
CML Disclosure of Incentives Form: Frequently asked questions



**Council of Mortgage
Lenders**



**Home Builders
Federation**



Homes for Scotland



**Royal Institution of
Chartered Surveyors**

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Council of Mortgage Lenders, North West Wing, Bush House, Aldwych, London WC2B 4PJ
Telephone: 0845 373 6771 Fax: 0845 373 6778
Web: www.cml.org.uk

Home Builders Federation, 1st Floor, Byron House, 7-9 St James's Street, London SW1A 1DW
Telephone: 020 7960 1600 Fax: 020 7960 1601
Web: www.hbf.co.uk

Homes for Scotland, 5 New Mart Place, Edinburgh EH14 1RW
Tel: 0131 455 8350 Fax: 0131 455 8360
Web: www.homesforscotland.com

Royal Institution of Chartered Surveyors, Surveyor Court, Westwood Way, Coventry CV4 8JE
Telephone: 0870 333 1600 Fax: 0 20 7 334 3811
Web: www.rics.org

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Introduction

This document is intended to explain the reasoning behind the development of the CML Disclosure of Incentives Form, who it should be completed by, who should receive it and when.

This frequently asked questions document is relevant for all parties (developers/sellers, valuers, solicitors/conveyancers and lenders) and should be read with this in mind.

It has been produced jointly by the Council of Mortgage Lenders, the Home Builders Federation, Homes for Scotland and the Royal Institution of Chartered Surveyors. The Law Societies, the Council for Licensed Conveyancers, the Construction Employers Federation (NI) and the House Builders Association were also consulted.

Improving the flow of information

The purpose of the form is to draw all the relevant financial information about the sale of newly built, converted and renovated property transactions into a single form. This will improve transparency and simplify the flow of information to all key parties involved in the transaction.

Lenders, developers, valuers and solicitors/conveyancers have been involved in developing the form to ensure that the process is as simple as possible.

To implement these requirements the Royal Institution of Chartered Surveyors have made changes to the professional standards for valuers in the 'Red Book'. Lenders, via the Council of Mortgage Lenders (CML), have changed their instructions to solicitors/conveyancers, whilst the Home Builders Federation (HBF) and Homes For Scotland (HFS) have amended their Codes of Conduct.

1) For what type of property sales is the form required?

The form is required for all newly built property that is yet to be occupied or purchased for the first time and any existing property that has yet to be occupied in its current form, for example, because of a renovation or conversion, where mortgage finance is required.

This will include any sales by Housing Associations, Registered Social Landlords (RSLs), or Local Authorities.

2) Who needs to complete the form?

It is the responsibility of the seller to complete the form.

Both the valuer and lender's solicitor/conveyancer will receive the form (see points 5, 7 and 8 for more detail).

3) Why are we on Version 2.1 of the form?

The Disclosure of Incentives Form was first introduced in September 2008, and has had one major amendment, which was introduced in October 2011. A minor change came into force on 12 March 2012, and created a field for naming other assisted purchase schemes that were not already specifically catered for on the form. This coincided with the introduction of the NewBuy Scheme. The revised version 2.1 should be used from 12 March 2012.

4) Where do I get the form from?

The form is available to download for free from the Lenders' Handbook webpage on the CML website: www.cml.org.uk/handbook, as well as from the HBF, HfS and RICS websites.

5) Who needs to receive the form?

The form is intended to improve the flow of information to the key parties involved in the transaction. Therefore, it must be provided to **the lender's solicitor/conveyancer** as a standard part of the process, and to the **valuer when requested**.

As noted above, the developer/seller is required to start the process by downloading the form and completing it.

The valuer will request the form from the developer/seller early in the sales process.

The form will need to be available for the valuer at the time of his or her site visit. This may mean that a member of the developer's/seller's sales team completes the form, or the form might be completed at the developer's/seller's head or regional office and a copy passed down to the site sales office to give to the valuer.

Valuers are encouraged to arrange an appointment in advance, to ensure the form is available when they visit the site. This is particularly important as some lenders will not accept a conditional valuation as a result of the form having not been provided to the valuer.

Valuers will need to retain a copy of the form for their files for any future verification.

At the time of the valuer's visit, most of the information required to complete the form is likely to be available. However some information may not be available, and there may be subsequent changes to the information (see point 6 for more detail).

The form given to the valuer can either be fully completed, including a signature from an authorised person on behalf of the developer/seller, or completed up to question 13 only, without a signature.

When the *'important information about this form'* section of the form is completed and signed by an authorised person on behalf of the developer/seller, it will be considered to be accurate and complete.

The valuer will accept an unsigned form, as for some developers/sellers the process of having an authorised person verify and sign the form may not be straight forward and could result in significant delays to the process.

The lender's solicitor/conveyancer will only accept a fully completed and signed form.

The form should be sent to the lender's solicitor/conveyancer as early as possible, in order to avoid any last minute delays, and no later than 7 working days before exchange of contracts/missives. Once the information on the form can be completed, the earlier it is sent to the lender's solicitor/conveyancer the better.

6) What happens if I don't know the answer to a question, or it is not applicable to the transaction?

When given to the valuer: If the answer to any question is unknown, write 'unknown'. If not applicable to the transaction, write 'none'.

Please ensure that as much detail is provided to the valuer as possible, to avoid last minute changes that may result in the lender amending or withdrawing their mortgage offer (See points 7 and 8 below).

When given to the lender's solicitor/conveyancer: If a question is not applicable, or no incentives have been offered, then write 'none'. 'Unknown' will not be accepted.

7) What happens if there are significant changes to the information given on a form after it has been passed to the valuer?

As the form will be of material importance to the valuation process, if the information provided changes significantly it may affect the valuation. This may result in considerable delay, with the lender altering or even withdrawing the mortgage offer.

It is therefore essential that the information provided to the valuer is as complete as possible.

As the form will be sent to the lender's solicitor/conveyancer, there is no need to inform the valuer of any subsequent changes.

If any changes are made then the sooner the lender's solicitor/conveyancer receives the form and is made aware, the better.

8) What happens if further incentives are offered after the form has been submitted to the lender's solicitor/conveyancer?

If this situation arises, then the developer's/seller's solicitor/conveyancer should inform the lender's solicitor/conveyancer as soon as is practicable.

Ideally this will be through an amended version of the form, but it may just be a letter confirming the changes.

9) How does the RICS Red Book reflect the requirements imposed by the form?

The Disclosure of Incentives Form requirements are part of the mandatory requirements in UK Valuation Standard 3.1 "Residential Property Mortgage Valuations" and UK Appendix 10 "RICS residential mortgage valuation specification". The procedure provides clarity of approach to the identification of incentives and the purchase price of the property to be valued.

RICS has produced a Guidance Note on The Valuation of Individual New Build Homes as further guidance for its members.

10) How are the requirements of the form reflected in the existing instructions to solicitors/conveyancers in the Lenders' Handbook?

In short, the form does not override or discharge any duty solicitors/conveyancers have to the lender through instructions provided elsewhere in the Lenders' Handbook.

The form is a simple way of drawing together the information that a solicitor/conveyancer is already required to collect on behalf of the lender, as well as some additional information that is required for the valuer.

The solicitor/conveyancer is not being asked to verify the information contained in the form, but should simply confirm with the buyer/borrower that the information provided on the form regarding the agreed sales price and incentives offered is in line with the buyer/borrower's understanding.

The solicitor/conveyancer will only be required to report the information provided on the form to the lender in line with the lender's instructions in part 2 of the Lenders' Handbook. For example, some lenders only require information on incentives where they are in excess of 5% of the purchase price reported.

More detail on the introduction of the form from a solicitor/conveyancer's perspective is laid out in this [article](#) available on the CML new-build webpage.

11) Who should not receive the form?

The form is not intended for the buyer, as they should know the details of the transaction that they have agreed with the developer/seller.

The form should be treated as confidential information and should not under any circumstances be provided to anyone not directly involved in the transaction.

12) The CML Disclosure of Incentives Form: Question by question

This section of the document looks in detail at the questions on the form. Where no explanation for a question is offered, it is because we believe the question does not need any further explanation.

Question 3: Use of assisted purchase scheme

This question asks for details if an assisted purchase scheme has been used, including shared equity and shared ownership schemes.

The form requires the name of the purchase scheme. This may be a government or housing association sponsored shared ownership or shared equity scheme or a developer's own shared ownership or shared equity scheme. Or it may be a guarantee scheme which is supported by government, developer or other third party, or a combination thereof.

Shared equity schemes usually involve an equity contribution from the seller or a third party – normally in the form of a second charge loan against the property. A second charge loan (usually interest-free for a period) against the property will reduce the finance required to purchase the property, but will mean the borrower, while legally buying 100% of the property, is agreeing to give up a share of any increase in its value.

Guarantee schemes usually involve the seller or third party providing a contribution to cover the lender's risk in the event that they sustain a loss under the loan.

Under 'Loan from seller' provide the amount of any loans, whether secured on the property or not, together with the interest rate and the term of the loan(s). But do not include any equity loan, usually taking the form of a secured second charge, as this should be provided under shared equity above. The distinguishing feature of an equity loan is that the balance of the loan will vary with movements in the value of the property.

Question 4: Determining the beneficiary of the transaction

This question aims to identify if the sales consideration will be paid to more than one party, whether it be through an assignment, known sub-sale or similar arrangement or is just a cash payment to a third party to facilitate the transaction. Where the builder is forgoing full payment, because for example they are providing an equity loan or other loan, the full agreed sales price as listed in question 9 should be provided.

A sub-sale/assignment will usually occur as follows: the developer agrees to sell to A, who in-turn agrees to sell to B, resulting in the developer selling directly to B. The lender will not be aware of 'A' – it is their details that should be provided.

In some instances the developer will assign an option to purchase property, or a number of properties, to an individual, group or firm (the assignee). The assignee will then find a buyer for the property. As the developer may not have full knowledge of the transaction, it should be the assignee that completes and signs the form, naming themselves and the developer as the beneficiaries.

After the assignee has found a buyer(s) for the property(ies), the developer may agree to buy-out the assignee's option to purchase. In these circumstances the developer will be responsible for completing and signing the

form. Additionally, the assignee, and the amount that the developer has paid to buy-out their option to purchase, should both be detailed in this question.

Some developers operate schemes where payments are made to third parties such as firms or relatives that may be providing additional finance to the buyer. These payments should be disclosed here.

Some developers have entered into schemes where they deposit funds with the lender providing the buyer's mortgage or in a separate entity, and use these funds to indemnify the lender against future credit losses in respect of the borrower. Alternatively, some developers are paying for mortgage indemnity insurance that protects the lender. These payments do not need to be recorded on the form.

Question 5: Introducer/finders fees

This should include all fees paid to third parties related to specific buyers they introduce to the seller/developer, however described. Do not report general marketing costs where paid directly by the developer or subcontracted to a third party such as an estate agent.

Question 6 a) – Units on site: Density and exposure

We understand that the information provided in question 6 a) cannot be accurate to the last unit completed for a period of 12 months, and we therefore expect the information to be an estimate based on the seller's/developer's current plans.

We are also aware that a number of developers may be active on a single site. We are only asking for the approximate number of units that the seller has constructed and will be constructing, and not the aggregate number for the whole site.

Question 6 b) – Identify bulk purchases

This question is intended to clarify the number of properties on a site that a seller who is not the developer (e.g. an individual investor or investment company) is either selling, owns or has a stake in.

In circumstances where more than one company/individual will receive a portion of the sales consideration, we would also like to know how many units on site that company/individual has an interest in. This company/individual should be detailed in question 4 of the form.

Question 8 – Access to non-standard shared amenities

This question is looking to ascertain if any “luxury” or non-standard shared amenities are provided that may add value to the property, such as a gym or swimming pool for communal use.

Answers to this question should only include facilities other than those required for access to the property or standard maintenance provision, or communal areas and gardens.

Question 9 – List price, agreed sales price and any discount

This question asks for the list price, any discounts and the agreed sales price.

The discount is simply the difference between the list price as at the date the sale was agreed and the agreed sales price.

The agreed sales price is the figure that should be listed on any transfer, or dispositions and lease, and that should be provided to the Land Registry (England and Wales), Registers of Scotland (Scotland) and Land Registers of Northern Ireland (Northern Ireland).

There is no need to list any incentives offered (either financial or non-financial) at this point, as these will be detailed in question 10. Make sure any discount recorded in question 9 is not included in your answer to question 10 because this could lead the valuer or lender to double count the discount.

Where a discount is offered for the purchase of more than one property state how many properties are being purchased and how the bulk purchase discount is being apportioned between them.

Question 10 – Incentives: Financial and non-financial

This box is intended to capture all incentives offered, both financial and non-financial. You should not include any items detailed under Question 3 .

- Financial incentives

Where any financial incentives are included in the deal, the full monetary value should be provided. For mortgage subsidies/rental guarantees we have asked for a total figure, which is calculated by multiplying the amount offered per month by the number of months it will be paid. Where rental income is guaranteed for a minimum period rather than a fixed term, explain this including VAT where this is being paid by the developer (for example, where they are paying the buyer’s legal fees).

Where a financial incentive (or incentives) is included in the deal which does not fall into any of the categories listed, please put the total amount in the 'other' field and then use the box to explain the detail of the incentive(s).

Where a developer offers free or subsidised mortgage payment protection insurance to the buyer, this does not need to be reported on the form as long as the policy stipulates that claim payouts will be made directly to the mortgage lender.

- Non-financial incentives

Where any non-financial incentives are included in the deal they should be listed in the space provided.

There is no need to provide the costs of these items.

Any item that is provided as part of the standard specification for the property should not be listed.

If an upgrade on the standard specification is offered free of charge, this should be included here.

Question 11: Part exchange

Where a property is taken in part exchange please provide the agreed sales price and the amount above or below market value as determined by an independent valuation.

If there has yet to be a valuation of the property being taken in part exchange, please state 'not available at present time'. We would anticipate that the valuation will be available at the time of exchange of contracts/missives. If the valuation is not included when it is received by the lender's solicitor/conveyancer it may result in delays.

Rather than buying the part exchange property themselves, some developers use a third party which buys the property and usually then seeks to sell it on the open market. These third parties are usually paid a fee by the developer for this service and the value of this fee needs to be provided. The figure should include all payments being made to any third party agent including the amount of any top up payment from the developer where the agent agrees to buy the property at a discount to market value.

Where the developer pays fees to facilitate a sale of the buyer's existing property (for example by paying their estate agency fees) these should also be reported in the same place.

Question 12: Presenting the form to the valuer

This question should be completed by the person that completes the form for the valuer.

The 'important information about this form' section should remain blank, for the reasons stated in point 5 above.

Important information about this form

This section should only be completed by a duly authorised individual, and only when the seller is happy that the information provided is accurate and complete.

Once this section of the form is completed a copy should be sent to the lender's solicitor/conveyancer.