

CYBG REMEDIATION SUPPORT GROUP LTD

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Lewis Shand Smith,
Chairman
The BBRS
One Fetter Lane,
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By email and 1st class post

Friday 14th December 2020

Dear Mr. Shand-Smith

We wrote to you on the 28th of May, putting you on notice of our perceived failings of the BBRS scheme.

Nearly seven months later, we reaffirm our concerns that the BBRS is not fit for purpose, unless and until you confirm.'

1. The full amount of any recommended award will be made.
2. Eligibility will include all cases (including insolvency) irrespective of whether they have been through any formal review.
3. The banks do not have a veto on boundary cases.
4. The BBRS focus remains on a backward-looking scheme.
5. The BBRS is genuinely independent of the banks.

Financial Limitation on Awards

In his article in the Times on 25th May 2020, James Hurley referred to the BBRS financial limits, which he said appeared on the BBRS website:

'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 2001.'

The then chancellor, Philip Hammond, wrote to Stephen Jones on 19 January 2019, stating:

*'First I note that in the contractually-binding award limit for this backward-looking scheme is £350,000 - in line with the proposed increase to the FOS award limit currently being consulted on by the FCA - but that scheme can recommend payment of a higher sum should it deem it appropriate. While a bank can of course choose not to pay more than £350,000, **I would expect the bank's default position to be paying the amount recommended by the scheme.** There should be no reason to doubt the outcome determined by the scheme, and it would be helpful not to prolong the process for businesses who have sought resolution for their complaint.'*

The APPG on Fair Business Banking stated:

*'**The banks and the BBRS have been given clear guidance from Treasury that they should be expected to pay the award determination.**'*

This reinforces the current position on legacy cases.

Please confirm that the full amount recommended will be paid without limit?

Eligibility

Stephen Jones, in his email to APPG on 28th March 2019, said:

'It stands to reason however, that if a formal review of an independent redress scheme concludes that the process was flawed or that individual cases should be re-examined, there would be a strong argument for the disputes concerned to be considered for inclusion by the DRS (sic BBRS).'

Letter from Andrew Bailey to Stewart Hosie MP dated 7th June 2019:

'The Independent Steering Group (ISG) for the DRS (sic BBRS), chaired by Lewis Shand Smith, is still to confirm the full set of eligibility criteria for the proposed historic DRS. This includes the treatment of complaints that have already undergone some kind of review process (voluntary or otherwise) within the scope of the scheme.'

Kevin Hollinrake MP is quoted in the Times on 26th July 2019, stating:

*'In a letter to Stephen Jones, chief executive of UK Finance, the City trade body, **Mr Hollinrake said this rule would deny access to 85 per cent of the cases the parliamentary group deals with.**'*

Email from Stephen Jones to Jim Shannon dated 22nd February 2019:

*'Provisional estimates from banks suggest that well over 60,000 complaints not resolved in customers' favour could be in scope. However, it is important to recognise that many complainants will have accepted the outcome and reason for the bank's decision. **Nevertheless, the scheme will enable any of these cases brought forward to be reviewed should the SME wish to do so.**'*

Excluding 85% of legacy cases does not make for a fair and representative BBRS.

https://nab.virginmoney-rsg.com/wp-content/uploads/2019/08/V1.Walkout-threat-hits-bank-compensation-scheme-for-small-firms.TIMES_.25.July_.2019-converted.pdf

<https://nab.virginmoney-rsg.com/wp-content/uploads/2019/10/14-October-2019-Times-storm-clouds-gather-over-banks-bid-to-make-peace.pdf>

BBRS Focus

The BBRS focus now appears to be on the future process rather than the original stated objective for dealing with legacy cases.

The APPG FFB certainly made the consequences of this clear, back in late 2018.

APPG FBB Position Statement dated 14th November 2018:

'The biggest issue we have if we want to restore trust between banks and business is that the principle that 'justice is seen to be done' is observed.

'We have an opportunity to secure the future relationship between businesses and their lenders, and the decisions we take in these next months will define the landscape for businesses in the UK for years – even decades- to come. It is imperative that we get these next steps right, and that we don't wait for the next crisis to discover that we squandered this opportunity.'

BBRS Independence

We were encouraged by your statement in the BBRS 16th June Webinar where you said:

'The other really important thing to mention is that alternative dispute resolution must be independent and fair.'

And

'The other thing is that it is really important to recognise the independence of this organisation. So, the people who are making the judgments, for example, in an adjudication are clearly independent of any of the parties who are involved in the dispute and it is one of the things that we have been focusing on through creating this organisation, is just ensuring that that independence is there and that it is seen to be there.'

Your colleague Lucy Armstrong confirmed

'And I think he (sic Shand-Smith) hit the nail on the head earlier when he talked about it (sic the BBRB) needing to be independent.'

...So, it is about being open, it is about being transparent. It is fundamentally about being independent.

Samantha Barrass said

*'...The board (sic of the BBRB) has been appointed and is up and going, and **they will need to be confident that the governance structure, and any detail, is completely consistent with the BBRB operating independently.**'*

Mrs Barrass went on to say

*'And so, it is in our DNA, as an organisation and certainly on the part of the stakeholders operating with us, that **we need to not just be independent, but be demonstrably independent and that there is confidence in that.**'*

On 6th March Kevin Hollinrake, on behalf of the APPG, said:

'...It cannot be fair that the banks should be allowed to set the parameters by which they'll compensate their victims.'

In the 18th November BBRB Webinar you stated:

'I can categorically assure you that the BBRB board will be independent, the BBRB company will be independent and because that is independent, crucially, and this really matters most, the decision-making when we deal with complaints will be completely independent.'

Boundary cases

The banks now appear to have a veto on 'boundary cases'. I refer to Alexandra Marks Webinar transcript comment on 18th November (our highlighting).

*'There is also a boundary process envisaged for cases that are otherwise ineligible for the BBRB, as you say Jon. This might be cases around the margins that have just missed eligibility criteria, the financial criteria, or perhaps their case has been declined jurisdiction by the Financial Ombudsman Service. **Again in those situations**, if the customer brings their dissatisfaction, their complaint to us, then **we will approach the bank** to consider whether that case is one that we should take on. If we, the BBRB, think it is a proper case and give our reasons to the bank why we think we should look at it, **they have undertaken in good faith to consider** that and give us their reasons if they disagree.'*

This is a nonsense, the banks now have a veto.

This is not what the then Chancellor, Philip Hammond, intended in his letter of the 19th January where in summing up his expectations on what should be delivered by the new scheme, he wrote to UK Finance and confirmed (our highlighting):

'If it transpires that the scheme is not bringing resolution to a meaningful number of complaints, and as such is not going to achieve its objective of bringing closure to past complaints, then I would expect there to be further discussions around the scope of and eligibility for the backward-looking scheme. I do not, however, wish to prejudge the outcome of the scheme, and therefore look forward to receiving further updates on this point once the scheme is operational.'

How do you reconcile the statements made by you, your colleagues, the (former) Chancellor and the APPG that the BBRs scheme is fair and independent when it appears 85% of legacy cases are excluded and the banks now have a veto?

Finally, we make the following points:

- A. SME Alliance do not represent our members.
- B. Our group did not approve anything presented by Ian Lightbody in a BBRs Webinar presentation on the 18th November.
(<https://thebbrs.org/event-transcript-sme-roundtable-event/>), and any views expressed were his own.
- C. Mr. Lightbody resigned as a director from CYBG Remediation Support Group Ltd on 1st November.

Yours sincerely

Gurch Samra
John Guidi
David Farndon
Scott Simpson

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