

# Types of borrower

## LEARNING OBJECTIVES

Mortgage customers are not all the same: people require mortgages for various purposes and in a range of situations. Lenders and advisers need to be aware of the different types of borrower and the specific rules that may apply to lending to each group. It is also vital to be aware of people who are not permitted, for legal reasons, to borrow.

By the end of this topic, you should have an understanding of:

- types of mortgage borrower;
- ‘mortgage prisoners’ and vulnerable customers;
- those who are not legally allowed to borrow and those who may have difficulty borrowing;
- the different forms of powers of attorney.



## THINK ...

Some of the content of this topic should be familiar to you from your studies for UK Financial Regulation. For instance, can you recall:

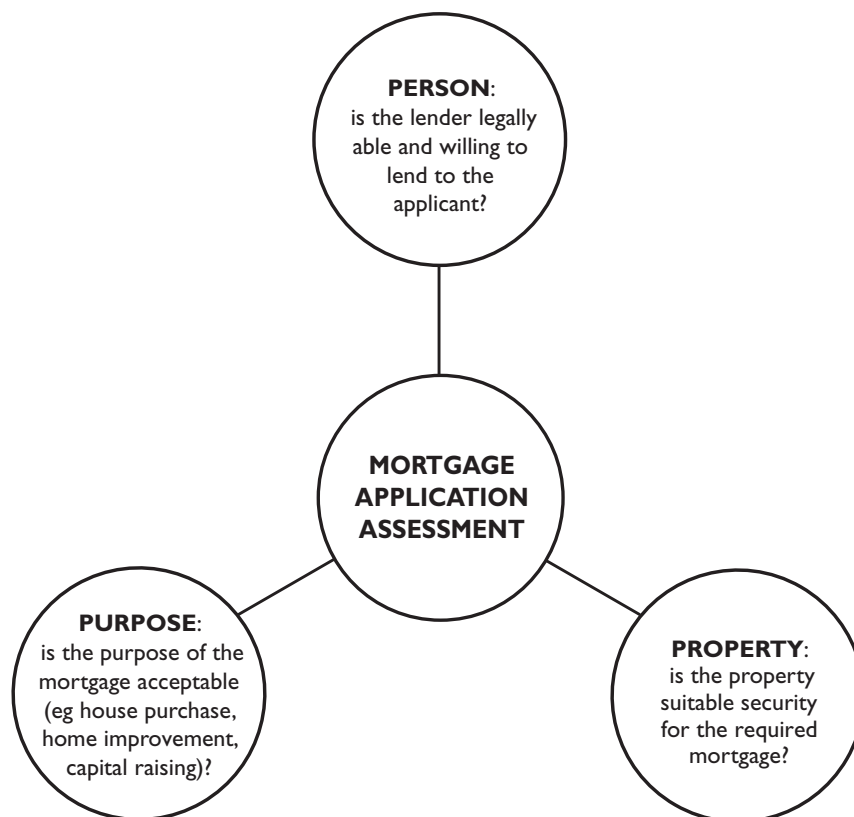
- the difference between a retail client and a professional client?
- the key differences, legally, between a sole trader, a partnership, a limited liability partnership and a limited company?
- who the FCA might regard as a ‘vulnerable customer’?
- the difference between an ordinary and a lasting power of attorney?

In this topic we’ll be focusing on the relevance of these issues to mortgage lending. (And don’t worry if you can’t remember much from your previous studies, as this topic covers the information you need.)

## 2.1 How is a mortgage application assessed?

In simple terms, a mortgage lender has to focus on three key factors, sometimes known as the three Ps, which are shown in Figure 2.1.

**FIGURE 2.1 THE THREE Ps OF ASSESSING A MORTGAGE APPLICATION**



We will look at each of these and how the lender reaches a decision in Unit 4, but for now we need to consider the main characteristics of the different types of borrower, together with those who, for a variety of reasons, are not able to enter into a mortgage contract.

There are several issues that all lenders have to address in assessing types of borrower:

- who may and may not borrow according to the law;
- if there are no legal barriers, whether the lender is prepared to lend to the applicant;
- whether funds should be allocated to, or earmarked for, particular groups or classes such as first-time buyers, professional introducers, and so on;
- how much the lender should consider lending to each applicant.

A sound lending policy considers these matters and others on an ongoing basis, taking into account:

- the lender's strategy, market positioning and required business levels in certain sectors;
- the risk profile of the applicant;
- the desired profit margin;
- arrears and recovery statistics and other circumstances.

## 2.2 What are the types of mortgage borrower?

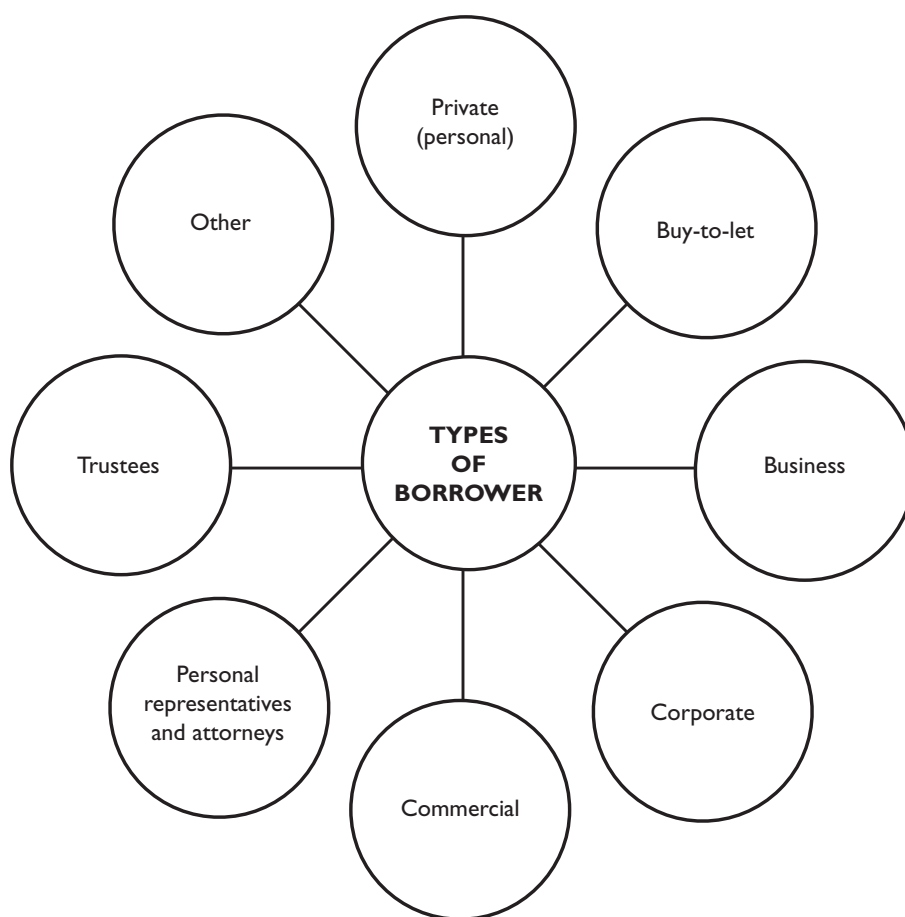
### JOINT AND SEVERAL LIABILITY

Before we look at the different types of mortgage borrower, we need to be clear on a basic principle of mortgage law. If two or more people take out a mortgage, the mortgage deed (the contract) makes them jointly and severally liable for that loan. This means all parties are liable for the whole amount of the loan, not just their 'share' of it.

The parties to the mortgage can agree between themselves to share responsibility for the loan (and other outgoings as well) in whatever proportions they wish, but the lender can still pursue them individually for the whole loan.

So, a couple with a joint mortgage are both responsible for the mortgage, even if they split up. In the same way, if a borrower disappears, or refuses to pay the mortgage, the other borrower will be responsible for the payments.

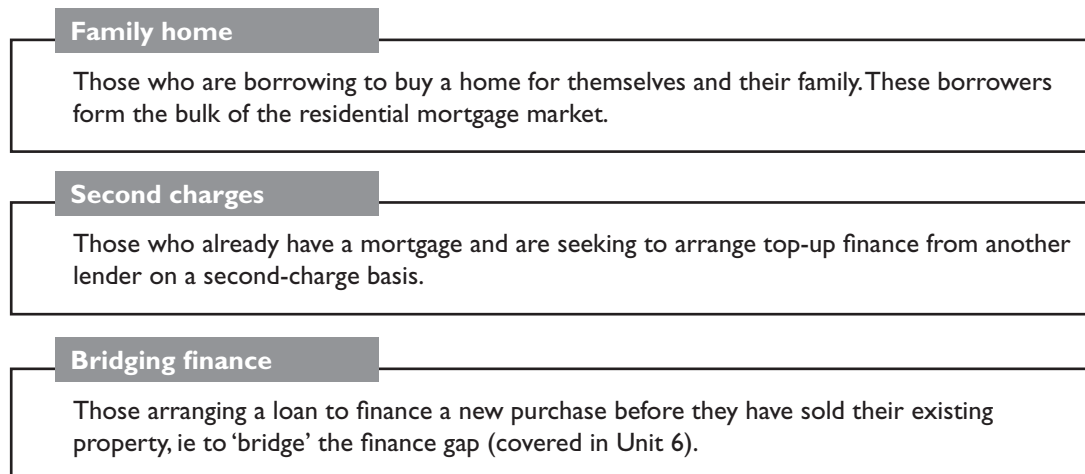
**FIGURE 2.2 TYPES OF BORROWER**



We will discuss different types of business borrower in section 2.3, and corporate and commercial borrowers in section 2.4.

### **2.2.1 Private (personal) borrowers**

There are three key reasons why private borrowers seek mortgage finance, as summarised in Figure 2.3.

**FIGURE 2.3 REASONS FOR SEEKING MORTGAGE FINANCE**

### 2.2.2 Buy-to-let borrowers

Buy-to-let (BTL) borrowers are those buying a residential property with a view to letting (renting) it to someone else as a form of investment. BTL property purchases have increased as people have sought alternatives to the stock market for their investment funds. The investor hopes to make profits from a combination of rising house prices and regular rental payments, which are intended to provide a surplus after mortgage payments, management charges and maintenance costs are covered.

In most cases, the investor needs to raise some of the purchase amount through a mortgage. Responsibility for a BTL mortgage is exactly the same as for a 'normal' mortgage, in that borrowers are jointly and severally liable. Most lenders will not consider BTL mortgages for first-time buyers and those who do not own their own home.

The criteria for BTL mortgages tend to be a little different and, provided the applicant has a specified minimum level of income, the amount of the loan is determined by whether the rental income will be enough to service the loan repayments.

In 2016, the PRA introduced requirements for lenders to assess more stringently a number of affordability factors when considering buy-to-let applications. The three main factors are:

- **Interest coverage ratio (ICR)** – the ratio of rental income to mortgage payments (including associated costs and tax). Each lender can set an ICR based on rental demand and typical rent levels in the area, with the PRA setting 125 per cent as a minimum industry standard, meaning that rent must be at least 125 per cent of the landlord's costs, although some lenders set a minimum as high as 145 per cent.

- **Interest rate affordability stress test** (sometimes referred to as the stress ICR) – the lender is required to consider the effect of interest rate increases on the borrower’s ability to service the mortgage over a minimum period of five years from the start of the mortgage, unless the mortgage is on a fixed or capped rate for at least five years or the mortgage term is less than five years. This is achieved by increasing the actual rate of the selected mortgage to give a notional rate, which is then used for the ICR. The lender can determine the rate to use, but it must be at least 2 per cent above the actual rate.
- **Income affordability test** – where the borrower will be using some personal income to support the mortgage, the lender must carry out a detailed affordability assessment.

The buy-to-let affordability process is covered in detail in section 24.6.2.

## Consumer buy to let

Since 21 March 2016, as a result of the Mortgage Credit Directive, there has been an additional category of buy-to-let mortgage called ‘consumer buy to let’ (CBTL). A CBTL mortgage is one where the purpose of arranging a mortgage is not ‘wholly or predominantly’ for business purposes. Borrowers in this category are sometimes described as ‘accidental landlords’ – in other words, they are people who need to let out a property because of personal circumstances rather than because they have made a conscious choice to buy a property for rental. Such circumstances might include those who inherit a property, or people who need to move quickly because they have a new job and do not have time to sell their family home before moving. Existing mortgages remain as ‘normal’ mortgages, but if they need to arrange a new mortgage on the property, it would be classed as a consumer buy-to-let mortgage.

### IN BRIEF

#### REGULATION OF BTL AND CBTL MORTGAGES

In general, mortgages for BTL property are not subject to FCA regulation because they are defined as business loans and are not secured on the borrower’s main residence.

However, CBTL mortgages are subject to legislation resulting from the Consumer Credit Directive 2015. Firms with Section 4a permission to carry out regulated activities that wish to deal in CBTL business must register as CBTL firms with the FCA.

CBTL mortgages are subject to the Mortgage Credit Directive Order 2015, but the requirements for firms are similar to the MCOB rules and, where advice is given, the firm must assess the client's circumstances, meet initial and product disclosure requirements and assess affordability.

Regulation of BTL and CBTL mortgages is covered in more detail in section 3.3.6.

### 2.2.3 High-net-worth customers

The FCA defines a high-net-worth customer as one with a minimum annual net income of £300,000, or minimum net assets of £3m. In the case of joint applicants, at least one of them must meet the definition in their own right. A high-net-worth customer can also be someone whose obligations under the mortgage contract are guaranteed by a person with a minimum annual net income of £300,000, or minimum net assets of £3m.

The rules allow lenders to apply more flexible processes to high-net-worth customers than for mainstream mortgages, as we will see in Topic 8.

### 2.2.4 Professional customer

The FCA defines a 'professional customer' as one who has worked in the home finance sector for at least a year, in a professional position that requires knowledge of the product or service to be arranged, and who the firm reasonably believes to be capable of understanding the risks involved in the proposed arrangements.

### 2.2.5 Personal representatives

Personal representatives (or executors in Scotland) act in managing the estates of deceased people. If the deceased person has left a will, the personal representative is called an executor and is named by grant of probate. If the deceased has not left a will, the representative is an administrator, appointed by letters of administration.

Lenders can lend to personal representatives of an estate if they need a loan to administer the estate or to buy property for a dependant of the deceased.



### EXECUTORS IN SCOTLAND

In Scotland, if the deceased person has appointed an executor in a will, they are the executor-nominate. Otherwise, the executor is appointed by the court (executor-dative). Both generally need to obtain confirmation from the court to deal with the estate.

#### 2.2.6 Attorneys

An attorney is a person who is given the responsibility to deal with someone else's financial or other personal affairs through a document called a 'power of attorney'. There are many users of attorneys, including elderly people who can no longer manage their own finances or people who live outside the UK for long periods. We look at powers of attorney in section 2.8.

#### 2.2.7 Trustees

Trustees are people appointed in a document called a trust deed to hold a specific asset, or assets, on behalf of others called the beneficiaries, and to act for the beneficiaries according to the terms set out in the deed.

The property in the trust is called trust property. Generally, the terms of larger trusts allow the trustees to borrow money for certain purposes and up to specified limits. A good example would be where the trustees arrange a mortgage to buy a property for a beneficiary to live in. Before lending to trustees, a lender should examine that the trustees are specifically given the power to borrow, because not all trusts provide that power.

Trustees are often appointed to act on behalf of a disabled person, and can also arrange mortgages for them.

#### 2.2.8 Clubs and associations

Clubs and associations are usually managed by elected committees on behalf of their members. The powers that the committee may exercise are often contained in a set of rules or other terms of reference under which they must operate. These rules will normally show whether the club may borrow and the extent to which it can do so. Lenders will need to make certain that the constitution allows the club to borrow, and that it will be able to repay the loan.

### 2.3 Business borrowers

Mortgages taken out by *individuals* for business purposes are regulated and subject to MCOB if:



- the borrowing is secured by a legal charge on a property where at least 40 per cent of the land is used as a residence (the standard definition of a regulated mortgage); and
- the sole purpose of the mortgage, remortgage or further advance is to raise funds for use by a small business (ie one with turnover of less than £1m per year).

If the mortgage is taken out by a business, or by individuals in the business, and is secured on business premises, the mortgage is not a regulated mortgage.

If the mortgage is regulated, the lender must have seen a business plan or other evidence that the loan is for business purposes, and must assess affordability based on the applicant's income and expenditure as usual. If the repayments are to be made from the business's resources, the strength of those resources must be taken into account. Where the borrower relies on the business for their personal income and the current and potentially increased mortgage repayments, the lender must assess whether the business can support the customer's essential expenditure and basic quality of living costs.

### 2.3.1 Business partnerships

A business partnership is an arrangement between self-employed people to work together. Unlike a company, it is not a separate legal entity, and the assets of the partnership are owned jointly by the partners themselves. Each partner is also jointly responsible for the debts of the partnership, and lenders ensure that any lending contract makes them jointly and severally liable for the loan.

Mortgages for partners for business purposes are regulated if the criteria for regulated business mortgages (section 2.3) are met.

#### CHECK YOUR UNDERSTANDING I



Elena and Rita are in a business partnership together, and have arranged a mortgage loan of £240,000. They agree between them that Elena will pay for a third of the mortgage and Rita for two thirds.

However, Rita very suddenly leaves the country and does not leave any contact details. How much of the loan is Elena liable to repay?

- £80,000
- £160,000
- £240,000

Partnerships should have a written partnership agreement, and the lender will need to check an up-to-date copy of the agreement to make sure that it can lend safely to the partnership. The partnership agreement will include:

- each partner's share of the profits;
- the arrangements if one partner retires, dies or becomes bankrupt;
- whether the partnership is able to borrow and, if so, whether individual partners can enter into contracts on behalf of the others, or whether all partners must sign for the contract to be legally binding.

### 2.3.2 Limited liability partnerships

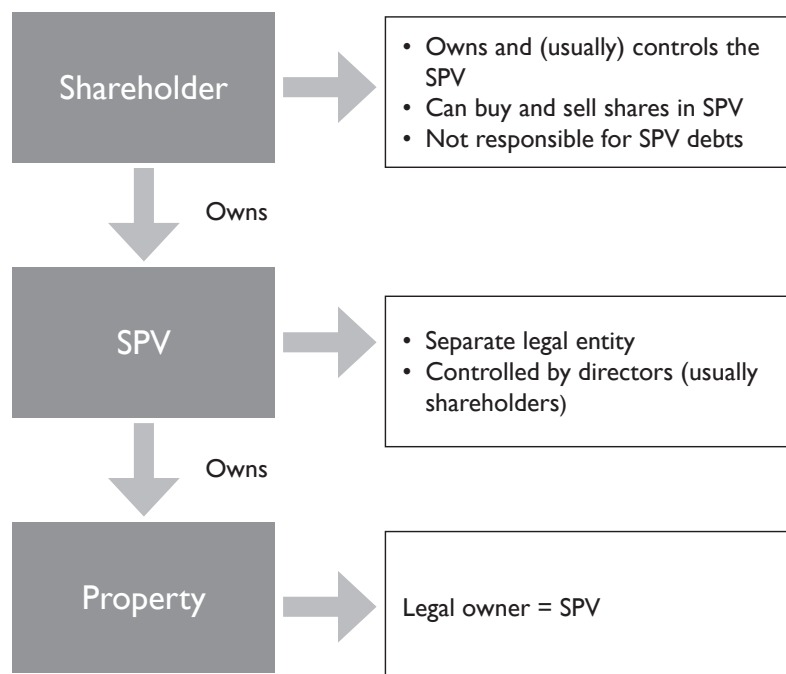
A limited liability partnership (LLP) is a form of partnership where the business is a separate legal entity from the partners, who act as agents of the partnership. This means that, just like a limited company, the partners do not have a direct liability for the debts of the partnership, over and above any capital they brought to the partnership when it was formed. Mortgage lending is provided to the LLP itself rather than to the individual partners. The lender may decide to take personal guarantees from the partners for any lending to the partnership, in much the same way as they would from the directors of a small limited company.

Mortgage lending directly to an LLP is not regulated.

### 2.3.3 Special purpose vehicles

A special purpose vehicle (SPV) is a way of holding business property through a limited company, rather than the individual(s) holding the property in their own name. The ownership structure is shown in Figure 2.4.

**FIGURE 2.4 OWNERSHIP STRUCTURE OF AN SPV**



The limited company is registered as the legal owner of the property, and directors are responsible for making sure the company meets all the normal legal obligations of a limited company. The people who would otherwise own the property in their own name become shareholders (and directors) of the company, so they own the company rather than the property.

The number of SPVs set up to hold BTL property has increased significantly in recent years, and experts suggest the trend will continue. Changes to the taxation of BTL property make it more attractive to hold the property in an SPV.

As the SPV is a business, any BTL mortgage would not be a regulated CBTL mortgage. In most cases, the lender requires personal guarantees from the directors before agreeing to a mortgage. By agreeing to a personal guarantee, the directors agree to take responsibility for the mortgage if the company fails to meet payments. The guarantee is usually arranged by the lender taking a legal charge over the directors' own main property.

We discuss the taxation of BTL property and SPVs in Topic 24.



#### CHECK YOUR UNDERSTANDING 2

From your studies for UK Financial Regulation, can you recall the key features of a limited company? In particular, can you remember how shareholders are remunerated and what liability they have for the debts of the company?

## 2.4 Corporate borrowers

Lending to a limited company is categorised as corporate borrowing, and may be for either residential or commercial purposes. Before making a lending decision, it is prudent for the lender to confirm that the company is permitted by its memorandum and articles of association to borrow, whether there are any restrictions or limits on such borrowing and whether the individuals the lender is dealing with have authority to commit the company to borrowing.

Many lenders will only lend to small companies if directors or shareholders give a personal guarantee to settle the debt if the company has insufficient funds or cannot meet the repayments.

Corporate mortgages are not regulated by the FCA, regardless of the type of property, because the loan is to a company, not an individual, but it will be covered by MCOB rules if the firm has a turnover of less than £1m.

### **BUILDING SOCIETIES AND CORPORATE LENDING**

Building societies are restricted under the provisions of the Building Societies Act 1986 (as amended by the Building Societies Act 1997) in respect of corporate lending. A maximum of 25 per cent of a building society's commercial assets can be held in loans to limited companies secured on land.

## **2.5 Commercial borrowers**

A commercial mortgage is one that is secured on commercial property (for example, a shop or a factory) as opposed to residential property. A commercial mortgage can be offered either to an individual or to a company, but will not be a regulated mortgage.

## **2.6 Special FCA categories**

There are also two categories of borrower specifically referred to by the FCA in MCOB, because their circumstances require careful treatment in relation to mortgages. They are 'mortgage prisoners' and vulnerable customers.

### **2.6.1 'Mortgage prisoners'**

'Mortgage prisoners' is a term to describe customers who have a regulated mortgage and may be prevented from changing to another arrangement with their existing lender or moving to another lender if they are subject to the standard affordability requirements under MCOB.

There are specific MCOB rules applying to borrowers wishing to switch to a different mortgage with their existing lender or to remortgage with a different lender without increasing their borrowing and monthly costs. The rules only apply to those wishing to change a mortgage on their existing property; they cannot be used for those wishing to move to another property.

The rules are contained in MCOB 11.9; we consider them in detail in section 10.7.1.

### **2.6.2 Vulnerable customers**

The FCA's Occasional Paper No. 8 (2016) describes a vulnerable customer as someone who is "[. . .] especially susceptible to detriment as a result of their personal circumstances, particularly when a firm is not providing appropriate levels of care". This was reinforced in the 2021 paper, *FG21/1 Finalised guidance for firms on the fair treatment of vulnerable customers*.

An individual may be vulnerable because of a wide range of circumstances including (but not limited to) physical or mental disability, poor health, or weak numeracy and literacy skills. Their vulnerability might be short term, for example because of a job loss, a recent bereavement or release following a prison sentence. Firms have a responsibility to identify and deal appropriately with vulnerable customers, tailoring their service provision to customer needs.

The 2021 guidance states that good outcomes for vulnerable customers require firms to:

- understand the needs of their target market/customer base;
- ensure their staff have the right skills and capability to recognise and respond to the needs of vulnerable customers;
- respond to customer needs throughout product design, flexible customer service provision and communications;
- monitor and assess whether they are meeting and responding to the needs of customers with characteristics of vulnerability, and make improvements where this is not happening.

The paper identifies four key ‘drivers’ that could cause vulnerability:

- Health – health conditions or illnesses that affect the ability to carry out day-to-day tasks.
- Life events – such as bereavement, job loss or relationship breakdown.
- Resilience – low ability to withstand financial or emotional shocks.
- Capability – low knowledge of financial matters or low confidence in managing money (financial capability). Low capability in other relevant areas such as literacy or digital skills.

For mortgages, the FCA also regards the following as vulnerable customers because of the nature of the financial arrangement they are considering:

- those buying a property using the statutory right to buy;
- those entering a sale-and-rent-back agreement;
- equity-release applicants;
- customers whose main purpose is debt consolidation.

### FACTFIND

If you would like to find out more about the FCA's guidance in relation to vulnerable customers, go to:

[www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf](http://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf)

## **2.7 Which groups of people are unable to borrow?**

We have looked at those who are able to borrow, subject to the lender's agreement. We now look at three groups of people who are unable, by law, to borrow or whose ability to borrow is restricted:

- minors;
- the mentally incapacitated;
- undischarged bankrupts and those with poor credit records.

### **2.7.1 Minors**

A person under the age of 18 years (a minor) cannot hold a legal estate in land (property), and cannot normally enter into a contract unless it is for 'necessities'. For these reasons mortgages are only made available to persons of 18 years of age and over; lenders will check the applicant's age before agreeing to a mortgage.



#### **MINORS**

The law regarding minors is different in Scotland. Students taking the Scottish version of the examination should refer to the Appendix to Unit 3 for details.

### **2.7.2 Lack of mental capacity**

A person who is mentally incapacitated cannot borrow in their own right – another person has to act for them. In England and Wales, a person of unsound mind who requires housing to be funded by a mortgage is represented by a deputy appointed by the Court of Protection, unless they have set up an appropriate power of attorney.

We look at powers of attorney in section 2.8.

### 2.7.3 Insolvency and bankruptcy

Insolvency occurs when:

- a person's liabilities exceed their assets; and
- a person cannot meet their financial obligations within a reasonable period of them falling due.

Under the Insolvency Act 1986 (England, Wales and Northern Ireland) or the Bankruptcy (Scotland) Act 1985, a bankrupt is any person who is insolvent and has been declared bankrupt by the county (or Sheriff) court. The court issues a bankruptcy order.

So, someone could be insolvent but not bankrupt – at least not until they or their creditors apply for a bankruptcy order.



#### SEQUESTRATION

Scottish law refers to bankruptcy as 'sequestration'. Scottish sequestration law is different from bankruptcy laws in the rest of the UK.

This text will focus on bankruptcy laws that apply to England, Wales and Northern Ireland.

A bankruptcy order results from a petition for bankruptcy, either from the individual or a creditor. An individual can petition for their own bankruptcy, regardless of how much they owe, and creditors can petition for a debtor's bankruptcy if the debt is at least £5,000 in England, Wales and Northern Ireland.

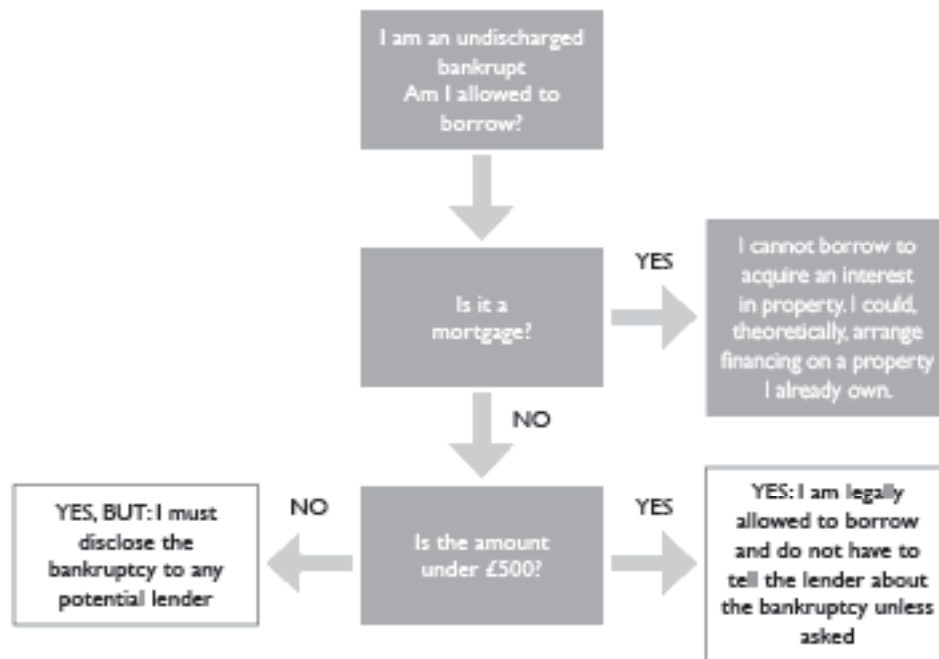
When someone is declared bankrupt, their case is in the hands of a trustee in bankruptcy, whose role is to seize their assets, sell them and use the proceeds to pay the court costs and settle as many of their debts as possible. The individual can keep some assets that they need for work or to provide a basic standard of living, but everything else, including property, may be at risk.

In most cases (including in Scotland), the period of bankruptcy lasts for 12 months. However, the bankruptcy order can be extended in certain situations – for example, if the individual does not co-operate with the trustee.

During the bankruptcy period an individual is said to be 'undischarged'. The law does not always prevent an undischarged bankrupt from borrowing, but it places significant restrictions on them (see Figure 2.5). In reality, few, if any, lenders would be prepared to lend to an undischarged bankrupt. An undischarged bankrupt cannot acquire an interest in property, which means that they cannot buy a property or apply for a mortgage to buy a property.

However, if they already own a property they can, technically, seek a further advance or remortgage on it, as they are not gaining an interest in a property they already own. In reality, though, it would be very difficult, if not almost impossible, for them to obtain that financing whilst undischarged.

**FIGURE 2.5 WHEN CAN AN UNDISCHARGED BANKRUPT BORROW?**



### DISCLOSING A PREVIOUS BANKRUPTCY

Once discharged from bankruptcy, the individual is entitled to borrow, but they are likely to have difficulty finding a willing lender. A borrower must declare a previous bankruptcy if asked by the lender, and all lenders will ask on the mortgage application form as a matter of course. Failure to declare a previous bankruptcy when asked can render the person guilty of fraud.

Bankruptcy is recorded on the publicly available Insolvency Register until three months after discharge, and details of bankruptcy are held on the individual's credit file for six years from declaration of bankruptcy.

Many lenders will automatically decline applications from those with a previous bankruptcy. Some lenders require an applicant to have been discharged for a minimum period of years before they will consider lending. Lenders take each case on its merits.



### 2.7.4 Individual voluntary arrangements and debt relief orders

Bankruptcy is not always the best course of action for creditors or debtors. Some people may have debts that they could afford to repay in part, and an individual voluntary arrangement (IVA) or debt relief order (DRO) may be a more appropriate option for them. A similar arrangement known as a protected trust deed is available in Scotland.

An IVA or DRO does not legally prevent an individual from taking out a mortgage, but lenders may be unwilling to consider an application.

IVAs, DROs and protected trust deeds are covered further in Topic 11.

#### KEY TERMS

##### INDIVIDUAL VOLUNTARY ARRANGEMENT

A formal agreement between a debtor and their creditors to make reduced payments towards their total debt over an agreed period, typically five years, after which the debt is deemed to be settled.

##### DEBT RELIEF ORDER

An order granted by the official receiver to a non-property owning individual with debts of less than £30,000 and limited assets who cannot repay their debts. It prevents creditors from seeking repayment without the approval of a court while the DRO is in place; after 12 months the debts are usually written off.

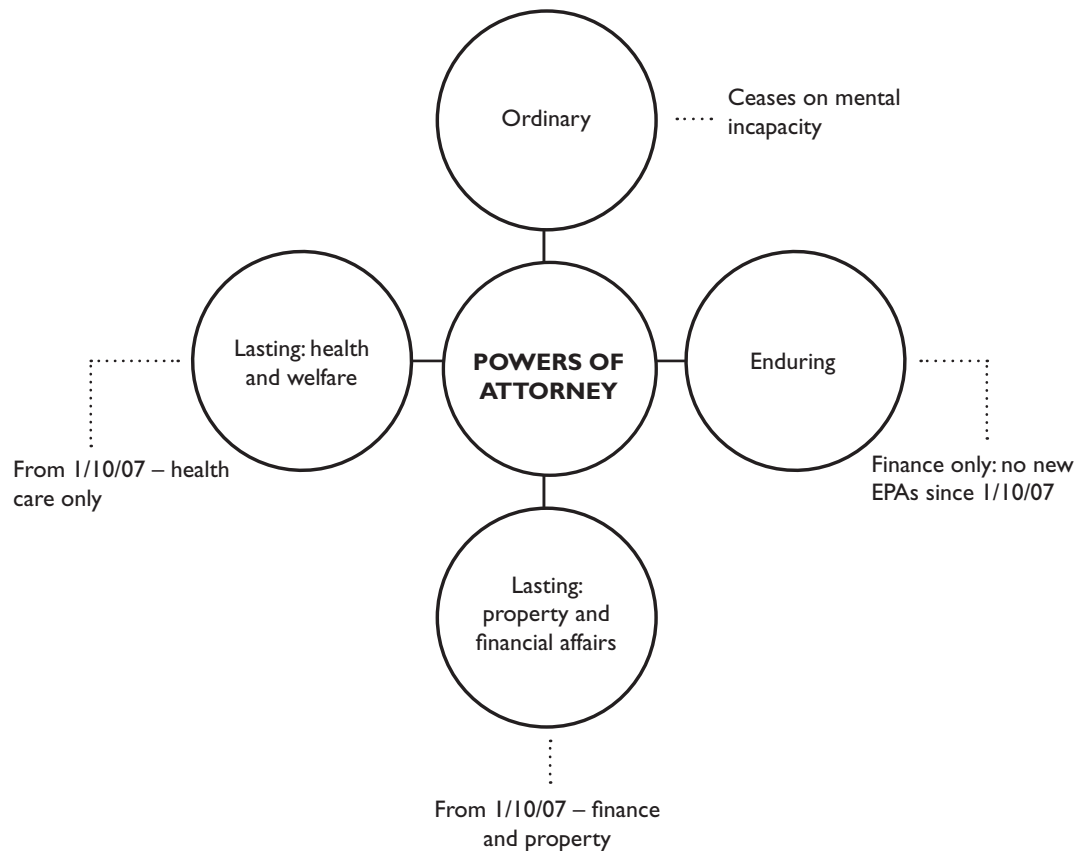
## 2.8 What are powers of attorney?

Someone who would like to be sure that a person they know and trust will be able to look after their affairs if they become unable to do so themselves should set up a power of attorney. The donor can control the amount of responsibility that is given to the attorney. Some give their attorney general powers, while others limit the powers to specific issues.

Someone who does not have legal capacity to contract is not able to appoint an attorney; for example, a minor cannot appoint someone else as their attorney and enter into a contract that way.

There are a number of different forms of powers of attorney. These are summarised in Figure 2.6 and described further below.

FIGURE 2.6 POWERS OF ATTORNEY



#### KEY TERMS

##### DONOR

The person granting powers to their representative.

##### ATTORNEY

The person granted the powers to act on the donor's behalf. Also sometimes referred to as the 'donee'.

##### DEPUTY

Appointed by the Court of Protection to look after the affairs of someone who becomes mentally incapacitated.

### 2.8.1 What is an ordinary power of attorney?

An ordinary power of attorney enables the attorney to carry out activities relating to the donor's financial and property affairs. It is typically used by

people who are mentally capable but physically infirm to enable someone to pay bills and carry out transactions on their behalf. It is also commonly used by people who are abroad for a while, allowing someone else to pay their bills and so on. The donor has complete control over their affairs, can carry out the same transactions as the attorney, and can revoke the powers whenever they wish. They can also limit what the attorney can do.

An ordinary power of attorney ceases when the donor becomes mentally incapable, and if they have not made other arrangements, the Court of Protection will appoint someone to look after their affairs. This will not necessarily be someone they know, and there will be fees for appointing a deputy, for the deputy's services and for ongoing supervision of the deputy.

### 2.8.2 What is a lasting power of attorney?

While an ordinary power of attorney ceases on mental incapacity, a lasting power of attorney (LPA) is specifically designed to enable people to decide who will look after their affairs if and when they are mentally unable to do so themselves, and to enable that person to take up those powers with minimal disruption. An LPA must be registered with the Office of the Public Guardian (OPG) before it becomes effective.

An LPA is available in two forms:

- **Property and financial affairs** – once the power has been registered, the attorney can look after the donor's finances and property, usually including borrowing unless it is specifically excluded. With the donor's agreement it can be registered and used before they lose mental capacity, and in this case they can still deal with their own finances if they wish. If the LPA is to be registered when the donor loses mental capacity, there is a set process that must be followed for registration, in order to protect the donor.
- **Health and welfare** – this allows the attorney to make decisions about the donor's medical treatment and care. It can only be used once the donor has lost mental capacity and is no longer able to make decisions for themselves.

#### FACTFIND

Further information about powers of attorney, including how to set up and register an LPA, is available at:

[www.gov.uk/power-of-attorney](http://www.gov.uk/power-of-attorney)



## POWER OF ATTORNEY

In Scotland, the powers are known as:

- a continuing power of attorney, which is the equivalent of a property and financial affairs LPA;
- welfare power of attorney, which is the equivalent of a health and welfare power of attorney; or
- combined power of attorney, which combines property and welfare matters.

Note that in Scotland, it is necessary for the power of attorney to confer specific authority to borrow.

Powers of attorney in Scotland are dealt with by the Office of the Public Guardian (Scotland).

### 2.8.3 What is an enduring power of attorney?

Until 30 September 2007, it was possible to set up an enduring power of attorney (EPA). An EPA can be used like an ordinary power of attorney, while the donor has mental capacity; in other words, the attorney can assist the donor to manage financial matters. If the donor loses mental capacity, the EPA must be registered with the Office of the Public Guardian in order for the attorney to continue to act for the donor.

An unregistered EPA may be revoked, providing the donor has mental capacity. A registered EPA may be revoked, but only after confirmation from the Court of Protection that the donor fully understands the implications of doing so.

When an application is made to register an EPA with the OPG, the donor and at least three of the donor's relatives aged at least 18 and mentally capable must be informed.

Since 1 October 2007 it has not been possible to set up any new EPAs but those already in force at that date remain valid, and existing EPAs may continue to be registered with the OPG. Therefore, you may encounter EPAs when dealing with customers.

**FACTFIND**

Further information about using and registering an EPA is available at:

[www.gov.uk/use-or-cancel-an-enduring-power-of-attorney](http://www.gov.uk/use-or-cancel-an-enduring-power-of-attorney)

**CONFIRMING AUTHORITY TO BORROW**

Before agreeing to lend to an attorney who holds powers under an EPA or LPA, the lender must confirm that:

- the EPA or LPA is currently in force (ie not revoked, or unregistered where registration is required);
- the EPA or LPA gives the attorney authority to borrow;
- the purpose for which the borrowing is required is not excluded.

**THINK AGAIN ...**

Now that you have completed this topic, how has your knowledge and understanding improved?

For instance, can you:

- outline three reasons why a personal customer might need a mortgage?
- explain the basic difference between a buy-to-let mortgage and a consumer buy-to-let mortgage?
- explain the situations in which a mortgage loan to a business is a regulated mortgage?
- describe how an SPV works?
- outline the bankruptcy process and how it affects the individual's ability to borrow?

Go back over any points you don't understand and make notes to help you revise.

Test your knowledge before moving on to the next topic.



## Test your knowledge

Use these questions to assess your learning for Topic 2. Review the text if necessary.

Answers can be found at the end of this book.

- 1) Helena and Cath have a £120,000 mortgage in their joint names on their flat, which they bought two years ago and own on a joint tenancy basis. Helena and Cath have split up, Helena has moved out and Cath has not been able to contact her about paying the mortgage. Who will the lender hold liable if the mortgage payments are not made?
  - a) Cath for the whole amount, because she is the only person actually living in the flat.
  - b) Helena and Cath, but the lender will pursue Cath for the whole amount if Helena cannot be contacted.
  - c) Cath for 50 per cent of the outstanding payments and Helena for the remainder.
  - d) Cath for 50 per cent because she is only liable for half the amount borrowed.
- 2) What are the three main reasons why a personal borrower might require a mortgage? Select all that apply.
  - a) To purchase a family home.
  - b) To purchase a business property.
  - c) To arrange additional finance on a second-charge basis.
  - d) To provide bridging finance.
  - e) To let a home to tenants.
- 3) Before agreeing to lend to trustees, a lender must establish that the trustees have authority to borrow for the proposed transaction under the terms of the trust deed. True or false?
- 4) A partnership business has a legal existence of its own, separate from that of the individual partners. True or false?
- 5) James wishes to raise £30,000 for his small business by arranging a further advance on the mortgage on his family home. Would the further advance be a regulated mortgage?

- 6) Vanda has mortgages on two buy-to-let properties, which she owns via a special purchase vehicle. Are the mortgages regulated under MCOB?
- 7) An undischarged bankrupt cannot own property. True or false?
- 8) Alan was declared bankrupt for the first time in London on 5 May this year. He will be discharged on:
  - a) 5 May next year.
  - b) 5 May two years later.
  - c) 5 May three years later.
  - d) 5 May five years later.
- 9) A person who makes a power of attorney is known as a donor. True or false?
- 10) Jack established an enduring power of attorney (EPA) in 2006, with his daughter as his attorney. Jack is now suffering from dementia and his daughter wishes to sell his house and use the proceeds to extend her own home so that Jack can move in with her. Is she permitted to do this?

