

Bounce Back Loans

1

Can a lender count on an existing all monies personal guarantee given by a director (or any individual) for a separate loan facility when seeking to recover monies under a BBL loan?

The lender is not expected to take any security in connection with a BBL loan and is not required to extend the benefit of any existing security to also cover the BBL loan. In particular, the lender is not able to take or enforce a personal guarantee in connection with a BBL loan. Please see below question 4 about an all monies debenture, which is the exception to extending existing security to the BBL loan.

Note - For Coronavirus Business Interruption Loan Scheme (CBILS) there is no requirement to pursue an all monies personal guarantee a lender may already have in place where the CBILS facility is <£250k.

2

Can a lender still claim under the BBL Guarantee Agreement if they have lent outside the terms? For example, a company incorporated after the deadline or if they have lent over and above the 25% of turnover?

In order for a claim to be valid under the BBL Guarantee Agreement, the lender must have conducted the various mandatory checks required as part of the scheme. Note however that the lender is able to rely on the borrower's self-certification of compliance with the eligibility criteria detailed in the BBL Guarantee Agreement and was not required to verify most of the criteria. Ultimately whether the lender is able to claim under the Guarantee Agreement is a matter between the lender and the BBB and does not impact the lender's rights against the borrower.

3

Can BBL loans be caught by an existing floating charge?

The guidance is that if a lender would normally use the proceeds of an all monies debenture to discharge unsecured debt (even if the use of proceeds in that manner has not been flagged to the borrower or recorded in the loan documentation), then we would expect it to use its usual process.

4

Can a lender claim under the guarantee for non-payment even if the BBL loan funds were used to reduce the borrower's overall liability to the lender?

A claim can be made although it should be noted that if a lender required a borrower to pay down commercial debt as a condition of drawing the BBL, then this would not be in the spirit of the scheme.

5

Is it possible to obtain copies of the BBL loan documentation? For example, the Guarantee Agreement or the Statement of Agreed Principles?

There are no current plans to provide a copy of the Collaborative Statement of Agreed Principles as this is a confidential document containing sensitive information. Discussions are currently underway in relation to whether any elements of the Guarantee Agreement can be made available.

6

Are the Lender Manuals and BBL Guarantee Agreements identical terms?

The Lender Manual is based on the requirements contained within the Guarantee Agreement and provides operational guidance on the management of the scheme. Under the terms of the Guarantee Agreement, the lender is required to comply with both the terms of the Guarantee Agreement and the Scheme Guidance. In the event of any inconsistency between the Scheme Guidance and the Guarantee Agreement, the Guarantee Agreement takes precedence.

7

Can a BBL loan or a CBILS be transferred between lenders?

A BBL loan or a CBILS cannot be transferred between lenders.

8

Can a BBL be compromised through a Company Voluntary Arrangement (CVA) or a Restructuring Plan (RP)?

The expectation is that lenders engage with borrowers to understand the capacity to repay the BBL loan and where a CVA or RP is put in place, any proceeds arising from either a Principle Private Residence or a Primary Personal Vehicle cannot be used to repay the BBL loan.

9

What is the view of the Insolvency Service on directors using BBL loan monies on a reasonable basis to cover their living costs if they had no other means of getting income (eg Furlough Scheme)? Particularly, Personal Service Companies where main day to day expenses has always been for the director's services in their company.

This would have to be judged on a case by case basis.

If a director has no other income at all (because they were not eligible under the Furlough Scheme) and they used the BBL loan monies to draw funds for reasonable living expenses at a rate similar or lower to that pre-pandemic then it would be difficult to justify taking action against the director, particularly if by using the BBL loan monies in this way there was an economic benefit gained from keeping the company afloat (especially a Personal Services Company). It would be a different consideration if the director had spent the full BBL loan monies of £50K in a few months outstripping previous drawings.

10

Scenario—Company A is insolvent and on the advice of an IP, the company should be placed into Creditors' Voluntary Liquidation. There is cash at bank of £10k to fund the costs of placing the company into liquidation. However, Bank B is still owed monies under a BBL loan granted to the company. Bank B has a right to set-off in respect of the credit balance in the account. Is it considered ethically wrong if the IP advises the director to transfer the credit balance to a designated client account in advance of the liquidation, which would defeat the bank's ability to exercise set-off, to pay for the costs of the liquidation?

The answer to this question is not BBL specific (if a borrower had an account with the lender and it owed money to the lender) the same principles would apply to that as would apply to the BBL. Furthermore, it would be considered to be ethically wrong for the IP to advise the director to transfer monies from a credit balance held with a bank to an alternative location to avoid the bank's right to exercise set-off, even if this meant funds were then generally available in the liquidation.