

The LSB's Information for Practitioners

The Standards of Lending Practice for
business customers

Product sale

December 2017

This document has been produced by the LSB and provides non-exhaustive examples of the approach Registered Firms (Firms) may wish to take into consideration when seeking to adhere to the Standards of Lending Practice for business customers (the Standards) on product sale.

Registered Firms must be able to demonstrate to the LSB that they are adhering to the Standards of Lending Practice; however the LSB does not monitor compliance with the content of this document and as such, it is not intended to be prescriptive nor binding on Registered Firms. The LSB acknowledges that each Firm will have its own way of demonstrating that it is adhering to the Standards without the need to refer to, or take account of, the content of this document.

Where a reference is made to the Consumer Credit Act 1974, as amended (the CCA), the Consumer Credit Sourcebook (CONC), other Financial Conduct Authority (FCA) requirement or wider legislation, the examples or suggestions which follow represent the LSB's view on how the Standard could be achieved.

This document will be kept under review and updated to reflect examples of good practice being undertaken across the industry in this area.

Customer outcome: business customers will only be provided with a product that is deemed affordable and which meets the requirements of the business.

Firms will achieve this: with systems and controls that ensure the sales process, training and incentives promote the right behaviours and direct their employees, or their agents, to deliver the right customer outcome.

1. Firms should ensure that customers are provided with clear guidance on the information and documentation they will need to submit during the application process

Firms offer a variety of information on their websites regarding the application process for a business loan, credit card or overdraft. This is a useful starting point for the customer to explore the product options on offer and to understand whether any eligibility criteria apply for example, if a business current account is required, and what information they will need to provide to support their application.

The LSB recognises that Firms will have their own requirements as to the information and documentation they will request during the application process. The type and level of information required will be driven by the complexity of the borrowing, size and sophistication of the business itself. Firms may have eligibility criteria, for example, relating to the entity type and business sector and the LSB would expect this to be clear to the customer.

Consideration could be given as to how this information is presented to the different customer types, for example for businesses who are towards the lower end of the £6.5m scope of the Standards. This could include providing a rationale for the information requested or outlining how the Firm will take this into account during the application process. For example:

- whether there are any other business interests, explaining that this information will help the Firm to understand what commitments the business or key members of the management team have, which enables the Firm to assess how much attention and focus the business will have.
- whether or not security is available and if some form of appropriate security would be sought, such as guarantees, property or other assets that are easy to value and realise – an explanation of which may be appropriate to the customer’s situation.
- the owner’s investment in the business, which would show the owner’s investment relative to the bank’s proposed investment.

2. Firms should inform the customer of the likely time it will take for a lending decision to be made. Following receipt of the required completed documentation, Firms should ensure that customers are kept informed of the progress of their application

The range of customers caught under the new Standards of Lending Practice has increased and within this group there will be varying degrees of sophistication across the different business models, in terms of maturity, size and their understanding of the lending process. Some may lack awareness of the additional requirements which are attached to business lending or may not have accounted for the fact that it can take time for the Firm to process their application. Ensuring that the customer is informed of the likely length of time it will take for a decision to be made at the outset will help to aid the customer’s understanding of the lending process.

Wherever possible, the LSB would encourage Firms to keep customers updated on the progress of their application, particularly where for example, security is required or the lending has a layer of complexity which will increase the time required to process the application. This Standard is not intended to be overly onerous on Firms, the focus is on ensuring that the customer is aware of how long it may take for them to receive a decision and ensuring they remain informed during the process.

There may be situations where it isn't possible to provide a definitive timeframe. However, the LSB would expect that Firms are able to provide an indication of the timeframe within which a customer can expect to know whether their application has been successful or not. This can be flexed where required if the lending decision goes beyond the initial timeframe. In these circumstances, the LSB would expect that the customer is kept informed of progress and that Firms will be proactive rather than reactive, informing customers of any delays or promptly requesting any additional information which may be required to support the customer's application. Firms are encouraged to be as open as they can as to the reason for the delay and any potential new dates which may apply.

3. Firms should ensure that when a customer applies for a product, they are informed that checks may be made at Credit Reference Agencies and that information may also be provided to Credit Reference Agencies during the life of the borrowing

Some business customers may lack understanding of how Credit Reference Agencies (CRAs) fit into the application process and that, by applying for business related lending, information is recorded on their credit file. When a customer applies for a product covered under the Standards of Lending Practice, they should be told whether searches will be made at CRAs, whether a record of any search will be retained at the CRA and, if so, that this could impact on their ability to obtain finance elsewhere. The business customer should also be told if the details of the account, if opened, will be passed to CRAs and that the information will be accessed and used by others. This will include information about the running of the account such as the limit and balances as well as payment performance.

4. Before providing any form of credit, granting a limit or increasing the customer's borrowing, Firms should assess, from the information available at the time, whether the customer will be able to repay it in a sustainable manner without incurring financial difficulty

Registered Firms should request the level and detail of information required to fully assess the customer's ability to repay borrowing without it causing the customer financial difficulties. Taking into account the actual and/or anticipated turnover of the business, existing debt commitments and any known future changes which could be reasonably expected to have a significant financial impact on the customer, to ensure that the business can service any debt. This assessment will take into account whether any security is provided, although, the LSB would not expect a Firm to lend to a customer based on the level of security provided alone.

Registered Firms may also require additional information to satisfy themselves that the customer can meet their obligations as they fall due. The LSB acknowledges that Firms may have additional requirements in place, depending on the type and level of borrowing requested and any information the Firm already has about the customer. Firms may wish to consider the following factors:

- why the business wants to borrow the money
- the length of borrowing

- the business plan and annual accounts
- the business's cash flow, profitability and existing financial commitments
- any personal financial commitments which may affect the business
- how the customer has handled their finances in the past
- information from credit reference agencies and, with the customer's permission, others, such as other lenders and the customer's landlord (where relevant)
- credit scoring
- any security provided
- any future changes which could be reasonably expected to have a significant financial impact on the customer
- personal indebtedness indicators
- total credit exposure
- adverse information e.g. CCJ/bankruptcy.

5. If a Firm offers a product which includes an indicative quotation facility, it should provide the customer with clear information as to what this is, and that any quotation provided will be linked to the customer's financial circumstances

From 2 February 2018, the CMA will require the larger banks to offer business customers the ability to obtain indicative price quotations and their eligibility for unsecured business loans and unsecured standard tariff business overdrafts, up to £25,000. The intention is that the same tool should be accessible to a minimum number of third party intermediary service providers by 2 May 2018.

Ahead of this implementation date, and for borrowing which will not be caught by these requirements, where a Firm offers an indicative quotation facility relating to a product captured under the Standards of Lending Practice, the LSB would expect the customer to be informed that the headline rate may not be available and any quotation will be linked to the business' financial circumstances as known to the Firm and where relevant, CRAs, prior to the customer commencing a formal application.

The LSB would expect where a customer asks for an indication of the likely interest rate for a product, the Firm should either:

- as industry best practice, provide an indicative quotation, in respect of which any credit search undertaken is not registered as a full application search at CRAs i.e. it is not used by lenders in their risk assessment; or
- inform the customer that it does not offer an indicative quotation facility and ensure that the customer is aware that, if they proceed, an application search will be registered at the CRA(s).

6. Firms providing a credit card product should present information about the main features of a credit card in a summary box form, where appropriate

There will be some customers for whom the provision of the summary box information will not be appropriate; however for customers who are at the smaller end of the £6.5m scale and for those who fall under CONC and CCA oversight, due to the way the business is structured, this information should be provided in line with the Best Practice Guidelines (issued by The UK Card Association, now part of UK Finance).

The primary objective of the summary box is to provide the customer with consistent and succinct summary of the key features of the credit card they are considering and to enable to customers to compare different products more easily. This should be provided to the customer prior to their acceptance of the agreement.

Before a relevant customer enters into the contract for a credit card (and when they accept the product for the first time) they should be given information relating to the following:

- an explanation of how interest is calculated and charged; for example, whether it is charged on the full statement balance or only on any balance remaining after the customer has made the monthly payment;
- where relevant, with details of the interest and exchange rates to be applied or, if reference interest and exchange rates are to be used, the method for calculating the actual interest and the relevant date and index or base for determining such reference interest or exchange rates;
- this information must be provided either in good time before the customer is bound by the contract, or where the contract is concluded at the payment service user's request, using a means of distance communication, immediately after the conclusion of the contract;
- details of how monthly payments are applied to any outstanding balance across transaction types including promotional offers;
- an explanation of recurring transactions;
- details of charges for the day-to-day running of the account, including any annual fee, dormancy fee, charge for exceeding credit limit, charge for delayed monthly payment, charges for overseas transactions, cash withdrawal fees for card usage at an ATM or over the counter, fees for any cash equivalent transactions, balance transfer fees, returned payment fees due to insufficient funds, and any other applicable fees;
- the distinction between being the principal cardholder and an additional cardholder should be explained i.e., that the principal cardholder is responsible for all spending, including that by additional cardholders, and is responsible for repayments on the credit card;
- the interest rates applicable to different types of transactions (e.g., purchases, balance transfers, credit card cheque transactions and cash transactions) and the ways in which customers will be told about changes in interest rates; and
- sufficient details to enable customers to pay on time, including via automated payments. Registered Firms should also ensure that, where customers are offered the facility to pay by cheque by post, sufficient time is given to allow payments to be made in time, taking account of the postal delivery system and the length of the clearing cycle.

7. At the point of sale, Firms should provide clear information to the customer regarding the key features of a product and any breakage or early repayment fees/costs associated with it. This information should be made available to the customer upon request, throughout the lifetime of the borrowing

This Standard follows on from paragraph 5 of Product Information and is intended to ensure that there is a consistent approach to the provision of information around the key features and costs associated with the use of the product. The intention is that the customer should be in a position to make an informed decision and have opportunities to review and ask questions should they need to do so, as they move through the application process.

Issues relating to lender's explanations of break costs, customers' awareness of their existence and the associated costs, are well documented. Historically, where disclosure of break costs have been made and detailed information provided, there has been evidence to suggest that some customers may not have understood what the term meant or how these costs would be applied to their loan.

The provision of clear information on the way the product works and the costs associated with it, will enable the customer to assess whether the business will be able to sustain the borrowing. This could include informing customers that, for fixed rate loans, if they decide to pay early or cancel the fixed interest rate, that they may have to pay breakage cost in addition to other fees such as early repayment fees. This information also raises early awareness of the costs, which the customer may not have been taken into account, and prompt them to consider what impact these could have, on the business at a future point in time. The customer should be able to request information on the costs associated with repaying their loan early throughout the life of the product.

8. Firms should inform the customer if any security, for example, a guarantee/debenture/indemnity, is required to support the borrowing or other liabilities and the reason why. The level of security required by the Firm should be appropriate to the amount borrowed

Customers may not always understand why they are required to provide security to support their borrowing and the LSB would encourage Firms, where security is required, to provide the customer with a clear explanation as to why this makes the proposition feasible. This could also include an explanation as to why the particular type of security is required relative to the customer's circumstances.

The LSB would not expect a Firm to require security which is excessive when considered in light of the level of the customer's borrowing. However, if the only security the customer can offer is in excess of the figure being borrowed, this does not preclude the security from being taken. However, the LSB would expect Firms to explain to the customer what this means in terms of their situation and the implications for them if the business was unable to pay. The customer could also be encouraged to seek legal advice to ensure that they fully understand their obligations under the agreement.

Where the Firm requires security to support a business's borrowing or other liabilities, it should confirm what is needed in writing. The LSB would expect that any documentation provided should be easy to understand and avoid technical language whenever possible. The customer should have the opportunity to discuss with the Firm anything about which they are unsure.

Where a guarantee is provided, the LSB would expect Firms to tell the guarantor the extent of their liability, including the addition of interest and charges after demand has been made. Where independent legal advice has been given, it may be assumed that the solicitor will have explained the nature of all monies and continuing security, if appropriate. Depending on the nature and structure of facilities, Firms may choose to explain these features to those customers who have declined independent legal advice (and should always do so when requested by any guarantor).

9. Firms should ensure that the customer is provided with clear information on the circumstances under which the security will be released. The security should not be relied upon beyond the life of the borrowing.

This Standard follows on from paragraph 8 and the LSB would expect that where security is taken, the customer is informed that this will not be retained beyond the life of the borrowing without their consent. It should be made clear that the security will be released once the facility is repaid – unless contrary instructions are received from the customer.

10. Firms should confirm the conditions of any facility in writing and recommend that the customer seeks independent advice before accepting the facility

Independent advice can help the customer to make an informed decision about the agreement they are looking to enter into and enable them to better understand their obligations under it. The exact conditions will be dependent on the circumstances of the borrowing but the LSB would consider that the following is included as appropriate:

- the amount and purpose of the facility;
- whether the facility is for a particular period or whether it is repayable on demand;
- details of repayments;
- the interest rate and any other charges for the facility, and whether these are variable;
- when the facility will normally be reviewed;
- the existing or new security and guarantees, including any minimum values to be maintained;
- what sort of circumstances will lead to an earlier review or require repayment;
- the information the customer will need to give before they can use the facility; and
- what action the Firm will take if repayments are not met.

The customer should be encouraged to obtain independent advice before accepting the facility to ensure that they understand their liabilities under the agreement.

11. Firms should ensure that customers are kept informed of the estimated timescales which may apply to the issuing of facility letters or for obtaining any security that may be required to support the borrowing

The LSB's expectation is that customers are kept updated of the progress of their application so that they are better placed to understand when they will have formal notification of their borrowing and any conditions which may be attached to it. Customers may not have an understanding of the legal element which sits around the process of obtaining security and that this can take time to complete

The LSB recognises that the timescales will be dependent on the individual circumstances, level and complexity of the borrowing and that while an indication can be provided, the Firm may have to go beyond this. The Standard does not preclude Firms from flexing any timescales provided, but the intention is that the customer is aware of how their application is progressing and when they can expect this element of the process to be completed. This will allow them to better manage onward elements which may be required, such as obtaining legal advice in relation to the facility letter.

12. Before a customer accepts the facility, Firms should agree with the customer as to what form of monitoring information they will require about the business' performance and how often this will be required

The nature of business lending means that the size and experience of the business customer can vary from highly qualified and experienced individuals running a large company to a sole trader who has recently set up in business or who maybe hasn't required any additional funding up until now. Information such as management accounts and/or cashflow projections may be requested on a regular basis and will require time and potentially costs, to prepare if, for example, information is required from external sources such as accountants. Therefore, ensuring that the customer is aware of these requirements means they can factor this into their internal processes.

The type of monitoring information will depend on the form of the lending and Firms will have a view on what is appropriate in the circumstances, examples include:

- a comparison of the forecasts with actual results;
- progress on important aspects of the business plan, such as contract renewals;
- revised cash-flow forecasts;
- major capital spending proposals;
- annual accounts and regular management accounts;
- details of how much the customer owes creditors, and are owed by debtors, and for how long these have been due; and
- evidence that the customer is meeting any special conditions agreed.

Firms will have their own monitoring requirements, in addition to, or instead of the above depending on the type of lending, complexity of the business and risk to the lender. Firms should ensure that the customer understands what is expected of them and if further down the track, additional information is required, which is on top of what has been agreed, the LSB would expect Firms to provide customers with a reasonable amount of time to provide this. Firms should confirm in writing what information is to be provided and by when.

13. If an individual or a business agrees to be a guarantor or to provide an indemnity, the Firm should make the individual/business aware of their obligations under the agreement and that they have the option to seek legal advice, should they wish to do so

Firms may accept a guarantee or other form of security provided by another person to support the business' liabilities. It is important that guarantors or granters understand the full nature of their commitment and the potential implications of their decision, to do this Firms should ensure that a guarantor has the option to seek independent advice. The LSB recognises that some guarantors may not wish to do so, or in the example of a director providing a guarantee for their own business, that they understand what they are committing to. In these circumstances the LSB would encourage Firms to document that the customer has been provided with the opportunity to seek advice but has declined to do so.

The LSB would expect that guarantors are told that by giving the guarantee or other security they may become liable instead of, or as well as, the customer and told what their liability will be, including the addition of interest and charges after demand has been made. When independent legal advice has been given, it may be assumed that the solicitor will have explained the nature of all monies and continuing security if appropriate. Depending on the nature and structure of facilities, Firms may

choose to explain these features to those customers who have declined independent legal advice (and should always do so when requested by any guarantor).

Firms may wish to go further than what is covered in this section and actually get a potential guarantor or granter who refuses to take legal advice to sign a declaration to that effect. In any case, the recommendation to take independent legal advice and the potential consequences of their decision should be stated clearly on all appropriate documents that the guarantor or granter is asked to sign.

14. Firms should not accept unlimited guarantees for an individual/business unless it is to support the customer's liabilities under a merchant agreement; however other forms of unlimited third party security may be taken, if available

In order to ensure that the individual is able to identify the limit of their liabilities under any guarantee they have provided, Registered Firms should not take an unlimited guarantee from an individual other than to support a customer's liabilities under a merchant agreement where a lender will offer unsecured advances of cash, based on future credit and debit card sales. In this context, unlimited guarantees are permitted. 'Unlimited' applies to the capital amount of the loan and excludes interest, charges and arrears etc. An explanation of this should be covered in the guarantee/indemnity or other security documents that the guarantor is asked to sign.

Where other forms of unlimited third party security are available this can be taken, provided that the limit of the granter's liability is explained in a side letter. This is to avoid the need to take fresh security, with the associated expense and inconvenience to customers, each time a facility changes.

In the case of limited companies, which are part of the same group structure, Firms may continue to take unlimited guarantees from the constituent companies in support of borrowing by other companies in the group.