

The LSB's Information for Practitioners

The Standards of Lending Practice for
business customers – Asset Finance

Product sale

May 2020

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 an appropriate and affordable product 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. The customer should be 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 an asset finance product. 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 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 trading history, asset class and/or 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. The customer should be informed 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 is not 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. The customer should be made aware that when they apply for a product, checks may be made at Credit Reference Agencies and that information may also be provided to Credit Reference Agencies during the life of the relationship.

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 an asset finance product, an assessment should be made, from the information available at the time, as to whether the customer will be able to maintain their payments or rentals in a sustainable manner without encountering financial difficulty.

Update to take account of measures introduced by the Government to support lending to SMEs impacted by the Covid-19 pandemic.

HM Government has established the Coronavirus Business Interruption Loans Scheme (CBILS) to support the continued provision of finance to SMEs throughout the Covid-19 pandemic. It is recognised that registered firms are prepared to support business customers experiencing disruption caused by the coronavirus pandemic, and in doing so may be prepared to offer products, including asset finance products, under CBILS in reliance on the Government guarantee under the scheme. On 27 April 2020, changes to the criteria firms are required to apply when considering businesses for a loan under CBILS were announced.

The criteria for assessing affordability of a product under CBILS is different to that set by the Standards. When considering an application for a CBILS product firms should ensure that processes for assessing whether the product is affordable for the business align with the requirements of the scheme. Firms should consider the range of information available to them, examples include: the performance of the business prior to the Covid-19 outbreak; a view of how the customer will be able

to maintain their payments or rentals in due course, relying on judgement in the absence of financial forecast information; and the general prospects for the sector in which the business operates once the effects of the pandemic have receded.

Firms are reminded that they should only request information relating to the performance of the business where the customer might reasonably be able to provide the requested information at speed. The LSB recognises that some business customers may wish to provide the firm with forward-looking financial and business plans. If a business customer chooses to do so, this information can be used to support the better assessment as to the appropriateness of lending under the Government's schemes, the level of borrowing and duration required and the affordability of the financing applied for.

The LSB considers participating firms' compliance with the requirements of CBILS to be compliant with this provision of the Standards of Lending Practice. In line with the requirements of the wider Standards, the LSB would expect participating firms to continue to ensure that the customer is provided with clear information on how the product works and its key features (see also paragraph 7, Product sale).

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 requires the asset
- the industry within which the business operates
- the length of the agreement
- 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. Where a quotation facility is offered, the customer should be made aware that any quotation is based on information known about the customer at the point in time, how long it is valid for and that it may be subject to change.

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. At the point of sale, the customer should be provided with clear information regarding the key features of the product, what options are available to them at the end of their primary agreement and what action, if any, they will need to take.

This Standard follows on from paragraph 10 of Product Information and is intended to ensure that there is a consistent approach to the provision of information around the key features 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.

The provision of clear information on the way the product works will enable the customer to assess whether the business will be able to sustain the agreement and ensure the customer fully understands the features of the product and how the agreement will run. Firms should provide clear information on the options available to the customer at the end of their primary agreement for example, extending the agreement into a secondary term, purchasing the asset at the end of the agreement for a nominal sum, or selling the asset to a third party, enabling a customer to plan ahead.

7. The customer should be provided with clear information to enable them to understand the total cost of the product. This information should be made available to the customer upon request, throughout the lifetime of the relationship.

The requirements of this Standard extend to any information provided to the customer by a third party such as an intermediary or broker.

The LSB expects Firms to ensure that the customer is fully informed of the cost of the agreement and are able to determine whether the product is suitable for their business. The provision of clear information as to the total cost of the product enables the customer to assess whether the business will be able to maintain their contractual repayments through the life of the agreement.

The customer should be given an opportunity to seek further clarification and, seek professional advice. It also prompts the customer to consider what immediate impact these costs may have on the business.

8. Where the agreement allows for early termination, the customer should be provided with clear information regarding the costs associated with this.

The requirements of this Standard extend to any information provided to the customer by a third party such as an intermediary or broker.

This Standard seeks to ensure that where the customer's agreement permits early termination, and the customer opts for this, they are clear on the total cost of the likely exit fees for terminating the agreement early and what this might mean for the customer. Firms should ensure that this information enables the customer make an informed decision about the suitability of asset finance product, taking into account the potential costs associated with it.

9. The customer should know what will happen to the asset at the end of their agreement and what action, if any, they need to take.

The requirements of this Standard extend to any information provided to the customer by a third party such as an intermediary or broker.

The LSB expects Firms to have controls in place to ensure customers are provided with sufficient information on what will happen to the asset at the end of their agreement and what might this might mean for the customer in the context of their business. Information should be communicated at an early stage, prior to the customer entering into the agreement to ensure the customer has a comprehensive understanding of their contractual obligations including any actions they are obligated to take, and the implications this may have on the business.

10. The customer should be informed if any additional security is required to support the borrowing and the reason why. The level of security required should be appropriate to the amount borrowed.

The requirements of this Standard extend to any information provided to the customer by a third party such as an intermediary or broker.

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).

11. Where additional security is taken, beyond the asset itself, this should not be retained beyond the life of the agreement without the customer's consent.

This Standard follows on from the requirements of Standard 10, where security is taken, the customer is informed that this will not be retained beyond the life of the finance agreement 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, intermediary or authorised third party.

12. The conditions of the facility should be confirmed in writing and the customer should be allowed time to seek independent advice, if they wish to do so.

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;
- where relevant, when the agreement 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;
- what happens at the end of the agreement; including where relevant the prospect of a secondary term, or return of asset;
- 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.

13. The customer should be kept informed of the estimated timescales which may apply to the issuing of the agreement or for obtaining any additional 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.

14. Before a customer accepts the agreement, the customer should be told what form of monitoring information, if any, they will be required to provide 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 size and form of finance 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.

15. If an individual or a business agrees to provide an additional security, they should be made 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.