

28 July 2021

Dear Chief Executive

SME Lending - our expectations of firms in reporting BBLs fraudulent activity

We are writing to set out our expectation that lenders report to us any instances where an FCA firm, as a BBLs borrower, has committed or otherwise been involved in fraudulent activity.

We also wish to take the opportunity to remind firms of their wider obligations for reporting fraud and restate messages from our webinar 'Collecting and recovering small business lending'.

Background

The last year has been truly unprecedented for those involved with small and medium-sized enterprises (SME) lending. We have seen the banking sector make significant efforts to support small businesses as they deal with the impact of the coronavirus pandemic (Covid-19). Most notably, lenders acted at speed and diverted significant levels of resource to delivering the Government's Coronavirus Business Interruption Loan Scheme (CBILS) and the Bounce Back Loan Scheme (BBLs).

The delivery of loan funds through these loan schemes has been crucial in securing the survival of many small businesses. These schemes were different to any other lending schemes seen in the past and saw unprecedented numbers of SMEs borrow under them – many borrowing for the first time. We have had excellent engagement from industry as we have developed guidance and statements regarding SME lending over the last 16 months.

Allegations of fraud that involve an FCA firm

The unique nature of the BBLs has led to it being the target of fraudulent activity. We have a particular interest in allegations of fraud that involve an FCA firm, as a BBL borrower.

This means that if there are allegations of fraud regarding an authorised firm (or a firm registered for supervision under the Money Laundering Regulations (Annex 1 firms)) then we expect the lender, after completing its initial investigations to understand the validity of the allegation, to inform the FCA.

Such disclosure is in line with our Principles of Business. PRIN 11 - Relations with regulators, requires a firm to deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice.

Where an FCA firm has committed or otherwise been involved in fraudulent activity, the case should be reported to us at sme fraudreports@fca.org.uk.

Once your report has been submitted, you should continue your own investigations and take appropriate action (notification to the FCA is complementary to and not a replacement for other obligations being fulfilled). We will engage with you on cases that are of particular interest and may request additional information about the loan or your investigation.

Existing obligations in relation to BBL fraud

We know accredited lenders have been concerned about levels of fraudulent activity and we are grateful to many of them for sharing with us details of their concerns.

While customer due diligence checks and other internal processes by lenders have identified many fraudulent applications at an early stage, other fraudulent applications may have as yet been unidentified. We welcome the detailed information provided by many lenders on the progress they are making in improving detection of fraudulent activity.

The types of fraudulent activity identified are varied and include making applications on behalf of fake businesses, making applications for ineligible borrowers using dormant companies, and knowingly mis-stating information on application forms, particularly on levels of business turnover.

Despite the levels of fraud detected at the loan application stage we are aware that many instances of fraud may only be identified when undertaking your BBL collection and recovery

activities. So, we ask you and your teams to be especially alert to this possibility. It will also be important to keep resourcing levels under review to ensure instances of financial crime are identified and reported in a timely manner through the appropriate channels, and to assess, monitor and manage controls to identify fraud cases effectively in line with existing requirements, such as in SYSC.

Reporting to the British Business Bank (BBB) - BBLs specific

BBB manages the scheme on behalf of the Secretary of State for the department for Business Energy and Industrial Strategy (BEIS), which is the guarantor for BBLs loans.

If fraud is identified or alleged at any point in the customer journey, the scheme rules for BBLs set out the obligations on your firm as a scheme lender to inform the BBB.

Obligations under the Proceeds of Crime Act

Where fraud is identified or alleged, whether on government scheme or other lending cases, you should also consider your obligations under the Proceeds of Crime Act to report suspicions of money laundering.

Action Fraud

Action Fraud is the UK's national reporting centre for fraud and cybercrime. BBLs accredited lenders should report fraud targeted at this scheme to Action Fraud. Reporting in Scotland should be made to Police Scotland.

Obligations to report to other regulators and professional bodies

We would also ask you consider where a borrower is a member of a professional body, the need to report alleged or identified fraud to that body or other regulators. For example, in particular cases, it may be appropriate to report to bodies such as The Insolvency Service, The Law Society, ICAEW – and equivalent bodies in the devolved nations.

Next steps by the FCA

We will continue to liaise closely with the British Business Bank, BEIS and all relevant regulatory and enforcement authorities to ensure a consistent approach to such cases.

SME collections and recoveries – a reminder of our key messages

Our focus on lending before, during, and as we cautiously enter the recovery phase of Covid-19 is to ensure that customers, including SMEs, receive appropriate outcomes. This is particularly important as CBILS and BBLs have now closed to new applications and our coronavirus temporary guidance for firms is coming to an end.

The FCA has rules to support the fair treatment of customers through the regulated collections and recoveries process. In particular, our Consumer Credit Sourcebook Chapter 7 (CONC 7) sets out our rules for the treatment of customers who are in default or arrears difficulties. Under Principle 6, a firm must pay due regard to the interests of its customers and treat them fairly. Where CONC 7 applies to SME customers that are in default or arrears difficulties, we want to see a focus on ensuring they are treated with forbearance and due consideration (as required by CONC 7.3.4R). Following our guidance contained in 'Bounce Back Loan Scheme: guidance for firms on use of Pay as You Grow options' will help firms to demonstrate that they have treated their BBLs customers fairly.

The Senior Managers and Certification Regime is also important when considering SME collections and recoveries activities. A senior manager's accountability stretches across both regulated and unregulated lending. It is important that senior managers are taking reasonable steps to ensure that the business of the firm for which they are responsible is controlled effectively.

We recognise the scale of the challenge you are facing as your firm begins work to collect BBLs loan repayments and the role of senior managers is crucial to ensure firms deal with these cases in a way which provides appropriate outcomes for borrowers at a very difficult time for their business.

Yours faithfully

Andrew Wigston

Head of Department, Retail Banking (Domestic) Supervision and Head of the Small Business Unit