

REGULATORY INTELLIGENCE

Increased ombudsman powers, new business dispute body should deter SME mistreatment repeat, say MPs

Published 22-May-2020 by
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The Financial Ombudsman Service's (FOS) new power to handle small and medium-sized (SME) business disputes as well as the Business Banking Resolution Scheme's (BBRS) establishment should deter banks from repeating past mistakes, MPs said. Financial institutions need to learn from the business customer mistreatment that occurred the aftermath of the 2008 financial crisis, they said.

"The trouble with what happened in 2008 was banks could act with impunity towards SME customers, GRG being one example. Even the reviews and redress schemes set up by banks were identified as flawed and favouring the banks. FOS and BBRS should have a deterrent effect and stop banks in their tracks. They should be treating customers fairly and banks will finally be held to account," Kevin Hollinrake, MP (Con) and chair of the All-Party Parliamentary Group for Fair Business Banking told Thomson Reuters Regulatory Intelligence.

Christopher Woolard, interim chief executive at the FCA, wrote in an April "Dear CEO" that while the regulator has adopted considerable regulatory flexibility to help banks pump money into businesses, each lender is still required to have an identifiable senior manager responsible for SMEs. The letter makes clear the FCA expects bank boards to be exercising effective oversight and challenge over these SME-responsible senior managers.

FOS powers expanded, COVID-19 loan complaints expected

In April 2019, FOS' [remit expanded](#) to allow SMEs with fewer than 50 employees, annual turnover of under £6.5 million and an annual balance sheet total of under £5 million to access the service on the same terms as individual consumers and micro-enterprises. The Financial Conduct Authority (FCA) [wrote](#) to FOS in early May to confirm its approach to complaints stemming from the Coronavirus Business Interruption Loan Scheme (CBILS) and Bounce Back Loans (BBL).

"[T]he 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," the FCA said.

The letter sets out the unusual circumstances under which these loans were being made — including borrowers "self-certifying that, among other things, they have been adversely affected by the pandemic and are borrowing to address that". The FCA also set out how "lenders will be taking a different approach to lending under the schemes and that this approach will be determined by the schemes' requirements" meaning that some of the lending standards have been relaxed.

Some of the consumer credit rules have been set aside but debt collection rules have not, Hollinrake said. The loans schemes' terms could give SMEs more breathing room — one-year interest free, for example; however, some borrowers will find themselves in dispute if their businesses fail in the coming months.

"There will be some contentious loans which could result in a high number of complaints — not necessarily due to banks' mistreatments although some may be," Hollinrake said.

The FOS has received almost 100 SME complaints related to the COVID-19 outbreak, however most of them are related to business interruption insurance, a spokeswoman said.

BBRS readies for more complaints

The BBRS, established to hear disputes relating to historical SME mistreatment outside FOS' remit, is also looking to get ready for a surge in complaints arising from the high volume of government-backed loans. The BBRS is a voluntary scheme, however, and not all UK lenders participate. That means there could be a SMEs that are too big for FOS that are also excluded from BBRS.

"As it stands some SMEs are not eligible for FOS and will not have the chance to participate in BBRS either. It would be expedient for more banks to come into the BBRS to allow disputes arising from the current crisis to be heard as well as those dating back nearly two decades," Jim Shannon, MP (DUP) told TRRI.

A recent BBRS study identified the need for a "deep rethink" of the way SME disputes are handled. The BBRS' live pilot is running now with 40 cases and aims to adopt "a human and flexible approach, as an alternative to the stress and cost of seeking to resolve complaints through the courts". The BBRS says one of its founding principles is it should build processes that are fair and transparent.



The live pilot, which should wrap up in late 2020, is designed to test its approach to ensure that when it goes live the BBRS service achieves that goal.

BBRS considering prioritisation policy

The BBRS is also considering a prioritisation policy whereby terminally ill and vulnerable customers facing court action may enter the scheme ahead of others to achieve resolution before dying or being in an even worse position than when they registered for the scheme. The policy will identify various factors it will take into account in determining whether a case should be prioritised, bearing in mind that every case prioritised means every other case is effectively de-prioritised. Broadly, the scheme will operate on a first-come-first-served approach.

"John Glen, MP and economic secretary to the Treasury, reinforced the importance of considering a prioritisation and emergency cases policy for BBRS in the February 4, 2020 debate. Prioritisation has not been achieved for the BBRS' Live Pilot, which is unfortunate for the very few individual cases likely to be involved. Prioritisation must be addressed soon, while also recognising the need for those registered to have their cases properly and promptly considered after for many a decade," Shannon said.

Progress on the voluntary scheme had been "frustrating slow" noting its eligibility criteria had not yet been resolved, Hollinrake said.

"Some [victims] will have passed away. Some will have lost interest. This is too long coming. It is welcome that they will prioritise cases and then they should crack on with first-come-first-served and get the main scheme open this year," Hollinrake said.

[Complaints Procedure](#)

Produced by Thomson Reuters Accelus Regulatory Intelligence

22-May-2020



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