The Standards of Lending Practice

Business Customers – Asset Finance

Introduction

The Standards of Lending Practice for business customers, sets good practice in relation to lending to business customers, across the lifecycle from the product design phase to the initial offering of the product through to dealing with customers who find themselves in financial difficulty.

The Principles for Lending outline the overarching areas of focus for Registered Firms and underpinning these are the more detailed *Standards of Lending Practice* which are broken down into the following topics:

- Product information
- Product sale
- Declined applications [1]
- Product execution
- Credit risk management
- Financial difficulty
- Portfolio management
- Vulnerability

There is also a separate section on Governance and Oversight, which sets out the framework Registered Firms should have in place to ensure that the Standards are implemented and operate effectively.

Update to take account of measures introduced by the Government to support lending to SMEs impacted by 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 the Government established Coronavirus Business Interruption Loan Scheme (CBILS) in reliance on the Government guarantee under the scheme.

The LSB is clear that in order for firms to meet their obligations under the scheme, there is a need to facilitate fast and efficient lending decisions. The LSB would, therefore, consider participating firms' compliance with the requirements of the Government scheme to be compliant with the relevant provisions of the Standards of Lending Practice. This applies, in particular, to paragraph 4 of **product sale**.

The LSB also recognises that by participating in the Government scheme firms may not be able to apply in full effect all provisions within the Standards as certain aspects of the products have been determined by Government, and as such firms will have a limited role in the design and review of these products. The relevant sections of the Standards – asset finance being: **product information, credit risk management**, **vulnerability, financial difficulty** and paragraph 8 of the provisions on **governance and oversight.**

This update is a temporary measure relating to the Covid-19 pandemic and is designed to support firms in delivering products to business customers under CBILS. The update will be reviewed as appropriate. It does not apply to any other products offered by firms.

[1] Also referred to as 'unsuccessful applications' under the Small Business, Enterprise and Employment Act 2015.

Products covered under the Standards of Lending Practice

The Standards of Lending Practice for business customers apply to products offered for business lending purposes as previously covered under the Lending Code: overdraft, loan, credit card and chargecard products. They do not apply to trade loans or invoice financing. This set of Standards apply to asset finance, namely Hire Purchase and leasing products. Contract hire (motor retail at the point of sale/within dealership) is not currently in scope.

The Standards represent a move away from its predecessor, the Lending Code, which was focused more on compliance with provisions than customer outcomes. The Standards acknowledge that there may be several ways to achieve the right customer outcome and that the best solution in a specific situation may differ depending on the customer's individual circumstances. This approach avoids Firms having to rigidly follow a set of rules which may not always be appropriate and to allow for flexibility. The LSB's oversight regime recognises this and focuses on how Firms are demonstrating that they are meeting the outcomes.

Each section contains both a 'customer outcome' and an overall statement of how a Firm will achieve this; both are supported by a more detailed set of standards to enable Firms to demonstrate how they achieve the desired outcome.

Application

The protections of the *Standards of Lending Practice* apply to businesses/organisations, which at the point of lending:

- have an annual turnover of no more than £6.5 million in its last financial year (exclusive of VAT and other turnover related taxes), and;
- which does not have a complex ownership structure (for example, businesses with overseas, multiple, or layered ownership structures).

Where a customer is referred to a third party because the Firm has declined a customer's application, the extent of a Firm's liability for ensuring the customer receives the protections provided by the Standards is limited to the point at which the customer is transferred/handed off to the third party.

The Standards as applied to hire purchase and leasing agreements offered to business customers, recognise the role that intermediaries play in this particular area of the market, whilst ensuring that the Standards provide consistent protections to small business customers, regardless of product. There are variations in the approach taken to drafting this set of Standards to take account of the initial engagement between small business customers and Registered Firms. The Standards also take into account the FLA's Business Finance Code and its non-binding guidance for intermediaries and the National Association of Commercial Finance Brokers' code of practice.

The Standards recognise that intermediaries play an integral role in the asset finance market and that intermediaries may act between finance providers and customers, the equipment supplier and the customer and in some circumstances, may manage the entire relationship, with Registered Firms providing only the finance. The LSB recognises that the Standards of Lending Practice cannot bind intermediaries but expects its Registered Firms to take reasonable steps to ensure that any intermediaries are aligned to, and act in accordance with, the requirements of the Standards of Lending Practice so that customers receive a consistent level of protection, regardless of the channel through which they engage with the Firm. The LSB would also expect that Firms undertake an appropriate level of due diligence before transacting with third parties.

Alignment with statutory regulation

Registered Firms offering products to sole traders or partnerships may be regulated by the Financial Conduct Authority (FCA) for this type of customer and, depending on the type and value of the borrowing will be required to adhere to the Consumer Credit Sourcebook (CONC). For completeness, the Standards of Lending Practice may include where relevant, references to other legislation or statutory rules such as the Data Protection Act 1998 (DPA), General Data Protection Regulations (GDPR) (2018) or Consumer Rights Act (2015) which supersedes the Sale of Goods Act (1979). The Governance and Oversight section acknowledges that the FCA's Senior Management Arrangements, Systems and Controls (SYSC) requires Firms to have adequate governance arrangements in place.

The intention is that the Standards of Lending Practice for business customers provide an overview of the entire lending process but adherence to any legislative or statutory requirement referenced is outside of the LSB's oversight regime. In the event that legislation or statutory rules which replicate or conflict with the wording of the Standards comes into force, the relevant legislation or statutory rules will supersede its content.

Terminology

Any references in the Standards of Lending Practice to *customer* or *customers* applies to a business or businesses from the point at which it enters into discussions with a Registered Firm regarding a relevant lending product. Reference to *borrowing* means a hire purchase or leasing product.

In line with the FLA's definition, reference to intermediaries includes: credit brokers, equipment suppliers and dealers.

Statement of Lender and Borrower Responsibilities

A separate one-page customer facing document has been developed to sit alongside the Standards of Lending Practice and is available on Registered Firms' websites, customers may wish to read the Standards alongside this document.

Principles for lending

Application

Below are the overarching principles that Registered Firms which lend, provide finance, and/or undertake associated debt collection activities, to business customers should use to govern their relationship with them.

The Principles for Lending and *Standards of Lending Practice* apply to:

- Overdraft, loan (excluding trade loans), credit card, chargecard, hire purchase and leasing (excluding contract hire) products.
- Registered Firms and any third parties that retail and service the lending products listed above on behalf of a Registered Firm.

Registered Firms will ensure that their business customers:

a. Are told about the products the Firm has to offer and provided with clear information to enable them to choose a product that meets their needs.

b. Are provided with information about how to apply for the different products a Firm offers; what the application process entails and any other requirements a Firm may have.

c. Are aware of the high level basis on which the Firm will make its decision to lend to them. If the customer’s application is declined the primary reason for this will be provided.

d. Are aware that they have the right to appeal a Firm’s decision to decline their application and, where appropriate, have the option to be referred to alternative sources of finance.

e. Will be provided with clear and understandable documentation which sets out their obligations under their agreement with the Firm.

f. Are aware of the options open to them if they anticipate, or a Firm becomes aware, that they will have or are experiencing difficulty in repaying their borrowing.

g. Will know what happens when they have repaid their borrowing or no longer require it.

Product information

Customer outcome: all product information presented to business customers will be clear, fair and not misleading and enable the customer to understand the key features of the product, such as the interest rates, fees and charges that apply.

Firms will achieve this: with systems and controls at product design, financial promotion and product review stages that assess product performance and ensure product information is clear, fair and not misleading.

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1. All financial promotions, across all channels, should be clear, fair and not misleading. This includes material provided to comparison websites and intermediaries.

2. Firms should ensure that products are designed/developed in a manner that ensures fair customer outcomes and that all risks associated with the product are fully understood and managed appropriately.

3. Firms should undertake regular product reviews at regular intervals to ensure that their products are, and remain, fit for purpose based on product performance.

4. Firms should ensure that product reviews take into account internal and external risks which ensure that any changes do not lead to unfair outcomes for customers.

5. Customer facing employees should be trained and knowledgeable about the range of products, across all channels, on offer to customers.

6. Where a Firm works with intermediary partners, the Firm should ensure that the intermediary is competent and knowledgeable about the range of products, across all channels, on offer to customers.

7. Where relevant, customers should be made aware of the relationship between the Firm and any intermediary and whether the arrangement includes any payments or commissions.

8. Customers will be provided with clear and understandable information which enables them to decide whether the product is appropriate and meets the needs of the business.

9. The customer's consent should be sought prior to sharing any business or personal details with a third party or an alternative source of finance. [DPA] [GDPR]

10. Customers should be provided with clear information as to how the product on offer work, its key features and the associated costs.

Product sale

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.

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1. The customer should be provided with clear guidance on the information and documentation they will need to submit during the application process.

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.

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

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.

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.

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

Product sale

Declined applications

Customer outcome: business customers whose applications are declined are provided with the right of appeal and are aware of the alternative sources of finance available.

Firms will achieve this: with systems and controls that promote the right behaviours to ensure that their employees, or their agents, are able to treat declined business customers fairly and appropriately.

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1. If an application for a product is declined, the Firm should ensure that it understands the reason(s) behind it in order to be able to convey, where appropriate, this information to the customer or intermediary. As a minimum, the Firm should provide the primary reason for the decline in writing.

2. Where the Firm is able to identify that the application was declined due to information obtained from a Credit Reference Agency search, the customer should be directed to obtain a copy of the information held about them from the relevant Credit Reference Agencies, prior to making any further applications.

3. Firms should inform the customer of their right of appeal and have fair and effective processes in place to review a decision to decline an application. These should, as a minimum, reflect the Lending Appeals process.

4. Where appropriate, the customer may be signposted to alternative sources of finance or third party. The customer should be made aware that the signposting is not an indication that any subsequent application would be successful.

5. Firms who are designated banks under the Small and Medium Sized Business (Finance Platforms) Regulations 2015 should offer a customer declined for finance the opportunity for their details to be referred to government designated finance platform.

Product execution

Customer outcome: information provided to business customers will be clear in terms of presentation and in clarifying any action that the customer needs to take. Business customer requests will be dealt with in a timely, secure and accurate manner.

Firms will achieve this: with systems, processes and controls that aim to provide an accurate view of the customer's relationship with the Firm and the relevant lending products they hold. This should be underpinned by appropriately skilled and knowledgeable staff.

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1. Customers will be provided with written notice of any change in interest rates (where relevant), fees or charges which affect the cost of their product. This requirement does not apply where the increase relates to a published rate, for example, base rate or other benchmark.

2. Firms will maintain the security of customers' data but may share information about the day-to-day running of a customer's account(s), including positive data, with credit reference agencies where the Firm has agreed to follow the principles of reciprocity.

3. Where individual provides a guarantee/indemnity or other security, they should be able to request information regarding their current level of liability, as long as the customer gives their permission and confidentiality is not breached.

4. Firms should comply with a customer's request to co-operate with their professional adviser(s) during the lifetime of the relationship. All communication with the customer/their adviser will be undertaken in a clear and open manner.

5. Any changes to the terms of the customer's agreement should be fair and transparent. The customer should be provided with clear information regarding the reason for the changes and provided with a reasonable amount of time to seek further clarification, or where appropriate, alternative sources of finance.

6. Where a customer is relationship managed and a change is made to this process which will impact on the customer, they will be provided with advance notice, and the reason for the change. Where this will require action from the customer, they should be allowed sufficient time to complete this, taking into account the channel currently used.

7. Firms should comply with a customer's request to have access to the basic information held by the Firm about their products/accounts. The request should be dealt with in a timely and efficient manner.

8. In line with the industry protocol, requests for a Deed of Priority[2] or Waiver should be dealt with quickly and efficiently.

[2] Known as a Ranking Arrangement in Scotland.

9. Ahead of the expiry of their primary agreement, the customer should be aware of what will happen to the asset and what action, if any, they need to take.

Credit risk management

Customer outcome: business customers will be supported by pro-active and reactive measures designed to identify signs of financial stress. [3]

Firms will achieve this: with systems and controls that are capable of identifying, across the relevant products held, where customers may be showing signs of financial stress and pro-actively engaging with the customer to agree an appropriate solution.

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1. The customer should be told what information, if any, will be required to allow the Firm to monitor the business' performance and how and when this should be provided.

2. As appropriate, a sufficient level of monitoring of a customer's borrowing should be undertaken to help determine if the customer is exhibiting signs of financial stress. Where relevant, appropriate support should be offered.

3. Firms should have appropriate triggers and processes in place to help identify customers who are showing signs of financial stress and should engage with these customers in a supportive and open manner.

4. Firms should ensure that relevant customer facing employees are sufficiently trained and skilled to help them to identify and deal with those customers who may be showing signs of financial stress.

5. Where a customer is identified by an intermediary as showing signs of financial stress, a referral process should be in place which enables the Firm to deal with the customer in line with its policies and processes.

6. Firms should undertake monitoring and assurance work to ensure that their policies and processes are designed and are operating effectively in identifying and supporting customers who are showing signs of financial stress.

[3] The customer has not yet defaulted but information available to the Firm suggests that the business may be showing signs of being in financial difficulty.

Financial difficulty

Customer outcome: business customers in financial difficulty, or in the early stages of the collections process, will receive appropriate support and fair treatment, in order to help them deal with their debt(s) in the most suitable way.

Firms will achieve this: with systems and controls that are capable of identifying and, subsequently, supporting business customers in financial difficulty. Firms should be able to demonstrate that a sympathetic and positive approach has been applied when considering a customer's financial situation.

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1. Firms should have triggers and processes in place to help identify customers who may be in financial difficulty and should act promptly and efficiently to address the situation with the customer.

2. Firms should have appropriate policies and procedures in place to identify and support vulnerable individuals[4] within a business where this impacts on the customer's ability to pay.

3. Customers identified as being in financial difficulty should be contacted and provided with clear information setting out the support available to them, the next steps and where relevant, with any action they are required to take. They should not be subject to harassment or undue pressure when discussing their financial situation.

4. Firms should demonstrate an empathetic approach to the customer's situation; listening to and acting upon information provided by the customer with a view to developing an appropriate solution.

5. If, after exploring all the options open to the customer, it is clear that recovery of the asset is required, the Firm should ensure that the customer is provided with clear information as to what this entails.

6. Firms should seek to ensure that any recovery agents acting on their behalf demonstrate appropriate levels of conduct and deal with the customer in a professional and open manner.

7. Firms should apply an appropriate level of forbearance where, if after having made contact with the customer, it is clear that this would be appropriate for their situation.

8. If a Firm is aware that a customer is, or suspects that they are, in financial difficulty but is able to maintain their borrowing commitments to the Firm, the customer should be given the opportunity to take action to turnaround the business.

9. Firms should work with and support a customer's turnaround plan where the Firm believes that it has a good chance of succeeding.

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[4] A person who, when taking into account information available to the Firm about the how the business is structured and operates, is able to exert significant control over the way in which it is run.

10. If a Firm is unable to support a turnaround plan, the customer should be notified of the reasons why and given a reasonable period of time to consider the options open to them.

11. Firms should guide the customer to appropriate advice which reflects their circumstances and level of borrowing. Where appropriate and available, the customer will be signposted to a third party offering free, impartial debt advice.

Portfolio management

Unless otherwise stated, the following Standards apply to the sale of performing and non-performing debt, where responsibility for the day to day customer relationship transfers to the third party.

Customer outcome: when debts are sold, impacted business customers will be treated fairly and all communications regarding the sale, and what this means for the customer, will be transparent and provided in good time.

Firms will achieve this: with systems and controls to ensure that only eligible business customers are transferred to a third party and appropriate due diligence is undertaken on the Firm before a sale, which demonstrates that the customer will be treated fairly.

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1. Firms should follow a robust due diligence process when selecting third parties for debt sale or debt collection activities to ensure that customers will continue to be treated fairly, in line with the requirements of the Standards of Lending Practice and the relevant contractual terms.

2. Firms should ensure that where the decision is made to sell a customer's debt and the contractual terms require the customer's consent to do so, this is obtained prior to any sale taking place.

3. Where an agreement allows for a Firm to sell a customer's debt without their consent, Firms should ensure that:
    a. the customer is provided with reasonable notice that the Firm intends to sell their debt and provided with clear information as to what the sale means for the product(s) that they hold with the Firm and;
    b. if the relationship with the customer will be serviced by the third party, full contact details for the purchaser are provided.

4. If an individual[5] has provided appropriate and relevant notification of an ongoing mental health or critical illness that affects the customer's ability to repay their debts, or the Firm is aware the individual is terminally ill, the Firm should consider whether it is appropriate to sell the debt(s).

5. If a Firm sells non-performing debt, it should take appropriate and reasonable steps to ensure that the third party, to whom the customer's debt has been sold, deals with the customer in a manner that is consistent with the relevant requirements of the Standards of Lending Practice and the relevant contractual terms.

6. Where a debt is sold and during the lifetime of the original agreement[6], a dispute arises between the customer and the third party which the parties are unable to resolve, Firms should ensure that they have processes in place to allow the customer access to the Firm's complaints procedure.

[5] A person who, when taking into account information available to the Firm about the how the business is structured and operates, is able to exert significant control over the way in which it is run.

[6] Subject to industry practice on the retention of personal data under the Data Protection Act 1998.

Vulnerability

The following Standards have been drafted to support Firms in identifying and addressing situations where an individual within a business either is, or the Firm has reason to suspect that they may be, vulnerable.

- Reference to *vulnerability* is in relation to the individual rather than the business itself, for example, a business in financial difficulty would not necessarily be considered to be vulnerable for the purposes of these Standards; and
- Reference to an *individual* means a person who, when taking into account information available to the Firm about the how the business is structured and operates, is able to exert significant control over the way in which it is run.

These Standards can be applied to a sole trader, partnership or to an individual within a limited company. The impact of the individual's vulnerability on the business customer's relationship with their Registered Firm will depend on a number of non-exhaustive factors such as: the legal structure of the business, its sophistication, the role and level of responsibility of the individual within it and the extent of the individual's vulnerability. Firms will be at different stages of developing an approach to business customers and vulnerability and the applicability of the following standards will depend on the individual circumstances of the person.

Customer outcome: inclusive products and services take into account the broad range of business customers to which they may apply and contain appropriate flexibility to meet the needs of customers who may be, or are in, a vulnerable situation. Where customers are identified as, or the Firm has reason to believe that they may be, vulnerable, appropriate adjustments are made to ensure that their individual circumstances are accommodated to enable the customer, or their authorised third party, to manage their account(s).

Firms will achieve this: with systems and controls that are capable of assisting in the identification of customers who are, or may be, in a vulnerable situation, and having appropriate measures, training, referral points and skilled staff to deal appropriately with the customer once identified.

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1. Firms should have a vulnerability strategy, which defines its approach to the identification and treatment of individuals considered to be vulnerable, through whichever channel the customer chooses to engage.

2. Firms should undertake appropriate monitoring and assurance work to ensure that the vulnerability policies, processes and controls are designed and operating effectively and delivering fair customer outcomes.

3. Firms should have policies and processes governing the identification and fair treatment of individuals in vulnerable circumstances. These should take into account: the channel, where the individual is within the customer journey and the varying nature and degrees of permanence of different vulnerabilities.

4. Firms should seek to ensure that where an intermediary identifies an individual as potentially vulnerable, this information is passed to the Firm, with the customer's consent, and it is taken into account during interactions with the individual.

5. a. Firms should ensure that their employees are sufficiently trained to help them to identify vulnerability and deal with the individual in accordance with their policies and processes, with appropriate escalation points, where the circumstances require this.

   b. When an individual is identified as potentially vulnerable, a Firm should ensure that its employees have appropriate referral and escalation points and are aware of how to access them.

6. Where appropriate, Firms should develop triggers and management information to assist employees in the identification and subsequent monitoring of individuals who may be vulnerable.

7. Where a Firm is developing a new product, or reviewing an existing product, it should consider vulnerability as part of the design or review process, paying regard to target market, clarity, accessibility and the operation of the product.

8. Firms' sales policies and processes should take account of the impact vulnerability may have on an individual's ability to make an informed decision about a product and provide relevant support during the application process.

Governance and oversight

Customer outcome: business customers will receive a fair outcome when taking out a credit product and throughout the whole customer lifecycle, wherever the interaction with the customer takes place.

Firms will achieve this: with processes, controls and governance arrangements that ensure that there is effective senior management oversight of the Firm's achievement of the customer outcomes contained in the Standards of Lending Practice for business customers.

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1. Firms should have adequate governance, policies, processes, management information and controls to enable effective oversight of adherence to standards and delivery of fair customer outcomes.

2. Firms should have an effective risk management framework appropriate to the size of the Firm to ensure that the Standards of Lending Practice are achieved.

3. Firms should ensure that their employees are adequately trained to deliver the Standards of Lending Practice's customer outcomes, and that any incentive schemes are driving the right behaviours to ensure fair customer outcomes.

4. Firms should have systems in place to ensure that the Firms' employees and agents are promoting products in a clear and transparent way.

5. Firms should have systems in place to ensure that any failure to adhere to the Standards of Lending Practice are identified and assessed for materiality and root cause. Where the materiality threshold is met, these are reported to the LSB and remediated in a timely manner.

6. Firms should have processes in place to identify when changes to the Standards of Lending Practice are made and to ensure that these are effectively incorporated within policies, processes and systems.

7. Firms should ensure that when systems or processes are changed, or products are introduced or changed, the impact on meeting the Standards of Lending Practice is adequately assessed.

8. Firms should ensure that the product design stage takes into account internal and external risks which could impact upon a customer's ability to maintain their repayments so that new products do not lead to unsustainable borrowing.

9. Where part of the credit process/life cycle is undertaken by a third party, Firms should:
    a. undertake effective and robust due diligence to ensure that the third party or intermediary can meet the requirements of the Standards of Lending Practice and deliver the required customer outcomes; and
    b. exercise effective ongoing oversight of the third party or intermediary to ensure that it is meeting the Standards of Lending Practice and delivering the required customer outcomes.

10. Firms should have a robust complaints management process in place to deal with Standards of Lending Practice-related complaints and to undertake root cause analysis [DISP].

11. Firms should assign an appropriately skilled and senior individual(s) with clear accountability for overseeing that the Standards of Lending Practice are being adhered to and customer outcomes achieved, and for ensuring that remedial action is instigated where this is not happening.