

BBRS ELIGIBILITY GOVERNANCE

ELIGIBILITY CONDITIONS REFERENCE DOCUMENT

1. BACKGROUND AND PURPOSE

The BBRS is an independent body that has been established to address cases in relation to SMEs which are, in the main, too large for the Financial Ombudsman Service and that have not previously had access to independent review. The BBRS' aim is to resolve disputes in relation to larger SMEs and their banks.

There are two elements to the BBRS: the Historical scheme and the Contemporary scheme. Each has its own eligibility criteria that aim to dovetail with those of the Financial Ombudsman Service (FOS).

The BBRS' eligibility criteria within the Scheme Rules, as part of the wider legal architecture, were unanimously approved by the Implementation Steering Group (ISG) meeting on 9 February 2021, having been provided for review to ISG members at the ISG's 10 December 2020 meeting.

The purpose of this document is to outline the BBRS' eligibility criteria and provide a reference document that all parties can refer to. This document does not set out all the detailed provisions of the Scheme Rules. Nor does it address questions relating to the efficacy of the BBRS' operations, existing Scheme Rules (including eligibility criteria) or the mechanisms through which changes to the BBRS' legal architecture (including the eligibility criteria) could be affected.

1.1. Post-Implementation Review (PIR)

The BBRS commissioned an independent Post-Implementation Review (PIR), which considered whether the establishment of BBRS reflects the build requirements as set out in the UK Finance response to the Walker Review and in the ISG's Terms of Reference (ISG ToR).

The PIR concluded that the current operational set up of the BBRS largely reflects those requirements.

The report further found that the BBRS' eligibility criteria are broadly consistent with the ISG TOR, although there have been some changes and refinement. These changes include significant widening of access to the Historical Scheme (moving the start date for the historical scheme from 2008 to 2001), as well as the development of the 'concessionary case' concept (see further below).

2. ELIGIBILITY CRITERIA

2.1. General criteria

The BBRS has two schemes: a Historical Scheme for unresolved complaints about an act or omission dating back to 1 December 2001 and a Contemporary Scheme for complaints about an act or omission that has arisen since 1 April 2019. In addition to the financial criteria for each Scheme, there are some general criteria that determine whether a complaint is eligible for consideration by the BBRS, including:

A complaint must:

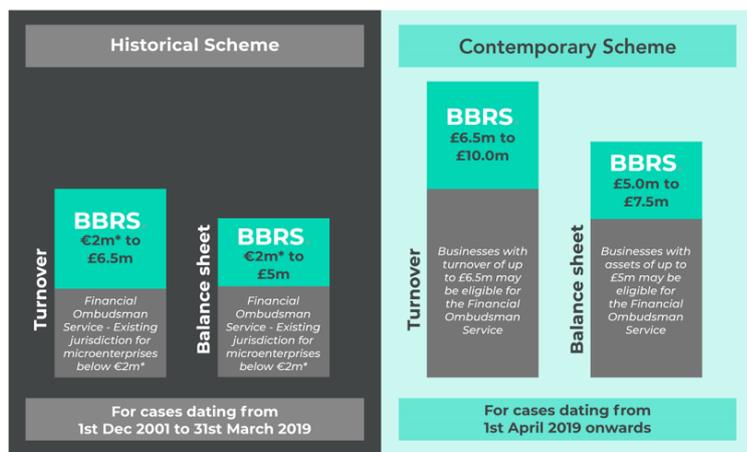
- relate to a banking service, such as lending or payment services, offered by one of the BBRS' participating banks
- be brought in relation to a UK-formed/incorporated/registered business, trust, charity, friendly society, or co-operative society that is (or was at the time of the issue complained about) a customer of the bank
- have first been brought to the relevant bank
- not be, or have been, at any time, eligible for the Financial Ombudsman Service (FOS) or one of the Excluded Schemes
- be referred to the bank (or in the case of Contemporary complaints, to the BBRS) within six years of the act or omission complained of or (if later) three years from the date the customer became aware (or ought reasonably to have become aware) of cause for complaint
- for the Contemporary Scheme only, have been brought to the BBRS within six months of the date on which the bank notifies the complainant, in writing, the BBRS may be able to consider the complaint
- not be subject to any settlement or ongoing legal proceedings of any kind OR have resulted in any judgement or order of a Court of tribunal (whether or not final)

and be brought against one of the BBRS' participating banks:

- Barclays Bank plc and Barclays Bank UK plc
- Danske Bank
- HSBC UK Bank plc
- Lloyds Banking Group (Lloyds Bank plc and Bank of Scotland plc)
- NatWest Group (including The Royal Bank of Scotland Plc, National Westminster Bank plc, Coutts & Company and Ulster Bank Limited (Northern Ireland))

- Santander UK plc
- Virgin Money (including Clydesdale Bank plc and Yorkshire Bank)

Headline financial eligibility criteria



Until 1 November 2009, FOS could consider cases from SMEs with an annual turnover of up to £1m. From 1 November 2009, this changed to either turnover OR balance sheet total of less than €2m, provided they also had fewer than ten employees.

* A turnover/balance sheet below €2m is the EU definition of a microenterprise to this eligibility criterion

*There are some limited exceptions

2.2. Historical Scheme

The BBRS Historical Scheme is for complaints relating to incidents (acts or omissions on the part of the bank) that took place between 1 December 2001 and 31 March 2019. Different financial criteria apply depending on the date that the complaint was made to the bank:

Date	UK Businesses	Charities	Trusts
Complaint made between 1 December 2001 and 31 October 2009	Turnover: At least £1 million but less than £6.5 million Balance Sheet: Less than £5 million	Annual income of at least £1 million but less than £6.5 million	Net asset value of at least £1 million but less than £5 million
Complaint made between 1 November 2009 and 31 March 2019	Turnover: More than €2 million* but less than £6.5 million (* unless 10 or more employees) Balance Sheet: More than €2 million* but less than £5 million (* unless 10 or more employees)		

2.3. Contemporary Scheme

The BBRS' Contemporary Scheme is for complaints relating to incidents (acts or omissions on the part of the bank) that took place on or after 1 April 2019.

The BBRS can consider complaints in relation to businesses which were formed/incorporated/registered in the UK, and which are/were not eligible to complain to the FOS, and meet the following financial criteria:

Turnover of less than **£10m**

Balance sheet of less than **£7.5m**

Charities must have an annual income of less than **£10m**

Trusts must have a Net Asset Value of less than **£7.5m**

To be eligible for the Contemporary Scheme your complaint must not be, or have been, eligible for the Financial Ombudsman Service.

2.4. Concessionary cases

The BBRS may, in some circumstances, also be able to look at complaints that are ineligible. These will broadly fall into two categories:

Cases falling outside the BBRS' eligibility conditions

- If a case falls outside the BBRS' eligibility criteria, the BBRS may still be able to consider it if the BBRS, the customer, and the bank all agree
- If the BBRS is asked to consider a complaint and believes it should be able to do so (for example because the case falls just outside the eligibility criteria, there is a technical reason why it is ineligible or the complaint cannot be considered by any other Alternative Dispute Resolution (ADR) Scheme), the BBRS will write to the bank, explaining why it thinks it should consider it, and ask for the bank's agreement
- Banks have agreed to act reasonably and in good faith when considering such requests and, if it disagrees with the BBRS' request, will provide an explanation to both the BBRS and the customer.

Excluded schemes

The BBRS may still be able to assist where:

- The complaint meets all the BBRS' other eligibility conditions apart from the fact it relates to an Excluded Scheme; and
- Either the customer believes they have new evidence which was not previously considered in the Excluded Scheme and, had it been considered, it would have made a material difference to the outcome.

- Or the customer did not have, nor could reasonably be expected to have had, notice of the Excluded Scheme.

In such cases, whether or not the bank decides to reconsider the complaint (which banks have committed to decide in good faith), that bank will give the BBRS and the customer a written explanation in sufficient detail to enable the BBRS to explain it to that customer.

The banks have also agreed to answer any reasonable follow up questions the BBRS may ask about the bank's decision and the outcome of any reconsideration.

If the BBRS believes that it should be able to consider the case, it will ask for the bank's agreement to do so (see 'Cases falling outside the BBRS' eligibility conditions' above).