

A Statement of Principles



Banks and businesses
– working together

bba

The voice of banking
& financial services

Foreword

The original Statement of Principles came into force on 1 July 1997, having been drafted after the recession in the early 90s when many lessons were learned. In light of the current economic climate, the Principles have been reviewed by all key stakeholders to ensure that they continue to show real commitment from banks and highlight the responsibilities of businesses.

The Principles show how banks will work with small businesses to get the relationship right from the start and help if the business gets into difficulties. They set out the industry's best practice, showing business customers what they can expect from their bank and, in return, what they can do to build a strong relationship with their bank.

The Principles show that banks are committed to working with business customers to find ways of overcoming the difficulties they may face in changing markets and through the economic cycle. All businesses experience these challenges. The Principles also emphasise that if the owners and managers of the business take early advice and action, they can work with the bank to sort out difficulties.

All our major banks have skilled specialists to deal with customers in difficulties. They will be involved in the small number of cases when, despite everyone's efforts, a business is failing. The industry and its customers are well aware that good managers and responsible banks are beneficial to everyone concerned, directly benefiting most of the businesses that succeed, and also the wider community. Professional advisers and business support organisations have an important role to play in building trusted relationships between businesses and banks.

Angela Knight
Chief Executive, British Bankers' Association

Overview

The Statement of Principles defines how banks will work together with their small business customers when they need finance for the first time, and later as their needs change.¹ The Principles show how banks will work with small business customers to get the relationship right from the start and help if the business gets into difficulties, and how businesses can work most effectively with their bank.

The Statement of Principles is followed by banks who subscribe to the Business Banking Code. The Business Banking Code sets out how banks will deal with business customers in the UK. It includes banks' responsibilities involving:

- current accounts
- deposit accounts
- account switching
- business loans and overdrafts
- charges and interest rates
- financial difficulties.

All banks that subscribe to the Business Banking Code will ensure that every member of their staff receives a copy of this Statement. Copies of the Statement will also be given to all small business customers, and this Statement and the Business Banking Code are freely available in bank branches and online at www.bba.org.uk

The Principles cover:

1. Getting things right at the start
2. Sharing concerns
3. Agreeing the way forward
4. Making a complaint
5. Switching your account to another bank.

¹ In this Statement, small businesses are defined as businesses with trading turnover or income of under £1 million a year.

Introduction

The relationship between a bank and a customer is a partnership. It needs careful thought and openness on both sides from the start, and particularly in difficult times.

Small businesses are important to banks because they represent a significant proportion of their customers and use a wide range of bank services. If a customer does get into difficulties and its bank becomes aware, the bank will discuss with the customer the advice and action that may be necessary. In most cases, this should allow the bank and customer to agree the terms of the bank's support and to return to running the business successfully. However, if the customer does not ask for or act on advice, or take part in meaningful discussions, the bank may have to take action to protect its own position.

The Principles set out, in general terms, how the customer and bank can tackle financial difficulties in a positive way. Many factors can contribute to this but the single most important step is for customers to speak to their bank at the earliest opportunity, take appropriate advice and act as soon as something goes wrong. Banks will contact small business customers as soon as they know of difficulties and will offer to discuss these personally with the customer.

A meaningful business plan is often the basis for successful discussions, both at the start and if things begin to go wrong. When a bank tells a customer about its concerns, it will be as relevant and specific as possible, because that will help the customer to work with the bank to sort them out.

It is in the interests of both the bank and the customer to address concerns as soon as possible and agree a way forward. Sometimes, only selling the business or changing management can save the main business and save jobs for the benefit of the whole community. Where the business is not viable as structured, formal insolvency procedures may have to be considered to

restructure or wind down the business. It is not in anyone's interests for banks to continue to support businesses that cannot survive. The Enterprise Act 2002 recognises this and banks will work with management to use the best legal framework to achieve a fair outcome.

Banks will continue to reinforce these Principles within their own systems and publications, and make sure that all relevant staff within their organisations understand and apply them. The Banking Code Standards Board (BCSB) independently monitors banks' compliance with the Business Banking Code, including a commitment to follow the Statement of Principles. The BCSB will monitor banks' application of this Statement in their operational procedures, including ensuring relevant staff receive a copy of the Statement and providing the Principles to new and existing customers.

In the following Principles, 'we' means the banks agreeing to follow these Principles and 'you' means the business customers of those banks.

The Principles

1 Getting things right at the start

a We will confirm the conditions of any facility (borrowing, guarantees, bonds and so on) in writing.

We will make sure that the documents detailing the facility are easy to understand, using technical language only when necessary. We will be happy to explain anything you are not sure about.

It is important that you read the documents carefully. Please feel free to ask questions and get independent advice.

The documents legally bind both of us. If you are asked, you should only sign them if you fully understand what you are doing. They will normally include:

- the amount and purpose of the facility
- whether the facility is for a particular period or whether you will have to repay it when asked
- when any repayments are to be made and the amount of those repayments
- the interest rate and any other charges for the facility, and whether these are variable
- when we will normally review the facility with you
- the existing or new security and guarantees, including any minimum values to be maintained
- what sort of circumstances will lead to an earlier review or require repayment
- the information you will need to give us before you can use the facility
- what action we might take if you fail to meet repayments.

If the documents do not fully reflect any aspect of the negotiated agreement, discuss this with us before signing. Although banks always commit to first consider business assets before determining whether personal assets are appropriate, if you are providing personal security make sure that you and anybody else giving security understand the documents. Anyone

providing security is also encouraged to get independent legal advice.

b We will recommend that you get independent advice before accepting the facility.

The documents relating to your facility are important and form the agreement between us. Independent advice can help you to make an informed choice about the facility and understand the risks and responsibilities involved.

You can get legal advice from solicitors. Other sources of advice include accountants, Business Link, Business Gateway Scotland, Highlands and Islands Enterprise Scotland, Flexible Support for Business in Wales and Invest Northern Ireland. If you want, we can give you details of where you can get advice locally.

Whoever you choose to get advice from, you will be responsible for the costs involved. We will be happy to discuss any issues with your adviser if you ask us to.

A list of useful contact details is included at the end of this publication.

c We will co-operate with your advisers to explain the facility and to clarify anything during the relationship.

You are free to involve your advisers in discussions with us. You may need to give us specific permission to talk to them if you will not be present. Advisers can help both you and the bank to fully understand each other's position.

d Before you accept the facility, we will agree with you what sort of monitoring information we need and how often we need it.

We will need to see information that tells us how your business is performing. You need to know how your business is running and should be able to show us that you are keeping on top of developments.

We will write to you setting out what information is required by us and when. This is for the benefit of both of us and to avoid the possibility of future misunderstandings. What is appropriate will vary from

case to case and we will make our needs clear. We believe best business practice includes a business plan and performance monitoring. We anticipate that you will have already produced what we ask you for, to help you run your business. It is not our aim to add unnecessary costs and burdens and we will limit these where possible. Examples of what we might need are:

- a comparison of the forecasts in your business plan, with actual results
- progress on important aspects of the business plan, such as contract renewals
- revised cash-flow forecasts
- major capital spending proposals
- annual accounts and regular management accounts
- details of how much you owe creditors, and are owed by debtors, and for how long these have been due
- proof that you are meeting any special conditions we and you have agreed.

If your circumstances change, we will talk to you about any new information we will need from you.

e If we are not able to offer you a facility we will explain the key reasons why, if you ask us to.

There may be occasions when we are not able to offer you a facility. If this is the case, we will give you the key reasons why in writing if you ask us to and in person if you wish (unless we cannot do so for legal reasons).

2 Sharing concerns

- a You should discuss any concerns you have about your current or future business performance with us as soon as possible. We will consider any financial difficulties you have sympathetically and positively and, if we have concerns about your business or our relationship with you, we will let you know in writing and offer to discuss these with you personally.**

You manage the business and should be the first to realise that problems are developing. You should talk to us as soon as possible about your concerns and your plans. In addition, we will use our wide experience and account monitoring systems to try to spot problems before they become obvious. If we do so we will contact you to discuss possible actions.

Although these discussions may be difficult, we will be constructive and positive. Speaking to the bank about financial difficulties at your earliest opportunity will, in many cases, help us to agree terms of the bank's support and return to running the business successfully. Not telling us about problems is likely to lead to unnecessary or serious difficulties. Occasionally we may need to contact you urgently, and we may do so by phone if possible, or by fax or e-mail.

This list gives a few examples of what can cause us concern, particularly if you do not explain what is happening.

- If you go overdrawn without our agreement.
- If you go over your agreed overdraft limit, especially more than once.
- If there are large increases or decreases in turnover.
- If you are trading at a loss.
- If you suddenly lose a key customer, contract or employee.
- If you restructure your business through reorganisation, acquisition or sale.
- If you use a facility for purposes other than agreed with us.
- If you fail to make a loan repayment.
- If you do not keep to conditions set out in the facility letter or loan agreement.

- If you do not supply agreed monitoring information on time.
- If another creditor commences legal action against your business.

You may want to get independent advice when you become aware of problems. We will remind you of the benefits of getting independent advice when we contact you to tell you our concerns about your business or our relationship with you.

b We may ask you for more financial information to help us work together to understand any problems.

Financial information will help us to analyse the problems and understand your business' needs and the main factors which affect its ability to remain viable and successful. It is often an advantage to have someone outside the business help you to decide how your business should proceed.

If you have told us about problems at an early stage, there will be time to discuss and agree on any actions that need to be taken.

c We may suggest an independent review of your business.

If we suggest that an independent review should be carried out, we will explain the reasons why, what we think should be done and will discuss with you how the review will take place, who should carry out the review and the costs you will have to pay.

A review will be valuable to both of us as it will provide an independent view of the future prospects of the business. Someone with experience of these situations will be able to carry out the review fairly.

The review will usually cover all the options, including assessing:

- opportunities for improving cash flow and profitability
- the main business activities or new markets
- investment needs and refinancing options
- recommendations for the future.

3 Agreeing the way forward

a If your business is reviewed, we will discuss with you (and your advisers) the information provided before reaching any conclusions or taking any action.

We would expect the reviewer to have discussed the report with you before sending it to us. Discussions with us should give you a further opportunity to highlight any facts or opinions in the report that you disagree with. It is important that we both consider all the available information and all the options. We will take account of any other independent advice that you have received.

If we agree on a way forward, you will need to prepare a new business plan to put that strategy into practice and to agree any new facilities. Sometimes the reviewer may be responsible for preparing, testing and monitoring this plan.

If we cannot reach an agreement, we will make it clear why we feel unable to continue to support you. We will tell you when we will withdraw our support and will communicate these changes personally.

b We will support a rescue plan, if we believe it will succeed.

The key for both of us is to find a way forward that provides a lasting solution to the real problems and not just a quick fix. We will discuss with you the elements of the rescue plan and how it will achieve this aim. A successful rescue plan may involve changes to the business and its management, as well as changes to your facilities with us and we would expect you and others involved in running the business to view these changes positively.

A rescue plan usually involves providing extra time, security and investment. A bank is unlikely to increase its risk as part of the arrangements, so you may need extra security if we agree extra lending, although we will always look at business assets for security first. It is possible that the cost of your borrowing may increase – if so, we will explain the reasons why.

c If we do not think that the rescue plan will succeed, we will explain the reasons why and help you and your advisers to consider other options.

In most cases, by continuing to work together, we will find an acceptable alternative way forward. If we cannot support your plan, we will discuss the possibility of giving you time to find other bankers.

In serious situations, the way forward may involve an insolvency process.

To protect businesses (directors and owners) experiencing financial difficulty, there is a range of insolvency procedures, including voluntary arrangements, administration and administrative receivership (but see paragraph 3e, below).

All these procedures can allow the business to be restructured. If a restructure or a sale is not possible, we will help achieve an orderly wind-down using the most appropriate insolvency route. This is in the interests of all stakeholders, including directors and owners whose responsibilities are clearly recognised in law.

If you want any information or advice about insolvency procedures, you should contact the Insolvency Service or a licensed insolvency practitioner.

d If you make the changes agreed between us early enough to save the main business, we will not, other than in exceptional circumstances, start action to recover the amount you have borrowed.

Throughout the rescue plan, we will continue to work positively with you to support a lasting solution for a successful running of the business. To help us do this, it is important that you:

- act in good faith
- keep us informed about developments
- keep to your agreements with us
- carefully consider what your own and any independent advisers say
- are prepared to make the necessary changes early enough.

If we find, for example, that you have withheld important information or done something which affects the security we hold, we may have to start recovery action. This action may include appointing an administrative receiver (receiver in Scotland) or an administrator (if a company is involved), and will depend on the type of security we hold.

A final decision not to continue to provide support is made at a senior level in the bank, on the recommendation of the relationship manager. We will explain the decision to you and provide a written explanation if you ask us to, unless we cannot do so for legal reasons.

e If, after reviewing all the options with you, appointing an administrator or an administrative receiver (receiver in Scotland) is considered to be the most appropriate action to take, the decision to appoint the receiver will be confirmed within the bank at a senior level.

The decision to appoint an administrator or receiver (either by the directors or us) is often taken in the light of a recommendation from an independent accountant who has knowledge of the business.

In most cases, the directors invite the bank to appoint an administrator or administrative receiver after accepting that it is the most appropriate insolvency process based on very careful consideration of all the options available to protect the interests of the business, including the employees and creditors.

Insolvency practitioners will decide whether to accept a formal appointment after considering guidance on ethical standards. As a result of the Enterprise Act, an administrative receiver can only be appointed under security taken before 15 September 2003.

If you give us good reasons why a member of the firm that has carried out an independent review should not be appointed as administrator, we will appoint a different administrator (unless there are exceptional circumstances). The same principle applies for administrative receivers and receivers in Scotland.

4 Making a complaint

- a We have procedures to help sort out complaints and disagreements. We will act fairly and reasonably, and try to sort out problems quickly.**

We recognise that disagreements need to be dealt with quickly. Each bank's procedures include your right to appeal to a higher authority in the bank if you feel that you have not been dealt with properly.

We will communicate with you using plain language, and you are free to ask questions if you do not understand the complaints process or anything we are telling you.

You are free to include your independent advisers in any discussions with us and we will talk directly to them if you authorise us to do so.

Further information about our complaints process is available in branches and included in the Business Banking Code.

- b You can complain to the Financial Ombudsman Service if you are not happy with something we have done (or failed to do) and we are not able to sort out the problem to your satisfaction.**

The Financial Ombudsman Service is available to businesses with a turnover of less than £1 million.

To complain to the Ombudsman you must have received a final response from us (or have waited more than eight weeks for a final response).

If you are still not happy, you should fill in a complaint form and send it to the service. We will give you details of the service, or you may contact the Financial Ombudsman Service direct (www.financial-ombudsman.org.uk).

5 Switching your account to another bank

- a If you decide to move your current account to another bank, we will give them information on your standing orders and direct debits within three working days of receiving their request to do this.**

We realise that if you are not happy with the service we give you, you might want to move your current account to another bank. Therefore, if asked by the new bank, we will send, within three working days, all the information necessary to transfer your direct debits and standing orders.

- b In the absence of exceptional circumstances relating to the transfer of charges or securities, the lenders will complete the transfer of accounts within five working days, when timely information is provided by the customer.**

Once your application for a new account has been successfully completed and the old and new bank have swapped information on your direct debits and standing orders, both banks will ensure that, unless there are exceptional circumstances relating to the transfer of charges or securities, the transfer of your account will be complete in five working days.

Useful contacts

For businesses that experience difficulties with their banks at branch level, banks have provided a central point of contact to discuss your concerns. Details of each bank's central telephone number are available on the bank's website.

If you are in difficulties, you can also get help from debt-counselling and business support organisations. We will tell you where you can get advice, some of which may be free. If you ask us to, we will work with your advisers. The contact details for some organisations which may be able to help are as follows.

- Advice UK – 020 7407 4070 (www.adviceuk.org.uk)
- Business Debtline – 0800 197 6026 (www.bdl.org.uk)
- Business Link – 0845 600 9 006 (www.businesslink.gov.uk)
- Citizens Advice – You can get the phone number of your local bureau from the phone book, the local library or www.citizensadvice.org.uk
- Citizens Advice Scotland – 0131 550 1000 (www.cas.org.uk)
- Federation of Small Businesses – www.fsb.org.uk
- Financial Services Authority – 0845 606 1234 (www.fsa.gov.uk)
- Money Advice Scotland – 0141 572 0237 (www.moneyadvicescotland.org.uk)
- National Federation of Enterprise Agencies – 01234 831623 (www.nfea.com)
- Northern Ireland Citizens Advice Bureau – 028 9023 1120 (www.citizensadvice.co.uk)
- The British Chambers of Commerce – 020 7654 5800 (www.chamberonline.co.uk)
- The Insolvency Service – 0845 602 9848 (www.insolvency.gov.uk)
- The Forum of Private Business – 0845 130 1722 (www.fpb.co.uk)
- The Institute of Directors – 020 7766 8866 (www.iod.com)