FINANCIAL CONDUCT AUTHORITY

12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

Sent by email

4 May 2020

Dear Caroline

The Government's Coronavirus Business Interruption Loan Scheme and the Bounce Back Loan Scheme

As you will be aware, many businesses are facing significant financial difficulties in the exceptional circumstances arising from the coronavirus pandemic.

Two of the measures recently announced by the Government to help businesses are the Coronavirus Business Interruption Loan Scheme (CBILS) and the Bounce Back Loan Scheme (BBLS), referred to collectively in this letter as 'the Schemes'.

CBILS, which has already been running for a number of weeks, supports small and medium-sized businesses with an annual turnover of up to £45m to access loans, overdrafts, invoice finance and asset finance of up to £5m. Borrowing terms are up to 6 years. From today, BBLS sits alongside CBILS, offering term loans of between £2,000 and £50,000. BBLS loan terms are fixed at 6 years and term loans and overdrafts of £50,000 and under are no longer available under CBILS.

From our recent work on extending the Financial Ombudsman Service's jurisdiction to include complaints from more small and medium-sized businesses, we know that the vast majority of businesses covered by the Schemes will be eligible to complain to the ombudsman service about acts or omissions by firms in relation to agreements under the Schemes.

We are aware that accredited lenders will want clarity on the question of how the ombudsman service will view lender behaviour under BBLS, which have come into force today, and the changes to CBILS which were made on 27 April.

We are keen to work closely with the ombudsman service on ensuring lenders have this clarity, which should help enable them to provide much-needed finance to struggling businesses. In this letter, we draw your attention to how the key aspects of the arrangements for both Schemes will work.

The new regulatory arrangements for the Bounce Back Loan Scheme

The Government is making changes to the Regulated Activities Order. Lending under BBLS that would otherwise have resulted in regulated credit agreements (ie loans of £25,000 or under to sole traders, certain small partnerships and other relevant small businesses) will fall outside regulated lending activity. However, debt collecting in relation to BBLS loans in this category, whether by the lender itself or a third party, will be a regulated activity.

This means that the usual regulatory regime that applies to regulated credit agreements, including the requirements in the Consumer Credit Act, will not apply to lending or post-lending (other than debt collecting) activity under BBLS. These aspects, including how lenders have entered into and administered loans, could be the subject of future complaints to the ombudsman service.

Within these changes, we consider the most important aspect to draw your attention to is that, under these new regulatory arrangements and the BBLS, there is no requirement in BBLS for lenders to conduct creditworthiness or affordability checks. This approach is clearly different to requirements within FCA rules on creditworthiness assessments for regulated credit agreements (ie CONC 5.2A).

We also note that the Government will introduce primary legislation at the earliest opportunity to disapply sections 140A-140C of the CCA for BBLS lending (to apply when the Scheme comes into effect ie with retrospective effect).

There are, however, a number of protections in relation to other aspects of lending under BBLS, for example providing information to borrowers as specified by the Scheme. The ombudsman service will need to take account of these.

The new approaches to creditworthiness assessments in the Coronavirus Business Interruption Loan Scheme

From 27 April, CBILS requirements around creditworthiness and affordability assessments changed. From this date, the requirement is that the lender considers that the business (or its business group) has a viable business proposition. This is to be determined according to the lender's underwriting policies in place from time to time, but without regard to any concerns over the business's short-to-medium term business performance due to the uncertainty and impact of the pandemic.

For smaller value facilities (eg those of £30,000 or below), in determining the eligibility of the applicant, rather than assessing viability in accordance with the above paragraph, lenders may decide to determine the business's creditworthiness based on its internal credit scoring models from time to time.

Following these changes, we published a statement. This set out that if lenders comply with the relevant requirements of CBILS on creditworthiness and affordability assessments (as announced on 27 April), we do not expect them to comply with CONC 5.2A.4-34 where the lending is regulated (ie credit agreements of £25,000 or under with sole traders, certain small partnerships and other relevant small businesses). We have updated this statement today, confirming that this remains our position.

How the Financial Ombudsman Service will approach complaints arising from lending under the Schemes

It is our understanding that the ombudsman service recognises the exceptional circumstances caused by the pandemic that have necessitated the Schemes. This includes that borrowers are self-certifying that, among other things, they have been adversely affected by the pandemic and are borrowing to address that.

We also understand that the ombudsman service will take into account, when considering complaints, that lenders will be taking a different approach to lending under the Schemes and that this approach will be determined by the Schemes' requirements and recent pronouncements we have made on the applicability of certain regulatory provisions.

Further, we understand that in exercising their statutory duty to resolve complaints according to what is fair and reasonable in all the circumstances of the case, ombudsmen will take into account, and give due weight to, the need for firms to comply with the Schemes' requirements as relevant considerations provided for in DISP 3.6.4R.

Of course, we recognise that the ombudsman may depart from relevant law and regulation where he or she considers there are good reasons for doing so. However, we understand that there are likely to be few instances where this would happen, and if this does happen then the ombudsman must give the parties clear reasons for doing so.

To help provide this assurance to lenders, please could you respond to this letter as soon as possible. In your response, I would be grateful if you could acknowledge that the Schemes require lenders to take a different approach to lending, and confirm that our understanding of how you will approach complaints which might arise from lending under the Schemes, as set out above, is correct.

Yours sincerely

Christopher Woolard
Interim Chief Executive