

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

### **INSTRUCTIONS AND GUIDANCE NOTES TO SOLICITORS AND LICENSED CONVEYANCERS**

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**We certify that these instructions and Guidance Notes ("Instructions") have been prepared to 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.**

**These Instructions cover a variety of situations and not all will apply to the case concerned. It is for you to apply them accordingly.**

## **1 GENERAL INSTRUCTIONS**

You are instructed to act on behalf of us on the terms set out in these Instructions.

(a) "Your Client" means the Borrower / Mortgagor / Consensor who is giving the Security that we require.

(b) "Security" means the Mortgage security which you are instructed to take for us.

(c) "Property" means the freehold (including commonhold) and/or leasehold property being given as Security.

(d) "Mortgage Offer Document" means the formal loan agreement under which we provide the Mortgage.

(e) "Mortgage" means the mortgage or other loan which we make available to the Mortgagor or Borrower named in the Mortgage Offer Document.

(f) "Transfer Instructions" means those referred to in section 11.

1.1 The guidance contained in these Instructions is intended to assist you in the discharge of your responsibilities to us and does not in any way limit or reduce your responsibilities either to us or to your Client. You are not by these Instructions constituted our agent in the taking of the Security.

1.2 You must hold a current practising certificate, have professional indemnity insurance that complies with the requirements set out in SRA Indemnity Insurance Rules 2019 and you must not be acting as a "freelance solicitor" as described in Regulation 10.2 of the SRA Standards and Regulations 2019.

1.3 You must recover all your costs and disbursements including any stamp duty and registration fees from your Client whether or not the matter is completed. Your obligation to comply strictly with these Instructions is not dependent or conditional upon payment of your costs and disbursements by your Client.

1.4 You must not act for the seller / landlord in any transaction as well as the buyer / tenant unless we agree and your professional rules allow.

1.5 You must comply with any general and special conditions which we state require the confirmation of a legal adviser and which relate to our Security and/or to its enforceability as shown in any Mortgage Offer Document enclosed with these Instructions. The Mortgage Offer Document does not restrict what is secured by our Security which, unless stated, does not secure only those facilities. All money and liabilities both present and future are secured as explained in section 6 below.

1.6 Having regard to our instructions you must ensure that the correct form of Security is taken for that which is to be secured. In accordance with paragraph 4.2 of these Instructions you should take

reasonable steps to satisfy yourself that the person(s) executing the Security is/are in fact the person(s) as named in the covering letter.

1.7 You must ensure the Mortgagor has a good and marketable title to the Property over which Security is being given.

1.8 In addition to any specific requirements in these Instructions you will report to us, as soon as possible, any matter arising which may adversely affect our Security. This includes the following:

(a) Any inability to comply with the matters detailed in these Instructions which apply to the case concerned or any term that we ask you to confirm in any enclosed Mortgage Offer Document.

(b) After investigating title, any differences in the parties named in any covering letter with these Instructions or a Mortgage Offer Document and the parties who on completion of the transaction will be the owners of the Property.

(c) Any Security which will remain in place or the granting of other security at completion.

(d) Report if your Client is acquiring the property from a Seller who has owned the property for less than 6 months and provide appropriate advice.

(e) Report to us if you become aware that your Client is not providing the balance of the purchase price from their own funds or is proposing to give a second charge over the property.

We do not accept deposits sourced from unsecured credit facilities or personal borrowing.

We do not require you to report a deposit gifted by a family member (unless the donor is also the Vendor) provided that you are satisfied that the following conditions are met:

The gift must be from an immediate family member(s), who confirms it is unconditional and not repayable. Gifts from third parties, including friends and employers are not acceptable.

The family member(s) must be related to one of the borrower(s) as follows; a spouse, civil partner, co-habitee, parent, sibling, child, step-parent, step-child, grandparent, grandchild, parent-in-law, or child-in-law.

Where a gifted deposit meets the above conditions and a Declaration of Trust is not being made, you must obtain and retain on your file a letter, addressed to you, signed by each donor which confirms the following information:

- The name and address of the family member gifting the deposit
- Their relationship to the borrower(s)
- The name and current address of the borrower(s)
- The address of the property being purchased
- The amount being gifted and the source of the funds
- That the gift is not repayable and the donor(s) providing the gift will not acquire an interest in the property
- The letter must be obtained prior to completion and dated no more than 3 months of this date.

(f) 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. Please

see our further Instructions at paragraph 7.9 (Trusts) on Declarations of Trust and the interests of persons who are and/or are not party to the Mortgage.

(g) In addition to your usual searches, you must ensure clear bankruptcy searches are obtained against all parties contributing to the balance of the purchase price. You must notify us if you cannot obtain clear searches and not proceed without our written confirmation.

(h) Any doubt as to the extent of the Property to be mortgaged or rights of access or the benefit of other necessary easements.

(i) Any letting of the Property being given as Security unless we have told you we know of it.

(j) Any planning scheme or other proposal (for example road widening, redevelopment or clearance) which may affect the Property or its use.

(k) Any rights of pre-emption or options granted or affecting the Property

(l) Any other circumstances which after investigating title and making all appropriate searches and enquiries in your professional opinion you consider might affect our decision to provide the Mortgage and/or agree to the transaction.

1.9 In any case where you are unable to continue to act for us you must advise us immediately in writing and return all documents enclosed with these Instructions.

1.10 Once the Mortgage is drawn the Borrower will be charged interest from the date of drawdown at the rate specified in the Mortgage Offer Document. If completion is delayed you must return the advance monies to us within 3 working days of receipt, failing which we will require an interest payment from you from the date of receipt of the monies to the date of payment.

1.11 Any monies comprising the Mortgage which you receive will only be applied by you in respect of the transaction in which you are instructed. These monies will (unless otherwise notified by us) be held in trust for us and are to be held to our order and returned on demand.

1.12 If we advance any monies in respect of a deposit, the monies will be held (i) subject to paragraph 1.11 above and (ii) by the Seller's solicitor as stakeholder.

1.13 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 you must report this to us and await further instructions.

## **2 CERTIFICATE OF TITLE (the "Certificate of Title")**

2.1 You are required to give the Certificate of Title in the form on our first direct website address below and in unqualified terms. It is to be sent to us at least six (6) working days before the funds are required. The Certificate of Title can be located under Legal Instructions for Moving Home, <https://www2.firstdirect.com/help/useful-information/legal-instructions/>.

2.2 The Certificate of Title must be signed by a Solicitor, Legal Executive or Licensed Conveyancer (employed in the Solicitors' practice) who will be deemed authorised to sign it. A Licensed Conveyancer (not employed in a Solicitors' practice) may only give the Certificate of Title for house purchase, transfer of equity and remortgage transactions.

2.3 We reserve the right to refuse to allow the Mortgage to be drawn or execute any document relative to the transaction unless we have received the original properly completed Certificate of Title.

### **3 CERTIFICATE OF EXECUTION (the “Certificate of Execution”)**

3.1 If a Certificate of Execution is enclosed with these Instructions, you are required to give it in the form enclosed. The loan cannot be drawn down until this is in our possession.

3.2 The Certificate of Execution in the form enclosed must be given in unqualified terms. It must be signed by the same person who advised on, and witnessed, the execution of the Security who must be either a Solicitor, Legal Executive or Licensed Conveyancer (employed in the Solicitors' practice). A Licensed Conveyancer (not employed in a Solicitors' practice) may only give the Certificate of Execution for house purchase, transfer of equity and remortgage transactions.

If the person executing the Security is outside England and Wales and you are not able to personally witness their signature, provided that you have explained the terms of, and given independent advice on, the Security, it will be sufficient that the signature is witnessed by a third party. In this situation, you may delete clause (b) of the Certificate of Execution.

3.3 If you cannot give the Certificate of Execution as mentioned above you should not allow the Security to be executed. The Certificate of Execution should be returned to us as soon as the Security has been executed.

### **4 INDEPENDENT LEGAL ADVICE**

4.1 We have always recommended, and will continue to do so, that depositors of Security seek independent legal advice. This is particularly so as a result of the Barclays Bank -v- O'Brien, CIBC -v- Pitt and Royal Bank of Scotland -v-Etridge cases.

The above is of special concern to depositors (otherwise known as mortgagors) of Security for the account of third parties where they have no control over the third party or where, despite the fact that the borrowing is in joint names, the borrowing is not obviously for the benefit of both parties. Where such a depositor of Security is your Client, we are anxious that your Client does receive independent legal advice before executing the Security. Your Client has nominated you as the solicitor from whom they wish to take such advice. You need to ensure that you can act separately for the Mortgagor in circumstances where you are also instructed by the Borrower. If, as a result, you feel that you cannot act, you must return the Security to us with a brief explanation of the reasons. If you feel that you can act (and are satisfied that by doing so, the Security will not be open to challenge) then any advice you give must be given in the absence of the Borrower or any other person interested in the transaction. We envisage that you will wish to explain to your Client the meaning effect and nature of the Security particularly emphasising the "all monies" nature of the Security (up to any limit set out) and the fact that it will operate as continuing security. We would expect that if you have any doubt as to your Client's willingness to sign, their understanding of the Security or any knowledge of other circumstances that may lead to a successful challenge to the Security then you will not allow your Client to execute the Security which should be returned to us with a brief explanation of the reasons. If, in your opinion and following your advice, the Security can be executed by your Client then please proceed in accordance with the relevant sections of these

Instructions. In particular, the Certificate of Execution mentioned in section 3 above should be returned to us as soon as the Security has been executed. We have informed your Client that we require this certificate from you so that, once they have signed the Security, they will not be able to dispute that they are legally bound by the same.

4.2 You must take reasonable steps to satisfy yourself as to the identity of your Client giving the Security and any other person signing any other document required by us. This includes, if necessary, asking to check the identities of such persons against either a valid full passport or a current full UK driving licence or some other documentation we specify in writing. Please note that a duplicate driving licence is not acceptable.

4.3 Where there is more than one person giving the Security, you should see each of them on their own, and in the case of indirect Security (see paragraph 6.1.2 of these Instructions), without the Borrower or the Borrower's representative being present.

4.4 The fact that you are acting for us in providing assurance and the Certificate of Execution should not in any way restrict your ability to:

(a) explain the Security and/or the Mortgage and its nature and effect to your Client;

(b) provide your Client with such advice as you deem necessary to discharge your professional responsibilities; including, where appropriate, ensuring that your Client has independent advice. You are not by these Instructions constituted our agent.

4.5 In the case of a house purchase, transfers of equity and remortgage transactions where all that which is initially secured is the mortgage loan to acquire the property, a Licensed Conveyancer (not employed in a Solicitor's practice) may advise and witness the Security but your Client must still be advised of all that which is potentially secured (see section 6 below).

4.6 In Transfers of Equity transactions (see section 11) it will be your responsibility to fully explain the extent of the obligations and the meaning and effect of any existing and/or new Mortgage and/or Security to the continuing and/or incoming owner(s). You should satisfy yourself, before any drawdown of the Mortgage and/or the execution of the Transfer and/or the Security that they, as far as you are aware, fully understand the overall transaction and are entering into it willingly and free of any misrepresentation, undue influence or coercion.

4.7 There may be occasions where new security is not being taken and we are relying upon existing security to secure new borrowing which despite being in joint names, will not obviously be for the benefit of both parties. We require that the depositor of security who does not obviously benefit from the new borrowing receive independent legal advice before the new loan is drawn down. That depositor or security has nominated you as the solicitor from whom they wish to take such advice.

In these circumstances, please comply with Section 3 above and this Section 4, but, instead of advising on the implications of executing the security, please advise on the implications of the existing security being used to secure the new borrowing. Furthermore, instead of a Certificate of Execution, we require you to give a Certificate of ILA to be signed by the person who gave the independent legal advice, which will be enclosed with these Instructions. In Section 3, for "Certificate of Execution" read "Certificate of ILA".

If you cannot give the Certificate of ILA as mentioned above, you should not allow the new loan to be drawn down. The Certificate of ILA should be returned to us as soon as the depositor has agreed that the existing security may be used to secure the new borrowing.

4.8 If you have any doubt as to the above you must advise us immediately and not complete the transfer or request the drawdown of any new Mortgage.

## **5 INSOLVENCY MATTERS**

Insolvency Act 1986 (as amended) (“the Act”)

5.1 It will be your responsibility to advise us of any risk that any transaction on which the Security is dependent (including any transfer of the mortgaged Property) may be set aside under the Act as a transaction by way of gift or at undervalue. We take the view that a transaction might be set aside under Section 342 (as a simple transaction at undervalue as defined in Section 339) or Section 425 (as a transaction at undervalue putting assets beyond the reach of creditors as defined in Section 423).

5.2 In the case of transactions falling within Section 339 only, and taking effect after the coming into force of the Insolvency (No. 2) Act 1994, we take the view that unless there is actual knowledge of bankruptcy (or impending bankruptcy) affecting any party to the transaction and as long as there is a clear bankruptcy search obtained against all parties to the transaction then any new mortgage in favour of us should be protected. It is for you to advise us in respect of each individual case.

5.3 If you advise there is a risk, we will require suitable indemnity insurance and you must arrange this. The policy must be for an amount which represents the full value of the Property. It must benefit us and any successor in title. A copy of the policy must be sent to us with the title documents, with the original being passed to your client.

## **6 SECURITY DOCUMENTS**

There follows a brief explanation of our most commonly used standard forms of Security. These explanations, and any explanatory sections within the documents, are intended to be of general assistance only and do not relieve you of your responsibility to consider and explain their terms to your Client.

The Mortgagor is required to give Security “with full title guarantee”. This is so irrespective of what the covenants for title may be in the title to the Property. If the Mortgagor perceives any risk in doing so then it is for the Mortgagor to cover that risk as appropriate.

The Security may be limited as to the money and liabilities secured. If such limitation is agreed, you will be given details.

### **6.1 Mortgages over Freehold (including Commonhold) and Leasehold Property**

These comprise a Mortgage Deed plus a separate Mortgage Deed Conditions document. You should give your Client the Mortgage Deed Conditions document and a copy of the Mortgage Deed.

These can be either direct (Form A1 series) or indirect (Form A2 series). In both cases these secure the Debt as defined in them (“the Debt”), i.e. all money and liabilities both present and future including mortgage and similar term loans, overdrafts and guarantee, surety and similar liabilities, secured as continuing security. This will also include certain charge card liabilities and CCA loans.

#### **6.1.1 Direct Legal Mortgage (Form A1 series)**

A direct legal mortgage is where the person who owns the Property is the same person who is borrowing from us. The direct legal mortgage (see our standard form A1 series) therefore secures the Debt of the Mortgagor. Generally, a direct Mortgage will only be forwarded to you in the following circumstances:

(a) Where the Debt to be secured by the Mortgage is a direct liability of the Mortgagor and, in our opinion, not capable of being regarded as disadvantageous to the Mortgagor or any joint Mortgagor.

(b) Where the Mortgagor seeks independent advice.

#### 6.1.2 Indirect Legal Mortgage (Form A2 series)

An indirect legal mortgage is usually (but not always) where the person who is borrowing from us either jointly owns the Property with someone else or some other party owns the Property. For example, where A and B are the owners and B is the Borrower, or where C and D are the owners and E is the Borrower. These examples are for illustration purposes only and are not exhaustive of the circumstances in which an indirect legal mortgage can be taken.

The indirect legal mortgage (see our standard form A2 series) therefore secures the Debt of the named Borrower. Where there is more than one person named as Borrower, there is secured the Debt of all or any of them as well as the Debt which all or any of them may owe with any other person. We are under no obligation to advise the Mortgagor of the Mortgage afforded to the Borrower.

#### 6.2 Letter of Consent and Postponement by Deed

This is taken from occupier(s) (aged 17 or over when the Mortgage is given) of a Property mortgaged or intended to be mortgaged to us. It will also be taken from anyone else who has an interest in the Property but who is not a legal estate owner of the Property. Whatever right or interest the Consentor might have in the Property is postponed to us. The Letter of Consent will secure the Debt as defined in, and secured by, the Mortgage (see paragraph 6.1 above) as continuing security.

### **7 SECURITY OVER FREEHOLD AND LEASEHOLD PROPERTY**

#### 7.1 Occupiers and Third Parties Other than the Mortgagor

A Letter of Consent and Postponement by Deed will be enclosed. The Letter of Consent and Postponement may be wholly or partially completed by us before it is sent to you. However, if all or any of the details are missing you are required to fill in anything which has been left blank before it is signed. In every case, it is your responsibility to enquire:

- who occupies the Property, and/or
- if any third party has an interest in the Property

and notify us of any such person.

You should also notify us of any other occupiers who you have become aware of (as Letters of Consent and Postponement may also be required in respect of these). This is to ensure that we are able to secure vacant possession against any person who may have an interest in the Property in addition to the Mortgagor.

#### 7.2 Vacant Possession

Unless any Mortgage Offer Document specifically states otherwise, the Mortgage is made on the condition that the Mortgagor will obtain vacant possession for the whole of the Property on completion. You must report to us if, after enquiries, you become aware that vacant possession is not to be granted.

If we are lending to the sitting tenant you must be satisfied that the Mortgagor/Borrower is the tenant. You must report any tenancy which will be created or remain in place and continue after completion of the Mortgage. Where any tenancy is to end before completion of the Mortgage, it is your responsibility to see that this is properly done.

### 7.3 Title and Related Matters

7.3.1 You must advise us where you are aware of any specific defect, dispute or matter relating to the Property which might affect the acceptability of the Property as security.

The following are unacceptable:

(a) Any refusal by a landlord to deduce title to the freehold or other superior interest on the original grant of a lease.

(b) Where the title comprises a lease granted under the Leasehold Reform Act 1967, if the title to the new lease to replace the existing lease cannot be investigated.

(c) Where a lease provides for an escalation of ground rent, if its terms do not comply with the statutory conditions precluding the creation of a protected tenancy within the leasehold term.

### 7.3.2 Property not used for residential purposes

You should notify us if the Property is not to be used wholly for residential purposes and specify the intended use of the Property upon completion. You are required to ensure that nothing has been revealed by your searches and enquiries which would prevent the Property being used by any occupant for its intended use.

### 7.3.3 Possessory Title

Title to unregistered land by adverse possession and Possessory Title to registered land which will not be converted automatically to Absolute Title is usually unacceptable as Security.

### 7.3.4 Easements, Covenants etc.

It is your responsibility to ensure that the Property has the benefit of all necessary rights, easements, exceptions or reservations for its use and enjoyment including access and services. The Property must not be subject to any adverse, onerous or unusual right, restriction, reservation, exception or covenant.

### 7.3.5 Planning Consents and Building Regulations etc.

It is your responsibility to ensure that all necessary planning, building regulations and other consents exist in relation to the Property for its present or intended use and to advise us of any breach, enforcement or absence of such consent. In addition, any unusual or restrictive condition in any consent (for example, an agricultural restriction) must be advised to us. Generally, a property with such a restriction will be unacceptable as Security unless specifically agreed by us. When reporting to us on such matters, please provide your recommendations and advise on the appropriate action.

### 7.3.6 Roads and Sewers

It is your responsibility to ensure that the Property fronts a publicly adopted highway and drains into a publicly maintained sewer or that there are appropriate easements and agreements and bonds in force to cover any potential financial liability for maintenance. If the roads and/or sewers are unadopted and there is no agreement and bond, then you should seek our written approval to proceed. When reporting to us on such matters, please provide your recommendations and advise on the appropriate action.

#### 7.3.7 Searches

It is your responsibility to make all necessary searches prior to completion of the transaction to include an appropriate local land charges search, a bankruptcy search against the Mortgagor and Borrower, Land Registry/Land Charges searches and (if applicable) a search of the register maintained by the Registrar of Companies. We will rely upon your advice as to which searches are appropriate. It will be your responsibility to make any additional searches which may be required (for example, Index Map, Commons, Coal Mining or Mine Working searches).

These searches must be clear and current, and any priority maintained until completion and/or any registration of our Security.

Personal searches are acceptable provided the search firm is registered with the Council of Property Search Organisations (CoPSO), has adequate professional indemnity insurance and states that it complies with the Code of Practice for Search Compilers and Retailers.

#### 7.3.8 Site plans and Valuation Report

In cases where a site plan is enclosed, you are required to satisfy yourself that the Property to be mortgaged accords with the site plan.

If the covering letter requires you to deal with matters raised in an enclosed valuation report, you must do so.

A copy of the valuation report may be provided to your Client. We recommend that you advise your Client that they should not rely on any such report, or the fact that we have agreed to lend, in deciding whether to proceed with the purchase of a property. We further recommend that you advise your Client that they obtain their own more detailed report on the condition and value of the Property, based on a fuller inspection, to enable them to decide whether the Property is suitable for their purposes.

#### 7.4 Leasehold Titles

7.4.1 If the lease will have less than 25 years to run after the end of the term of the loan, you must advise us and only proceed if we agree.

7.4.2 If the title is registered, or to be registered, the Mortgagor must have Absolute Leasehold Title. A Good Leasehold Title will normally only be acceptable if it is not possible to upgrade and convert it to an Absolute Title.

Our consent will be required to accept a Good Leasehold Title. We will only be prepared to accept that if you advise us, in writing, of the reason why it cannot be converted and you are still able to give an unqualified Certificate of Title. Your advice should contain a brief explanation as to why only Good Leasehold Title is available. Title Indemnity insurance may be required and you will be responsible for obtaining it.

7.4.3 If the title is unregistered, then the documents of title forwarded to us must include a marked Epitome of Title to the freehold title and to any superior lease.

7.4.4 The lease must not contain any onerous or unusual covenants or restrictions. There must be mutually enforceable covenants between tenants and/or the landlord or the management company must be under an obligation, at the request of any tenant, to enforce covenants against any other tenant. The landlord or management company must be under an obligation to maintain the exterior of the building, main structure, including roof and foundations, and common parts of the building. There must be no outstanding disputes or breaches in relation to any provision in the lease at the date of completion and drawdown of the Mortgage.

7.4.5 Residential leases which give the landlord a right of forfeiture for an insolvency or similar event or execution against the tenant, are unacceptable. There is no objection to this in a commercial lease.

7.4.6 Leases which include any restriction on assignment and creation of mortgages are, generally, unacceptable.

7.4.7 It is your responsibility to serve on the landlord (and/or any other appropriate party) all necessary notices including in all cases (irrespective of whether the lease requires it) notice of our Mortgage.

7.4.8 Where the Mortgagor is obliged to purchase a share in any management company, we will require the share certificate (in the name of the Mortgagor) to be held as security. You are to ensure that the standard Stock Transfer form is completed appropriately and signed by the Mortgagor but left undated and forwarded to us with the title documents.

#### 7.5 Freehold Flats (“Flying Freeholds”)

Freehold flats are only acceptable as Security if our requirements are met. We require that there are appropriate mutual rights of support and maintenance and mutually enforceable covenants usually including a Deed of Covenant being entered into on each dealing with the Property between the existing/other flat owners and the incoming purchaser. It is your responsibility to advise us as to acceptability.

#### 7.6 Rent Charges

Any rent charge imposed upon the Property which takes priority to our Mortgage and confers a right of re-entry will be unacceptable. Where the Property (whether freehold or leasehold) is subject to a rent, 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.

#### 7.7 New Properties and Properties Built Within the Last Ten Years

New properties and properties built within the last 10 years must be covered by any of the following: NHBC Buildmark, Zurich Municipal Newbuild, Zurich Municipal Rebuild or other appropriate and market-acceptable warranty cover as we shall agree, with all necessary top-up arrangements in force.

#### 7.8 Purchase Price of New Properties

Where the Property to be mortgaged has yet to be occupied for the first time in its current form, for example, because of a renovation or conversion, you must obtain a completed copy of the UKF Disclosure of Incentives Form from the conveyancer acting on behalf of the seller. In such cases,

when you send a completed Certificate of Title to us you are confirming that you are in receipt of a completed UKF Disclosure of Incentives Form from the seller's conveyancer which complies with your instruction.

This does not override your other duties regarding the purchase price set out elsewhere in these Instructions.

#### 7.9 Trusts

Any form of Trust creating a lifetime interest in the Property is not acceptable.

Where a Property is already subject to a Trust, the trustees and beneficiaries if over the age of 18 years must postpone their interest in favour of our Mortgage.

A Trust is defined as, but not limited to; Declaration of Trust, Discretionary Trust and Settlement Trust.

If you are aware or made aware any form of Trust has been or is intended to be created in respect of the Property you must notify the Bank immediately.

Where a Declaration of Trust is already in place, it must meet our requirements as set out in Appendix 1. If it doesn't, you are to draft a deed varying the existing Declaration of Trust to meet our requirements or arrange for the existing Declaration to be brought to an end and replaced by a new Declaration of Trust meeting our requirements.

Please see paragraph 1.8(f) above on Declarations of Trust and the requirement to send us a copy of the draft deed at least 10 working days prior to completion for approval.

Where there is a sole legal proprietor, it is not acceptable to us for the sole legal proprietor to enter into a Declaration of Trust. Land Registry rules require a Form A Restriction in such instances; this would prevent the registration of our Legal Mortgage.

#### 7.10 Shared Ownership Leases

If the transaction involves a Shared Ownership Lease, you must advise us immediately. You need not do so if you have already been separately instructed to proceed with the Lease.

If instructed to proceed, you must advise on the suitability of the Lease as security in accordance with these Instructions.

#### 7.11 Commonhold

If the Property is commonhold:

- (a) you must be satisfied there is nothing in the Commonhold Community Statement that is unduly restrictive of the use and occupation of the Property for the purpose for which it is to be used;
- (b) you must make enquiry of the current unit holder and the Commonhold Association as to any known breaches of Commonhold Community Statement by the Commonhold Association or any unit holder and report such breaches to us;
- (c) you must make sure that the liabilities of the outgoing unit holder are discharged prior to completion;

(d) you must ensure that the Commonhold Community Statement provides that, in the event of a voluntary termination of the commonhold, the termination statement provides that the unit holder will ensure that any mortgage secured on their unit is repaid on termination;

(e) you must ensure that notice of transfer of a commonhold unit and notice of the mortgage are sent to the Commonhold Association within 14 days of completion.

#### 7.12 Attorneys

Where an attorney appointed under a general or an enduring power of attorney is expecting a Legal 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 beneficial interest in the Property at the date of this Legal Mortgage, acting by [his/her] attorney [name of attorney] in the presence of:”

If you fail to do this, the Land Registry may refuse to register the Legal Mortgage.

### **8 INSURANCE**

#### 8.1 Property Insurance – General

If property insurance is being arranged by us, please contact us at the earliest opportunity to enable cover to be effected in good time, as all insurance is subject to underwriting.

If property insurance is not being arranged by us, it is your responsibility to ensure that cover is brought into effect as mentioned below.

We require the Property is insured from exchange of contracts, or from such time as the Mortgagor assumes risk or drawdown of the Mortgage. If we provide you with a buildings insurance figure, it is your responsibility to ensure that insurance has been obtained for at least that amount.

We require the following risks to be covered by the buildings insurance policy: fire, lightning, aircraft, explosion, earthquake, storm, flood, escape of water or oil, riot, malicious damage, theft, falling trees, branches and aerials, subsidence, heave, landslip, collision, accidental damage to underground services, professional fees, demolition and site clearance costs and public liability to anyone.

If we require, please request before completion the insurer’s confirmation that the insurer will notify us if the policy is not renewed or is cancelled. Unless we advise you otherwise, there is no need for you to send us the policy documents, or the last premium receipt.

#### 8.2 Property Insurance - Leasehold Property

Where it is a condition of the lease that the Property is insured by the landlord, it is your responsibility to:-

- Satisfy yourself (from exchange of contracts or from such time as the Mortgagor assumes risk or drawdown of the Mortgage) that the Property is insured; and
- Give notice to the insurer of our interest.

#### 8.3 Endowment/Life/Pension Assurance

Where you are instructed to do so, it will be your responsibility to ensure that appropriate steps are taken to ensure that we have enforceable security over each of these policies as appropriate.

You will:

- (a) arrange for the policy to be put on risk on or before completion of the Mortgage;
- (b) if requested by us, ensure that a Mortgage of the policy is executed before completion;
- (c) if we require you to do so, give notice to the insurance company of the Mortgage of the policy;
- (d) ensure that the policy, any Mortgage of it and receipted notice of Mortgage are deposited and forwarded to us.

## **9 PRIORITY OF SECURITY**

Unless otherwise instructed, we should rank ahead of any other Mortgage or other Security. The priority of our Security may be specified in any Mortgage Offer Document/Transfer Instructions (when enclosed) under the heading "Security". It is your responsibility to see that we have the appropriate priority.

The priorities stated in the Mortgage Offer Document/Transfer Instructions (when enclosed) do not take account of any statutory charge in favour of a third party (for example, to secure discount provisions where the Property is a former Council house or flat). It will be your responsibility to have postponed any prior statutory charge unless we have agreed otherwise.

There must be no restriction upon the creation of our Security. You must obtain any necessary consent to the creation of our Security. In all cases, you must give notice of our Security to any prior mortgagee and obtain acknowledgement of it. The latter must be forwarded with the title documents. Land Charges entries must be made as necessary.

## **10 POST COMPLETION PROCEDURES**

10.1 You must submit the application for registration at the appropriate Land Registry office immediately following completion of the Mortgage and in any event within the priority period conferred by any search. You must ensure that our full address, as shown on the covering letter, is quoted on the appropriate Land Registry form as proprietor of the new Mortgage.

10.2 Where the Property is subject to first registration, you must provide a copy of the Land Registry's acknowledgement form duly receipted.

10.3 It is your responsibility to ensure that the necessary registration entries have been made correctly at the appropriate registry(ies) before forwarding to us the documents set out in paragraph 10.4 below. The documents must be sent to us within ten working days of receipt by you of the Land Registry Title Information Document.

10.4 You should send to us:

### **IN ALL CASES:**

1. Title Information Document and Official Copy
2. Copy of the completed Legal Mortgage in our favour
3. Any Letters of Consent and Postponement by Deed in our favour
4. Notice and acknowledgement to a prior mortgagee of our mortgage (where appropriate).
5. Copy Indemnity Policy (where appropriate)

6. Any other document(s) specified in our letter of instruction to you.

**IN ADDITION:**

**LEASEHOLD:** Lease and any deeds/documents emanating from the lease, including, (where appropriate) but not limited to:

Received Notice of the Transfer and Mortgage

Consent of the landlord to us as Mortgagee, if required by the lease

Landlord's undertaking to give us notice prior to forfeiture proceedings.

Share Certificate/Stock Transfer Forms

Deed of Variation

**FREEHOLD:** We do not require any additional documents.

**REGISTERED (including Commonhold):** It is for you to decide what, if any, of the pre-registration documents you may wish to pass to your Client.

10.5 You should retain the information contained in the conveyancing file in a permanent form and provide the information relating to the Security to us immediately on request.

**11 TRANSFERS OF PROPERTY ALREADY MORTGAGED TO US (TRANSFERS OF EQUITY)**

**11.1 General**

Details of the Property, together with summaries of the pre-transfer position and post-transfer requirements are contained in the attached form entitled "Transfer of Mortgaged Property - Instruction Form" - ("The Transfer Instructions"). It is your responsibility to see that the information in the Transfer Instructions correctly represents the underlying transaction as instructed by your Client. It will be your responsibility to make appropriate searches and enquiries although a local search will not be required.

**11.2 Transfer of the Property**

Any transfer must be completed in accordance with the Transfer Instructions. You will be responsible for ensuring that the transfer of the Property is properly completed with the transferee having good and marketable title to the Property. Any existing Mortgage and/or new Mortgage and/or other Security, must secure any existing and/or new borrowing (as appropriate) and any future borrowing. The Security must be valid and enforceable as set out in these Instructions and with particular regard to section 4.

**11.3 Additional Instructions where transfer of the Property is subject to an existing Mortgage in our favour and no new mortgage is being taken**

The transfer of the Property may, in certain circumstances, result in determining the continuing nature of our existing Mortgage. Where the transfer is to take place subject to an existing Mortgage in our favour, and a new Mortgage is not being taken post transfer, we require you to ensure that, wherever possible, continuing security of our existing Mortgage is preserved.

If it is possible to preserve continuing security we require the following wording (adapting the definitions where necessary) to be incorporated in an appropriate place in the transfer deed or form TR1 (as the case may be):-

"This Transfer is subject to a Legal Mortgage dated [ ] and registered on [ ] in favour of HSBC UK Bank Plc which shall remain a continuing security for that which is secured by it and shall be read as if the Transferee was the mortgagor"

If it is not possible to preserve continuing security, the following wording should be incorporated instead:-

"This Transfer is subject to a Legal Mortgage dated [ ] and registered on [ ] in favour of HSBC UK Bank Plc."

We will tell you when it is and is not possible to preserve continuing security in our covering letter of instruction to you.

In addition, the following points must be complied with in respect of the transfer deed or form TR1 (as the case may be):-

- where continuing security can be preserved, there should be no reference made to the amount of the indebtedness outstanding under the Mortgage;
- if there is a clause where we release the transferor from the Mortgage covenants, this is only acceptable where that person is not also a transferee and where the clause makes it clear that the outgoing transferor is not released from their implied covenants for title.
- if there is a clause whereby we release one of the transferors from the obligations under the Mortgage, but that person is to remain contractually liable to us under the Mortgage Offer Document, the clause needs to make it clear that we are not releasing that person's contractual liability for the indebtedness; and
- there must be a statement as to what consideration is payable for the transfer. If it is less than the current market value of the share in the property being transferred, or is for nominal or no consideration, then:-
  - (i) clear bankruptcy searches must be obtained at the time of completion of the transfer against the parties to it; and
  - (ii) if, after having made enquiries, you are of the view that the transfer is at risk to being set aside as a transaction at an undervalue putting assets beyond the reach of creditors under Section 425 of the Insolvency Act 1986, or such provision that replaces it, you should obtain our instructions before proceeding further. If we agree to proceed, suitable indemnity insurance may be required to protect us and you will be responsible for obtaining it.

#### 11.4 Independent Legal Advice

This must be given as stated in section 4 of these Instructions.

The transfer of the Property, particularly where there is any replacement Mortgage, may result in any continuing or incoming owner accepting liability for the Mortgage for which the outgoing owner was responsible, whether solely or jointly and separately with the continuing owner.

The Transfer Instructions should indicate when this is the case but the absence of such information does not relieve you from your responsibility to make suitable enquiries and investigation.

## Appendix 1

### Declarations of Trust

#### INSTRUCTIONS ON DECLARATIONS OF TRUST

#### GUIDANCE NOTES ON DECLARATIONS OF TRUST – FOR EXTERNAL LEGAL ADVISERS

	<p><b>You are responsible for ensuring the content of a Declaration of Trust does not adversely affect the rights, remedies and interest of first direct as mortgagee and its security over the Property (including our first charge priority).</b></p> <p><b>Nothing in this guidance note shall constitute a waiver of the duty and obligations placed on you.</b></p>	<p><b>Yes/ No</b></p>
Item	Reference to “ <b>HSBC</b> ” and “ <b>the Bank</b> ” and “ <b>us</b> ” means HSBC UK Bank plc (including the <b>first direct</b> trading brand).	
1.	The Declaration of Trust must not be drawn up in conjunction with a Will Trust or Family Trust.	
2.	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 (“ <b>the Declaration of Trust</b> ”) 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 our legal mortgage or 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.	
3.	<b>Sole legal proprietor – it is not acceptable for a sole legal proprietor to 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.</b>	
4.	On completion, we require a fully enforceable first ranking mortgage or legal charge over the Property executed by all owners of the legal estate (the “ <b>Bank’s Legal Mortgage</b> ”).	
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 “ <b>to secure the mortgage debt defined therein</b> ”. The Declaration of Trust will need to define the ‘ <b>mortgage debt</b> ’ as “all of the money which the borrower(s) owe the Bank under the mortgage at any time. This will include:	

	<p>(a) the amount outstanding on each loan; and</p> <p>(b) any unpaid interest, fees, expenses and any early repayment or other charge.</p>	
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)	<b>"Net Proceeds of Sale"</b> 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.	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.	If a restriction is to be registered on the title to the Property to protect the trustees' equitable interests, the restriction 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.	
12.	<b>Declarations of Trust that do not create a third party interest</b> – 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, <b>provided the Declaration of Trust makes it clear that the Bank's Legal Mortgage/charge takes priority to the interest of the borrowers.</b>	