

## The Business Banking Resolution Service – Our Setup and Governance

### What is the Business Banking Resolution Service?

The Business Banking Resolution Service (BBRS) is a non-profit organisation set up to resolve historical and current disputes between [eligible](#) small and medium sized businesses (SMEs) and participating Banks. The service supports SME customers who have not previously accessed independent review, without the need for litigation.

The BBRS delivers an accessible and transparent dispute resolution service, giving eligible SMEs the opportunity to have their complaint heard and independently reviewed.

The BBRS uses a range of techniques to help SME customers and banks find resolution. More information about the BBRS service can be found [here](#).

### Why was the BBRS set up?

The BBRS was established in response to the commitments made by the banking and finance industry following the [Simon Walker Review](#). This identified the need for an independent service to resolve historic and current business banking complaints for [eligible](#) SMEs that have not previously had access to independent review.

### How was the BBRS set up?

In early 2019 an Implementation Steering Group (ISG) was created to set up and establish the BBRS. This group included:

- An independent Chair.
- A voting membership balanced equally between the seven participating banks and a further seven SME representatives. This membership included representatives such as the All-Party Parliamentary Group on Fair Business Banking and the SME Alliance.
- Additional observers included representatives from the Financial Conduct Authority (FCA), the Financial Ombudsman Service (FOS), UK Finance and HM Treasury.

The ISG undertook a near two-year consultative process to set up the BBRS. ISG decision-makers were informed by a Design Working Group and several supporting sub-groups who made recommendations about the design and operation of the scheme. All of these groups had SME membership.

Within this structure, the ISG developed the fundamentals of the BBRS, such as the scheme rules and policy, legal documentation, [Scheme eligibility](#) and operational details. All ISG members, including each SME representative, were empowered to make their own informed decisions about the design of the scheme and its readiness to start operating.

### **Did the ISG receive independent legal advice?**

During this time the ISG, banks and SME representatives all had unlimited access to their own separate and independent legal advice. This legal counsel was important to ensure all ISG members had a detailed understanding of, and appreciation for, both the architecture of the BBRS and specifically the independence of the scheme.

### **When did the BBRS start operating?**

On 9<sup>th</sup> February 2021 the ISG unanimously agreed the foundational documents for the BBRS, and that:

1. The BBRS was ready to start operating, the architecture of the scheme was agreed and that the ISG was advised that the legal architecture met the needs of the Scheme.
2. The BBRS would independently commission a Post Implementation Review (PIR).
3. The role of the ISG had concluded and its business was closed.

The BBRS began operations on 15<sup>th</sup> February 2021.

### **How is the BBRS independent?**

The BBRS is a wholly independent decision-making authority. The organisation's independence is safeguarded by a Board of Independent Directors, and the independence of the Chief Adjudicator is safeguarded directly by the Scheme Rules and the BBRS's Articles of Association.

The set-up of the BBRS provides a structure and complaints process that is specifically designed to be independent of both the banks and SME Community. It is also independent of government, regulators, and all other bodies. It has a fully independent Board of Directors with budgetary and operational autonomy. It is a not-for-profit company limited by guarantee without share capital or shareholders.

### **How is the adjudication process independent?**

The BBRS's Articles of Association ensures and protects the independence of its adjudication process. This includes the role of the Chief Adjudicator,

which is critical to the BBRS delivering fair and independent outcomes to eligible disputes.

The Chief Adjudicator is an individual appointed by the BBRS Board of Directors, who is responsible for receiving and considering complaints and, where appropriate, investigating, facilitating, and encouraging their resolution, settlement and/or withdrawal. The Chief Adjudicator must make decisions in accordance with the Scheme Rules.

The Chief Adjudicator sits on the BBRS Board to ensure that the interests of independent decision-making have full authority within the organisation.

### **What is the role of the Chief Adjudicator?**

The Chief Adjudicator oversees the proper handling of all registered complaints and oversees the work delegated to independent assessors, within the BBRS and specialist supplier CEDR, for assessments for eligibility, dispute resolution, awards, appeals and recommendations for concessionary consent.

### **Who is represented on the BBRS Board of Directors?**

The BBRS is governed by a fully independent Board of Directors with relevant industry experience and knowledge of the broader stakeholder community. The Board includes:

- Two Executive Directors (being the CEO and the Chief Adjudicator)
- Six independent, Voting Member, Non-Executive Directors which includes a Non-Executive Chairperson and one Bank Experienced Director (who is a banking specialist).

These Non-Executive Directors work with the Executive Directors to ensure that the scheme is delivered effectively in line with the agreed design and operating principles of the ISG.

The original Non-Executive Directors were appointed after an open advertisement and search process. The appointments panel comprised of a member of the SME community, the banking community, and an independent chair.

All BBRS Directors are bound by [the Companies Act](#) and have agreed to safeguard the independence of the Chief Adjudicator in line with the company constitution.

The Company Limited by Guarantee (CLG) has seven members: the six BBRS Non-Executive Directors and the Bank Appointed Member (BAM).

## **What is the Bank Appointed Member?**

As the funding entities, the seven participating banks interact with the BBRS via a corporate body called the Bank Appointed Member. The legal form of the Bank Appointed Member is a corporate body registered in the UK named [Resolution Service Appointed Member Limited](#).

Unlike the other six independent, Voting Member, Non-Executive Directors, the Bank Appointed Member has no voting rights.

The Bank Appointed Member holds some reserved powers, which is commonplace for voluntarily funded independent organisations. Its purpose is to ensure that the BBRS continues to use the funding provided by the participating banks as agreed between the entities. These safeguards are set out in the Articles of Association and primarily cover four matters: altering the Articles; winding up the BBRS; transfer of the scheme; or changing the name (or any method to do these).

The Bank Appointed Member has no right to remove or appoint any of the BBRS' Board of Directors or vote on any BBRS Board matters. The Bank Appointed Member does not attend meetings of the BBRS Board, and to date, has not needed to exercise any reserved powers outlined in the Articles since the BBRS began operating (as of 12/08/22). Therefore, the Bank Appointed Member is not a 'Person of Significant Control' (PSC) according to the [Companies Act 2006](#).

## **What are the two BBRS Liaison Panels?**

The BBRS has two Liaison Panels, which represent the SME and banking communities respectively. The purpose of these Panels is to encourage a two-way dialogue and help all stakeholders to understand key issues and changes to policy and practice that may be of relevance to the BBRS's operations. Neither have decision-making powers or oversight of the BBRS.

The terms of reference for the SME Liaison Panel are [here](#) and the Bank Liaison Panel are [here](#).

## **Can the BBRS Scheme Rules be changed?**

Any party – whether the SME Liaison Panel, Banks, or anyone else – can be an initiator of a proposed change and recommend or suggest to the BBRS what rule changes might be made. The BBRS is then required to facilitate a consultation process with both the SME Liaison Panel and Banking Liaison Panel and then the Bank Appointed Member. Further information is provided in the process for rule changes document published in May 2022 [here](#).

## **What is the Post Implementation Review?**

At its final meeting, the ISG included an action for the BBRS to commission an independent Post Implementation Review (PIR) to consider how the BBRS is delivering the recommendations within the Walker Review.

The design of the PIR (now in two parts) enables stakeholders, including SME representatives, to input to the process.

The first phase of the PIR determined whether the ISG had executed its responsibilities correctly.

## **What were the findings of the Post Implementation Review (Part 1)?**

The review, published on 28 February 2022, found that:

- The BBRS is independent in its leadership, governance, and adjudication process.
- The set-up of the BBRS provides a structure and process that is independent of the banks and the SME community.
- The BBRS has its own Board of Independent Directors and Articles of Association.
- The Chief Adjudicator has total independence when making determinations on complaints that fall within the Scheme Rules.
- There is nothing to indicate that determinations of eligible complaints would be or have been anything other than fair and reasonable.
- The BBRS reflects the ISG terms of reference.

The PIR (Part 1) also confirmed that:

- The legal architecture and Scheme Rules of the BBRS had the approval of all ISG members.
- All parties were present at the final agreement and subsequent closure of the ISG.
- The Eligibility Criteria referred to in the current Scheme Rules differ to some extent from those included in the initial ISG terms of reference. Some were widened to extend a larger complaints period, and some were clarified to dovetail with the FOS.

Finally, the PIR reviewers commented that: *“The ISG concluded on 9 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 Bank Appointed Member was introduced into the Articles of Association is unfounded with the only change to that section of the Articles being a single typographical correction.”*

### **How was the PIR conducted and how were participants selected?**

An independent, external review team conducted the PIR (Part 1) through in-depth interviews with staff members of the BBRS and representatives of the SMEs and banking community. As the PIR Part 1 records, “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.”

### **When will the Post Implementation Review (Part 2) take place?**

The second part of the PIR is expected to be conducted in late 2022 and will consider the operational effectiveness of the BBRS and has been designed with input from SME and Bank Liaison Panels. It is currently scheduled to be published in 2023.

***Further information about these topics is available in the below frequently asked questions***

## **BBRS Governance: Frequently Asked Questions**

### **Why is the Bank Appointed Member or any director not listed as a Person of Significant control in the BBRS company register?**

The Department for Business, Energy and Industrial Strategy published statutory guidance concerning how to establish whether a person has significant influence or control over a company. Notably, paragraph 2.8 of the guidance states that if a person holds particular ‘rights in relation to certain fundamental matters for the purposes of protecting minority interests in the company then this is unlikely, on its own, to constitute “significant influence or control” over the company.’

The Bank Appointed Member does not exercise ‘significant influence or control’ over BBRS and the independence of the BBRS is not prejudiced by the reserved powers for the Bank Appointed Member.

### **Do the BAM possess any company voting rights?**

The Bank Appointed Member is nominated by the participating banks to function as a non-voting member of the BBRS and with a limited degree of appropriate reserved powers.

Per article 41.2 of the BBRS Articles of Association: “All voting rights are held by the Directors of the independent Board.” The Bank Appointed Member does not hold any company voting rights.

### **Was there wide awareness of the role of the BAM, as outlined in the final Articles of Association, before its formation?**

The BBRS Articles of Association were drafted, reviewed and agreed unanimously by the Implementation Steering Group (ISG), which included the SME members. The consultation process also included these SME representative bodies obtaining legal advice on the role of the Bank Appointed Member (BAM) prior to giving their approval and agreement to the articles. The limited role of the BAM has always been clear and has not changed.

### **Why is the BAM not registered as a PSC in the Companies House Register?**

The BAM does not meet the threshold of being a PSC. The Companies Act 2006 defines a person of significant control as a party:

- that holds more than 25% of shares or voting rights in a company; or

- that has the right to appoint or remove the majority of the board of directors; or
- otherwise exercises significant influence or control.

The BBRS is a not-for-profit company limited by guarantee without share capital, and the BAM does not hold voting rights in BBRS. The BAM has no right to remove or appoint a majority of BBRS's board of directors and it does not exercise any 'significant influence or control' over BBRS.

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