Guidance relating to Mortgage Exclusions for Levy purposes

Part 1

Overview of the mortgage exclusion regime

Definitions used in this Guidance have the same meaning as those set out in the Levy Rules except that, where any provision of this Guidance refers to the Employer, the provision will apply in the same way if the chargor is an Ultimate Parent or other member of the Employer's Group.

The Board's requirements – mortgage age variable

1.1 The mortgage age variable (which measures the age of the newest unsatisfied mortgage or secured charge registered) is a feature of most of the Insolvency Risk scorecards and can have a significant impact on an Employer's Insolvency Risk Score. As with other variables, we are clear that mortgage age is an important predictor of Insolvency Risk across the universe of PPF employers. However, we have considered closely whether this is likely to be true for all mortgage types. The Board has decided that certain types of mortgage or charge will be disregarded when calculating an Employer's Score as they are not necessarily predictive of Insolvency Risk. These are as follows:

i. A Refinance Mortgage;

ii. A Rent Deposit;

iii. A Pension Scheme Mortgage; and

iv. An Immaterial Mortgage.

v. In addition, where the Employer or another Group company benefits from an Investment Grade CRA Rating and criteria set out in the definition of CRA Test in the Levy Rules are satisfied, all mortgages will be disregarded.

1.2 Part 2 sets out the requirements you must satisfy for a mortgage or charge to be identified as one of (i) to (v) above. You may have a combination of (i) to (v). You must produce a separate Officer's Certificate for:

- each Refinance Mortgage, Rent Deposit or Pension Scheme Mortgage that you are seeking to exclude; and
- each aggregated set of Immaterial Mortgages that you are seeking to exclude;

You will need to consider carefully which Officer's Certificate or which combination of Officer's Certificates is appropriate for the scheme. Please note that failure to comply with the requirements set out in Part 2 will mean that your Officer's Certificate(s) will be rejected and your Insolvency Risk Score calculated without disregarding the relevant mortgages.

Once you have identified the relevant Officer's Certificate(s) for your circumstances, you will need to comply with the requirements in relation to each Officer's Certificate.

You can download all relevant certificates either from Experian's website or from the PPF's website.

1.3 Once a certificate has been accepted as meeting the Board's requirements, its effect will be that the mortgage(s) to which it relates will be disregarded. Where an older mortgage replaces a Refinance Mortgage, the mortgage age variable will be based on the most recent mortgage remaining following the disregard of the Refinance Mortgage.

1.4 A certificate that has been accepted for a levy year will be carried forward to the subsequent levy years, in certain circumstances – see section 4 below.

Part 2

The Board's requirements in relation to the mortgage exclusion regime

The circumstances in which a mortgage or charge will be disregarded in assessing an Employer's Insolvency Risk Score are as follows:

2.1 Refinance Mortgage

i. The definition of Refinance Mortgage is set out in Rule A1 of the Levy Rules. Schemes should note that the term Refinance Mortgage refers to the security interest itself (i.e. the charge document), and not the underlying loan agreement/borrowing to which that security interest relates. When considering whether the requirements are met (in particular the requirement that the Refinance Mortgage becomes effective not later than 14 days after the Original Mortgage was satisfied), it is important to understand that this requirement relates to the security interest not to the loan agreement.

ii. In broad terms, the Refinance Mortgage regime is designed to capture the situation where a new mortgage simply replaces an older one where the borrowing hasn't increased, and where the new borrowing is on the same or better terms i.e. it truly is a rollover of an existing mortgage into a new one. Where the definition applies, we are of the view that it is reasonable that the mortgage age of the former mortgage should be used in scoring the employer rather than the age of the new one. If you believe that one or more of your mortgages could satisfy this test, then you should submit a Refinance Mortgage Officer's Certificate.

iii. The Rules contain a provision that a Refinance Mortgage is effective no more than 14 days after the release of the Original Mortgage. There are several distinct events to be considered here when deciding whether you meet this requirement:

1. the entering into of a refinancing loan agreement under which monies are advanced for the purpose of repaying an existing loan;

2. the repayment of that existing loan;

3. the discharge of the charge over assets that was taken by the lender who advanced the existing loan (which may be the same lender that is advancing the refinancing);

4. the taking of security over assets by the lender over the new refinancing;

5. the deregistration of the original charge over assets at Companies House;

6. the registration of the new charge over assets.

iv. It is events 3 and 4 that are of relevance for the 14-day requirement. In most cases we would expect them to be almost simultaneous even if the entire set of events takes longer. If the entire set of events does take longer, this does not preclude the 14 day rule applying as the rule applies to the release / effectiveness of the legal charges representing the lending under the Refinance Mortgage and the Original Mortgage. Experian will use events 5 and 6 as their primary source of evidence that events 3 and 4 have taken place within the 14-day required timeframe, but it is acceptable if other evidence shows that the requirement has been met (for example, if it is clear that the taking effect of the new charge was within 14 days but it had not been registered at Companies House within that timescale).

v. Events 1-6 may not necessarily all happen in that order – it is possible, for example, that event 4 takes place before event 3, in particular if the charges are not over the same assets. If that is the case, and the Refinance Mortgage is therefore effective before the release of the Original Mortgage, there is no set time limit under the Rules for the Original Mortgage to be released, as the requirement that the monies from the new lending must be used to discharge the original borrowing prevents the new borrowing from being additional borrowing. The meeting of this requirement does not need to be demonstrated on the face of the loan documentation itself if other satisfactory contemporaneous evidence exists.

vi. In previous levy years we have asked that, when certifying the Refinance Mortgage, you should include copies of all relevant executed documents in respect of the Original Mortgage and the Refinance Mortgage (including the mortgage deed, any facility letters and any other relevant documents) which **in respect of both the Original Mortgage and the Refinance Mortgage** show specifically the requirements stated in the Levy Rules. You can send in full copies in this way still, but it is important that you **highlight the relevant parts** of the documents that set out the details required. Please also include, with your submission, a brief covering note listing the relevant highlighted parts and the requirement to which they relate. We have also introduced some flexibility this year (see limb (a) of the definition of Refinance Mortgage in Rule A1 of the Levy Rules) such that you may provide copies of the pertinent pages that evidence the requirements, along with a summary sheet explaining how things join up. Please note that if you do use the latter then we may, if needed, come back to you to ask for further information.

vii. You must submit the Officer's Certificate plus highlighted attachments to Experian before midnight at the end of 31 March 2020.

viii. Where you have a Refinance Mortgage that has been excluded for levy purposes, the age of that Refinance Mortgage will also be adjusted to the age of the Original Mortgage for the purposes of the definition of Immaterial Mortgage. Therefore, if you are also certifying mortgages as being Immaterial Mortgages and counting back through your mortgage history to see which mortgages are to be included, you should regard the Refinance Mortgage as being the age of the Original Mortgage.

It is possible for a new mortgage to replace more than one earlier mortgage. In that case, the new mortgage will be accepted as a Refinance Mortgage so long as certain conditions are met, as set out in the definition of Refinance Mortgage in Rule A1. It is also possible that the new mortgage may be in respect of borrowing by a different entity than that who undertook the original borrowing. In this case, the new mortgage can be certified as a Refinance Mortgage so long as the principal obligations secured by the Original Mortgage were obligations of a member of the same group as original borrower.

Failure to supply relevant documents by the deadline stated will result in the Officer's Certificate being rejected.

2.2 Rent Deposits

i. Rent Deposit agreements are unlikely to be predictive of insolvency risk and so Experian will disregard them when calculating your Score. We are aware that the requirement to register these charges at Companies House ceased in April 2013 although agreements entered into before this date will have been registered.

ii. A Rent Deposit creates a security interest which falls within the description in Section 859A(6)(a) of the Companies Act 2006. This is "*a charge in favour of a landlord on a cash deposit given as security in connection with the lease of land*". You must certify in the Rent Deposit Officer's Certificate that the security created by the relevant agreement meets this definition.

iii. As part of its data collection procedures, Experian will review charges and mortgages registered at Companies House to decide if it is a Rent Deposit. If it decides that it is, Experian will disregard it when calculating your Score. However, if you are unsure whether this has in fact happened (because you have looked on the Portal and cannot see it has been disregarded), you should submit an Officer's Certificate to this effect. **Please note, you should not rely on Experian having identified and excluded any**

Rent Deposit. If you are in any doubt, you should submit the relevant Officer's Certificate and documentation as required in this Guidance and the Levy Rules.

iv. When completing the Certificate, you should include a copy of the executed Rent Deposit agreement.

v. You must submit the Certificate and attachments to Experian before midnight at the end of 31 March 2020.

Failure to supply relevant documents by the deadline stated will result in the Officer's Certificate being rejected.

2.3 Pension Scheme Mortgage

i. A mortgage or charge created by an employer in favour of the trustees of a PPF eligible pension scheme (e.g. to improve scheme funding security) may also be disregarded by Experian when calculating your Score.

ii. If you wish Experian to disregard such a mortgage or charge in favour of a PPF eligible pension scheme, you should submit an Officer's Certificate to this effect. **Please note, you should not rely on Experian having identified and excluded any Pension Scheme Mortgage. If you are in any doubt, you should submit the relevant Officer's Certificate and documentation as required in this Guidance and the Levy Rules.**

iii. You must complete the Pension Scheme Mortgage Officer's Certificate. You can certify any mortgage or charge in favour of the trustees of a PPF eligible pension scheme whether or not it complies with our requirements to qualify as a Type B Contingent Asset. However, it must be a current charge in favour of the trustees of a pension scheme which has been registered at Companies House in the UK (or other overseas electronic public registries in the countries specified in the column relating to the Mortgage Age Variable in Table 1 of the Insolvency Risk Appendix) and has not yet been released.

iv. The charge may be in favour of named trustees of a named pension scheme or in favour of a corporate pension trustee with reference to a named pension scheme. One or more of the trustees named in the deed may in fact have resigned or been replaced. However, we do not need to see deeds of retirement and appointment which are subsequent to the date of the charge.

v. However, you must send us copies of any deeds or documents effecting a change to the name of the pension scheme to enable us to update the records used by Experian.

vi. You must re-certify a new charge if the existing charge in favour of the pension scheme is replaced by another, unless both the charges in question are PPF-compliant Type B(ii) contingent assets in which case we do not require a new certification for a new Type B(ii) contingent asset that simply replaces an existing one (for example if a scheme has decided to release the earlier charge and execute a new one in order to move onto a new PPF standard form agreement).

vii. When completing the Officer's Certificate, you should include a copy of the executed security agreement and of any relevant supporting documents.

viii. You must submit the Certificate and attachments to Experian before midnight at the end of 31 March 2020.

Failure to supply relevant documents by the deadline stated will result in the Officer's Certificate being rejected.

2.4 Immaterial Mortgages

i. The definition of Immaterial Mortgage is set out in Rule A1 of the Levy Rules. Where an Officer's Certificate is submitted which complies with the definition, Experian will disregard such mortgages when calculating your Score.

ii. In the case of a revolving credit facility or overdraft facility, this should be assessed by reference to the Highest Drawn Amount (as defined in the Levy Rules) in the period 1 March 2019 to 29 February 2020. This amount should be evidenced by bank statements (see further below). Where the revolving facility has not been in place for a full year, or bank statements are not supplied in respect of it, then it will be treated as having a value which is the maximum undrawn amount available under it. The same principle applies in respect of charges over bank accounts where the chargor may be required to deposit sums – the amount for the purposes of assessing immateriality is to be assessed by reference to the Highest Deposited Amount (as defined in the Levy Rules) in the period 1 March 2019 to 29 February 2020. Where the charged bank account has not been in place for a full year (or bank statements are not supplied), it will be treated as having a value which is the maximum amount that might be required to be deposited. In the case of a transaction not involving borrowing but in respect of which there is a related charge the test should be assessed by reference to the maximum amount which may become due from the chargor under the transaction. Examples of where this might be relevant include:

(A) grant income which is required to be repaid, and where a charge is taken to enforce repayment; and

(B) a charge over land with a zero value, which is not treated as an asset in the company's accounts.

Appropriate evidence should be submitted to support the fact that the value of the charge is such that it should be treated as an Immaterial Mortgage. Applications will be considered on a case-by-case basis, and the nature of supporting evidence required will depend on the nature of the charge. At the very least, documentation should be provided to evidence the link between the charge and the underlying asset.

iii. As noted above, where you have a Refinance Mortgage that has been excluded for levy purposes, the age of that Refinance Mortgage will also be adjusted to the age of the Original Mortgage for the purposes of the definition of Immaterial Mortgage. Therefore, when you are considering which mortgages to apply for exclusion as being under the 0.5% threshold (as defined in the Immaterial Mortgage definition in the Determination), you should regard the Refinance Mortgage as being the age of the Original Mortgage.

iv. When completing the Officer's Certificate, you should include a list setting out the number, type and size of mortgages attached that are to be relied upon. Copies of executed mortgage documents and any ancillary documents evidencing the size of the credit facility in respect of each mortgage referred to must also be submitted, otherwise the Officer's Certificate will be rejected. You should submit only one Officer's Certificate per levy year covering all mortgages to be excluded as Immaterial Mortgages.

v. Overdraft facilities that are the subject of a charge registered at Companies House may be included in the calculation of the 0.5% threshold. You should state in the certificate the value of the Highest Drawn Amount at any time during that period under the overdraft facility relating to the security interest being certified and include this in assessing whether the aggregate value of all certified charges is at or under 0.5% of Total Assets. To evidence the highest amount drawn, **certified copies** of bank statements on the overdraft account showing all transactions in the period from 1 March 2019 and ending on 29 February 2020 should be attached to the Certificate.

vi. Experian will apply the conclusions of the latest Officer's Certificate across all monthly scores. This means that, in the event that a new charge is registered within the period when Scores are being calculated (April 2019 – March 2020 inclusive), you will need to make an assessment as to which charges to certify. This is because that charge may only affect certain Monthly Scores (e.g. if it is entered into in February, it may only affect the February and March Score) but, because it is very new, it may have a significant impact on those Scores it does affect. **It is your responsibility to establish which mortgages you should certify in order to achieve the best result.**

vii. It is important in each case that you **highlight the relevant parts** of the documents which show the details required to show the amounts of each mortgage calculated as set out above. Please also include, with your submission, a brief covering note listing the relevant highlighted parts and the requirement to which they relate.

viii. You must submit the Officer's Certificate and attachments to Experian by midnight at the end of 31 March 2020.

ix. If the aggregated amounts of the mortgage(s) and attached to the Officer's Certificate exceed the 0.5% threshold, the Certificate will be rejected and the charges taken into account for scoring purposes.

x. Where an Officer's Certificate is being submitted in respect of more than one mortgage, each mortgage registration number should also be supplied to Experian for the purposes of identification.

Failure to supply relevant documents by the stated deadline will result in the Certificate being rejected.

2.5 Employers/group members with credit ratings

i. The presence of an investment grade rating indicates strongly that a company has access to capital markets and, therefore, any mortgage charge is less predictive of Insolvency Risk. We also recognise that groups might have one or more designated entities in the Employer's group which act as a treasury centre with access to the markets and which benefits from an external rating. Accordingly, the Employer will be assumed to have no mortgages when calculating the Score if an Officer's Certificate is received which confirms that either:

a) the Employer itself is CRA Rated and has a CRA Rating at Investment Grade; or

b) the Employer is not CRA Rated but another member of the Employer's Group is CRA Rated and each other member of the Employer's Group which is CRA Rated has a CRA Rating which is Investment Grade.

The Board will check that the certificated rating of Investment Grade remains correct at 31 March 2020. If it does not, the exclusion will not apply.

ii. For the purpose of the above test we define a rating for a CRA Rated entity as a publicly available long term unsecured issuer rating provided by one of the three main rating agencies: Standard & Poor's; Fitch Ratings; and Moody's Investor Service. A CRA Rating is Investment Grade if it is BBB- or better when the rating agency is S&P or Fitch or Baa3 or better if the agency is Moody's.

iii. Where there is only one such rating, that rating is the CRA Rating which will be used. If there are two CRA Ratings in relation to the Employer or other member of the Employer's Group, the less favourable rating will be used. If there are three ratings in relation to the Employer or other member of the Employer's Group, the second most favourable rating will be used.

iv. If any time the CRA Rating of a CRA Rated entity (the Employer and any other CRA Rated member of the Employer's Group) drops below Investment Grade you must inform Experian in writing immediately.

3. **General**

3.1 For an Officer's Certificate to be accepted, the Board must be satisfied that it is signed by the appropriate person. Those who can sign an officer's certificate for a mortgage exclusion are:

(a) any director or the company secretary, in the case of a company;

(b) any member, in the case of a limited liability partnership;

(c) the general partner, in the case of a limited partnership.

3.2 For the avoidance of doubt, a single certificate can cover more than one scheme employer, provided that Experian receives confirmation that the signatory is authorised to sign on behalf of each employer.

4. Recognition of certificates from the previous year

4.1 Where the following certificates have been accepted for use in the calculation of the 2019/20 levies, they will be automatically carried over for use in the 2020/21 levies:

(a) Refinance Mortgages;

(b) Rent Deposits;

(c) Pension Scheme Mortgages;

(d) where the Group CRA Test is met for 2020/21.

4.2 However, you should submit a new certificate if the basis on which the Group CRA Test is met is different from the basis on which it was met in the previous Levy Year(s). For example if the identify of the CRA rated entity in a group changes, it will be necessary to provide a new certificate. You should also note that the Board checks ratings at the Measurement Time itself (see 2.5i above).

4.3 Certificates for Immaterial Mortgages will need to be submitted for each Levy Year.

5 Entities with no power to grant security

5.1 Entities for which charges information will not automatically be collected by Experian will generally receive a neutral mortgage score. The exception to this will be if the entity has no power to grant security over its assets (and can therefore have no charges). Such entities will generally receive a zero score if they provide satisfactory evidence to the Board that they do not have the legal ability to grant security over any of their assets.[1]

5.2 The Board expects employers who fall within this exception to contact Experian by email at experianppf@mailgb.custhelp.com before midnight at the end of 31 March 2020, with the following evidence:

(a) A copy of the legislation applying to the entity that prevents the entity from granting security;

(b) A copy of the constitutional documents of the entity demonstrating the prohibition on granting security;

in each case, accompanied by a letter from a legal advisor (which may be an in-house lawyer), confirming that the entity has no power to grant security.