

**HSBC UK Bank plc trading as first direct**

**Mortgage Lending Instructions and Guidance Notes for  
England & Wales, Scotland & Northern Ireland**

Version 1 – 2023

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## 1.0 Lender Requirements & Transfer of Business

References to “HSBC”, the “Bank”, “we” “us”, and “our” means HSBC UK Bank plc trading as first direct.

References to “**borrower(s)**” includes “**mortgagor(s)**” unless mentioned otherwise by us in this document. References to “**Guidance Notes**” mean the instructions and guidance contained in this document ‘Mortgage Lending Instructions and Guidance Notes for England & Wales, Scotland & Northern Ireland’

### 1.1 Lender Requirements

We instruct you to act in accordance with the UK Finance Mortgage Lenders’ Handbook for conveyancers (the ‘**Handbook**’). The general provisions of Part 1 of the Handbook and the HSBC UK Bank plc trading as first direct lender specific requirements, whichever are appropriate, in Part 2 of the Handbook must be followed. The Handbook can be found at <https://lendershandbook.ukfinance.org.uk/lenders-handbook/>

We also require that you act in accordance with these Guidance Notes and we certify that these comply with the requirements of the SRA Code of Conduct 2019, referred to in the SRA Standards and Regulations 2019, published by the Law Society and with the Council for Licensed Conveyancers (CLC’s) Code of Conduct 2011 (in respect of England & Wales) and with the requirements of the Law Society of Scotland Standards for solicitors (in respect of Scotland) and with the Solicitors Practice Regulations 1987 (as amended) and the Home Charter Scheme as published by the Law Society of Northern Ireland (in respect of Northern Ireland).

You must hold a current practising certificate, have professional indemnity insurance that complies with the requirements set out in SRA Indemnity Insurance Rules 2019 or the Solicitors Practice Regulations 1987 (as amended) and you must not be acting as a “freelance solicitor” as described in Regulation 10.2 of the SRA Standards and Regulations 2019 (or any equivalent as may apply from time to time in Scotland or Northern Ireland).

The Guidance Notes are, wherever possible, in the same chronological order as in the Handbook.

Any query outside of the scope of these Guidance Notes will need to be referred to the Bank using the usual referral process.

### 1.2 Transfer of Business from HSBC Bank plc to HSBC UK Bank plc on 1st July 2018

If you receive a requisition from the Land Registry (or Registers of Scotland or the Land Registry of Northern Ireland, as appropriate) querying a registration or discharge of a security lodged shortly after the effective date of the Bank’s ring-fencing transfer scheme which became effective on 1 July 2018 and, in particular, with regard to the party name shown in the disposition submitted for registration or to appear on the register. In such a case, firms may be required to provide a copy of the ring-fencing transfer scheme to explain, where appropriate, the change of entity. A copy of the scheme is available at [https://investments.hsbc.co.uk/pdf/sanction\\_hearing\\_court\\_order.pdf](https://investments.hsbc.co.uk/pdf/sanction_hearing_court_order.pdf)

## 2.0 General

### 2.1 Mortgage Deed / Standard Security (also referred to as Legal Charge)

All mortgage deeds and other documents should be obtained from Legal instructions for moving home, located through <https://www2.firstdirect.com/help/useful-information/legal-instructions/> .

Where the mortgage offer includes more than one loan, the Bank only requires one Mortgage Deed / Standard Security.

## **2.2 Conveyancer/Solicitor Acting for both Seller and Purchaser**

The Bank does not usually allow the same solicitor or conveyancer, or the same firm of solicitors or conveyancers, to act for both seller and purchaser except that you may act but only provided you consider there is no conflict of interest and you are acting within the guidelines issued by your applicable regulatory authority or body, the Solicitors Regulation Authority or the Council for Licensed Conveyancers (in respect of England & Wales), the Law Society of Scotland (in respect of Scotland), the Home Charter Scheme or the Law Society of Northern Ireland (in respect of Northern Ireland)

## **2.3 Freelance Solicitors**

If the solicitor acting for any party in the transaction, to include but not limited to the Seller in a purchase transaction, and a Transferor in a Transfer of Equity transaction, is a “freelance solicitor” as described in Regulation 10.2 of the SRA Standards and Regulations 2019 (or any equivalent as may apply from time to time in Scotland or Northern Ireland) you must report this to us and await further instructions.

## **2.4 Property Address Incorrect**

Please advise the Bank of any discrepancy between the property address stated in the mortgage offer, the valuation report (if provided by the Bank) and that appearing in any registers or legal documents.

The mortgage offer will not need to be re-issued by our Bank if only the postcode is incorrectly stated.

## **2.5 Borrower Name Incorrect**

### **2.5.1 General Policy**

You must notify us if the borrower’s(s’) first or last names do not match those which appear in the mortgage offer and we will confirm if a revised mortgage offer will be sent by us.

Unless you specifically require this, the mortgage offer will not be reissued where:

- a one letter alteration is required to the first or last name
- the first name is an acceptable abbreviation (please see 2.5.2 below) and is the name by which the borrower wishes to be known

We do not need to be advised if a middle name has not been stated or is incorrectly stated in the mortgage offer, and we will not issue a new document to include a middle name.

### **2.5.2 Acceptable Abbreviations – first names**

Ann for Annie or Annette

Beccy for Rebecca Bert for Edward Chas for Charles

Chris for Christopher Dave for David Debbie for Deborah Ted for Edward

Fi for Fiona

Gert for Gertrude

Izzy for Isabella

Katy or Kate for Katherine

Jim for James  
Liz for Elizabeth  
Molly or Madge or Meg for Margaret  
Nat for Nathaniel or Natalie Pat for Patricia or Patrick Sue for Susan or Suzanne Steve for Stephen  
or Steven Tom or Tommy for Thomas Rob for Robert  
Vicky for Victoria  
Bill for William

## 3.0 Searches and Reports

### 3.1 Bankrupts – discharged and undischarged

**England & Wales and Northern Ireland only.** If the bankruptcy search shows that the Bank's borrower(s) has or have been discharged from bankruptcy, you should cancel the entries and check that there is a Certificate of Discharge. If the Bankruptcy Order was more than 5 years ago, check that the entry in the Land Charges Register has been cancelled or arrange cancellation of the entry.

If the borrower is an undischarged bankrupt, you must confirm that the Trustee in Bankruptcy is happy for the Bank to continue the lending and that the Trustee consents to this. Please forward the letter from the Trustee to the Bank.

In all cases, you are to ensure that the legal estate and equitable interest in the property have re-vested in the borrower(s).

**Scotland only.** If the Search in the Register of Inhibitions shows, that the Bank's borrower(s) has or have been discharged from sequestration, an Inhibition or a Trust Deed, you should ensure there is a relevant Discharge.

If there is an undischarged Trust Deed or Inhibition against the borrower, you must confirm that the Trustee in Bankruptcy or Accountant in Bankruptcy is happy for the Bank to continue the lending and that the Trustee in Bankruptcy or Accountant in Bankruptcy consents to this. Please forward the letter from the Trustee in Bankruptcy or Accountant in Bankruptcy to the Bank.

In all cases, you are to ensure that the legal estate and equitable interest in the property have re-vested in the borrower(s).

### 3.2 Coal Mining Reports

#### 3.2.1 Raising Points on the Report

When submitting reports please highlight any specific matters that you wish the Bank to consider.

If any of the following matters appear in the report, these are acceptable to the Bank and therefore do not need to be referred, provided that the customer is happy to proceed:

- a) 'Past Underground Mining' indicating that 'ground movement should by now have ceased'; or
- b) 'Future Underground Mining' indicating that 'coal reserves exist in the locality, and could be worked in the future'; or
- c) 'In addition you may wish to know that the property is in an area where coal is believed to exist at or close to the surface that may have been worked at some point in the past';

### **3.2.2 Report not Necessary**

If the Bank has provided you with a valuation report and you consider that a Coal Mining Report is not necessary even though the valuer has recommended that one be obtained, the Bank will rely upon your professional judgment. If the valuer has made the Coal Mining Report a requirement and has stated that his valuation amount is subject to a satisfactory report, then you must advise the Bank.

### **3.2.3 Non-Standard Reports**

Any non-standard mining reports (e.g. Cornish Tin Mining) with adverse entries need to be referred to the Bank. The Bank will respond to the entries and their acceptability or otherwise.

## **3.3 Chancel Check Reports (England & Wales only)**

The Bank relies upon your professional judgment to protect the Bank's security and expects you to arrange suitable indemnity insurance for the full market value of the property if you consider this to be necessary.

## **4.0 Good and Marketable Title**

### **4.1 Absolute and Good Leasehold Title (England & Wales and Northern Ireland only) Ownership without exclusion of indemnity (Scotland only)**

You must advise the Bank if the title to the Property is good leasehold title and notify the Bank of any indemnity insurance arranged. The Bank will respond to you and advise of the acceptability or otherwise of the title and whether the title covered by indemnity insurance is acceptable.

**Scotland only.** The title to the Property should be outright ownership without exclusion of indemnity. Where the title is leasehold, and does not meet the criteria to convert to ownership under the Long Leases (Scotland) Act 2012, you must contact the Bank for further instructions.

### **4.2 Sub-sales including back-to-back transfers & contract assignments**

We will not lend when the property is being purchased via a sub-sale transaction (this includes back-to-back transfers and assignment of contracts)

## **5.0 Other Arrangements**

### **5.1 Biomass Boilers and other Renewable Heat Incentive Schemes**

Please contact the Bank for further instructions and await its confirmation that it is happy to proceed.

## **6.0 Restrictions on Use and Occupation**

### **6.1 Agricultural Occupancy Restrictions**

Properties with agricultural restrictions are not suitable for residential mortgage borrowing from the Bank.

## **7.0 Second Charges**

With the exception of a charge to secure an Armed Forces Help to Buy Loan, the Bank does not permit any second charges to secure funds lent for the source of deposit or for any other purpose.

## **8.0 Rent Charges (England & Wales only)**

Any rent charge imposed upon the property which would take priority to the Bank's mortgage and confer a right of re-entry will be unacceptable.

Where the property (whether freehold or leasehold) is subject to a rent charge, if the rent is payable in respect of other land as well as the property to be mortgaged, and has not been legally apportioned, it will be unacceptable to the Bank.

## **9.0 Insolvency Considerations**

### **9.1 Purchase from a Relative/At an Undervalue**

The Bank will rely upon your professional judgement as to whether you consider that indemnity insurance should be obtained.

### **9.2 Purchase from a Company**

The Bank is happy to proceed providing you are satisfied that the company is properly constituted, solvent, approves the transaction and the transaction is at arm's length. If you are not satisfied with any aspect of the transaction, you must report any concerns to us.

## **10.0 Powers of Attorney**

### **10.1 General Requirements**

- a) If some or all of the documentation relating to the property transaction is to be signed under a power of attorney, please ensure you comply with the following requirements:
  - 
  - i) notify the Bank if an attorney is to sign the mortgage deed and provide a specimen signature of the attorney.
  - ii) ensure the form of power of attorney, appropriate to the circumstances, is granted by the donor which is valid under the current law.
  - iii) ensure the attorney is given the necessary powers to act on the donor's behalf in the proposed transaction(s), in particular ensuring that the attorney is authorised to execute the loan documentation as well as the mortgage deed. Please also consider whether it is necessary in the circumstances to ensure that the attorney has power to execute third party security (if the charge is the Bank's A2 Series Legal Mortgage); and
  - iv) ensure all documents to be signed under the power of attorney are validly executed under it.
- b) Where an attorney, appointed under a general, a lasting or an enduring power of attorney, is executing a mortgage on behalf of the mortgagor, you must ensure that (where appropriate) the execution clause for the attorney reads (or is amended to read) as follows:
  -



*“Signed as a Deed by [name of donor of the power], who has a legal estate and a beneficial interest, in the Property at the date hereof, acting by [his/her] attorney [name of attorney] in the presence of:”*

**Scotland only.** *“Signed by [name of Attorney] as Attorney for [name of donor of Power] per a Power of Attorney dated [date of Power of Attorney] in the presence of:”*

## **11.0 Stamp Duty Land Tax, Land Transaction Tax or Land and Buildings Transaction Tax Mitigation Schemes**

These schemes are not acceptable to the Bank.

## **12.0 [Intentionally blank]**

## **13.0 Other Occupiers**

### **13.1 Letter of Consent and Postponement by Deed (excluding Scotland)**

#### **13.1.1 General Requirements**

The Bank will rely on you to identify anyone who is required to execute a Letter of Consent and Postponement by Deed.

The Letter of Consent and Postponement by Deed will ensure that the consenter will postpone any interest they may have in the property (including any rights of occupation) to the Bank and the Bank’s mortgage.

All fees relating to the legal advice and the execution of the Letter of Consent and Postponement by Deed are payable by the consenter.

The completed Letter of Consent and Postponement by Deed and the Certificate of Execution should be returned to the Bank with the Title Information Documents.

#### **13.1.2 Common Errors**

When completing the Letter of Consent and Postponement by Deed please ensure the consentors are aware of the following:

- a) an independent person not related to the borrower or the transaction must witness the original signatures.
- b) the form must not be marked with correction fluid.

## **14.0 Independent Legal Advice (ILA)**

### **14.1 General Requirements**

Please refer to paragraph 8.1 of Parts 1 and 2 of the Handbook. The Bank will rely on you to identify anyone who requires ILA.

You must take reasonable steps to satisfy yourself as to the identity of your Client giving the security and of any other who is to sign any other document that we require e.g., a letter of consent and

postponement. This includes checking their identity against a valid full passport or current full UK driving licence or other documentation as specified by us in writing. A duplicate driving licence is not acceptable.

## **14.2 Certificate of Execution for Independent Legal Advice**

Where ILA is required, the Solicitor, Legal Executive or Licensed Conveyancer (in each case, the “**Lawyer**”) giving the ILA should complete a Certificate of Execution.

It is acceptable to the Bank if this advice is given in writing and not necessarily by a personal attendance with the lawyer but you must use your professional judgment as to which you consider appropriate taking into account the specific circumstances and needs of your client. The word “attended” in the Certificate of Execution in this context includes written advice and is not limited to a personal attendance in the presence of the Lawyer. The Certificate of Execution should be amended if the advising Lawyer has not witnessed the mortgagor’s signature

## **14.3 Certificate of Execution for Independent Legal Advice for Letters of Consent and Postponement by Deed (excluding Scotland)**

The Bank expects you to write to any adult occupier or beneficial owner (including any borrower who is not a mortgagor) that you identify to recommend that they take ILA.

If they choose to take ILA, a Letter of Consent and Postponement by Deed and a Certificate of Execution for Letter of Consent and Postponement by Deed is required for each adult occupier/beneficial owner occupier.

If they decline ILA, a Letter of Consent and Postponement by Deed, independently witnessed is required for each adult occupier/beneficial owner occupier and an Independent Legal Advice Waiver.

## **15.0 Indemnity Insurance**

### **15.1 Defective Title Indemnity Insurance**

Defective title indemnity insurance should be arranged for the amount of the mortgage lending in the case of a possessory title or the full market value of the property in all other cases. You should advise the borrower(s) that this may not totally reimburse them of the costs of purchasing the property in the event of a claim.

### **16.0 [Intentionally blank]**

## **17.0 Signing and Witnessing of Documents**

### **17.1 The Witnessing of Documents by Third Parties**

If the mortgage deed can only be witnessed by a third party:

- a) the Bank is happy to proceed provided that the witness is not a party to the loan or a relative of the depositors, and you have explained the legal implications of signing the document;
- b) if the customer is abroad, a local qualified lawyer may witness the signature.

However, they cannot give advice on the contents of the mortgage deed unless they are qualified in the jurisdiction of the governing law of the mortgage deed. A neighbour or any other third party may also witness the document, provided sub-section (a) above is satisfied.

## 18.0 Request for Documents

### 18.1 Deeds and/or Documents Required by Solicitor/Conveyancer – Solicitor/Conveyancer Undertaking

If any title deeds and/or other documents are required by you for mortgage reasons, you must provide an undertaking to the Bank as follows:

- a) you undertake to hold them on the Bank's behalf and return them on demand in the same condition in which they were received;
- b) you undertake to return them without the property to which they relate or any interest therein being, to your knowledge, in anyway charged, conveyed, assigned, leased, unencumbered, disposed of, or dealt with, unless the Bank gives you instructions otherwise;
- c) in the event of completion of the instructed transaction you undertake:
  - i) to pay the amount sufficient to redeem the Bank's mortgage;
  - ii) if the application relates to net sale proceeds, to pay the net sale proceeds to the Bank;
  - iii) if the title deeds or other documents relate to another property in addition to that referred to in the instructions, to return the documents to the Bank suitably endorsed or noted.

## 19.0 Declaration/Deed of Trust

### 19.1 General Requirements

Where a Declaration of Trust is being made, you must send us a copy of the draft deed at least 10 working days prior to completion for approval. You must not proceed without such approval.

You are responsible for ensuring that the content of a Declaration of Trust shall not adversely affect HSBC's rights, remedies and interest as mortgagee and its security over the property (including the Bank's first charge priority). Nothing in this guidance note shall constitute a waiver of the duty and obligations placed on HSBC's legal adviser.

Reference to "HSBC" and "the Bank" means **HSBC UK Bank plc trading as first direct**.

1. The Declaration of Trust must not be drawn up in conjunction with a Will Trust or Family Trust.
2. **England & Wales and Northern Ireland:** If the equitable interest in the property is to be held as Tenants in Common and any party that is not a party to the mortgage is gaining an equitable interest in the property, a Declaration of Trust by way of deed ("**the Declaration of Trust**") is required. If the intention to enter into a Declaration of Trust is known prior to

completion of the mortgage, the Declaration of Trust should be entered into on the same day as the Bank's mortgage or legal charge. In all cases (regardless of when the Declaration of Trust is entered into), the Declaration of Trust must take effect in all respects subject to the Bank's Legal Mortgage (see definition at 4 below) and this must be expressly stated in the Declaration of Trust; or

2. **Scotland:** If any party that is not a party to the Bank's Legal Mortgage (see definition at 4 below) is gaining an interest in the property, a Declaration of Trust by way of deed ("**the Declaration of Trust**") is required. If the intention to enter into a Declaration of Trust is known prior to completion of the Bank's Legal Mortgage, the Declaration of Trust should be entered into on the same day as the Bank's Legal Mortgage or charge.
3. In all cases (regardless of when the Declaration of Trust is entered into), the Declaration of Trust must take effect in all respects subject to the Bank's Legal Mortgage and this must be expressly stated in the Declaration of Trust.
3. **England: Sole legal proprietor – it is not acceptable for a sole legal proprietor enter into a Declaration of Trust. Land Registry rules require a Form A. Restriction in such instances; this would prevent the registration of the Bank's Legal Mortgage; or**
3. **Scotland and Northern Ireland: Sole legal proprietor – it is not acceptable for a sole legal proprietor to enter into a Declaration of Trust.**
4. **England & Wales and Northern Ireland:** On completion, the Bank requires a fully enforceable first charge by way of legal mortgage or a first ranking mortgage or legal charge over the property executed by all owners of the legal estate (the "**Bank's Legal Mortgage**"); or
4. **Scotland:** On completion, the Bank requires a fully enforceable first ranking standard security (the "**Bank's Legal Mortgage**") over the property executed by all owners of the heritable property.
5. If the Declaration of Trust makes any reference to the amount of the mortgage advance or to the mortgage balance, this will need to be removed and replaced with the words "**to secure the mortgage debt defined therein**". The Declaration of Trust will need to define the '**mortgage debt**' as "all of the money which the borrower(s) owe the Bank under the mortgage at any time. This will include:
  - (a) the amount outstanding on each loan; and
  - (b) any unpaid interest, fees, expenses and any early repayment or other charge.
6. If the Declaration of Trust includes reference to a specific lender and its mortgage, the provision of the clause must be sufficiently wide to make it clear that this includes any lender and any mortgage secured on the property.
7. Any Declaration of Trust that confers a life time interest, or a tenancy for life, is unacceptable, all provisions in the Declaration of Trust relating to any such interest, including provisions relating to the way the Declaration of Trust governs it, are not to apply and must be removed in their entirety.
8. If the Declaration of Trust makes reference to any monies received from a claim under a buildings insurance policy, any monies received must be used in accordance with the Bank's Mortgage Loan Terms and Conditions.

9. Prior to completion of the Bank's Legal Mortgage, all draft and existing Declaration of Trust must be referred to the Bank for review and all must incorporate the key provisions in this guidance.
- 9(a). **"Net Proceeds of Sale"** shall mean the sale proceeds in the event of a sale, remaining once the mortgage debt has been repaid, and then legal fees, selling agent's commission and valuer's fee, (if any) and any other related sale fees and costs have been settled.
- 9(b). No monies shall be paid to the [*Trustees*] until the Bank's Mortgage Debt has been repaid in full.
10. **England & Wales and Northern Ireland:** The Bank's standard form of Letter of Consent and Postponement by deed shall be required from any person with an equitable interest if such person or persons will not be party to the Bank's Legal Mortgage.
11. **England & Wales and Northern Ireland:** If a restriction (or inhibition) is to be registered on the title (or folio(s)) to the property to protect the trustees' equitable interests, the restriction (or inhibition) must not affect, the registration of the Bank's Legal Mortgage, Bank's ability to sell the property as mortgagee in possession and/or the ability of the purchaser deriving title from a disposal by the Bank to register the purchase at the Land Registry or the Land Registry of Northern Ireland, as appropriate.
12. **Declarations of Trust that do not create a third party interest** – where the only parties to a declaration of trust are the borrowers who will be mortgagors under the mortgage and no third party interest is created, the Bank shall not insist on the inclusion of points 5, 9(a) and 9(b) above, **provided the Declaration of Trust makes it clear that the Bank's Legal Mortgage/charge takes priority to the interest of the borrowers.**

## 20.0 eDS1 Forms

### 20.1 General Requirements

All Transfer of Title cases will require a new security to be taken.

The existing charge will automatically be released in England & Wales by the eDS1 Form once you register the new Legal Mortgage at the Land Registry.

**Scotland only:** The existing security should be discharged once the new security is registered at Registers of Scotland.

## 21.0 Buildings Insurance

### 21.1 General & Additional Requirements for Mortgage Lending £5 million and over

We require the property to be insured against all the usual risks to its full replacement value. We do not require a copy of the Buildings Insurance to be provided to us unless the mortgage amount is £5,000,000.00 or above. If the mortgage amount is £5,000,000.00 or above, we will not complete until a copy of the Buildings Insurance policy is held.