The LSB's Information for Practitioners

The Standards of Lending Practice for business customers

Treatment of customers in financial difficulty

January 2021

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 financial difficulty.

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 to 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 represents 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 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

This section focuses on the treatment of businesses in financial difficulty and includes a dedicated section on business support units. The LSB recognises that not all firms have business support units in place and where they are, there is not one model which is applied consistently across registered firms. Customers may move in and out of financial difficulty/business support units during the course of their relationship with the firm. For ease of reference a separate set of Standards for business support units can be found below. However, firms will apply a consistent approach to the treatment of businesses in financial difficulty, regardless of where responsibility for the relationship with the customer sits within the firm.

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

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) and Bounce Back Loan Scheme (BBLS) 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 under CBILS and BBLS in reliance on the Government guarantee under each scheme.

For products offered under CBILS, firms will have access to a limited range of information, depending upon the type and level of information the customer was able to provide at the application stage and what, if anything, is known about the business. However, it is recognised that in the absence of a pre-existing relationship with the customer, the ability to identify financial difficulty may only arise at the point the customer misses a payment.

For products offered under BBLS, it is acknowledged that under the terms of BBLS, firms are not required to obtain any current or historic information on the performance of the business. Therefore, firms may be unaware as to whether or not the business is in financial difficulty during the initial 12 months of the agreement.

The scheme has been designed as a mass market product without a relationship management model which means that even where there is a pre-existing relationship with the business, firms will be unable, due to the way the scheme operates, to take this information into account at the point of lending. In addition, the application of an automatic interest and principal holiday means that firms will be further limited in the types of information which would normally feed into the triggers and processes already in place to identify signs of potential or actual financial difficulty. It is recognised that, based on the information that customers are required to provide to firms under the BBLS, firms, at the point of application and for the first 12 months of the agreement, will be unable to identify if a customer is in financial difficulty unless proactively contacted by the customer.

If, after a customer has accessed funding, a firm does identify a customer as showing signs of financial difficulty, the LSB would expect the firm to take reasonable steps to apply the provisions set out in paragraphs 3 to 7 of the Standards on the treatment of customers in financial difficulty. This may be the case where a customer informs a firm that the business is showing signs of financial difficulty, or where a firm becomes aware of such signs through any systems and processes that they have in place (in line with the Standards) to enable them to identify and support business customers in financial difficulty.

To encourage a consistent and fair approach to supporting BBLS customers, on 24 September 2020, the Government announced the introduction of Pay As You Grow (PAYG) measures. PAYG measures are available to all customers, not just those experiencing or at risk of financial distress or difficulty. However, the LSB recognises that PAYG support measures will provide many customers experiencing financial difficulty with the forbearance they need.

Firms offering PAYG support options to customers should, as part of the customer journey, ask questions about customers' financial situation and use filtering or triaging to identify and to offer additional support to customers who need it. This may include customers who need further information to enable them to make decisions regarding the use of PAYG support measures or may include customers who are in financial difficulty and need further discussions about what support might be appropriate for their circumstances. Firms should ensure that they are able act promptly and efficiently to address the situation with the customer. Firms should enable customers in financial difficulty and in need of further support to engage with an appropriate member of staff to discuss their circumstances.

Firms should ensure that any support offered is permitted under the guarantee agreement for the scheme and is in line with any relevant guidance or directions that may be issued by the UK Government from time to time.

As set out in the BBLS guarantee agreement, the LSB would expect firms to apply the requirements of the Standards when carrying out recoveries activity where the debt collection is unregulated, unless directed otherwise by the UK Government.

The LSB recognises that, should the Government issue new guidance or directions, firms may need to review or adapt their approach to supporting customers or to undertaking recoveries activities.

Firms will have access to a broad range of information on their business customers, depending on the size and type of business and how the relationship with the customer is managed. For those Firms which operate a relationship managed model, there may be opportunities for early identification of financial difficulties during any monitoring activity or engagement with the customer.

For smaller businesses, changes in personal circumstances such as a loss of a key employee, a breakdown of a relationship, bereavement, a serious accident or illness could also impact on the customer's ability to effectively manage the business' finances. Where the Firm is made aware of these changes, the LSB would expect the Firm to engage with the customer with a view to understanding whether the changes in circumstance are, or may be likely to, have an impact on the day to day running of their business.

A Firm should consider what information it has available to it that might indicate that a customer is at risk of, or may be, experiencing financial difficulties. Such illustrative triggers may include:

- loss of a significant source of income such as a key contract
- a significant increase in financial commitments
- frequent requests to change terms of the borrowing
- failing to meet repayments or other commitments on time
- regular requests for increased borrowing
- frequently returning items on a current account
- frequent incurrence of unarranged overdraft/late payment/over-limit fees
- being informed that another lender or creditor requires immediate repayment
- the customer goes overdrawn without agreement;
- the customer goes over their agreed overdraft limit, especially more than once;
- longer term cash flow shortages which do not reflect seasonal fluctuations
- there are large increases or decreases in the business's turnover
- the business is trading at a loss
- the business suddenly loses a key customer or employee
- a large part of the business is sold
- a facility is used for purposes other than those agreed with the Firm
- the customer does not keep to conditions set out in the loan agreement
- the customer does not supply agreed monitoring information on time; and
- another creditor brings a winding-up petition or other legal action against the business.

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

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 Loan Scheme (CBILS) and Bounce Back Loan Scheme (BBLS) 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 under CBILS and BBLS in reliance on the Government guarantee under each scheme.

Given the requirements of CBILS, it is acknowledged that unless there is a pre-existing relationship with the business, firms will have limited access to information on both the business and the circumstances of the business owner.

As set out in the Standards, 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.

For lending under BBLS, it is recognised that unless this information is proactively provided by the customer, firms may be unable to identify such customers at the point of origination. However, if at any point during the course of the relationship with the customer, a firm becomes aware that a customer is, or may be, in a vulnerable situation the LSB would expect the firm to act in accordance with the relevant Standards.

The LSB recognises that many firms will look to automate, and use digital journeys for, their engagement with BBLS customers. Firms should ensure that when customers do engage, for instance if they look to make use of the PAYG support options, that there is the possibility of manual intervention at any point in the customer journey, to enable customers who may be in vulnerable circumstances to opt-out of a digital journey, to access information and support and, where necessary, to engage with an appropriate member of staff.

This standard is seeking 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. This 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 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 will depend on the individual circumstances of the person.

Being in financial difficulty can be a stressful situation for a customer who is not vulnerable, therefore when dealing with a business customer who has been identified as, or the Firm has reason to suspect that they may be, vulnerable there is a greater need to fully understand their circumstances in light of their business. Having the structures and processes which allow staff to investigate situations fully, and equipping them with the knowledge, confidence and skills to question and explore circumstances appropriately will enable them to identify the likely support needs of the customer.

Firms should ensure, that, when they become aware of a vulnerability, the impact is fully considered on the individual and where applicable, the business and its ability to meet and maintain ongoing financial commitments. Firms should remain alert to the fact, that, whatever the vulnerability, the way in which a person might handle or respond to a situation can vary, based on personal circumstance, and the size and structure of the business, relative to the individual's day to day responsibilities and the nature and permanence of the situation.

The LSB would suggest that, wherever possible, Firms seek to establish a single customer view. It is acknowledged that for some, the ability to implement this across the organisation may be hampered by legacy systems particularly where there are multiple product holdings. Where possible, consideration should be given to manual workarounds to help Firms to ensure that multiple accounts can be linked so that correspondence and account activity is coordinated. For some business customers, the Money Advice Liaison Group's (MALG) Debt and Mental Health Evidence Form (DMHEF) may be appropriate. This provides a standardised approach for third parties and creditors to share relevant information about the customer's mental health condition from health and social care professionals. In line with current industry practice, Firms should consider the DMHEF if it is presented by the customer or, with the customer's consent, their adviser or medical practitioner.

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

Where a customer is identified as being in financial difficulties they should be contacted and provided with clear information to enable them to engage constructively with the Firm. This contact should seek to enable the Firm to understand the customer's situation through appropriate questioning, the outcome of which can be used to determine how to best manage the customer's borrowing with the Firm. Where appropriate, there may also be a benefit to signposting relevant customers to free, impartial debt advice.

The LSB recognises that for some products firms will be able to use automated processes to offer support to customers. The LSB would expect firms to ensure that any such processes provide customers with clear information about the support available and that the processes use appropriate questioning to support the customer with any actions they may look to take. The LSB would expect firms to ensure that, at any point during an automated process, there is the possibly of manual intervention to enable a customer to opt-out of a digital journey, to access information and support, and, where necessary, to engage with to an appropriate member of staff to discuss their circumstances.

When a customer is identified as being in financial difficulty, Firms should take a view as to the appropriate level of intervention/support required, this will be dependent upon the individual customer's circumstances and the information obtained. The conversation may identify that the business is expecting a change in income in the foreseeable future, for example the award of a significant contract or the payment of high value invoices which will have a positive impact upon the finances of the business.

The LSB would expect that customers are made aware of the next steps in the process, for example, the application of forbearance and how this could work or what the potential outcome of the situation could entail. Firms should provide this information in an appropriate form and in plain English, avoiding the use of any technical or legal language, wherever possible. Where customers are required to undertake any action as a result of the contact, that this is made clear to them with any agreed timescales or requests for additional information documented.

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 and mutually acceptable solution

Where a Firm identifies that a business customer is in financial difficulty or the customer self-discloses that the business is struggling, the Firm should engage with the customer with a view to understanding the business' overall situation and work with the customer to develop an appropriate solution.

This solution could take a number of forms; it could be for the customer to agree to cut down on non-essential expenditure, or a more formal arrangement following, for example, an independent review of the business. Such an arrangement might set out a detailed restructuring or repayment programme, including new facility agreements and what happens if the customer does not meet the agreement. If the plan includes an agreement to accept smaller loan repayments than stipulated in the original documentation, the Firm should tell the customer whether this is regarded as 'falling behind with repayments' and whether information will be passed to credit reference agencies.

Before agreeing an appropriate solution with the customer, the Firm should have sufficient information regarding the customer's financial situation to enable it to assess whether any proposed plan is affordable for the business. This can be achieved through appropriate questioning, as well as listening to and acting upon the information provided by the customer and consideration of any information the Firm has on the business itself. The LSB would expect that where a customer is unable to make repayments that are sufficient to meet a lender's minimum requirements for a repayment plan, the customer is given clear information on the effect this will have on their position and the options open to them. The LSB acknowledges that it may not always be possible for a Firm to agree a solution which enables the business to continue its relationship with the Firm or that the most appropriate outcome is that the business enters winding up proceedings. In these circumstances, the LSB would expect Firms to provide a clear explanation as to why the business can no longer be supported and allow the customer the opportunity to consider their options or seek professional advice.

When developing a repayment solution with a customer who has been identified as vulnerable, but who is able to set-up or continue to maintain a plan, Firms may wish to give consideration to the financial impact that the vulnerability may have. Taking account of the cost of travel to hospital, medication, and the impact of any reduction in income will help to ensure a plan is reflective of the customer's current situation. Identifying this expenditure will also help the Firm to assess whether any proposed repayment plan is affordable and sustainable. Where a vulnerable customer is unable to set up a plan, Firms should consider placing the account on hold and agreeing regular reviews with the customer to check in on their situation.

A Firm may suggest that an independent review of the customer's business is undertaken in order to provide an independent view of the future prospects of the business. In these circumstances, the Firm should explain the reasons for the review, what it thinks should be done and how the review will take place, including who should carry out the review and whether there are any costs associated for the customer. If a customer's business is reviewed, the LSB would expect the Firm to discuss with the customer (and where relevant, their advisers) the information provided before reaching any conclusions or taking any action.

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

For lending under BBLS, the LSB recognises that firms will look to offer customers support through the PAYG measures announced by the UK Government. While firms may look to automate and use digital journeys to offer customers support and forbearance, firms should still ask customers questions about their circumstances to help them identify customers who may need additional support. For instance, the customer may need further information to enable them to make decisions regarding the use of PAYG support measures or may need further discussions about what support might be appropriate for their circumstances.

In addition, the LSB would expect firms to ensure that, at any point during an automated process, there is the option for manual intervention to enable a customer to opt-out of a digital journey, to access information and support, and, where necessary, to engage with an appropriate member of staff.

Where a customer engages with the firm to discuss accessing support as a result of financial difficulty, firms should seek to understand the customer's situation and to identify any wider financial difficulties a customer may be experiencing. Taking into account a customer's situations, firms should try to develop an appropriate and mutually acceptable solution with the aim of helping the customer to deal with their debt(s) in the most suitable way. The LSB recognises that the PAYG support options will provide appropriate solutions for most BBLS customers.

There may be circumstances where, having taken into account the customer's situation, offering PAYG support would not be sufficient to meet the needs of the customer's situation. Where this is the case, firms should consider alternative forms of support or forbearance for customers. This may particularly be the case where a customer is in arrears. Where alternatives to PAYG are considered, firms should try to ensure they have sufficient information regarding the customer's financial situation to enable assessment of whether any proposed plan is affordable for the business.

The LSB recognises that the PAYG support measures have been designed to be offered in such a way that use of PAYG support options remains the customer's choice even where the customer has engaged with the firm and discussed alternative support or forbearance.

5. 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. Firms should ensure that the solution offered does no exacerbate the customer's situation

The type of forbearance applied will depend on the Firm's assessment of the customer's individual circumstances and what is appropriate for the business. For example, forbearance could take the form of: a term extension, application of breathing space, payment holiday, refinancing of an existing facility or other, as appropriate. Firms should ensure that the solution offered does not make the customer's situation worse, for example, agreeing to restructure a loan which attracts a higher rate of interest than the customer's current arrangement. While the restructuring itself may potentially resolve the situation in the short term, the cost of the revised agreement would mean that the overall borrowing may not be sustainable in the longer term.

The LSB would encourage Firms to consider reducing or stopping interest and charges when a business customer evidences that they are in financial difficulties. Such a reduction/suspension decision could be based upon an assessment which indicates that the customer is unable to make repayments sufficient to meet contractual terms. The LSB would consider it inappropriate for interest and charges to continue to be taken where the result would be that the repayment period for the customer becomes excessive. In forming a judgement on what might be excessive, a Firm should take into account the type of product and the individual circumstances of the business customer.

The LSB's view is that concessions should not be arbitrarily withdrawn irrespective of a customer's ability to pay or without any evidence of a change in the customer's circumstances. Expiry of a repayment arrangement should not automatically lead to the withdrawal of concessions. However, this does not rule out regular reviews and if a customer's position has improved then interest and charges can be reintroduced.

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For lending under BBLS, the LSB recognises that firms will look to offer customers support through the PAYG measures announced by the UK Government. While firms may look to automate and use digital journeys to offer customers support and forbearance, firms should still ask questions about their circumstances to help them identify customers who may need additional support. For instance, the customer may need further information to enable them to make decisions regarding the use of PAYG support measures or may need further discussions about what support might be appropriate for their circumstances.

Where a customer engages with the firm to access support as a result of financial difficulty, firms should seek to understand the customer's situation and to identify any wider financial difficulties a customer may be experiencing. Where alternatives to PAYG are considered, firms should try to ensure they have sufficient information regarding the customer's financial situation to enable assessment of whether any proposed plan is affordable for the business.

The LSB recognises that the PAYG support measures have been designed to be offered in such a way that use of PAYG support options remains the customer's choice, including in scenarios where firms may reasonably believe the business to be unviable. To help ensure the best outcome for the customer and to ensure they are treated fairly, firms should provide customers with clear information about the support available.

In addition, where a firm is aware that a customer has accessed PAYG support and subsequently remains in financial difficulty, firms should consider the customer's current situation and look to offer appropriate support and develop a mutually acceptable solution, acting on any information that is provided by the customer.

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

There may be circumstances where a customer meets one or more the triggers set out under section one above, but is able to maintain their borrowing commitments to the Firm. The LSB would expect that in these circumstances, the customer is given an opportunity to demonstrate that they can trade out of any short term difficulties they may be experiencing. The decision to do so will be based upon consideration of the information the Firm has regarding the business but where the business is viable and is able to meet its financial obligations, the LSB would expect that it is able to continue to trade.

The decision to do so could be subject to regular monitoring and review of the circumstances which is sufficient to enable the Firm to understand the financial health of the business. Any additional reporting requirements should not be so onerous on the customer that it makes the turnaround plan unsustainable. The LSB would expect the customer and the Firm to agree any timelines which may apply.

7. 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

Where a customer is signposted towards independent advice, this should take account of the size and sophistication of the business and should reflect the borrowers' circumstances, that is the advice provided would be at a cost which is appropriate for the level of the customer's borrowing. For example, a sole trader or sole director of a small company would not be sign posted towards a firm which is more appropriate for a larger, more corporate business where the costs would be disproportionate to the size and needs of the customer.