The LSB's Information for Practitioners

The Standards of Lending Practice for business customers – Asset Finance

Financial difficulty

May 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.

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

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, but are not limited to:

- loss of a significant source of income such as a key contract
- a significant increase in financial commitments
- frequent requests to change terms of their 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 their agreement
- the customer does not supply any agreed monitoring information on time; and

- another creditor brings a winding-up petition or other legal action against the business.

What might good practice look like? Firms have systems in place to monitor their portfolios for continually late or missed or bounced payments and where appropriate, there is pro-active contact to establish the customer's circumstances. Where practical, firms run watch lists with CRAs or have prior arrangements in place with larger customers to enable them to submit management information at agreed intervals.

What might poor practice look like? Firms are entirely reactive to missed payments and respond by applying moral or contractual pressure on customers. This may include, pre-emptively threatening repossession, visits by agents, or legal action, without trying to establish causes or circumstances or the best way forward.

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

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 LSB recognises that the causes of a vulnerable situation can be multiple and complex. For the purpose of the Standards, a business in difficulty is not, in and of itself, deemed vulnerable, however in practice, a vulnerable situation is not always clear cut. Vulnerability may not derive from personal circumstance alone but from a number of sources, including the business itself, or external environmental and economic factors. The impact of the vulnerability on the business customer's relationship with their firm may 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. For further information firms should refer to Section 10 – Vulnerability.

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.

What might good practice look like? Staff are trained to understand the various drivers of vulnerability which may impact on a customer's ability to pay and are aware of the approaches which could be taken to support such customers across a range of likely circumstances.

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, by an intermediary or a firm 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. Firms should ensure that all customers are treated fairly and in line with their policies and procedures.

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.

What might poor practice look like? Staff repeatedly pressure customers to pay but having little or no understanding of the impact of such pressure on the customer, nor of the various steps which could be taken to assist the customer to extricate themselves from the problem in the most cost-effective way.

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

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 agreements and what happens if the customer does not meet the agreement. If the plan includes an agreement to accept smaller 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 reduced repayments through 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 to provide a 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.

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

Where a firm has exhausted all other options, the firm may seek to recover the asset. Where this may be the case, firms should ensure the customer is made aware of this as soon as possible to give them enough time to prepare; the removal of an asset could have a significant impact on the business, and where practical, the firm should seek to provide reasonable notice.

This Standard aims to ensure that customers are provided with appropriate information in a clear and comprehensible manner to enable them to understand what actions are being taken by the firm. As much detail should be passed onto the customer about why the asset is being recovered, including the method and timescales for doing so and the implications this has on their agreement and any further action the customer might need to take.

The LSB would expect firms to maintain an empathetic approach to the customers situation, and, where appropriate, direct the customer to professional advice.

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

The LSB acknowledges that asset recovery may not always run smoothly, firms should satisfy themselves that recovery agents will conduct themselves in a professional and open manner and the customer will continue to be treated fairly throughout the process.

Firms should ensure that in line with the requirements of Standard 9, Governance and Oversight, they undertake effective and robust due diligence in selecting a third party to ensure that it can meet the Standards and deliver the required outcomes. This should be supported by oversight of the third party from which the firm should be able to derive a sufficient degree of comfort that fair outcomes are being achieved. The LSB expects that customers identified as being in vulnerable circumstances are appropriately supported in line with the Standards of Lending Practice – Vulnerability. Firms should ensure that there are appropriate mechanisms in place to identify and deal with any known or suspected breaches of the Standard. This may be achieved through a documented contract, with minimum service level agreements and regular relationship meetings.

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

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. 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.

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

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.

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

Where a customer proposes a turnaround plan which will enable the business to trade out of its difficulties, the LSB would expect that the firm gives due consideration to the customer's plan and where the firm believes that this could succeed, the customer is given an opportunity to demonstrate that the proposed plan is viable.

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

The LSB acknowledges that there will be circumstances where it is not possible for the firm to support a business' turnaround plan and in these situations, the customer should be told why the firm is unable do so. The LSB would expect that the firm engages with the customer in an open and constructive way and is clear as to the reasons why it cannot support the plan, what options, if any, are open to the customer and what the next steps in the process are.

The LSB would expect the firm to advise the customer when it will withdraw its support, applying a reasonable period of time for the customer to seek advice or alternative sources of finance and help the customer and where relevant, their advisers, to consider other options.

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

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.