LSB breaches management and reporting policy

Purpose

This policy sets out the LSB's approach to managing breaches, including the framework firms are expected to follow when, through their own systems and controls, or via the LSB's oversight activity, it is identified that the customer outcomes set out within the Standards of Lending Practice (the Standards) are not being achieved or a Code requirement is not being met.

This policy is applicable to all registered firms across each Standard and Code for which the LSB has oversight responsibilities. This currently includes:

- Standards of Lending Practice for personal customers;
- Standards of Lending Practice for business customers;
- Standards of Lending Practice for business customers – Asset Finance;
- Contingent Reimbursement Model Code for Authorised Push Payment Scams; and
- Access to Banking Standard.

The majority of firms are also regulated by the FCA and will adhere to the Consumer Credit Sourcebook (CONC). For completeness, the Standards also include where relevant, references to CONC and the Consumer Credit Act (CCA), therefore providing an overview of the entire lending process. Whilst adherence to any CONC/CCA reference is outside of the LSB's oversight regime we would still expect to be informed when firms are in breach of their responsibilities where these cross over with our Standards or Codes.

Appendix A to this document provides further guidance to firms on expectations of reporting breaches.

Breach definition

The LSB defines a breach as a **registered firm's non adherence to Registration Rule 1.2 (e) set out under Compliance policy, which states:**

> ***1.2(e)*** Registered Firms promise under the Applicable Codes and these Rules to act fairly and reasonably in all their dealings with personal customers and business customers, as appropriate, in the UK

Example: Firm has breached **LSB rule:**

'1.2 (e) 'Registered Firms promise under the Applicable Codes and these Rules to act fairly and reasonably in all their dealings with personal customers and business customers as appropriate, in the UK'

...based on evidence that the following customer **outcome** is not being achieved:

'(f) customers in financial difficulty, or in the early stages of the collections process, will receive appropriate support and fair treatment, across the different communication channels offered, in order to help them deal with their debts in the most suitable way.'

...(and/or) due to partially or not meeting the **standard:**

'Where a customer remains engaged with the firm and maintains their repayment plan, they will not be subject to unnecessary contact'

This means that, when systems and controls fail, firms will be breaching an overarching LSB rule and will be expected to identify the extent to which a specific Standard or Code requirement, and any corresponding customer outcome, has not been met or achieved.

On a more systemic level, firms could also be failing to achieve a customer outcome or Code requirement in its entirety, in which case, this is likely to be reported as a severe breach of the Rules.

Breaches can be identified by the firm (self-identified) or by the LSB but nonetheless, all reported items, together with accompanying actions plans, will be logged internally by the LSB to facilitate information tracking and reporting.

The categories in respect of root cause are: policy, process, system and people.

Assessing materiality

Materiality assessments enable the LSB to form a view on the risk exposure to the firm against the Standards framework or Code requirements and to identify any systemic or industry wide issues. The timeframe for notification and the level of detail required by the LSB will vary depending on the initial materiality rating provided by the firm:

Rating	Definition	Firm reports item to the LSB
Severe	Customer outcome(s)/Code requirement not met; actual, or high potential for, customer detriment	When it occurs
Major	Customer outcome(s)/Code requirement partially met or Standard(s) not met; high impact on customer outcomes	When it occurs
Moderate	Standard(s)/Code partially met; medium impact on customer outcomes	When it occurs
Minor	Standard(s)/Code mostly met; low impact on customer outcomes	Minimum annually within self-attestation documents. During firm relationship meeting by providing access to breaches log

Severe breaches are defined as the highest level of breach and will require full and prompt disclosure to the LSB.

Following introduction of the self-attestation process, firms are required to report all breaches which have occurred in the previous 12 months, regardless of severity and including very minor or technical breaches. However, where a breach has already been notified or raised during any LSB oversight work, it does not need to be reported again within the self-attestation document.

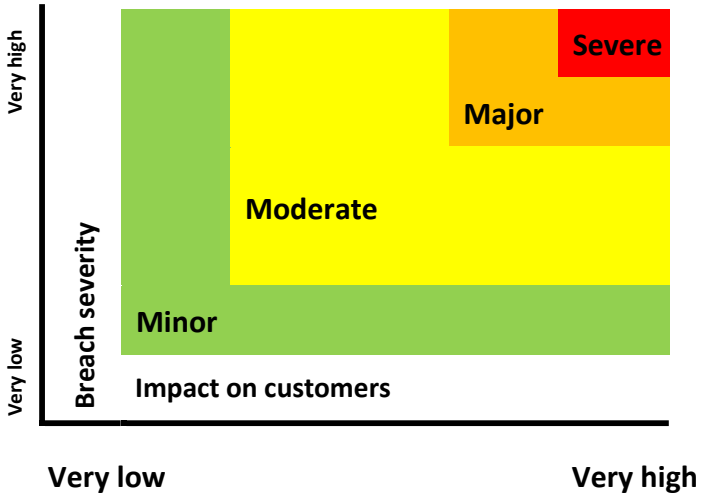
Firms are expected to continue to locally record and track all minor instances of failing to achieve outcomes or meet Standards/Codes for this purpose.

Should concerns arise in respect of breaches assessed as minor, especially if this indicates more systemic failings, LSB compliance managers may recommend that the rating is increased.

In the first instance, all breaches rated moderate and above, should be reported via an email to the designated LSB Compliance Manager.

Materiality grid

The grid below illustrates the degree to which failing to meet or achieve the outcomes and Standards/Codes could impact on customers.



Criteria for assessment

The factors to consider in determining which category the failure to achieve a customer outcome or meet a Standard/Code falls under can be broken into the following strands:

- The impact on customer outcome(s) ;
- The level of customer detriment, actual or potential;
- Proportion of customers impacted;
- Whether the failure is relatively isolated or systemic;
- The time taken for the firm to identify the issue; and
- The time taken to remedy the issue and the ability to implement interim mitigation.

This may require further investigative work by the firm to determine the full extent of the issue before materiality can be assessed. For example, this additional work may include:

- Identifying how many customers are impacted;

- Consideration of any additional impacts on vulnerable customers;
- Whether the remediation includes backbook customers, new customers or both;
- If the failure relates to findings from call sampling, possibly extending the sample to gain a better understanding of the extent of the issue;
- Depending on the nature of the issue, the strength of the controls in place, including the design and operational effectiveness; and whether there were compensating controls which have minimised the impact; and
- Whether the issue extends across single or multiple products and channels.

Breach reporting

Firms should provide the following information to the LSB:

- Details of the issue – the nature of the issue, when it was identified and took place, how it arose;
- The Standard(s), customer outcome(s)or Code requirement (s) affected;
- The number of customers impacted (specific and split between new business and backbook);
- Details of any actual or potential customer detriment – this should be specific between new business and backbook and include consideration of any additional impacts i.e. vulnerable customers, third parties, etc
- Proposed action and timescales, including any interim mitigation if the closure exceeds 6 months, and progress against milestones – this should link to the root cause of the breach and specify any new controls to prevent recurrence.
- The expected closure date - if the action has to be split into stages then a date should be provided for each stage;
- The root cause – i.e. was it caused by a policy, process, people or system; and
- Details of other related areas of the Standards or Codes that may be affected by the issue – i.e. whether there is a 'read across' to other products or business areas.

It may be that certain elements take more time to assess. In such circumstances, the LSB would expect to be notified of the event occurring but provided with details of customer impact, consumer detriment and root cause at a later date, once the outputs of internal investigations are known.

Firms should keep a record of all instances of outcomes not achieved or Standards/Code requirements not met to enable it to assess aggregate risks effectively, i.e. where the cumulative effect of a number of smaller instances produces a higher overall impact on customer outcomes. This may result in a reportable breach to the LSB as the cumulative effect may equate to a moderate or major rating.

Remediation plans

The mitigation required by the firm to resolve any identified breaches and to ensure full adherence to the Standard or Code to which it is relevant should be based on the outcome of any root cause analysis conducted and the impact of the breach on customers. Any remediation plan, once agreed internally within firms, should be shared with the LSB as part of ongoing management of the breach, particularly where actual customer detriment has been identified.

Appendix A

Firm guidance for the identification, management and reporting of breaches

This guidance is intended to provide clarity on the LSB's expectations regarding breach management and notification.

The LSB registration rules (the rules) set out our expectations with regards to breaches and reporting, reproduced here for ease of reference:

Compliance Policy

2. Breaches

2.1 The LSB regards it as good practice for each Lending Standards Compliance Officer to maintain an internal breaches log, listing breaches of which he becomes aware and recording the remedial action taken. In addition, in accordance with the Applicable Codes, a Registered Firm shall promptly notify the LSB of any breach of which it becomes aware, except for breaches which are minor or purely technical and involve negligible or no customer detriment..

2.2 The factors which the LSB and the Board will take into account in assessing a breach will include (without limitation):

(a) the extent of actual or potential customer harm;

(b) whether the problem was isolated or systemic;

(c) whether the breach was inadvertent, or represented a knowing act of commission or omission and the action taken when the breach was discovered or notified;

(d) the length of time over which the breach continued undetected or without effective remedial action being taken;

(e) whether there were any warning signals, such as concerns expressed in the media, customer complaints, or guidance from LSB, and what heed was paid to such signals;

(f) the extent of damage to confidence in, or the reputation of, the relevant industry at large; and

(g) the extent to which the Registered Firm sought to profit, or to avoid or mitigate a loss, by its actions or omissions.

When should firms be reporting breaches to the LSB?

We expect that firms will exercise an element of judgement when deciding what constitutes a reportable breach. We have set out some case studies below:

As part of its routine monitoring, firm A identified that it had been in breach of CONC for some time. It informed the FCA, which took supervisory action. The matter was then resolved with involvement from the regulator. Firm A did not report the incident to the LSB on the basis that the Standards are not intended to replace CONC.	Whilst it is true that CONC breaches are not directly within the remit of the LSB, we would still deem it appropriate to notify us as some elements of CONC are included within the Standards. Where the FCA has taken action, it is unlikely that we would compound this, however, it is important that we are kept up to date with regulatory developments at our registered firms. Following discussions with firm A, they have now included reference to the LSB within the process flow chart, which is used by relevant teams to establish what (and to which regulator) breaches must be reported.
Firm B had created promotional materials with a minor mistake in the product name. It identified this after the print stage, but before mailing customers. It cancelled the mailing and corrected the letters. It conducted a Root Cause Analysis and established that the outsourced printing company had used the incorrect version. The firm notified us and explained that there was no customer detriment.	When considered against the materiality assessment set out above, given that the issue was minor and there was no customer detriment, we would not have expected the firm to report this at the point of occurrence but should include within the self-attestation return. However, we would not say that the firm was wrong to report this. We would always encourage updates from our firms.
Firm C identified that the rate advertised online and in store for its credit card product was lower than the rate which was to be charged. Customers received correct information through all other mediums, and at later stages in the online journey. The correct rate was advised to customers before they completed sign-up.	Whilst firm C determined that the customer detriment was negligible, it decided to report the breach to us, and kept us informed of remedial work. The level of customer detriment is not a sole deciding factor in our decisions regarding whether an incident is significant. The fact that the firm reported this incident despite there being no customer detriment showed an open culture, and also allowed us to satisfy ourselves that

	the firm's proposed remedial actions were appropriate. We considered firm C's decision to report the breach to us to be appropriate.
A system issue at firm D resulted in customers not receiving an effective warning at the time of making an authorised payment. Firm D identified this, but the level of customer detriment was unclear at the time of reporting to the LSB. Subsequent investigation over a period of two weeks identified there had been some customer detriment and appropriate remediation was actioned.	Firm D informed the LSB of the breach upon identification even though further investigation was required. We were provided with information about what steps were being taken to explore the issue, and how any remedial action would be managed. The LSB considered the firm's proposals to be appropriate and, we agreed with firm D's decision to report this breach to us at the point of occurrence.
Firm E had begun a programme of closing of branches within the network. Whilst issuing communications to customers to advise of the closure only 6 weeks' notice was provided. This was identified during a routine 2LOD review of the programme. Firm E immediately notified the LSB and put in place mitigation to contact all affected customers as soon as possible. Where the firm was able, they also delayed the closure of some branches to ensure customers received the full 12 week notice required in line with the Access to Banking Standard.	Firm E was quite quick to inform the LSB of the breach as soon as this was discovered. We were kept informed through each stage of mitigation and the firm aimed to reduce the impact on customers as much as possible. The LSB considered the firm's proposals to be appropriate and we agreed with firm E's decision to report to us immediately.

Our preference is for firms to over-report rather than under-report. If in doubt, your assigned LSB Compliance Manager will be able to discuss the materiality of the issue with you and provide guidance.

Other notifications

The LSB's focus is on ensuring adherence to the Standards and Codes whilst supporting firms, when needed, in meeting their responsibilities. Our regular engagement with firms includes updates with regards to the structure, strategy and any acquisitions and mergers. We also maintain close relationships with the FCA, PSR, UK Finance and other stakeholders to ensure we are considerate of all related matters within the industry.

We therefore are appreciative of firms who choose to notify us of any related matters beyond the scope of the Standards or Codes. For instance:

- One firm notified us that it would not be able to meet the Open Banking start date. Whilst Open Banking is not within the remit of the LSB, it was useful to be aware of this as it provides a clearer picture of the firm's current status.

- Some firms have informed us, prior to publication, of issues which will be appearing in the media, even if this relates to an issue outside of the scope of the LSB. In these instances, it is helpful to be made aware of what may be reported in case we are approached for comment.