BBRS. Business Banking Resolution Service ™

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Harriett Baldwin MP
Chair, Treasury Committee

5th February 2024

Dear Harriett Baldwin MP,

Thank you for the opportunity to appear before the Treasury Committee on 23 January 2024 as part of the inquiry into SME Finance.

During the session I offered to provide more information on areas including: our recommendations to banks and government, our set up and governance, research into case volume and background on how our Scheme Rules were set. I have included further context in the letter below.

We look forward to reading the final recommendations from the Committee in due course.

Yours sincerely,

Mark Grimshaw
Chief Executive Officer
Business Banking Resolution Service

Question 157: The recommendations that the BBRS has made to the government and the banks on improving dispute resolution

Based on our Case Insights report, we have identified the following key learnings for UK banks:

Clarity of communication – whilst bank communications need to address various legal requirements, increased focus on making the core communication practical, useful and easily-understandable would aid clarity and help to avoid misunderstandings.

Personal Guarantees – providing absolute clarity around the potential long-lasting impact of providing a personal guarantee, its breadth and release mechanisms is vital. Many individuals do not understand their responsibilities as personal guarantor or how to be released from a guarantee they have given.

Fraud prevention – banks are better armed with knowledge of what might indicate a fraud than an SME. A sub-category is clear communication and expectation management to ensure customers understand how to report a suspected fraud to the bank, quickly, and what, then, to expect.

Appropriateness of products and transparency of fees – bearing in mind the, sometimes, limited business/financial knowledge of SME owners an a-symmetry of knowledge can occur and be hazardous. Care should be taken to ensure that products are suitable, terms and conditions are clear and that customers fully understand both the product and the contract they are entering.

Here are the set-up recommendations for government, as detailed in our written evidence submission:

1. The overarching recommendation for any future dispute resolution scheme would be to scrutinise the data and ensure that it is robust and accountable before discussions begin. Knowing the size of the problem and volumes would allow a better definition of any solution.
2. Recognising and ensuring that decisions should be made based on data and not emotions. The loudest voice should not prevail and mask any real and underlying issues or their absence. It is essential to make clear from initial discussion whether appeals will be considered, to manage expectations.
3. Strong project management principles are essential to ensure that accountability and challenge are at the heart of deliverability. Having an individual who is accountable and recognised as the Senior Responsible Officer will help ensure the management of optimism bias and overall expectations.
4. Those with a conflict of interest should not be allowed to determine and raise expectations or restrict considerations of wider objectives. They should not be part of the governance of an organisation seeking to deliver customer outcomes for them personally or their associates.
5. There needs to be greater challenge in establishing a new organisation. As mentioned elsewhere, this is dependent on clear and accurate data to ensure the organisational outcome is proportionate to the requirement. A regulatory or legislative approach should be considered which may remove the potential for mistrust.

Question 159: Response the offer of the BBRS paper on Personal Guarantees

In answer to the question about specific examples of where the banks could improve their practice, I made reference to Personal Guarantees and a report that the BBRS's Chief Adjudicator prepared. The full report can be found on our website here.

The report suggests that to help avoid disputes later, banks should be absolutely clear on the potential long-lasting impact of the guarantee, its breadth and release mechanisms. Specific recommendations include:

- Banks could insist on the customer seeking legal advice and offer to pay a contribution towards it.
- Personal guarantee documents could have a separate section setting out the key risks and obligations, which the customer is required to sign separately. The document should also have crystal-clear details about when the guarantee will end and in what circumstances.
- There is a very specific need to help individuals to be clear on their financial liability as a personal guarantor as distinct from liability of the business, especially where an 'all monies' guarantee is involved.
- A system of annual reminders, by banks to personal guarantors, would also ensure that the guarantor remains, many years on, cognisant of the continuing nature of the guarantee and any increase in its financial implications; and clear on any mechanism for release.

A takeaway from the report was that complaints about personal guarantees form a substantive proportion of complaints made to BBRS. It must be noted, however, that the number of complaints made to BBRS overall are relatively low, especially in the context of the vast number of personal guarantees given in relation to SMEs.

This is also a category of Complaint where BBRS has seen a good proportion of positive outcomes for customers – usually through direct settlement or conciliation – with customers released from liabilities ranging from a value of £1,500 through to £150,000. These are truly life-changing outcomes for individuals.

Question 174: Bayes Business School research and case volume

I made reference to research by Bayes Business School on the likely number of complaints the BBRS would receive.

In the face of low case numbers and confusion/misrepresentation on potential case volume, BBRS commissioned Bayes Business School, in September 2021, to conduct an independent review to determine the likely number of eligible cases.

Bayes Business School analysed industry data to estimate the number of firms that could be eligible for the BBRS. Bayes found that the varying and complex eligibility criteria made it challenging to establish the pool of SMEs that could be eligible for the BBRS. But by using behavioural assumptions and probabilities (i.e. looking at the rate of complaint to the Financial Ombudsman Service or the lower likelihood of a complaint being raised each year we move away from the date of the original incident), Bayes was able to get a more accurate picture of the likely number of cases.

Rather than estimates of 60,000 cases of which we were expected to get 10%, Bayes found that the estimates of the likely number of complaints was over estimated at the set up stage and that the BBRS was only likely to receive only a maximum of c.1600 cases.

An executive summary of the Bayes research has been published to our website.

Questions 181-183: Requests for clarification on the BBRS's set up and awareness of the Bank Appointed Member (BAM)

I said that I would share our document which outlines the set up and governance of the BBRS. This can be found on our website here.

The Implementation Steering Group (ISG) undertook a near two-year consultative process to set up the BBRS. ISG decision-makers were informed by a Design Working Group and several supporting sub-groups who made recommendations about the design and operation of the scheme. All of these groups had SME membership.

Within this structure, the ISG developed the fundamentals of the BBRS, such as the scheme rules and policy, legal documentation, Scheme eligibility – taking into account the Simon Walker Review recommendation of a scheme for SMEs that have not previously had access to independent review – and operational details. All ISG members, including each SME representative, were empowered to make their own informed decisions about the design of the scheme and its readiness to start operating.

The BBRS Articles of Association were drafted, reviewed and agreed unanimously by the ISG, which included SME members such as the SME Alliance, APPG on Fair Business Banking, the Federation of Small Businesses and others. The consultation process also included these SME representative bodies obtaining legal advice on the role of the BAM prior to giving their approval and agreement to the articles. The limited role of the BAM has always been clear and has not changed.

Question 187:

a) **Clarification of the role/status of the Bank Appointed Member**

As the funding entities, the seven participating banks interact with the BBRS via a corporate body called the Bank Appointed Member (BAM). The legal form of the BAM is a corporate body registered in the UK named Resolution Service Appointed Member Limited.

The BAM holds some reserved powers, which is commonplace for voluntarily funded independent organisations. Its purpose is to ensure that the BBRS continues to use the funding provided by the participating banks as agreed between the entities. These safeguards are set out in the Articles of Association and primarily cover four matters: altering the Articles; winding up the BBRS; transfer of the scheme; or changing the name (or any method to do these).

b) How the BBRS is independent of the Bank Appointed Member

The BBRS is a wholly independent decision-making authority. The organisation's independence is safeguarded by a Board of Independent Directors, and the independence of the Chief Adjudicator is safeguarded directly by the Scheme Rules and the BBRS's Articles of Association.

The set-up of the BBRS provides a structure and complaints process that is specifically designed to be independent of both the banks and SME Community. It is also independent of government, regulators, and all other bodies. It has a fully independent Board of Directors with budgetary and operational autonomy. It is a not-for-profit company limited by guarantee without share capital or shareholders.

Unlike the other six independent, Voting Member, Non-Executive Directors, the BAM has no voting rights.

The BAM has no leverage on any case matters and it does not influence the adjudication process in any form.

The independent Post Implementation Review part 1 (PIR 1) report wrote:

'The Legal Architecture of the BBRS provides for a structure and process which is independent of the banks and the SME community although none of it can be changed without agreement of the BBRS Independent Directors and directly or indirectly, the Participating Banks.' (Page 16 of PIR 1).

c) Further context in response to the question about whether the Bank Appointed Member is a Person of Significant Control

The Bank Appointed Member (BAM) does not exercise 'significant influence or control' over BBRS and the independence of the BBRS is not prejudiced by the reserved powers for the BAM.

A person of Significant Influence or Control must either hold more than 25% of the shares or voting rights in the company or have the right to appoint or remove the majority of the board of directors. The BAM does not have these rights. This is referenced in Para 1.4 of the statutory guidance paper published by the Department for Business, Energy and Industrial Strategy (now the Department of Business and Trade).

BBRS is a not-for-profit company limited by guarantee without share capital, and the BAM generally does not hold any voting rights in BBRS (see article 41.2 of the BBRS articles of association which is publicly available to view).

The BAM has no right to remove or appoint a majority of BBRS's board of directors (see articles 22 and 25 of the BBRS articles of association).

The BAM does not exercise any other 'significant influence or control' over BBRS. The Department for Business, Energy and Industrial Strategy published statutory guidance concerning how to establish whether a person has significant influence or control over a company. Notably, paragraph 2.8 of the guidance states that: 'if a person holds absolute veto rights in relation to certain fundamental matters for the purposes of protecting minority interests in the company then this is unlikely, on its own, to constitute "significant influence or control" over the company'. The guidance goes on to refer to a number of non-exhaustive examples of such rights, including changing the company's constitution and winding up the company. It should be noted that the small number of matters requiring the BAM's approval in the Schedule to the BBRS articles of association include such matters together with other matters such as changing the company name and transfer of the company's functions to another body.

BBRS accordingly takes the view that no singular individual or party meets the threshold of being a person of significant control. This view is supported by legal advice and, as explained above, is in accordance with statutory guidance. The information publicly available at Companies House reflects this position.

Questions 192-193:

a) Question covering the concluding Implementation Steering Group (ISG) meeting on 9 February 2021

The independent Post Implementation Review part 1 (PIR 1), which was published in February 2022, reviewed the ISG process, our setup and governance. On the subject of the sign off of the BBRS's Scheme Rules, it stated:

"The ISG concluded on 9 February 2021 with the granting of BBRS independence, enabling it to go live. We note concerns from SMEs that there were material changes between the Articles of Association agreed at ISG and those laid with Companies House ahead of go-live. We found no evidence that the changes were anything more than cosmetic and correctional. The SME concern that it was at this point that the Bank Appointed Member was introduced into the Articles of Association is unfounded with the only change to that section of the Articles being a single typographical correction." (Page 14 of PIR 1).

b) Request for clarification on whether discussions on expanding the BBRS's eligibility criteria took place

As I referenced in the meeting, the BBRS is not responsible for setting the rules by which we resolve cases, and requests to the change Scheme Rules require agreement from bank and SME parties. We clarified the process for requesting changes to our Scheme Rules by publishing this guide to our website following a request to do so from the SME Liaison Panel.