by Us or otherwise, shall comply with the financial promotion rules contained within the FCA Handbook and any other requirement We notify You of from time to time.

**3.2** In relation to each Application, You shall:

(a) where an Application relates to a Regulated Mortgage Contract, provide the Applicant with all documentation required by, and in accordance with, MCOB, in relation to Regulated Mortgage Contracts, We will only accept Applications when You are providing Applicants with an advised sales service and providing

adequate explanations to the Applicant in accordance with MCOB, It is Your responsibility in this regard to ensure that all FCA rules on advised sales are complied with;

(b) where an Application relates to any other product and / or service, provide the Applicant with all documentation required by, and in accordance with, all Applicable Regulations including, without limitation, adequate explanations in accordance with the Mortgage Credit Directive Order 2015;

(c) not make any statements or representations to any Applicant which is inconsistent with the terms of Our products or services or any documentation issued by Us or issued on Our behalf, Including without limitation, any Illustration, To the extent that You breach this clause you will keep us indemnified in accordance with clause 10 Indemnity.

**3.3** We reserve the right at Our sole discretion to decline all or any Applications and We are not required to give a reason for doing so, unless Applicable Regulations requires otherwise.

**3.4** We will arrange all processing and administration of Applications. We will provide You with details of Our procedures as and when We deem necessary.

**3.5** All Applications must be submitted with any relevant monies due, We will not accept liability for delays caused by incomplete or inaccurate information provided by You and/or the Applicant. Prior to submission You must have taken reasonable steps to ensure the Application meets Our current lending criteria (where applicable).

**3.6** If You knowingly submit false information/documents or a fraudulent Application, We will remove You from Our Panel and advise other third parties, including, but not limited to, any financial networks, clubs or the FCA under the Information from Lenders Scheme

**3.7** We shall at our own cost keep the Intermediary supplied in a timely manner with up to date guidance, product literature, application forms and other relevant information in relation to our mortgage products.

**3.8** The Intermediary warrants and undertakes that it will only use up to date product information and literature, application forms or any other relevant information provided by us, in paper, through the relevant website, or in any other format.

#### **4. Compliance**

**4.1** You must either be authorised by the FCA (and the PRA if applicable) or be an Appointed Representative, and hold (and continue to hold, either directly with the FCA (and the PRA if applicable) or have authority through Your relationship with Your Principal) all necessary Permissions which are required for You to perform and lawfully fulfil Your obligations under or in connection with these Terms of Business and carry out all activities required in introducing Applicants to Us and in Your dealings with Applicants.

**4.2** You must notify Us immediately in writing if:

- (a) any of Your Permissions are withdrawn or terminated;
- (b) any of Your Permissions are suspended or amended;
- (c) You are investigated for any breach of the Applicable Regulations; or
- (d) You are investigated by any Regulator.

**4.3** You shall ensure that the FCA's principles of treating customers fairly will be followed and upheld at all times.

**4.4** Each party agrees to maintain and comply with their respective Complaints Procedures in handling Complaints covered by these Terms of Business.

**4.5** Each party shall co-operate with the other party and give the other party all reasonable assistance in handling any Complaint or with any dealings with the Regulator.

**4.6** All Complaints relating to You, Your employees, agents and/or sub- contractors covered by these Terms of Business which are received by Us shall be referred to You for handling in accordance with Your Complaints Procedure.

**4.7** All Complaints relating to Us, Our employees, agents and/or sub- contractors covered by these Terms of Business which are received by You shall be referred to Us for handling in accordance with Our Complaints Procedure.

**4.8** You must have our written approval before using Our logo, distributing any advertising, press release or marketing literature that refers to Us. Our approval of the copy means that we are happy with the form and content, but does not mean that it complies with any Applicable Regulations or codes of practice. It is your responsibility to check compliance.

**4.9** In accordance with the Guidance Notes for Financial Sector published by the Money Laundering Regulations (2017) and updated from time to time, covering customer identification requirements, we delegate to the Intermediary the verification of all original identification required in relation to mortgage applications.

## **5. Data Protection and use of data**

**5.1** Personal data (Data) on customers gathered by the Intermediary, and passed to us, shall be jointly owned by both parties. For the avoidance of doubt, each party may use the Data for sales and marketing purposes, in accordance with permissions obtained from the customer. Both parties will comply at all times with the provisions of the Data Protection Act 2018 (as amended from time to time) with regard to the Data, including maintaining appropriate notifications with the Information Commissioner.

**5.2** Only natural persons are subject to the Data Protection Act. We will use your personal data to complete our assessment of your Intermediary Registration Form.

Any data we hold about you and how you use our website (if applicable) may be used for management information purposes. It may also be shared with the management of your business (if relevant), the business for whom you are an Appointed Representative (if relevant), the FCA, Law enforcement agencies, courts and other organisations where that is necessary for the administration of justice, to protect vital interests and to protect the security or integrity of our business operations.

**5.3** We will use your customers personal data to assess their mortgage application and, if it is successful, in the ongoing maintenance of their mortgage account with us. Our policy in respect of personal data is available to them via our website, in our branch/agency offices and on request via post.

## **6. Fees**

**6.1** For each Customer who completes the purchase of a Mortgage Product from the Society following introduction by the Intermediary, the Society shall pay the Commission to the Intermediary at the agreed rate the Commission.

**6.2** The purchase of a Mortgage Product by a Customer from the Society is deemed to be complete on the Date of Completion.

**6.3** The Society shall pay the Commission to the Intermediary, Principal or mortgage network or club 7 days after the Date of Completion.

**6.4** The Society shall not accept any business from, nor pay any Commission to, any Intermediary that does not hold the appropriate licences, registrations or permissions with the FCA, or that does not comply at any time with the Regulations, or any applicable rules, laws, statutes or regulations.

**6.5** The Society shall not be liable to pay the Commission to the Intermediary where the Intermediary does not disclose its entitlement to the Commission to the Customer in the course of providing the Services.

**6.6** The Society shall be entitled to set off any outstanding Commission against any debt owed to the Society by the Intermediary.

**6.7** If any mortgage application submitted to us by the Intermediary is found to be fraudulent it will not be entitled to any Commission. If the Society discovers after the Date of Completion a mortgage application was fraudulent then the Intermediary will on demand repay any Commission already paid in respect of the fraudulent mortgage application.

## **7. Termination**

**7.1** The Agreement may be terminated:

**7.1.1** by either party at any time upon giving notice in writing; or

**7.1.2** in accordance with clauses 7.2 and 7.3 of these Terms.

**7.2** The Society will have the right to cancel the Agreement with immediate effect in the event that:

**7.2.1** the Intermediary commits any act of dishonesty, fraud or malpractice; or

**7.2.2** the Intermediary breaches any of the Terms; or

**7.2.3** the Intermediary engages in any conduct prejudicial to the interests or reputation of the Society; or

**7.2.4** the Intermediary fails or ceases to hold the appropriate licences, registrations or permissions with the FCA, or does not comply at any time with the Regulations, or any applicable rules, laws statutes or regulations; or

**7.2.5** the Intermediary is subject to investigation or discipline by the FCA or other Regulator.

**7.3** The Agreement will automatically come to an end in the event of:

**7.3.1** the Intermediary's death; or

**7.3.2** the Intermediary's bankruptcy; or

**7.3.3** the Intermediary's winding up; or

**7.3.4** a petition by the Intermediary's creditors; or

**7.3.5** the Intermediary entering into arrangement with its creditors; or

**7.3.6** the change of control or ownership of the Intermediary.

## **8. Anti-Bribery and Corruption requirements**

**8.1** The Intermediary undertakes to comply with and perform its services in accordance with the Bribery Act 2010 and any other applicable anti-bribery or anti-corruption laws.

**8.2** The Intermediary will not act, nor omit to act in any way that will lead to us being in breach of the Bribery Act 2010 or any other applicable anti-corruption laws.

**8.3** The Intermediary will have its own anti-bribery and corruption policy or equivalent controls and ensure that its employees and sub-contractors comply with these obligations. The Intermediary will, if requested and as soon as reasonably practicable, provide us with relevant access and information in relation to their anti-bribery and anti-corruption policies and controls.

**8.4** We may, with immediate effect, cease to undertake any further business and terminate these Terms with the Intermediary if the Intermediary or any person employed by it or acting on its behalf (whether with or without the knowledge of the Intermediary) is in breach of the Bribery Act 2010 or of any other applicable anti-bribery or anti-corruption laws.

## **9. Confidentiality**

**9.1** The Intermediary will, at all times, keep confidential all information relating to the administrative, financial, technical, marketing or operational arrangements or future business strategy of our business that the Intermediary obtains in the course of submitting mortgage applications to us and dealing with these applications. Other than the disclosure of information to any relevant regulatory authority, at its request, the

Intermediary agrees not to disclose any of this confidential information to any third party, without our prior written consent.

## **10. Indemnity**

**10.1** You shall keep Us indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Us or any of Our respective directors, officers, agents, employees, members and successors in interest as a result of or in connection with any breach by You, Your employees, Your agents or Your subcontractors of these Terms of Business.

## **11. Limitation of Liability**

**11.1** Except where it is required to do so by the FCA, or in accordance with Regulatory/Statutory requirements, the Intermediary specifically undertakes at all times to:

**11.1.1** keep confidential any of the Society's confidential information (including but not limited to Customer Data, this document, any lists or specific customer details, and information relating to the Society's business or affairs); and

**11.1.2** not disclose (whether or not for profit) such lists or information to any competitor of the Society or any other business, person or organisation during the Term, or at any time following the date of termination of the Agreement.

**11.2** The entire liability of the Society to the Intermediary under or in connection with the Agreement shall not in any event exceed the amount of the Commission paid by the Society to the Intermediary for the provision of the Services.

**11.3** The Intermediary agrees to indemnify and keep the Society fully and effectually indemnified from and against any loss, claim, damage, reasonable expense, cost, award or liability whatsoever, incurred or suffered by the Society as a result of negligence, fraud or any default by the Intermediary (or its employers, agents or representatives) of its obligations, however arising, under the Agreement.

**11.4** Except in respect of death or personal injury caused by the Society's negligence, or as expressly provided in the Agreement, the Society shall not be liable to the Intermediary by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Agreement, for any loss of anticipated savings, business revenues or profits (whether categorised as direct or indirect), or any indirect, special or consequential loss (including losses arising from

## **12. Monitoring and Audit**

**12.1** We shall have the right at any time or times, upon giving reasonable notice to the Intermediary, to examine all files and records pertaining to mortgage applications submitted to us through the Intermediary, either by entering the Intermediary's premises, by our auditors entering the Intermediary's premises or by us or our auditors requesting information and/or documentation from the Intermediary. The Intermediary shall comply with all reasonable requests from us for information and/or documentation.

## **13. Insurance**

**13.1** You must hold (and continue to hold) professional indemnity insurance cover of at least £1million per annum for a single and in aggregate claim or professional indemnity insurance cover of an amount equal to or more than that which is required by the FCA Handbook from time to time, whichever is the higher, with a reputable insurance company, to cover any liability You may incur under these Terms of Business. On Our request, You shall produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of such insurance.

## **14. Variation**

**14.1** We reserve the right to alter these Terms of Business at any time

## **15. Governing Law**

15.1 These Terms of Business, and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

We may monitor and/or record your telephone conversations with the Society to ensure consistent service levels (including colleague training). If you are contacting us by email and not using our secure email facility, please remember not to send any personal, financial or banking information because the information isn't secure.

Loughborough Building Society is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority. Financial Services Register number 157258.