

The LSB's Information for Practitioners

The Standards of Lending Practice for
business customers

Portfolio management

July 2019

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 portfolio management.

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: 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. Where business customers are suffering from mental health or critical illness, the customer's debt will not be sold.

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.

Unless otherwise stated, the following Standards apply to the sale of performing and non-performing debt. The following Standards apply to the sale of debt at the portfolio level.

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 requirements of the Standards of Lending Practice and the relevant contractual terms

This standard is intended to ensure that where a customer's debt is sold or passed to a debt collection agency, that the customer will continue to be treated in line with the standards that firms apply under the Standards of Lending Practice. Customers therefore have comfort that while the debt is no longer being administered by the firm, the protections offered by the standards will continue to be met.

The due diligence process for selecting third parties for debt sale or debt collection should be sufficiently robust to satisfy the firm that the third party can meet the requirements of the Standards of Lending Practice. Whilst we do not specify the level of due diligence that should be undertaken, this should be comprehensive for the firm to gain assurance that the protections offered by the Standards will continue to be met by the third-party, and should be proportionate to the risk associated with the materiality of the outsourced arrangement and the provider.

For the purposes of the Standards, areas assessed through a firm's due diligence may include the following:

- an assessment of compliance against the Standards of Lending Practice for business customers relative to the activity undertaken by the third party;
- an understanding of the business strategy, model and culture,
- an assessment of governance and oversight arrangements in place including quality assurance activity, compliance and internal audit and the outputs of any recent reviews.
- this may be supported by a review of policies and processes, training and incentive schemes, and the approach to dealing with vulnerable customers.

Firms may support this assessment with a review of third party compliance with contractual terms, relevant FCA regulation, data protection and, where applicable, adherence to relevant codes of practice that may apply to the customer's borrowing. Whilst we do not prescribe the approach to due diligence, this should be sufficient for the firm to assure itself that the Standards are being met and the right outcomes are being achieved through appropriate systems and controls to minimise the risk of customer detriment. In addition to this firms may also wish to consider how it will ensure a smooth transition of customer accounts to a new outsourced provider, including what might happen when a vulnerable customer is identified or on service termination. Firms should also refer to the relevant paragraphs of Governance and Oversight for further guidance.

he LSB would expect that adherence to the Standards of Lending Practice forms part of all third party contracts and firms should ensure that the outcomes for handling financial difficulty cases are applied by such agents, through due diligence and periodic audit and review. The due diligence should be reviewed where there is a change to the relationship, which the firm considers to be material.

Firms should consider the benefit of receiving regular reports/updates from the outsourced provider to provide comfort that the outsourced provider is operating within the terms of the service agreement and that the Standards are being achieved. This may include: the identification of qualitative and quantitative performance targets; the evaluation of performance through service delivery reports or an independent review by its compliance or internal audit function, including any remedial action, and escalation processes for dealing with inadequate performance. The frequency of information exchange should be determined by the firm, and should be proportionate to the risk presented by the outsourcer.

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

One of the key elements of the Standards is to ensure that customers are provided with appropriate information, at the right time to enable them to better understand what changes are required or are being undertaken to the way they interact with their lender. Where a customer’s contract and/or terms and conditions provide for the customer’s consent to the sale of their debt, this should be 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**
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The requirement here is for firms to ensure that customers are aware that their debt will be sold and understand what that means in terms of their relationship with their lender. The LSB’s expectation is that customers know what is happening and the guiding factor is to ensure a seamless and uninterrupted customer experience and a fair outcome.

Firms may wish to have regard to the audience and business type and form of borrowing when communicating with impacted customers. The customer should be provided with a contact point should they wish to discuss the matter further.

Where the relationship will be serviced by the third party, the customer should know in advance who the third party is and provided with contact details. This is to prevent customers from being contacted out of the blue.

4. If an individual¹ 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 debt(s) should not be sold

The LSB acknowledges that it may not always be possible for a firm to know whether a customer is vulnerable but where the firm is aware, the Standards of Lending Practice prohibit the sale of debt where there is evidence of an ongoing mental health problem or critical illness that affects the customer's ability to repay their debt. Where vulnerability is identified by the firm, which impacts upon the customer's ability to repay their debt, the LSB would expect that these accounts are ring-fenced and not sold.

Vulnerability can occur at any time during a customer's relationship with their lender, including post debt sale but pre-transfer. Where a firm becomes aware that the customer is vulnerable (this refers to the individual who is able to exert significant influence over the way the business is run)² the debt should be ringfenced and excluded from the sale.

Responsibility for managing such accounts should be agreed between the creditor and the purchaser up front, though any decision should give due consideration to:

- assessing each case on its merits, which may include having regard to the nature and longevity of the customer's situation; and
- the customer experience and risk to customer outcomes.

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

Where the decision is made to sell non-performing debt, the LSB would expect firms to ensure that the customer continues to be treated in line with the requirements of the Standards of Lending Practice for business customers.

Firms should be able to satisfy themselves that the third party to whom they have sold customers' debts, continue to deal with such customers in a manner that is consistent with the relevant requirements of the Standards of Lending Practice and the contractual terms of the agreement between the firm and the customer.

The results of these steps should be used to satisfy the firm and the LSB, that all of the relevant requirements of the Standards of Lending Practice in respect of the debts sold are being adhered to. If instances of non-compliance are identified, firms should be able to evidence that appropriate action has been taken to remedy any breakdown of control or customer detriment.

¹ A person who, when taking into account information available to the firm about how the business is structured and operates, is able to exert influence over the way it is run.

² See also section on vulnerability.

- 6. Where a debt is sold and during the lifetime of the original agreement³, 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.**
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The intention of this Standard is that customers are able to have recourse to their lender, if they are unable to resolve a dispute with the third party which purchased their debt. Firms should ensure that where a debt is sold, the customer has an access point into the firm's complaints process and should ensure that processes are in place to enable customers to do so.

³ Subject to industry practice over the retention of personal data under data protection legislation.