

# The scramble to give business a champion when banks go bad

**The lending scandals of a decade ago are likely to be repeated after this crisis and efforts are being made to help the companies affected**

[James Hurley](#), Enterprise Editor  
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John Guidi pitched a tent outside the Clydesdale's headquarters in Glasgow and went on hunger strike to protest at his treatment by the lender



A spate of small business lending scandals emerged from the 2008 financial crisis, so will something similar happen in the wake of the economic fallout — likely to be even worse — from Covid-19?

With tens of thousands of companies fighting for survival and taking on emergency loans or seeking forbearance from banks, it's safe to assume that more disputes will emerge. It's Lewis Shand Smith's job to ensure that things don't get as acrimonious this time around.

The consumer rights champion and dispute resolution expert is chairman of the Business Banking Resolution Service. The service is being created to give small and medium-sized companies a chance to get an independent view on banking disputes. Funded by seven

participating banks, it is meant to address complaints that business owners, many of whom claim that their lender's misconduct linked to the credit crunch wrecked their livelihoods, have nowhere to turn when things go wrong.



Lewis Shand Smith has been warned to expect complaints about banks

The high cost of legal action and the fact that businesses are not owed any duty of care by their lender mean that the courts are rarely an option, while the unregulated nature of commercial lending means that a litany of misconduct often has gone without sanction, beyond the damage done to the banking industry's reputation.

The Business Banking Resolution Service has the support of the government, the Financial Conduct Authority and [Andrew Bailey](#), the Bank of England governor. Mr Shand Smith, 68, took on the job when it was envisioned that first and foremost the BBRS would be a [temporary, backwards-looking scheme](#) designed to offer a chance of resolution for thousands of people with outstanding grievances — people who he says are suffering “real frustration, anger, anxiety, illness”.

A forward-looking, permanent version would survive to provide a complaint forum for small companies too large to access the Financial Ombudsman Service, but this was expected to generate only about 100 complaints a year. However, the pandemic has forced a rethink: the FCA and the government have told Mr Shand Smith and his colleagues that the crisis will generate a wave of complaints that lenders cannot resolve and that the BBRS should prepare itself for an enhanced role.

BBRS research has found that banks' complaint-handling is flawed and that nearly one in three business customers have experienced behaviour from their lender this year that would give them cause to lodge a complaint. So is the organisation ready to step up to the plate? Not yet. The FCA and the Treasury are pushing for it to be launched by October 1, but originally it was hoped to have been up and running by the end of last year. It does, however, have a full board, expensive public relations advisers, a partnership with the Centre for Effective Dispute Resolution, a charity, to help it to manage cases and “customer champions” lined up to help vulnerable complainants through the process. Samantha Barrass, former boss of the Gibraltar financial services regulator, is chief executive, while Alexandra Marks, a lawyer and former chairwoman of Amnesty International, is chief adjudicator.

What it doesn't have yet is clarity on who is actually eligible to apply. A bone of contention is whether people who have been through a previous redress process, or who have tried to sue their bank, are able to apply. The banks say no, but representatives of small companies say

that the credibility of the scheme will be fundamentally undermined if too many are turned away.

[Kevin Hollinrake](#), the Conservative MP and chairman of the all-party parliamentary group on fair business banking, has threatened to walk away from his position on the independent steering group that is helping to inform the creation of the BBRS unless he can be satisfied that enough cases are being considered.

“If you exclude valid cases, it will lose the confidence of business people from day one, which is bad for businesses and very bad for banks and the economy. It’s in everyone’s interests to get to a reasonable position on this,” Mr Hollinrake said. “If we can’t resolve the eligibility issue, we will walk out of the door and tell people why we can’t support it.”

Some think that Mr Shand Smith, a Shetlander who has worked as a politician and an Episcopal priest, may need divine intervention to resolve the impasse, but he insisted: “We’re close to the finishing line.”



Samantha Barrass is chief executive of the new business resolution body

UK Finance, the banking trade body, says that the resolution service “is not intended to be a redress scheme for all SMEs that have previously had the opportunity for their complaint to be independently reviewed”. Yet many supposedly independent reviews into lending scandals have been flawed and Mr Shand Smith’s position is more nuanced. “It’s easy to do a broad sweep and say, ‘All this is in, all this is out’, but it’s not like that and that’s why it’s taking us so long,” he said.

Ms Marks “has the ability to make decisions on individual cases”, Mr Shand Smith said, indicating that people would not be subject to blanket exclusions. “There will inevitably be cases where it is not clear whether they’re eligible,” he said. “We’ve designed the system in such a way that . . . those cases come in and we will listen to people. They may not be eligible, but that won’t be clear right at the beginning.”

Another sticking point is what happens in the many cases where the former owner of an insolvent company wants to access the scheme. “The big issue there is, if the BBRS makes an award, to whom does that award go? That is really quite complex and there are restrictions in law,” Mr Shand Smith said.

One person close to the development of the scheme said that the board led by Mr Shand Smith was doing a good job of listening to the concerns of business representatives. However, he warned that nothing could be achieved until the insolvency and eligibility impasse was satisfactorily resolved. Another said that the organisation could face an existential threat over the stand-off: “They are in real danger of f\*\*\*ing this thing up.”

Ian Lightbody, a campaigner for business people who say that they were damaged by loans sold by Clydesdale Bank, now owned by Virgin Money, said: “You don’t win the lottery if you don’t buy a ticket, so we have encouraged people to apply.”

However, Mr Lightbody is also concerned that delays in getting the scheme up and running could be down to issues that may never be satisfactorily resolved. “Eligibility still isn’t sorted. The banks are pushing back like you wouldn’t believe.”

Mr Shand Smith insisted that the BBRS could become a valuable, permanent fixture: “It’s right that there are knotty points to unpick, but none are insurmountable,” he said. “I want a credible scheme that is as inclusive as possible in every sense of the word, and I am confident that all of those who have worked so hard to get us to this point will see that work repaid this autumn.”

### **Victims hunger for appropriate redress**

The Business Banking Resolution Service will offer compensation of up to £600,000 for complaints registered with a participating bank after April 1, 2019, and up to £350,000 for those registered beforehand, going all the way back to 2002 (James Hurley writes).

It is designed for those who cannot access the Financial Ombudsman Service’s dispute resolution service, which is restricted to smaller companies.

John Guidi, 64, says that he is among “hundreds . . . desperate for BBRS to be up and running”. The Scottish businessman went on [hunger strikes last year](#) outside the offices of CYBG in Glasgow to raise awareness of his dispute with the owner of Clydesdale Bank over the demise of his property-letting business.

He argues that it is critical that all cases are included “irrespective of the circumstances of the complaint”, so that those who have tried to sue or have been through a pseudo-independent, bank-led redress scheme are not automatically excluded. “This is our last hope of restitution. Victims are simply fighting to have their case heard and that is the reason BBRS was set up. Yet it appears that banks are fighting tooth and nail to circumvent that.”

The rationale for not excluding people who have been through a previous redress scheme was starkly illustrated by the debacle surrounding a Lloyds compensation scheme for people ruined by a restructuring fraud.

[A review of the scheme](#), undertaken by Sir Ross Cranston, a retired High Court judge, found it to be opaque, unfair and accompanied by the implied insult that the victims rather than the fraudsters were to blame for their troubles.

“Cranston was a game-changer,” Kevin Hollinrake, the Conservative MP, said. “It shows that just because you had an FCA-approved review, it doesn’t mean it was independent or fit for purpose.”

UK Finance, the banking trade body, said that “99.5 per cent of all small and medium-sized businesses will be eligible to have their unresolved disputes considered either by the FOS or by the BBRS”.