

**BBRS.**<sup>TM</sup>

Business Banking  
Resolution Service

# BBRS webinar transcript – Thursday 28<sup>th</sup> May

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Business Banking Resolution Service

**London, May 2020**

## Webinar transcript

On Thursday the 28<sup>th</sup> May the BBRS held a webinar designed to introduce the service and its leadership team. It was an opportunity for anyone interested in the service to hear about the aims of the organisation, progress to date, and our approach to resolving disputes. The event included a question and answer session with the BBRS team.

Speakers at the event included:

- Alexandra Marks CBE, Chief Adjudicator, BBRS
- Lewis Shand Smith, Chair, BBRS
- Samantha Barrass, Chief Executive, BBRS
- Dame Teresa Graham CBE, Chair, SME Advisory Group of UK Finance
- Stephen Pegge, Managing Director, Commercial Finance, UK Finance

## Transcript

**JON MCLEOD:** Hello and welcome to the Business Banking Resolution Service webinar. This is the first in the series of three webinars we are running. I am Jon McLeod and I am the Director of Communications.

I have got with me an exciting panel that I am going to introduce in one second; and then we will be taking your questions which we have been receiving ahead of today's session.

I would like to start by asking the Chair of the BBRS, Lewis Shand Smith, to introduce himself.

**LEWIS SHAND SMITH:** Good afternoon and thank you very much for joining us. As Jon has said, I am the Chair of the BBRS board and, since its beginning, I have been the independent chair of the implementation steering group. I think Jon also wants me to say a little bit about myself. For most of this century, I have been an ombudsman, first of all in the public sector as deputy ombudsman in Scotland and then for ten years as the UK energy, telecommunications, property and consumer ombudsman. I guess I would describe myself as an expert in standards and regulation, and particularly in dispute resolution; and I am also a qualified mediator.

**JON MCLEOD:** Thank you, Lewis. I am now going to ask the chief adjudicator of the BBRS, Alexandra Marks, to introduce herself. Alexandra?

**ALEXANDRA MARKS:** Thank you Jon, and good afternoon everybody. My name is Alexandra Marks and I am, as Jon has said, the chief adjudicator at the BBRS. And I am a solicitor; I practised for over 20 years in property and property finance in one of the country's large law firms. In 2002 I became a judge, sitting first in the Crown Courts as a recorder, presiding over jury trials. Then I became a deputy High Court judge, sitting principally in judicial review; and I have since also been sitting in the tribunal dealing with information rights. Most recently, I was a commissioner for the Criminal Cases Review Commission, investigating miscarriages of justice.

And the thing that all those roles have in common is the David and Goliath dynamic, where you have a great imbalance of power between the individual who is normally bringing the claim and the state or a large public authority. That was what appealed to me about this role at the BBRS, that I have experience of dealing with that imbalance of power and making sure that we have a very fair process, because that to my mind is the only way to ensure a fair outcome. It does not mean, of course, that the little guy always wins, but what it does mean is that there is a process in which he or she can feel confident.

## Transcript

**JON MCLEOD:** Alexandra, thank you very much. And I am now going to ask Samantha Barrass, who is the Chief Executive of the BBRS, to introduce herself.

**SAMANTHA BARRASS:** Hi. Good afternoon everyone. I am Samantha Barrass. I am an economist from many years ago and a New Zealander, although you cannot tell that from my accent. My entire career has been spent with a strong interest in how we make sure that the economy and the markets, financial markets, legal services markets, work well for consumers and businesses. It has primarily been in regulation and I was delighted to be offered the opportunity to move and take this role in the BBRS in looking at good methods for dispute resolution.

**JON MCLEOD:** Samantha, thank you very much. Now, the BBRS is being created by a group of stakeholders, one of the characteristics which makes it quite different to other services of its kind; and I am really pleased that Teresa Graham, who is the Chair of the UK Finance SME Advisory Group, is with us as well. So, Teresa, I would really like you to introduce yourself now. (

**DAME TERESA GRAHAM:** Thank you Jon. My name is Teresa Graham and hello to you all. As Jon said, I chair the SME Advisory Group of UK Finance and, as such, I champion the SME voice within UK Finance as critical friend. My background is as an accountant and also an adviser to government on deregulation and better regulation. I have a similar critical friend role in HMRC. I am a non-executive director of a number of other SME companies and I run a London-based social enterprise. And I am delighted to be part of this initiative. Thank you.

**JON MCLEOD:** Thanks, Teresa. And last but not least, I am really delighted that we have Stephen Pegge, who is the managing director for commercial finance, UK Finance, with us. Stephen, would you like to introduce yourself now, please?

**STEPHEN PEGGE:** Yes. Thank you very much, Jon. So again, I am delighted to be here today. I have a background of 37 years in the finance industry but have also undertaken a number of non-executive roles on a number of agencies and charities, including chairing some of those.

I look after policy, stakeholder engagement, support for our 270 financial members; everything from the very smallest fintech and little building society, up to some global financial services companies in helping and supporting the economy, society, communities and, most importantly, SMEs.

I am a director of UK Business Angels Association. We help early stage start-up businesses and that whole ecosystem. And since the beginning of the conception of this, I was involved in, first of all, commissioning Simon Walker to undertake a review of the need for further dispute resolution work; and then I am an observer on the implementation steering group for BBRS.

## Transcript

**JON MCLEOD:** Stephen, thank you for that introduction. I hope the presence of this diverse team gives the audience a sense of the wide range of skills and interests and experiences which are being brought to bear to create BBRS.

We are now going to have a brief Q and A with them on some of the founding mission and principles of BBRS. But before I do that, can I remind you to use the questions function in the questions pod? So please do submit away. We have already received a good quantity of excellent questions in advance, which have been grouped by subject area and we will be going through those later on in the session. And indeed, if we run out of time, we will carry those questions over to future webinars, so we will make sure we get to as many questions as possible. We cannot answer questions about individual cases. I expect that is not a surprise; we have said that before. But this is not the forum for us to be able to do that. There are other places that that can be done.

So, we will look, first of all, at matters to do with the BBRS in principle and its origins and I will start by asking Lewis a question, which is: why do we have this project? Why is the BBRS being created and what is the need that it is looking to fulfil?

**LEWIS SHAND SMITH:** Thank you, Jon. I guess the initial impetus came from groups and individuals who felt very strongly that they had been badly treated by the banks, particularly following the 2008 financial crash. They, and with considerable support both from the FCA and from the Treasury and from various MPs, lobbied very successfully, I think, for an independent review into what had happened. That review, as Stephen has already said, was conducted by Simon Walker and reached a number of conclusions. Amongst them was an agreement that the financial ombudsman jurisdiction should be extended to take in larger SMEs, but also that a voluntary ombudsman type scheme should be set up to cater for SMEs that were even larger. And in addition to that, that there should be a mechanism for allowing people to have their complaints dating back initially to 2008, but eventually to 2001, a mechanism whereby they could have their complaints heard as well. So that kind of historical side mirrors the new jurisdiction of the FOS, if you like, and then there is an additional jurisdiction for contemporary complaints which covers very large SMEs and really, between the FOS and the BBRS, with these seven banks that are participating, something like 99 per cent, more than 99 per cent of SMEs will have access to dispute resolution without having to go to the courts. And I think for me, that is the significant thing. This new organisation, like the FOS, will make decisions based on what is fair and reasonable. It means that the small businesses themselves will not have to go to litigation. The service for them will be independent, it will be free to use and therefore the risk is lowered. Simon Walker's report was then responded to by UK Finance on behalf of the banks and here we are.

## Transcript

**LEWIS SHAND SMITH:** So I have been really, really pleased to be part of this whole scheme because, as I said, since the beginning of the century I have been involved in dispute resolution, one way or another; and I think it is really important, when there is an imbalance of power, as there is between any large provider and either an individual or a small business, that there is a way of getting redress to that balance of power, there is a way of being heard, there is a way of disputes being resolved and right being done.

**JON MCLEOD:** Thanks, Lewis. Perhaps maybe I could turn to Stephen Pegge from UK Finance. Stephen, this is really quite an innovative approach that the participating banks have decided to adopt in this case. What lies behind the decision to try what is a relatively novel way of resolving these disputes?

**STEPHEN PEGGE:** I mean, commercial disputes are a normal feature of business life and, in many cases, are just settled between the parties. But sometimes intermediation is necessary. The reality is that going to courts for many small businesses is not always as easy or as successful and actually, for either party, it can be expensive, it can be adversarial, and increasingly people see alternative dispute resolution as a better way of doing it.

In the past in financial services, it was only micro-businesses that actually got an intermediated kind of set-up, you know, through the financial ombudsman scheme and, frankly, it was not really geared to the more complex business disputes.

Simon Walker looked around the world and took a lot of evidence. Data was analysed with the support of a couple of professors and they developed, (1) a recommendation that the FOS should be extended, which it was with specialist expertise, but that did not go to fill the whole gap and the banks involved, the main and most significant lenders in the market, said: we did not want to leave that gap, either for the future or, in fact, for the past because we know that there were people who were unhappy, who have not had their voice heard or an independent review of any kind, either through court, through the FOS or through a recognised scheme.

So, this is a way of, I think, identifying issues early, nipping them in the bud, helping the business and the industry to learn from the issues and improve itself. But just as importantly, maintaining relationships and I think that is the unique thing that these sorts of services can do. It can enable, yes, people to move on, but also for those businesses to continue to be successful and for their finance providers to continue to work with them. So that, I think, is the motivation here. I do believe you are right, this is innovative, and we had strong interest from other sectors and round the world; and I am quite sure that in the future, there will be other banks than the magnificent 7, I sometimes describe them as, wanting to join.

## Transcript

**JON MCLEOD:** Thank you, Stephen. And I would quite like to turn now to Teresa Graham, just to get a flavour for what SMEs should expect from the service and what your advice to them would be about dealing with an issue that they might have with their bank. Because obviously there are different ways of dealing with complaints with the bank. But how should they approach this new service, once it is up and running?

**DAME TERESA GRAHAM:** Thank you, Jon. Can I first of all say that the reason I am involved in this initiative is that, first and foremost, I believe that it is only through a fair and reasonable lens that the SME, in any dispute, can win through against their larger brethren, whether it is banks or in any dispute. And we are, as a group of SMEs, great critical friends; we are also your worst nightmare, or can be. And I am really pleased that we have built what I believe is a really good rapport with the banks and we have been dealing with those for a year now.

Now we have Samantha, we have got Alexandra, we have got a team, we have got yourself; building a scheme which totally understands the frustration, the anger that SMEs feel, the circumstance of helplessness, their vulnerability. This is going to be a welcoming place. This is going to be somewhere where the SME will receive a champion who will help them through the system. But as Stephen said, nipping the dispute in the bud, is the aim; my dream would be that we never ever have an SME who has to get to the other end of the system. These things will be dealt with really quickly. I can promise that we have concentrated enormously on the culture of the organisation, the people in there, who will meet and greet in a way that will provide comfort to that SME, that they are going to get a fair and reasonable determination and help throughout the system.

**JON MCLEOD:** Teresa, thank you for that introduction and actually it is a perfect segue for me to invite Alexandra Marks, who is the chief adjudicator of the BBRS, to tell us what a chief adjudicator is and also maybe to tell us a little bit about why she will not be scary, because this is meant to be a friendly human service but I know for one, I am quite scared of High Court judges. So how will this be different and what is your role going to look like, Alexandra?

**ALEXANDRA MARKS:** Thank you, Jon. My principal role as chief adjudicator is definitely not to be scary, but to ensure that we have a very robust process that is fair, that will reach fair and reasonable outcomes, because that is the core activity of the BBRS.

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**ALEXANDRA MARKS:** But equally important, as far as I am concerned, is making sure that everyone who comes to us with an unresolved complaint, and that applies to the banks just as much as it does to their customers who are dissatisfied with the outcome, can be heard. Now, that may not be literally sitting in a room, in a courtroom or a tribunal type room, but that they have the opportunity to put their case in their own words, tell their story and we will listen to it; because what I have seen, time and time again, is people think they will have their day in court, but very often, almost invariably, it does not turn out that way. You very rarely, in a court or in a tribunal, get the opportunity to tell your story. You get the opportunity if you are called as a witness to answer questions, but that is about it. And it is then up to the decision-maker, whether a judge or an adjudicator or someone else, to come up with the answer.

We want to do things differently. We want to ensure that everybody can put their case and with complainants, those who were or are bank customers, have a customer champion to help them do that; and identify exactly what the relevant evidence is and make sure that their case is presented in the way that the complainant wants. I need to emphasise that the customer champion is not going to be giving advice, certainly not legal advice, and is not going to be acting as an advocate or a representative for the complainant. But they are there to assist with the early stages of the case assembly and to make sure that the case assessor therefore has all the materials in good order and has a clear version of the story that the complainant wants to tell, and indeed the response from the bank.

My job is to make sure that that system is working correctly and that everyone knows that what they have to say has been heard and has been taken into account. And, of course, ultimately, we hope that will enable people to understand the decision that ultimately comes out of the adjudication, if we get that far.

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**ALEXANDRA MARKS:** Because it is important to say that another very important innovation of the service that we are offering is that it is not necessarily a linear journey from registering your interest and ending up with an adjudication decision. All the way through, we will be actively discussing with complainants and with banks whether there is an opportunity to resolve their dispute, the unresolved complaint, in a different way; by using a variety of different alternative dispute resolution techniques. These are well known amongst the legal fraternity, and include mediation, conciliation, and expert evaluation. And in that way, as Stephen was describing before, we very much hope that things can not only be nipped in the bud and reach a satisfactory outcome for both parties, but also that there is, in the right cases, the opportunity to preserve what is often a longstanding relationship. We of course do not think that is going to apply in every single case, and particularly those that have been very long running and have accumulated a lot of, not only material, but also accumulated a lot of grief - if that is not too strong a word, I do not think it is - on the part, particularly, of the claimants. We are not unrealistic enough to think that an alternative dispute resolution technique is going to be suitable in every case. But where it is, we will be quick to offer it and hope that people will take it up.

**JON MCLEOD:** Alexandra, thanks for that. I know we are going to come back to you, with regard to some of the things that you are already learning about service through the pilot scheme that you are running. But I quickly wanted to turn to Samantha Barrass, Chief Executive of the BBRS, just to ask how the pandemic crisis has affected preparations for the service to go live. We are all in this slightly odd situation of speaking to each other from our bedrooms and studies and front rooms, and so on.

But how has work been progressing, Samantha, and could you just give us, quickly, a flavour of what has been going on behind the scenes with you and your colleagues?

**SAMANTHA BARRASS:** Yes. We have been working very hard to understand the impact of the pandemic crisis on the work of the BBRS. As Lewis set out, the primary driver for the BBRS was the need to provide a strong responsive human dispute resolution service, looking at the more historic cases. But also, with a forward-looking focus, to be able to be a trusted provider of dispute resolution services for future cases. Our initial assumption was that the majority of cases initially would be coming from the older cases.

The pandemic crisis has meant two things to us.

The first is that we have needed to work really hard to deliver the scheme in an environment that was not that which we had anticipated. And for that, I have been massively grateful to the banks and the SME stakeholders who, in actually quite challenging circumstances, have been really unwavering in their support for the development of the BBRS. It is inevitable that we have had to learn to work in different ways.

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**SAMANTHA BARRASS:** And the second has been that we have really needed to be sure, and this is where my role as CEO comes in, that as an organisation we are able to scale up to meet what we anticipate may be quite a big demand for dispute resolution coming out of the crisis. Not necessarily because anything systemically has gone wrong at all with the way that lending services have worked for SMEs; but just that we cannot go through what we are all going through at the moment, and the SMEs and banks are going through in the current covid-19 lending environment, to not sensibly anticipate that there will be potentially a very significant increase in the cases coming through and we need to be ready to meet that. A big part of my job is to make sure that we have the right resources, the right culture and the right operation to be able to support the SME community and the banks, as we come out of the crisis.

**JON MCLEOD:** Thank you, Samantha. And you actually touched on a couple of questions there, because we have been asked online about timings for launch and the impact of covid-19 and when BBRS intends to go live, and that has been made public to be this autumn; the definition of autumn is quite broad, but it is this autumn.

I just wanted to turn quickly to Stephen Pegge, just on the "nipped in the bud" point that was made by Alexandra Marks, chief adjudicator, just then. Stephen, the research that BBRS published showed that, actually, three quarters of SME customers of banks were pretty confident about the bank's ability to handle a complaint in the first instance. Before customers even think of getting in touch with BBRS, they should be doing something else presumably, which is contacting their own bank?

**STEPHEN PEGGE:** Yes. And most disputes, quite right, are settled quite straightforwardly. In fact, many of them are fairly mundane sort of issues which are relatively easily dealt with. There was some analysis done by Professor Robert Blackburn from Kingston University, who is now in Liverpool actually, of all the data that was collated across the industry going back some years. It did show that the vast majority are settled. But sometimes you do need to kind of take that a step beyond and those can be some of the more significant complaints.

Where those start to reveal a theme, then it is possible to provide feedback to the industry to say: do you know what? Either on an individual institution level or actually more widely across the industry, there is something coming up here on a regular basis which might require some changes in the way that you are either communicating or operating.

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**STEPHEN PEGGE:** So that is what I mean by being nipped in the bud. I think having that kind of centre of expertise and regular feedback is a really valuable kind of service to the industry as a whole, and clearly the businesses, because what happens otherwise is that more and more customers are seeing the same issue and individual banks perhaps are not aggregating the results of that; and you end up having to have some kind of remediation scheme which might have to be supervised by a regulator and will not get to a business for even years after that issue has come to the fore. My hope and expectations are that with forward-looking issues that arise, you are able to have that reinforced feedback that enables us to work more effectively.

**JON MCLEOD:** Thanks, Stephen. And Alexandra, if I could turn to you. I think it would be really useful just to be clear with the audience what the basic dimensions of the BBRS's scheme would be, so broadly the eligibility criteria, to implement, the award limits, and maybe we could come on to talk a little bit about prioritisation and the ordering of cases. Could you just describe the scheme's dimensions in terms of scope to start with, so everyone is on the same page with that?

**ALEXANDRA MARKS:** So you see, I'm not scary at all! We are essentially dealing with historical complaints, which is everything before the 1 April 2019, provided the act or omission occurred after, I think it is 1 December 2001; that is the historical scheme. And we are also dealing with what we call variously either the general, the current, the contemporary scheme, which is after 1 April 2019, acts and omissions and complaints after that date. And the reason for that is that the Financial Ombudsman Service has had its own remit, if that is the word, extended. So it no longer deals simply with micro enterprises which are really small businesses below 2 million euros, curiously, is the denomination; but also SMEs of a certain size.

We are plugging the gap, if that is the right way to put it. For the historical scheme, we are dealing with SMEs that have turnover up to £6.5 million. And for the current scheme, it is between £6.5 million up to £10 million. There are some asset levels as well, depending on the type of enterprise. If you are a charity or if you are a trust, then there are slightly different measures. But that essentially is what we are dealing with, that size of SME.

And to move on to your second question, Jon, about the award limits. I stress that although these are the binding limits, it is within our ability as the BBRS to recommend a higher award and it is up to the bank whether or not they pay that higher award, but we expect that they will do so. For the historical scheme, the binding limit, which the banks are contractually bound to pay if we award it, is £350,000. And for the current contemporary scheme, which is post-1 April 2019, the binding limit is £600,000.

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**ALEXANDRA MARKS:** So those are the boundaries, if you like, but we recognise that there are some fuzzy edges between ourselves and, for example, the Financial Ombudsman Service, because even though there are some SMEs that fall within their turnover and asset limits, they may fall outside the remit of the Financial Ombudsman Service because they have too many employees, which is less than ten.

There are some SMEs, even though they are smaller than would strictly speaking otherwise fall within our purview whose complaints we will be able to review because they cannot go anywhere else.

As for the eligibility criteria, as very importantly was said before, everyone who wants to bring their complaint to us has to have gone to their bank first to seek resolution and, as Stephen said, that is often the place where these issues are resolved. But of course we recognise, and both the banks and the SME community we have been working with, recognise that there are some that are not resolved in that way and they can come to us, provided they satisfy the eligibility criteria.

**JON MCLEOD:** Thank you very much for that, Alexandra. I have also received questions today, and we have had questions pre-submitted just about the order of the consideration of cases. I am hoping this is not too granular, but it is pretty important. The live pilot at the moment is a learning exercise. But once the scheme goes live, is there a position on in what order cases will be considered and is that order a reflection of the order in which they were submitted?

**ALEXANDRA MARKS:** Yes. Well, the simple and general answer, but I am going to qualify it, is that: yes, we will be dealing with cases in the order in which we receive them, so it is a "first come, first served" principle. But there are two important qualifications to that.

The first qualification is that we selected, from hundreds of registrations we received, approximately 40 cases of varying complaint types to take into our live pilot. Now, we restricted ourselves in various ways with the live pilot cases. For example, we did not take into the live pilot any cases involving insolvency or complex issues, because they were just too complex and insolvency in particular is complex because we do not yet have a settled policy on insolvency-related issues.

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**ALEXANDRA MARKS:** We also wanted to make sure that between the banks that are participating in the BBRS, we had a good spread of cases, so we did not have them all against one bank and none against the others, for example. So that tied our hands somewhat and meant that many cases that would otherwise have been suitable for the live pilot, we did not take into the live pilot, which was principally for us to make sure that everything was running smoothly - and our apologies to those in the live pilot for whom things have not necessarily run smoothly. Therefore, one of the features of the live pilot is that we have promised those people who have helped us to develop our service that their determinations will come out first. The other important qualification to the first-come-first-served principle is that we have recognised during the live pilot, and indeed we have had many people tell us this, that there are of course categories of cases which are really urgent and require prioritisation. And that may be because the complainant is mortally ill. It may be because they are facing imminent court proceedings or whatever. We are working on devising a prioritisation policy for when we go live so that, if it is appropriate - and that will be obviously for us to decide, on a variety of factors such as workload, other cases in the queue so to speak - we will fast track those cases in an attempt to expedite them.

**JON MCLEOD:** Thanks very much for that, Alexandra. I just want to quickly ask two final questions, one to Teresa and one to Stephen, before we go on to the audience questions proper. Teresa, this is an important moment, in terms of the SMEs' relationship and the smaller businesses' relationship with their banking providers, banking service providers. What is your aspiration for the change that this makes to that critical relationship for the success of an SME and what would you like to see the position being a year from now, five years from now? Could you give us a bit of your vision for the future of this area?

**DAME TERESA GRAHAM:** Well, I think my vision would be that in 12 months' time, we will have a system, a dispute resolution service that welcomes fewer issues and problems from SMEs; but, welcomes them, deals with them in a fair way, in a welcoming way, with champions of seniority that inspire confidence in the service; and I know that that is what will happen. I am very confident. I am so confident the service will work that I really want this pilot to conclude successfully and quickly, so we can vest total independence into the BBRS team, so they can go off into the sunset and do fantastic things; helping, of course, to build trust between the SME community or rather rebuild that trust between the SME community and their funders. And it is going to be an incredibly difficult time as we come out and emerge through lockdown and into the business world. I think there will be a lot of issues, particularly for SMEs, and I wish every SME who is on this call the best, best of luck in emerging successfully into profitability and job creation in the future. Thank you.

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**JON MCLEOD:** Teresa, thanks for that and thanks for joining this first part of the webinar. Stephen, if I could turn to you, please. The introduction of the service will sort of mark a real cultural shift for the banks and a real sign of a change in the way in which the banks approach this important part of their business operations. How do you see banks promoting this service and telling their customers about it? Where will we be seeing this in advertising or websites or promotional literature or in branch? How do you think this can be leveraged by the banks really to show that they are doing the right thing?

**STEPHEN PEGGE:** There has already been a bit of communication to customers to raise the awareness, because we were keen to encourage expressions of interest in joining the pilot, and at the point where the service goes live I think it is going to be very much a collective effort.

One thing that is really important is that communication is consistent and also not confusing to people. So, once finalised, we will be setting out very clearly precisely what the eligibility criteria are.

There will always be cases where customers may come forward and it turns out that perhaps they ought to be going to another service and I am quite sure that the customer champions and the people within BBRS will help and support them in going where it is best for them to go. But it is something that I think to be seen of as a valuable service addition, really, to the banking industry themselves.

We will also be continuing to communicate this to the wider banking market, because I am quite sure, we already know there is some interest amongst others. Sometimes working with my members involves a bit of herding cats, in the nicest possible way, so I am not quite sure I could cope with more than seven very willing and very expert cats at the same time, but once it goes live, that will be a key focus for us as well.

I think in many ways; the trade associations are a really important channel too. At the moment, as you can imagine, with everything that is going on, we are having daily conversations with many of the trade associations who are represented around that implementation steering group table. The Chambers of Commerce and the Federation of Small Business, the CBI and the Institute of Directors. They themselves have really great routes into the wider marketplace. They are hearing it not just from their lender, but also from the wider market.

**JON MCLEOD:** Stephen, thanks for that. That is really very helpful indeed and I am hoping you are going to be able to listen into the Q and A from the floor that we are going to have right now, and before I kick that off, I would just like to remind everyone that they can use the question function. I can see the questions as they pop up on my other screen and I have already been able to deal with a couple of them as we have had the introductory comments.

## Transcript

**JON MCLEOD:** If we can then go on to the audience question section. Thank you to everyone who has already submitted questions. We will group them into subject areas and I am going to start with, you have guessed it, covid-19, because this is surely the thing which is going to have the greatest impact on businesses in the next period.

And Lewis, maybe I could return to you with the broad question about whether or not the BBRS will be able to accept complaints that may arise as a result of the covid-19 crisis, thinking about the many loan schemes that have been put out there by government, but also thinking about conventional loans. Lewis, what is the BBRS's line on that, and on covid-19?

**LEWIS SHAND SMITH:** Yes. Well, obviously for the certain banks, certain participating banks, if someone has taken out a loan from one of those banks, whether it is a loan that is one of the government guaranteed loans, or whether it is just a straightforward loan, obviously if things go wrong they have the opportunity to come to the BBRS, provided they are eligible in other ways, so provided it is a business that fits into the large business category. Otherwise, of course, it would go to the Financial Ombudsman Service.

I think the second thing to say is that, having said that, the caveat is that the bounce-back loans, they themselves would not be eligible for the BBRS, for a number of reasons, but the most significant reason is that they are much smaller businesses; and there are issues about the way that they have been created.

So yes, for most of those loans, yes. For the loans to large businesses, the BBRS would certainly be available for them. And indeed, we have been encouraged by the Treasury and the FCA, to make sure that we are ready.

I think the banks, though, they are well aware of the kind of pressures that they are under in providing these loans and providing them very, very quickly. But they are also well aware, because of that pressure and because of the timescales, that things could go wrong, and things will go wrong and because of the huge scale of it, the kind of percentage that might lead to complaints might be higher. But I know from the people that I have been speaking to and working with that they are doing all they possibly can to minimise that possibility and if something does go wrong, to anticipate what it might be and to be able to put it right very quickly. It is back to the point Stephen made earlier on, making sure that things are nipped in the bud. And the best place to sort those complaints out is with the banks themselves, with the lenders themselves. Nonetheless, the BBRS, for those loans that would be eligible for us, it is imperative that we are there and ready and as I say, there has been pressure. The Treasury is very keen to see that we are there and ready to play our part.

## Transcript

**JON MCLEOD:** Can I just ask two quick follow-ups, and let's make this a quick fire round because I have got six pages of questions here, so we are going to get through them.

To what extent is the BBRS concerned, Lewis, that the banks are too busy with other stuff to get on with BBRS? What is the reassurance that you can provide? And I think we have heard from Stephen that the banks are really focused on this.

**LEWIS SHAND SMITH:** Yes. I mean, the problem that the banks have had is that the people who are working on the BBRS are the same people who are working on the covid-19 related loans and the banks themselves have been working with fairly reduced staff numbers and, of course, most of them working from home. The pressures brought by covid-19 for those working with us are twofold, because it actually is reducing the time that they have and there are fewer of them actually carrying out the job of providing the loans. It is a question that I asked at the steering group on Thursday last week and we had a strong reassurance from the banks that they are committed to getting this up and running, that they see the need for not just the historical loans, not just the historical complaints, but also with contemporary complaints; and there is a determination to get this up and running as quickly as we possibly can.

**JON MCLEOD:** Great. That is great, Lewis. I am just going to go on now to the launch of the BBRS and I am trying to tie together different questions here, but maybe if I could start with Alexandra. We have talked a little bit about the running order for the consideration of complaints after go live.

What do you think the timescale would be, once go live takes place, for decisions to be made? In other words, how long will it take to decide, say, for example the earlier cases that are considered from this autumn?

**ALEXANDRA MARKS:** Thank you Jon. To be honest, that is terribly difficult to be able to tell at this stage for two reasons. We have not even finished our live pilot yet, as some of the audience will know, because I know some of the audience are actually having cases reviewed during our live pilot, and even that is obviously not necessarily going to be a guide about how long it takes. We really do not know yet. Obviously, we realise the importance of keeping the time people are waiting for an outcome as short as possible and we will get through it as soon as possible. But we are talking months, not years.

**JON MCLEOD:** And another question about the operation of the service. There are two elements to the question. What happens, Alexandra, if the bank is not a member of what Stephen called the magnificent 7 and also what about getting more banks signed up? How is that dynamic going to work, once the service is live?

## Transcript

**ALEXANDRA MARKS:** Well, the simple but disappointing answer to the first question is that if the bank is not one of the magnificent 7, as they have been called, who are participating in this scheme, then sadly their customers will not be able to bring their complaints to us. That is one reason, of course, why if other banks want to join the scheme, that will provide not only a resolution of disputes for those banks, but also their customers. But I am sure you will appreciate that as chief adjudicator, it is not my role to get more banks signed up. This is perhaps something that one of my fellow panellists could address. I would have put it to Stephen, if he was still on, but he is not. But I do not know if either Samantha or Lewis would like to comment on that?

**JON MCLEOD:** Lewis, yes, by all means.

**LEWIS SHAND SMITH:** Alexandra is right. It is not her job to go and do this. It is her job to be the independent adjudicator and to kind of keep her hands clean of that kind of commercial side of things. But I think we have recognised right from the beginning that the service would want to expand to take in other banks and not just other banks, but other lenders; and certainly the feedback that I have had over the last year is that there are other institutions, other lenders, that are kind of keen to become part of it, once it gets going. And as I said, not necessarily just other mainstream banks, but some of the newer lenders as well.

And again, you asked the question about the covid-19 loans before and the role of the Treasury, and I know that the Treasury itself is keen to see other banks engaging with the BBRS. So let us take it a bit at a time. Those conversations have been going on, not as a priority at the moment, but certainly once we get this stage over, once we get the business launched, Samantha and her team will definitely be taking part and finding ways to encourage others to join. But as I say, it is not just the banks; I think there are other lenders who may wish, and some have actually mentioned it to me, may wish to join the scheme. I am very enthusiastic that that should happen and certainly the next stage definitely, definitely, it is high on the priority list.

**SAMANTHA BARRASS:** Yes. I am very much looking forward to getting on with that. We are all aware that the lending environment has been subject to quite an enormous amount of change. There are a full range of lenders out there.

And you know, the team and I are very much looking forward to it, certainly once we get to the autumn and go live, a lot of the attention is going to be put into really maximising the extent to which we can bring the full range of lending providers into the scheme.

## Transcript

**JON MCLEOD:** Can I just follow up on that point please, Samantha, because we have been asked: are we expecting a flood of initial complaints? We have heard about the impact of covid-19. We know that there are important historic complaints to address and that there are indeed complaints which might be prioritised. What is your approach, sitting here today, to managing those competing demands on the initial operation?

**SAMANTHA BARRASS:** In terms of prioritisation and the approach to that, Alexandra has covered that point. I think it is really difficult. It is a really difficult question to answer, in a sense. We have begun some research. I think we all need to do more research in the coming weeks and months to understand the scale and the nature of the cases that the BBRS will come from and it is really important that we are on top of that. The best thing that I am doing to prepare for that is to make sure, and this is the experience that I bring to the BBRS, is to make sure that we have an approach to building up dispute resolution so that it is capable of scaling up and scaling down. Not just in terms of the number of cases that come through, the number of businesses that need support through our entry level service, but also to anticipate the skill set that is going to be needed on the part of the customer champions and the case assessors, to be able to work with people who need the service.

**JON MCLEOD:** Thanks for that. Just on that point, we have been asked how many, quotes, "frontline staff" will be employed by the BBRS to look at cases and liaise with customers. I guess it might be worth talking a little bit here about the role of the Centre for Effective Dispute Resolution in delivering the functional service.

**SAMANTHA BARRASS:** Yes. We are working in partnership with CEDR, as I said, the Centre for Effective Dispute Resolution, to provide the dispute resolution service. We are delighted to be partnering with them. And the point that I have just been making, Jon. CEDR bring a number of things to the party. They bring a culture and approach that is consistent with being human, responsive and effective, a kind approach, which is the approach that we want, that we want all of the people who are coming through the service to experience.

They also bring considerable experience in scaling up and scaling down. And, you know, what we are not doing at the BBRS is building a massive number of permanent employees in the BBRS. That is not consistent with being able to be responsive with partnering with CEDR who are able to very much support us in delivering that as an outcome.

**JON MCLEOD:** The implication of what you are saying is that they would expand the capacity, according to the demand on the service from customers within scope?

**SAMANTHA BARRASS:** That is right. And our almost weekly conversations that we are having, our catch-ups with CEDR, daily and weekly, are discussing with them what approach they are taking to be able to bring the right capacity to bear.

## Transcript

**JON MCLEOD:** Great. Just another appeal to the audience members to keep pinging in questions. I have got a couple of fans here, some heavy users of the questions function who I am trying to service as we go along, so please keep those coming in, as we head into the last half hour of the session. I want to spend a bit of time talking about eligibility which is a subject of great interest to those who have been hovering around the service. And I will, I guess, address the questions to Alexandra, because we know that there is an ambition for the scheme to consider as many complaints as possible. That is clearly an ambition which is laudable, but what "as many as possible" means in practice will clearly be something where there is a lot of detail to thrash out.

Alexandra, I wonder whether you could just talk to us a little bit about the progress in thrashing out those eligibility criteria and some of the issues around that. For example, the role of cases, the phase of cases that might have been through other schemes or indeed cases which are in the grey zone of the borderline of eligibility. And what will the approach, the philosophical approach to eligibility be, in terms of considering how eligibility rules might evolve over time? If I could throw that lot at you, Alexandra, because I know you are capable of giving a good answer.

**ALEXANDRA MARKS:** I will do my best! It is a complex area and many of those in the audience will be familiar with how complicated and indeed at times contentious this has been. It is important for me to stress that the eligibility parameters are not yet finalised and that is one issue that has been difficult, I would say, for us in the live pilot; because where we come across issues that are straying, if I may put it that way, towards the boundaries of eligibility or sometimes beyond, we cannot make decisions about this at this stage and it would be quite inappropriate for us to do so. But clearly by the time we go live, those knotty issues will have been resolved. Some are going to be quite straightforward, I would suggest, so as I indicated earlier if your bank is not one of the seven that have signed up to the BBRS, then sadly we are not going to be able to deal with those complaints. There are similarly relatively straightforward issues about the geographical location and where your bank is. If it is not in the United Kingdom, then again there is going to be a fairly straightforward though doubtless disappointing answer to that.

## Transcript

**ALEXANDRA MARKS:** More challenging are issues around, for example, turnover, because that is not always easy to identify and it may be that a particular business, for example, has had peaks or troughs in its turnover and therefore we will need to look very carefully at what the turnover was at the relevant time and not just take a sort of fairly straightforward snapshot type approach to it. That, I think, is one of the boundary areas that we will be looking at carefully. Equally challenging is what is meant by 'an independent review process', an expression which came from the Simon Walker review which you alluded to in your introduction and Lewis referred to, which was the foundation of the BBRS. And both in the Walker Review, and in the UK finance's response to it on behalf of the banks, was a statement that where complainants, having gone through the bank's own internal complaints system, had then had an independent review or an external review of some description, whether it be through the Financial Ombudsman Service, which is obviously a statutory body or through the courts, which needs no further explanation, or through certain other independent schemes, then they will not get a second bite of the cherry. But even that is not as straightforward as it may sound, because it depends whether the court actually considered the nature of the complaint, or whether the Financial Ombudsman Service did, and there are still discussions going on about what is meant by other "independent schemes". We are not able to be specific about that today, but of course by the time we go live, those issues will have been resolved and our website will be updated to show the detail of the eligibility policy that has been settled.

But to go back to my earlier point. We are not proposing to have a sort of "computer says no" type approach to eligibility, where there is doubt about it. What I envisage happening, once we have gone live and we have got a settled eligibility policy, is that in those boundary cases we will invite the complainants to tell us why they think they should be eligible and we will invite the banks to tell us how they will respond to that. And as with any other kind of jurisdictional issue, and I experience this in courts on numerous occasions, it would then be for the decision-maker to decide, on the basis of what the parties have said, where the right decision lies. And that is what I envisage we will be doing in deciding these knotty issues in go-live.

**JON MCLEOD:** Would it be fair to say that, to a certain extent, eligibility will not be determined by pre-written rules, but by virtue of your listening to the substance of the case at an early stage, sympathetically and thoughtfully, to determine whether or not it would benefit or would be suitable for the service?

## Transcript

**ALEXANDRA MARKS:** Yes, certainly where the eligibility issue is not clear-cut. There are obviously going to be some circumstances, and I have outlined some of them, where, though disappointing, it is going to be a fairly clear-cut answer. But where there is doubt about it, then we will listen and explore and, what is more, we are not going to decide eligibility as "you are in or you are out", either as a tick-box binary kind of question where there is doubt at day 1. We will continue to enquire. It also possible that eligibility issues will arise later on as the case progresses. It might be obvious right from the start, it might not be obvious, and we will make the decision to carry on. But it may be that during the course of our investigation, the conversations that take place with the complainant, the conversations that take place with the bank and importantly, of course, the documentation that they both submit, that we identify a problem further down the line, maybe during the case assembly or maybe during the case assessment process itself. It is not going to be necessarily, though in many cases it will be, a one-off decision that we make early on. We will keep an open mind throughout the course of the case. And of course, that cuts both ways. It may mean that someone who thinks that their complaint is 'in', as it were, may have disappointing news further down the line. But that still seems to me to be an appropriate, fair and reasonable way to deal with it.

**JON MCLEOD:** And on the question of annual review of eligibility or ongoing review of the eligibility, what is your approach there?

**ALEXANDRA MARKS:** All our policies provide for there to be at least annual review, and so we will be doing that. And in fact an important feature that I should emphasise about our live pilot process is that it has enabled us to identify some really quite tricky issues, including on eligibility, which to be honest, we have not thought of, and when I say "we", it was actually not me because I am not making the rules; I am trying to operate them. But the draft policies do not always contemplate the particular situation that we find ourselves faced with. Clearly, we are going to have some thinking to do about how to resolve those issues and that will feed into the process I described about finalising the eligibility policy before we go live. But it is not going to finish with the live pilot. We are expecting cases, because many of them are complex, they are difficult, they have been going on for a long time, to throw up unexpected issues, tricky issues, and those will continue to shape the way that we develop our policies in the future. We are not going to do it in isolation. Clearly, we are going to consult when we make changes to a policy in the future. But I would expect that that will be a regular feature of what we do in the future, yes.

**JON MCLEOD:** I promise to give you a break shortly and ask Lewis a question. But can I ask just one very quick one, Alexandra, which is about the data, the role of complaints about data and use of data. Clearly the Information Commissioner is out there to deal with data protection breaches, but what if there is a complaint where the handling of the data is an issue within the context of the complaint?

## Transcript

**ALEXANDRA MARKS:** Well, it may indeed be part of the complaint that we have to look at and assess; but as you have rightly said, Jon, in your introduction to this question, it may be that the complaint, or at least that part of the complaint, should be taken to the Information Commissioner. It is not an issue which has arisen in any of the cases we have seen so far, but I am sure it will.

**JON MCLEOD:** Great, thanks for that. I have got a couple of quick questions for Lewis, it is a quick-fire round. But one has just come in which I think is of interest because of your background in the ombudsman sector. A challenge coming in: how can the BBRS possibly be independent if it is funded by the banks? How can it act independently? What is the reassurance that you can provide there?

**LEWIS SHAND SMITH:** Yes. The point I made earlier, about Alexandra not being involved in trying to get new lenders on board, kind of illustrates that. It is very, very important that any ombudsman in the scheme, they are normally all funded by those that are under the jurisdiction, whether they are set up by statute, whether they are voluntary, whether they are in the public sector or the private sector. What is important is that the governance there is very, very strong, and we have appointed an independent board that have now had two meetings, so we have an independent board who have some very, very strong people and as well as having responsibilities under the Companies Act, they have a real responsibility to make sure that the ADR scheme, the adjudication scheme, the mediation, whatever it is, that that in itself is independent and its integrity is intact. They have a real duty to make sure the independence of the scheme, the integrity of the scheme and of the chief adjudicator and her people, that that is absolutely assured.

As I said earlier on, when I said Alexandra actually is nothing to do with trying to get other organisations in, that is just a case in point and it is one of the reasons why, perhaps unusually, just to make it absolutely clear that the chief adjudicator and chief executive are separate people. In my own organisation, when I was chief ombudsman, we had a split of adjudication and we had a deputy chief executive and a deputy chief ombudsman and we dealt with it that way. But it is really, really important that the adjudication side of this is not in any way affected by the commercial aspects of the organisation and the board has a real responsibility in making sure that happens, as indeed do I.

**JON MCLEOD:** As I say, a quick-fire round, Lewis. So how do we make sure that the banks who have got findings against them pay up quickly? Alexandra makes a finding, makes an award. How does the BBRS make sure they pay up?

## Transcript

**LEWIS SHAND SMITH:** It is a voluntary scheme. We have assumed, and we have got a reassurance, that the banks will pay up quickly. They will be contracted to the BBRS, so it is part of that contract. But we would assume, the assumption has been made from the beginning that it would be the same kind of scale as the financial ombudsman. The banks themselves have committed to pay quickly. I think the word I saw somewhere else was "timeously". They will pay it on time.

**ALEXANDRA MARKS:** Perhaps I could jump in there Jon. It is actually expressly stated in our case determination policy that the bank will honour the awards. As Lewis says, of course, it is a contractual scheme rather than a statutory one, but it would be rather foolish, I would venture to suggest, for them to join voluntarily the scheme to resolve disputes and then not comply by the awards that the BBRS makes.

**JON MCLEOD:** Thanks. Thanks for that. And Lewis, I just wanted to come back to you again. We heard a little bit about different forms of dispute resolution. What is your vision for using not just adjudication, but the role of other types of dispute resolution in this service and what role is that going to play in diffusing disputes?

**LEWIS SHAND SMITH:** Yes. I think it is absolutely essential that the service has the widest possible selection of tools at its disposal, and again it is one of the reasons for choosing CEDR as our partner. We will be using what is most appropriate. And again, to go back to the expression that has been used earlier, nipping things in the bud. If something comes in and it is clear that it could be settled quite quickly by perhaps an expert, what is called "muscular mediation". It is an expert who actually says: this is what I think the answer is, without examining the case and saying: because of my own knowledge, because of the experience of previous cases, and then suggesting it to both sides. We will offer mediation, both informally and formally. We will, as Alexandra already said, offer conciliation.

What we are looking at here is actually a boutique kind of service. It is not going to be a huge organisation like some other ADR schemes. It is a small dedicated organisation that is looking at a relatively small number of what we assume will be complex cases, complex because of the size of the business or the size of the loan, but also complex because of the historical nature of so many of them. Each complaint will be looked at as an individual complaint, on its merits, and the best way possible found to deal with that case. But that will be done, we will not be telling the person bringing the complaint: you must do it this way and you must do it in the way we say. It is actually a case of working with that person to find the best way forward and it has to be the best way forward both for the person and for the resolution of that person's complaint.

## Transcript

**LEWIS SHAND SMITH:** And also I think one of the things that, for me, kind of makes this scheme, this service different from services that have gone before is the customer champions that we plan to have in there; people who will be there to support the person bringing the complaint the whole way through and offer that support at a level at which it is wanted, at a level at which it is needed. As has already been said, they are not there to be advocates. They are there to be supporters and they will handhold the whole way through. I think that is really important too.

**JON MCLEOD:** Thanks for that, Lewis. I have just had a couple of messages from people who have had connectivity problems. I just wanted to assure everyone on the line that we are not only making a recording, but a verbatim transcript of the session, which we will upload onto our website as soon as it can be made available. So please do not worry or do not desperately try and make shorthand notes of what we are saying, because we will share that with you.

**LEWIS SHAND SMITH:** Technology is a wonderful thing. I am speaking to you from the Shetland Islands. It is not working quite as well as it ought to be, but never mind. I am getting there. We are all getting there, I hope, and we have all got the information.

**JON MCLEOD:** We are all learning. But everything that is said will be shared, so I hope that is going to be helpful for those who are joining. I just wanted to turn very quickly to the live pilot, Alexandra, and the learnings that we have had during the live pilot. There have been a few questions themed around it. We have already touched on the fact that the live pilot cases would be dealt with first, once we go live. Someone is saying that they do not think that is fair. We have had someone complain that their case was not selected for the live pilot, even though they were eligible, so why were they not selected for the live pilot. And then finally: what have we learned from the live pilot process? I just wondered whether, Alexandra, you could pick up on a few of those points for us, please.

**ALEXANDRA MARKS:** Yes. Jon, I hope I answered the first of those two earlier when I was talking about the live pilot, because I explained that we could not take every case that was suitable for the live pilot into the live pilot, because we were looking for a range of complaints against a range of banks and we know that people who were eligible will be disappointed that they were not selected, but we had to make a choice and we were only looking for a relatively small number that would enable us to test our processes. And precisely because we were using cases and therefore those customers to help us test our processes and our policies, we thought the very least we could do for them was to reassure them that their decisions would be the first to be dealt with. We did think that was fair, taking everything into consideration.

## Transcript

**ALEXANDRA MARKS:** I appreciate, of course, that there are many people who have registered an interest in our service who are desperate to have their case resolved and heard by us; but until we are up and running, it is simply not feasible for us to do that and, alas, some of those most in need are those with the sort of cases that in go-live we will prioritise, because the individuals have been waiting a very long time and are perhaps suffering from ill health, severe financial hardship, et cetera, we are not able to prioritise into live pilot. Live pilot was never designed to be a fast track for cases.

But to come on to your point, Jon, about what we have learned from the live pilot. We thank the customers very much who have been willing to allow us to use their cases to test our process and our learning, and shape what we are going to be doing when we launch our full service. And we have learned some very interesting lessons from them, one of which is that we will need to pay much more attention to the prioritisation factors that I already indicated. Clearly a number of the customers who are bringing their complaints to us are vulnerable in various respects and clearly, we need to make sure that we handle them and their cases appropriately to reflect that. There are others who need reasonable adjustments for a variety of reasons; you know, maybe visual impairment or other issues such as English not being a first language and so on. But other learnings that we have made, particularly which have caused us to adjust our policies or processes, are outlined in a report that we issued just a couple of weeks ago, 'Interim findings from the live pilot'. It is published on our website, so I do encourage people who are interested in that to take a look at it, because it gives an indication of the sort of things that we have discovered so far and will therefore be incorporating in our full service when we go live in the autumn.

**JON MCLEOD:** Thanks, Alexandra. I am just going to move quickly on to Samantha now, just to ask a couple of questions about the status of the BBRS. Two questions, really, and they are connected.

The first one is: how can BBRS be truly independent from the banks, given that it has been created by the banks?

And secondly, what is the voice for customers who have fallen victim to alleged malpractice by the banks? How are their interests going to be represented in the operations and the running and the strategy of the BBRS on an ongoing basis? Samantha, I wonder if you could pick up on those points.

## Transcript

**SAMANTHA BARRASS:** Yes. The independence of the BBRS, and Lewis covered some of the points before. It is incredibly important that there is both the perception and the actuality of the BBRS independence. And a lot of thought is going into making sure that the governance framework around the BBRS is consistent with there being confidence that the BBRS is operating independently. And that is where the independence of the board comes in and, as I said, the governance set up is really important, and Lewis covered those points before.

The voice of businesses, SMEs, people who are wishing to play a part in the ongoing life of the BBRS is going to be accommodated. We will be setting up, alongside our independent board, we are going to have an SME liaison panel and we will be setting that up in the coming weeks and months, to make sure that we have got an independent voice of SMEs, of businesses coming into the BBRS on a continuous basis. For example, when we are looking at, at least, an annual basis, make sure that the eligibility policy, for example, is working well; that will be a matter that we will be consulting with the SME liaison panel very closely indeed.

**JON MCLEOD:** Can I just follow up on that, because one of the audience has said: why would a bank ever want to join this scheme? It is going to cost them money and it is going to generate all these complaints. So how would you sell the idea of joining BBRS to a non-participating bank?

**SAMANTHA BARRASS:** Stephen Pegge outlined the importance to banks of there being a strong process whereby disputes could be resolved. The big kind of win for banks is that their reputation will be enhanced if they are part of a process whereby there is a demonstrably independent resolution of disputes that their customers wish to raise about them. In the world of business, I am certainly not going to go out there, saying that people do things from the goodness of their heart. There are very strong commercial drivers for the banks for an independent dispute resolution scheme and there is a big win and it is certainly going to be part of a discussion that I will be having, supported by the team, with other lending institutions to bring them into the BBRS.

**JON MCLEOD:** Thanks very much, Samantha. I have got two very quick ones for you, Alexandra, and I will ask them as a couple. What if criminal activity, or evidence of potential criminal activity is uncovered, in the course of the consideration of a complaint? And finally, will the adjudication process culminate in what is called naming and shaming? I mean, just naming, I suppose, would be enough; whether or not the shame would be judged by what has been found to have happened. The one about criminal activity and the one about naming and shaming, Alexandra, if you could address those.

## Transcript

**ALEXANDRA MARKS:** Well, of course it is possible that we will come across criminal activity in the course of an investigation. It will not necessarily mean that we do not pursue the complaint, but what it may mean is that either at that stage or at some subsequent stage, that we would refer the evidence that we have found to the relevant authorities, whether it is the police or the regulators or whatever. Clearly it depends what it is. There are certain offences, as I am sure you are aware, where we would have to tread extremely carefully. As I say, the important thing to recall is that we will not stop everything necessarily because we uncover evidence. Having said that, we are obviously not a criminal investigation organisation; we are a dispute resolution organisation; and therefore, it would not be for us to investigate and pursue those matters, but to refer them to the appropriate authorities.

On your second point, Jon, about adjudication decisions, naming and shaming. We are actually actively discussing, at the moment, publishing our decisions and how and when we will do that, and in what form. That is not something that we have finally concluded, but consistent with being a transparent organisation, we believe it will be appropriate for us to publish the decisions in some form, but we are conscious that some of the cases, as far as the complainants are concerned, even if their names were to be anonymised, will be so recognisable to many of those who are particularly active in some of the SME groups, that it would not be appropriate to give chapter and verse of our findings, nor would it be of great assistance beyond what you might describe as prurient interest to lay that all out on our website. We will need to tackle this with care and sensitivity, but it is our intention to ensure that the decisions are published, at least in a summary form, yes.

**JON MCLEOD:** Thanks for that. And you did talk about awards earlier, the upper awards limits and your ability to recommend awards higher than those limits. Part of the debate, the policy debates out there relates to consequential loss, beyond the award itself, which I know has been discussed in other places. Is that something that you have formed a view on as of yet and what can you tell us about this issue?

**ALEXANDRA MARKS:** Consequential loss is not something that we have been testing during the live pilot process, for the fairly obvious reason that until there has been a determination made, you cannot then decide whether there has been consequential loss arising from it. But clearly it is something that we are going to have to look at extremely carefully in the period leading up to go-live and in go-live and beyond. But it is true to say that the consequential loss policy that we will be adopting follows the usual legal principles about causation, about remoteness, about burden and standard of proof and about quantum. But having said that, we recognise that some of these cases will be very complex and we may need expert assistance in order to calculate the consequential loss arising from whatever it is that we have found has been done wrong or done unfairly and unreasonably.

## Transcript

**JON MCLEOD:** Alexandra, thanks for that. I am going to wrap up now, firstly by thanking everyone who has submitted questions in advance and also those who have fired in attendee questions using the technology, and apologies to anyone who has had line problems. As Lewis pointed out, we are in far-flung corners of the kingdom so it is a miracle that we are connected at all, but there will be a transcript and a recording of this session available. I recommend to you the future sessions which are coming up, we are hoping to hold two more, so please watch the website, from that. I would like to just ask Lewis to say a couple of words to close on his vision for the BBRS and where we hope to take that, and then I will close the session. So, Lewis, the final word goes to you as chair.

**LEWIS SHAND SMITH:** Thank you very much, Jon. My vision has been there from the beginning. I think the scheme is there, the service is there to put things right where they have gone wrong. It is as simple as that. Where something has gone wrong, to find out what has gone wrong and to put it right. It is there to support those who have suffered because of the imbalance of power, and it is there to treat people as individuals, to actually let them be heard, to let them state their case, make sure somebody is there to listen to them and to really, really hear them as they speak, and to find whatever way forward, whatever it is, that means that the right thing can be done and that they find a way to move on, that we all find a way to move on, they in particular with their lives, and into a much more secure future. I am really proud to be part of this.

**JON MCLEOD:** Lewis, thanks very much. I will just close by thanking our guests, Stephen Pegge and Teresa Graham, for their contributions earlier on. I would like to thank the chief adjudicator Alexandra Marks, the chief executive Samantha Barrass and indeed the chair, Lewis Shand Smith. And thanks to everyone who joined us today. It is 5.30. That is the end of the session. I wish you a very good evening and we will be in touch very soon. Thanks very much.

(The session was adjourned)

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