

Post-Implementation Review (PIR1)

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PIR BBRS Lead	Dan Kent
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About this report

This report is an evidence-based snapshot of the status of the BBRS at the time of the Post Implementation Review – Part 1 (PIR1). It reflects the views of the independent assurance team, based on information provided and evaluated over the PIR period, and is delivered to the SRO immediately at the conclusion of the PIR.

Methodology

The core methodology for this Post Implementation Review - Phase 1 (PIR1) is drawn from the well-established project and programme management assurance system used by central civil Government across the UK. Assurance reviews are not a forensic review or audit.

Each review is a snapshot in time based on a number of interviews with key personnel and the documents provided to the review team. Potential interviewees and documents to be seen were discussed and agreed with BBRS at an initial planning meeting and in subsequent meetings. The SME Liaison Panel interviewees were proposed by the Chairman of the SME Liaison Panel. Other SME interviewees were as requested by the review team.

Interviews are non-attributable both ways and evidence from interviewees is triangulated from other sources.

We have not looked in detail into the costs of establishing BBRS.

We would normally include a list of the documents produced at the time of the events that we were provided with for the review. For this review, we were provided with over 400 documents including: papers for ISG, DWG and specialist sub-group meetings; legal architecture; commercial contracts; policy; internal procedures; training materials; external reference materials such as the Simon Walker report and UK Finance response to Walker. The list of documents was very long and would have added many pages to our report. In addition, some of the documents were deemed to be commercially confidential. Throughout the review, the BBRS team were very responsive in providing additional relevant documentation as and when we requested it. We were also provided with documents from a few of the interviewees summarising their views or those of the people they represented.

Three members of the review team have considerable experience of project and programme management as well as leading assurance reviews across the UK. The fourth member of the team is a former lawyer with 40 years of extensive legal experience. Most members of the review team run their own SME.

No legal advice is provided in our report.

The scope of our review is set out in the terms of reference. We have not commented on the ongoing operation of BBRS or its performance. That work should be considered in Phase 2 of the PIR (PIR2).

In conducting our review, we have followed the following Code of Conduct, key principles:

- Open and honest contributions
- Maintaining confidentiality
- Comments made in interviews will be non-attributable both ways (No discussions were electronically recorded by the review team)
- Robust management of time
- Valuing best practice as well as identifying areas for improvement
- Independence and objectivity
- Team working
- Learning experience, gives value to the programme/project and its stakeholders.
- Appropriate triangulation of evidence.

Assurance Team Members:	Ian Brown (Leader) Charles Botsford Julie Palmer MBE Barry Francis
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1. Executive Summary

BBRS is responsible for commissioning this Post Implementation Review (PIR1) as an action from the final ISG meeting. The logic of two phases allows for the consideration of what was established before looking at its operation, delivery, and future opportunities.

An important context to our findings is that whilst there will have been (probably still are) a myriad of views as to what BBRS could or should have been, the purpose of this PIR1 is to consider how the organisation that was established reflects against what was documented in the UK Finance response to the Walker Report and more specifically in the ISG Terms of Reference (ISG ToR). In doing so we found the following -

- The establishment of the Independent Steering Group (ISG) was largely as envisaged. The purpose of ISG was for an 'assembly of willing parties and interested observers who had come together to deliver the ISG Terms of Reference' (ISG ToR). Whilst some may have had other aspirations of challenging or even expanding those terms, we found that the purpose of ISG was clear.
- ISG spent 2 years in the set up and launch of BBRS. BBRS largely reflects the ISG ToR. The legal architecture had the approval of all ISG members as noted in the minutes of the final ISG meeting dated 9th February 2021.
- ISG was properly constituted, well-resourced with an effective secretariat minuting each meeting. All parties had legal support, the SME support having been selected by them and paid for by the banks.
- The running of ISG was based on consensus. Decisions were fed by work from Design Working Group (DWG) and other fora. Extensive papers and slide decks were provided for most discussions.
- Like all negotiations, there was tension and frustration at times. Various parties threatened to and did 'walk' from the negotiations. However, what was a notable achievement was that all were present at the final agreement and the subsequent closure of ISG. It is clear some concessions were agreed.
- There is a notable over-estimation in the 'number of eligible complaints' planning assumption at the core of ISG. Early assumptions (DWG 1 - Number of Complaints) were lower and the ISG at some stage adopted a revised number for modelling which is emerging to be in the order of 10 times bigger than the original and the actual take up.

- The legal architecture of BBRS (as determined by ISG) is recognisable from the objectives of the ISG ToR. BBRS was designed and resourced for the higher number of complaints expected and its legal architecture and systems are complicated and reflect this. There is an acceptance that BBRS had a minimum size and complexity, irrespective of the number of cases and is funded by the banks.
- The eligibility criteria referred to in the Scheme Rules differ to some extent from those included in the ISG ToR. Some changes have widened the scope and others have narrowed it. Some changes are to dovetail BBRS with FOS schemes. In any event, the Scheme Rules were signed off by all parties at ISG on 9th February 2021.
- BBRS exists to provide the services within Scheme Rules as agreed by ISG. BBRS does not have it in its power to change the Scheme Rules. BBRS is not an extension of ISG but was formed as an independent body.

During our review we found a wide range of opinions and in some cases a significant amount of emotion. It was predominantly focused on getting resolution for complainants. Whilst there were lots of opinions provided in relation to the set-up of BBRS, the only way to make any changes is by agreement and that must involve all parties.

Now that BBRS is established, learning points are emerging as to the function of the organisation in line with the agreed scheme rules. PIR 2 presents an opportunity to consider the operational effectiveness of the organisation. It is also an opportunity for that review to pick up points of success and areas for improvement. The level of trust and understanding which may or may not have been achieved by the running of BBRS will in some part influence the opportunity for a carefully managed agenda of future improvement.

2. Acknowledgement

The Assurance Team would like to thank the BBS staff and stakeholder groups, for their support, openness, excellent administration, and flexibility in accommodating the demands of this review. All of this has contributed to our understanding of the Terms of Reference and the outcome of this Post Implementation Review.

3. Comments from the SRO

I would like to thank the Review Team for their professional approach to what was a challenging review. The team engaged fully with all interviewees and were very flexible in their overall approach especially when accommodating late changes to the interview schedule. The review covers all of the aspects set out in the Terms of Reference. The review also provides helpful input for the BBS and stakeholders to consider in the preparation of ToRs for PIR part 2.

4. Summary of the Business

The banking industry funded the establishment of the BBRS to meet the recommendations set out in the UK Finance response to a report by Simon Walker (Walker Report). The Walker Report laid out broad proposals to help rebuild trust in the banking sector and did not limit BBRS's suggested activities to adjudication.

Seven major banks (the Participating Banks) then arranged for a dispute resolution service to be created that offers alternative dispute resolution (ADR) services for those SMEs that have not had access to this before. The service is managed by an independent, not for profit private company BBRS. It is free and is open to those SME customers who are too large to take their complaint to the Financial Ombudsman Service (FOS) but do not have the resources to undertake expensive court litigation.

There are two elements to the BBRS service: the historical scheme and the contemporary scheme. Each has its own eligibility criteria that aim to dovetail with the FOS eligibility criteria. The historical scheme is open to SME customers with complaints against their banks dating back to December 2001 that have not yet been resolved nor had the opportunity to be looked at by an independent review scheme or a court of law. The contemporary scheme looks at complaints after 1st April 2019 and has a higher turnover eligibility threshold to reflect the expansion of the FOS eligibility scope that came into effect on that date.

The Participating Banks established an Implementation Steering Group (ISG), comprising members from the banking sponsors and SME representatives, together with observers from the FCA, the FOS, HM Treasury, and the All-Party Parliamentary Group (APPG) on Fair Business Banking. The ISG adopted terms of reference (ISG ToR) for the implementation of the proposed scheme in early 2019.

The Participating Banks agreed to the establishment of the BBRS created by a series of contracts that are the result of two years of collaboration between the Participating Banks and the representatives from the SME community.

The final meeting of ISG on 9th February 2021 included an action for BBRS to commission a post implementation review (PIR1) of the programme that led to the creation of the BBRS. The responsibility for the PIR was handed to the board of BBRS at the time of its launch and the disbandment of the ISG.

Key Milestones

Milestone	Date
Simon Walker's independent review into the complaints and alternative dispute resolution (ADR) landscape for the UK's SME market.	October 2018
UK Finance response to the Walker Report	December 2018
Implementation Steering Group (ISG) formed	January 2019
Business Banking Resolution Service (BBRS) incorporated	July 2019
Live Pilot initiated	January 2020
BBRS Go-Live	February 2021
Post Implementation Review (part 1)	January 2022

5. Scope/Terms of Reference of the Post-Implementation Review

The purpose of the post implementation review of the BBRS will be to review whether the service, as developed by the ISG through its terms of reference and modus operandi, delivered the recommendations of the UK Finance response to the Walker Report (the Recommendations), by:

- a. Assessing the nature and scope of the service set out in the Legal Architecture of BBRS as approved by the ISG against the Recommendations.
- b. Assessing how the ISG went about its work in establishing the BBRS (e.g., its processes and stakeholder engagement).
- c. Reviewing the ability of the BBRS to, through the established framework, to deliver the principles set out in the Terms of Reference of the ISG:
 - i. Independent leadership and governance.
 - ii. Ability to draw on expertise, including legal expertise.
 - iii. Fair and reasonable decision making.
 - iv. Transparency (e.g., though being able to receive in-person or written testimony from businesses).
 - v. An ability to receive and deal with appeals against its decisions; call for relevant evidence on specific issues from either party to a dispute; deal with consequential loss claims; refer businesses to alternative fora if this may be more appropriate.

The review is not intended to evaluate the operational effectiveness of the BBRS delivering services in accordance with the Scheme Rules, nor whether the BBRS, in delivering the Scheme Rules, has met the Recommendations. It is too early in the life of the BBRS to do that.

Follow up Review

The BBRS will assess in the first half of 2022 whether the time is right to commission a review of the effectiveness of the BBRS and whether it is delivering against Scheme Rules and operational plans.

6. Detailed Post-Implementation Review findings

The purpose of the post implementation review of the BBRS will be to review whether the service, as developed by the ISG through its terms of reference and modus operandi, delivered the recommendations of the UK Finance response to the Walker Report (the Recommendations), by:

- a. **Assessing the nature and scope of the service set out in the Legal Architecture of BBRS as approved by the ISG against the Recommendations.**

We found that the service developed by ISG was largely reflective of the recommendations contained within the UK Finance response to the Walker Report, as set out in the Annex: (Independent DRS Implementation Steering Group) to that document. The documents that make up the legal architecture of the BBRS in turn reflect those recommendations. The architecture and the resulting organisation are considerable in their size and complexity. This may have been based in part on the planning assumptions which prevailed within ISG, particularly in relation to the number of potential cases. Whilst the number of cases is widely considered to be overestimated by a factor of 10, we note that BBRS could not in turn have been simplified by a similar factor.

The resulting legal architecture was dictated by a minimum size and complexity that the BBRS needed to be to address the ISG ToR, to discharge its duties and provide the services. This minimum size and complexity reflected the confidentiality and security considerations of the banks. The result of this is that the BBRS legal architecture coupled with its data handling systems, have 'fixed requirements' which are largely unrelated to the number of cases. Whilst some of these requirements could be challenged, we heard that the importance of having systems that were robust and operationally secure overrode any considerations of costs, which were in any event funded by the banks.

It has been observed that the documents within the legal architecture are complicated, perhaps unnecessarily so. Whilst many believed that the documentation could have been simpler, there was a need to establish a binding resolution procedure by contract (rather than regulation) with a multiplicity of parties and to address the requirements of confidentiality naturally required by the parties, compliance with GDPR (including the differing procedures of Participating Banks) and, to some extent, the requirements of competition law. Responses from those interviewed suggested that any complexity did not impede processes, and the report on the live pilot commissioned by ISG in developing the BBRS suggests that the role of the customer champions may have alleviated some issues in this regard.

With the BBRS set up in line with the legal architecture resulting from the work of the ISG, it is of note that it is not in the powers of BBRS to change the requirements in the key documents which form the legal architecture, nor the associated services. Neither the Articles of Association or the Scheme Rules can be changed without the approval of the Directors of BBRS, the Bank Appointed Member (a non-voting member of BBRS commonly referred to as BAM) and the signatories to the Funding Agreement (see Section c. below).

We note that there are two liaison panels, one for banks and the other for SME representatives. The panels may benefit from a regular joint session. This is important as they are the two key parties required to consider and instigate by agreement improvements or change.

During our review there did not appear to be a clear and consistent definition of Alternative Dispute Resolution (ADR, the term used in UK Finance response to the Walker Report). We found some stakeholders understand ADR to mean 'mediation, conciliation or other dispute resolution system that does not rely on a judge, arbitrator or adjudicator making a decision on a particular case'. We found others who felt that ADR means 'any dispute resolution system that avoids litigation and possibly arbitration'. The resolution options provided for within the legal architecture, encompass both investigative adjudication and mediation. Most of the detailed provisions focus on adjudication. This reflects the need for more detailed regulation of investigative adjudication and associated appeals.

Whilst the Walker Report might have envisaged a greater emphasis on mediation, mediation relies on both parties to a dispute agreeing to use and commit to mediation. There were very different views amongst those we spoke to. Some were supportive of mediation, but we also heard that in many cases aggrieved businesses were unwilling to mediate, preferring the choice of an adjudication that might demonstrate the errors of the banks and confirm the alleged unfairness of how they had been treated. Mediation could be seen as more onerous in terms of all parties' people input than leaving the decision to an adjudicator. We found that some stakeholders considered that 'simply being heard,' could be key to some of the longstanding complaints, whilst others expressed views to the contrary. We did not see any analysis to support either of these views.

We would interpret the phrase 'legal architecture' to mean the legal framework enabling the BBRS to deliver the service. This does not rely on bespoke legislation but is based on interlocking contracts and the articles of association of the BBRS and thus relies on general principles of company law and contract law to create an integrated body of rights and obligations without reference to tailored statute or regulation. All relevant legal documents have been through the BBRS and bank governance process, these include:

- The Funding Agreement between the banks and the BBRS
- The data sharing agreements between the banks and the BBRS
- The participation Deed
- The customer agreements
- The Scheme Rules
- The BBRS Articles of Association
- The Liaison Panels' terms of reference
- The CEDR Lot A run agreement

Taken together, these documents provide a contractual mechanism for the resolution of disputes falling within the eligibility criteria and subject to the award values identified in the Recommendations.

We note the recommendations in the UK Finance Annex: Independent DRS Implementation Steering Group identify that the service should be proposed by an independent DRS implementation steering group and identifies features as to the nature and scope of the service. The nature and scope of the service set out in the Legal Architecture of the BBRS is consistent with the Recommendations.

More specifically:

1. The funding arrangements support the carrying out of the activities within the ISG ToR's.
2. The Articles of Association provide for independent governance in that they require independent non-executive directors to be appointed as a majority of the board. The independent directors are the voting members of the company, and the articles give powers to ensure the independence of the Company, the Board, the Chief Adjudicator, and decision-making in respect of case determination.
3. The terms of selection process for executive and non-executive directors, (conducted through specialist recruitment consultants) mandated a requirement that those selected should be independent.
4. The Recommendations identify a requirement for panels of experts to be appointed to support BBRS in its ADR processes. Those panels were not appointed. (see section c) The CEDR contract provides suitably qualified personnel including the general availability of experts on an ad-hoc basis, therefore providing the necessary sources of expertise. In the absence of a large number of cases, that view seems sound.
5. The eligibility criteria within the Scheme Rules largely reflect the recommendations in UKF with some deviations which we note later in this report.

b. Assessing how the ISG went about its work in establishing the BBRS (e.g., its processes and stakeholder engagement).

BBRS went live on 15th February 2021. We heard consistent reports that getting over the line and reaching Go-Live was a considerable achievement. Much of the detailed work took place during the unprecedented conditions of Covid 19 and the associated lockdown. This meant that from March 2020, most people were working remotely from home and that some of the benefits of meeting in person were lost.

The set up consisting of ISG, DWG, and specific working groups, brought a wide range of stakeholders to the table for the first time. ISG was the overarching decision making body for all aspects of BBRS development and had a membership from the Participating Banks, SME community, and observers from UK Finance, HMT, FCA, APPG and FOS. DWG was the group where design proposals for the various elements of BBRS were put forward, discussed, and once refined, put forward to ISG for approval. Several sub-groups were established to look at specific areas and DWG reported updates from these sub-groups. Membership of DWG and the sub-groups included representatives from the banks and SME communities. A secretariat was provided for ISG and all the working groups.

Whilst the ISG ToR set out that decisions would be based on a majority vote, we heard that the actual decision making was always based on consensus and that any recourse to a vote would have been seen as a failure. The use of consensus is particularly apparent in the final ISG sign-off meeting held on 9th February 2021 when all parties at that meeting were given opportunity to voice any objections prior to the legal architecture being signed off and Go-Live agreed.

We found that the stakeholders came with very different requirements and pre-conceptions. The fact that they were there and remained throughout the 2 years is testament to their desire to establish the DRS in the form of BBRS, although here remain disagreements which are, at least in part, focussed on the underlying Scheme Rules established in the ISG process. We heard that there were various points during the development process where parties either threatened to or did withdraw their support and that the Chief Adjudicator, the Chair, and the secretariat of the ISG were instrumental in keeping everyone onboard.

BBRS as an organisation was unlikely to satisfy all stakeholders, in particular those wanting the eligibility criteria changed to ensure that all their represented members would be able to access the service. The eligibility criteria as set out from the formation of ISG were clear, however we note that some changes were formally documented, and signed off.

We have seen that for each meeting of ISG, DWG or the sub-groups, the secretariat would provide a PowerPoint slide deck in advance that contained the agenda and details of each of the points to be discussed. We heard that the secretariat took care to explain the detail at each meeting to help ensure that those present understood what was being discussed and agreed upon.

Minutes were produced after ISG meetings and agreed at the following ISG meeting, save for the final ISG meeting on 9th February 2021 where ISG was disbanded. Minutes were not normally produced for DWG or the sub-groups. Action points and summaries from these meetings were normally presented in the slide pack for the following meeting.

In total there were 25+ ISG meetings, 50 DWG meetings and many sub-group meetings. We heard that meetings were generally open and with individuals free to voice their concerns and for such concerns to be addressed, albeit some concerns were moved back to subsequent meetings or dealt with outside the formal governance structure.

The ISG was a body with multiple representatives from a wide range of stakeholders. The ISG was detailed and wide ranging regarding its functions. It was a minuted forum recognised to have been effective, with the Chair and secretariat being widely commended. Documentation provided and considered in this forum could be linked to the DWGs demonstrating clear governance.

We heard that the Participating Banks, were often in opposition with each other, partly based on advice that the bank representatives were receiving from their respective in-house legal teams. To represent the banks as a singular group, a single legal firm was appointed. The SME representatives were concerned that they did not have legal advice and it was agreed independent lawyers would be selected by the SME community following a competitive procurement process with their fees met by the Participating Banks.

It was widely noted that a change took place within the collaborative approach of the ISG (and the associated working groups) once the external legal advisers for the banks and the SMEs were appointed. Whilst the shift from principles to detail within any negotiation are always more challenging, it was noted that there was a significant change with suggestions of 're visiting' previously agreed points. Several stakeholders noted the possibility that the lawyers may well have been introduced too early when a series of principles were still to be resolved. We have not seen any significant documented evidence in relation to either of these points.

We found that the live pilot which was undertaken early 2020 yielded a number of important lessons. What became clear was that the eligible case numbers were very much smaller than expected. The wide request for participants had the effect of attracting a significant number of historic complaints which have subsequently been identified as non-eligible. Whilst a pilot was the right thing to do in testing a system, the unintended consequence through the publicity and communications was to raise overall expectations in relation to the BBRS. We understand there was an acknowledged delay in the ability to publish determinations (only after the BBRS was live and scheme rules finalised).

Overall, we note that although the original intention was to launch in 9 months (November 2019) the process to launch took 2 years (February 2021). We understand that the reasons for this included unrealistic timescales; complexity of the legal architecture; the diversity of stakeholders and the data security and confidentiality required by seven separate banks.

ISG concluded on 9th February 2021 with the granting of BBRS Independence, enabling it to go live. We note concerns from SMEs that there were material changes between the Articles of Association agreed at ISG and those laid with Companies House ahead of go-live. We found no evidence that the changes were anything more than cosmetic and correctional. The SME concern that it was at this point that the BAM was introduced into the Articles of Association is unfounded with the only change to that section of the articles being a single typographical correction. However, perceptions held have already affected ongoing relationships and trust between the SMEs, BBRS and the Banks.

The ISG, and all activities required to launch the service were funded by the Participating Banks despite the development period extending from 9 months to 2 years. The initial design phase concluded in agreement of the Target Operating Model (TOM) and the establishment of BBRS. The process and discussion points leading to the TOM was well documented in the DWG papers, taking 13 meetings to develop and review ahead of sign off. This appears reasonable given its relevance but may also have been an early indication that the process of set-up may take longer than originally envisaged.

Membership increased throughout the process to include the identified SME groups. We note from the papers that attendance remained high throughout the period. A number of those interviewed sat on multiple working groups. We heard that at times, SME representation was thin on the ground. The desire to be involved in every meeting along with the additional challenge of legal complexities led to the agreement to fund legal support to the SMEs to balance up the negotiations. We understand that the addition of lawyers and legal firms into the set-up changed the dynamics of the relationships within the groups, and this was a common thread from interviewees.

There was organisational change in March 2020 when future executives of BBRS took over the programme management of the remaining activities to achieve BBRS set up. From this point the Chief Executive Officer (CEO) provided ISG with updates on the progress of the BBRS scrums against the remaining workstreams. The practice of presenting recommendations from the working groups to ISG continued. This also coincided with lockdown and the need to change to remote working practices.

We heard that all stakeholders contributed considerable amounts of resource in developing BBRS and that this input increased significantly in the run up to Go-Live. This was considered necessary to ensure that BBRS was fit for purpose for all parties, especially as there were significant differences in what outcomes were desired, and this continued throughout the set up. There was praise for the way the different member types worked together within the working groups, particularly in the early stages.

ISG agreed at its final meeting to BBRS commissioning a PIR. there is no detail about what the PIR would constitute, only that it would be objective and include input from SMEs and the banks.

c. Reviewing the ability of the BBRS to, through the established framework, to deliver the principles set out in the Terms of Reference of the ISG:

BBRS has been established to provide an independent dispute resolution service within the Scheme Rules where businesses would not otherwise have recourse to another dispute resolution service.

We found that BBRS has the ability to deliver the principles broadly as set out in the ISG TOR. This is achieved by securing the independence of the board of directors and the independent role of the Chief Adjudicator, within the legal architecture. The eligibility criteria are broadly consistent with the ISG TOR although there have been some changes and refinement as identified further on.

The BBRS Articles of Association and Funding Agreement contain provisions to ensure that BBRS does deliver the services provided for in the Scheme Rules and does not deviate from such delivery. The same principle that protects the independence and funding within the legal architecture also prevents alterations to the Scheme Rules and in turn ensures the Banks remain committed to BBRS.

There is full time provision of trained dispute resolution specialists, either within BBRS or through the contract with CEDR. We heard that the expert panel identified in the ISG TOR did not get established as there was no need, however, there is provision for a wide range of experts to be called upon when necessary for more complex cases. Time limits have been set for determining cases and hearing appeals.

BBRS is the product of ISG and is now independent of the parties to ISG except for the point about BAM in respect of any changes. It is not for BBRS to favour either the SME community or the banking community by proposing changes to the Scheme Rules or any other elements of its establishment or services. If one party has proposals to change any element, the rightful starting place for such discussions and possible agreement would appear to be through the respective liaison panels. Further clarification and signposting may be helpful to all parties.

The ISG ToR set out some of the rules in respect of the eligibility criteria. We found that the date in which historic cases would be eligible was moved back from 2008 to 2001. This was a significant widening of the access to the historic scheme. In addition, details of the eligibility criteria were developed by the working groups. Some of these details could potentially have had the consequence of reducing the number of complaints that would be eligible, particularly in respect of the historic scheme. We heard that the reason for some of this detail around the eligibility criteria was to ensure that they dovetailed with the FOS rules. Boundary (Subsequently called Concessionary) cases were introduced to address cases that might slip through between the boundaries of the BBRS and FOS schemes. The Scheme Rules, including the eligibility criteria were signed off at the 9 February 2021 ISG meeting having been provided to the ISG members at the 10 December 2020 ISG, meeting some two months earlier.

i. Independent leadership and governance.

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

BBRS has its own board of independent directors and Articles of Association. The BBRS Articles of Association provide for the role of Chief Adjudicator, which is currently filled by a deputy high court judge. The Chief Adjudicator is one of the Directors on the Board. The appointments of the Chief Adjudicator and Board were made under the direction of ISG originally and then in accordance with the final adopted Articles of Association.

The differences between the structure of BBRS and the ISG ToR at this stage appear to be minor and of little practical consequence to either the matter of independence or governance. BBRS has a CEO and a Chief Adjudicator, both of who report into the BBRS board as detailed in the Articles of Association.

We found that BBRS and in particular, the Chief Adjudicator, has total independence when making determinations on complaints that fall within the Scheme Rules as far as Investigative Adjudication is concerned. Whilst mediation can be included at any stage in a complaint process, mediation requires the voluntary agreement of both parties. So, whilst the respective Respondent bank will need to agree to every mediation, this is not seen as demonstrating any loss of independence of the Chief Adjudicator but the practical realities of using mediation.

The Chief Adjudicator may consider any Complaint where the Complainant, Respondent and the Chief Adjudicator all agree in writing that BBRS may consider it under the Scheme Rules, regardless of whether: (1) The Respondent has provided a final response to the Complainant in relation to that Complaint; or (2) The Complaint meets the Eligibility Conditions.

ii. Ability to draw on expertise, including legal expertise.

The original intention was that BBRS would be a thin client with only a handful of members of staff. The technical expertise would be outsourced to an external organisation. A procurement exercise was conducted for the external supplier, and this was won by CEDR. We heard that the contract between BBRS and CEDR provides for CEDR making available a range of expert resources. We also understand that BBRS has now introduced its own Lead Case Assessors. The original assumption that there would be a large number of complex cases has not been borne out. There are relatively few complaints that meet the eligibility criteria and the majority of those are not complex, mainly relating to push payment fraud.

We heard that there has not been a need to establish the panels of legal and technical experts due to the small number of complaints and their lack of complexity. We have seen the considerable BBRS documentation relating to staff training and operational procedures to ensure that they are adequately equipped to deal with their roles in handling complaints. We understand that the appointment of customer champions and case handlers was generally well received. We are not sighted on the matter of their expertise or on the issue of 'at what point discussion stops and eligibility is established'. These are issues of operation for PIR2.

iii. **Fair and reasonable decision making.**

The Scheme Rules contain considerable detail on fair and reasonable decision-making. We have not seen or heard anything to indicate that determinations of eligible complaints would be or have been anything other than fair and reasonable.

The ongoing concerns of complainants relate primarily to eligibility.

iv. **Transparency (e.g., through being able to receive in-person or written testimony from businesses).**

The set up and documentation are consistent with businesses having the right to a robust hearing, with the opportunity to register a complaint in a number of ways including email, online, by telephone and post. The Scheme Rules are publicly available on the BBRS website. We heard that this approach is in line with the approach taken by the FOS, and that detailed data on complaints will be accessible to and reviewed by the FCA. Whilst initial decisions of the BBRS will remain private, appeal decisions will be published. We understand that there have not been any actual requirements for this to have been utilised to date, and notwithstanding it is an area for PIR2 to explore.

Whilst not routine, we heard that in-person testimony from businesses is available and has taken place.

v. **An ability to receive and deal with appeals against its decisions; call for relevant evidence on specific issues from either party to a dispute; deal with consequential loss claims; refer businesses to alternative fora if this may be more appropriate.**

The Scheme Rules provide for a two-stage appeals process if either the Complainant or Respondent are unhappy with the initial BBRS determination. The appeals process is consistent with that set out in the ISG ToR.

The Scheme Rules require the Complainant and the Respondent to make a 'reasonable and proportionate search' for documents that might be in their possession.

The Chief Adjudicator, in the specific circumstances set out in the Scheme Rules, will refer complaints to other dispute resolution schemes. In addition, the Scheme Rules specify some circumstances whereby the Chief Adjudicator can dismiss a complaint.

7. Next assurance review

The next assurance review is due to be the PIR2 review looking at Operational effectiveness. We would anticipate that this should be considered as an early follow on from this review in summer 2022.

Appendix A - Interviewees

Name	Role
Mark Grimshaw	BBRS CEO, BBRS Board Member, Review SRO
Lewis Shand Smith	BBRS Board Chair, ISG Chair
Graham Atkinson	BBRS Governance and Assurance Support
Alexandra Marks	BBRS Chief Adjudicator, BBRS Board Member
Chris Moore	BBRS Director of Corporate Services
Lyndy Geddes	BBRS Director of Operations
Stephen Pegge	BBRS Board Member, Director UK Finance
Caroline Barr	BBRS Board Member, Chair Bank Liaison Panel
Teresa Graham	ISG Member, Chair SME Advisory Group
Senior Manager*	Santander UK
Mike Conroy	UK Finance Director Commercial Finance
Dan Kent	BBRS Director of Quality & Change
Dirk Paterson	BBRS Customer Director
Gopal Pindoria	BBRS Head of Finance
Lucy Armstrong	ISG Member, BBRS Board Member, CEO The Alchemists
Peter Taylor	Former BBRS Director of Legal & Policy
Martin McTague	ISG Member, FSB Policy and Advocacy Chairman
Sharon Prosser	ISG Member, NatWest
Interviewee (a)*	SME Liaison Panel Member
Interviewee (b)*	SME Liaison Panel Member
John Munton	CEDR Director of Dispute Resolution Services
David Beaty	HSBC UK Head of Business Banking
Interviewee (c)*	ISG Member, SME Representative Group
Senior Manager*	Lloyds Banking Group
Kevin Hollinrake	ISG Member, Member of Parliament, Chair APPG Fair Business Banking
Antony Townsend	Chair SME Liaison Panel
Heather Buchanan	SME Liaison Panel Member, Director of Policy and Strategy APPG Fair Business Banking
	*The personal information of some interviewees has not been included at the request of the individual.

Appendix B – Suggested areas for consideration in PIR2

Looking at the operational ability and success of BBRS.

We would consider layers 1 and 2 to be within the practical remit of PIR2. Broadly speaking the first layer would look at the operation of BBRS within the Scheme Rules. The second layer would be looking at the opportunities to agree an agenda for the enhancement of and change to the Scheme Rules.

Layer 1 – Operation within Scheme Rules

- How is the customer journey operating – is it ‘fit for purpose’
- Are the Critical Success Factors as developed by ISG, being met?
- Within the Scheme Rules what changes could be made or considered to the way in which BBRS operates
- Communications – including stakeholder and ‘expectation’ management. Dealing with the past, moving forward
- Review of current numbers of Concession Cases
- Is there an opportunity for a greater use of mediation?
- BBRS time frame
- Customer champion and case handler expertise
- Point in a customer journey at which eligibility is determined
- Transparency of appeal publication and reporting to FCA.

Layer 2 – Operation within ‘developed’ Scheme Rules but remaining within ISG ToR

- What ‘changes’ could be made to the Scheme Rules still within the original remit of ISG ToR
- What is the level of flexibility on concession cases?
- Opportunity to combine SME and Bank liaison panels ‘thinking’ on a BBRS Ph 2 agenda
- Achieving granularity in relation to the cases which are failing to meet eligibility criteria and consideration
- Agree an ‘acceptable’ response to Philip Hammond’s letter of 19 January 2019 to the chief executive of UK Finance – achieving reconciliation of its ‘challenges’.