

## **BBRS Case Insights<sup>1</sup>**

Launched in February 2021, Business Banking Resolution Service (BBRS) is an industry funded, not-for-profit, resolution service, with seven major banks participating. The BBRS's purpose is to help eligible small and medium sized businesses (SMEs) resolve disputes with their bank.

The BBRS scheme is split into two parts: the Historical Scheme<sup>2</sup> and the Contemporary Scheme<sup>3</sup>.

By the end of July 2022, the BBRS had received 837 cases. Around 60 per cent fell into the Historical Scheme timespan and 20 per cent into the Contemporary Scheme timespan. It was not known whether the remaining 20 per cent were Historical or Contemporary cases due to incomplete submissions.

BBRS has examined its case intake with a view to identifying the most frequently complained about products and services. This is to help our understanding of the common areas of complaint and the operating realities of both banks and SMEs.

BBRS case numbers are relatively low, as the majority of SMEs are able to find support from the Financial Ombudsman Service. The universe of eligible cases is also smaller than initially forecasted when the BBRS was established. However, the BBRS case load provides an interesting evidence base.

Perhaps unsurprisingly, a core theme pervading throughout is 'communication'. The features of SMEs, and the individuals who own them, are infinitely varied. Often, however, SME owners will not have a full understanding of the implications of the distinction in banking between personal and business customers.

The insights and learnings from this report can help all parties work towards greater interaction with each other, and ultimately to build trust and understanding between banks and the SME community they serve.

**Sally Berlin**  
**Chief Adjudicator**

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<sup>1</sup> Based on data to 31 July 2022

<sup>2</sup> For acts/omissions occurring between 1 December 2001 and 31 March 2019

<sup>3</sup> For acts/omissions occurring on or after 1 April 2019

## Contents Page

1. Introduction and context	Page 3
2. BBRS eligibility criteria	Page 3
3. BBRS analysis of common dispute themes – Decision-stage cases	
3.1. Clarity of communication	Page 3
3.2. Effective engagement	Page 4
3.3. Personal guarantees	Page 4
3.4. Fraud protection	Page 4
3.5. Sales	Page 4
4. BBRS analysis of disputes by products and services – All registered cases	
4.1. Loans	Page 4
4.2. Valuation of property	Page 6
4.3. Personal guarantees	Page 6
4.4. Fraud	Page 7
4.5. Bank administration issues	Page 7
4.6. Closure of bank accounts with no reason being disclosed	Page 8
4.7. Customers have new evidence	Page 8
4.8. Miscellaneous	Page 9
5. Conclusions and next steps	
5.1. Consideration one: better communications	Page 9
5.2. Consideration two: products and services where complaints are most likely to occur	Page 9
5.3. Next steps	Page 9

**Disclaimer: BBRS will further include a summary statement that its Determinations and Final Determinations do not provide a binding precedent**

## 1. Introduction and context

At the end of July 2022, the BBRS had received 837 cases. Our analysis of the complaints we have received is divided into two parts.

In the first section of our analysis, we assessed 165 cases to late April 2022 that had reached decision stage<sup>4</sup>. From cases reaching this stage it is possible to draw learnings about the nature of SMEs' complaints and provide insights that can help inform and improve dispute resolution processes.

We aimed to review all remaining cases as part of this analysis but during the review process, it transpired that it was not possible to gather meaningful insights from a large number of the cases we received. Some were found to be duplicates of other cases and the remainder had limited information available because they were either not taken forward after registration or were withdrawn early in the process.

The second half of our analysis encompasses learnings from all cases registered with the BBRS, including cases where it was not possible to obtain significant insights, but where we could draw some basic insights about the nature of the products involved in the business banking dispute.

## 2. BBRS eligibility criteria

The BBRS is an independent organisation performing against Scheme Rules which were unanimously approved at our launch. We consider Historical and Contemporary complaints which meet agreed eligibility criteria, which we do not have the power to change.

The BBRS must comply with the Scheme Rules that were set by the Implementation Steering Group (ISG), made up of the participating banks and SME representatives. This means the BBRS has the power to assess eligibility, process complaints and deliver adjudications against the Scheme Rules. The BBRS' Concessionary case process allows the BBRS to consider complaints that may fall outside of the BBRS' eligibility criteria, with the agreement of all parties.

The BBRS is not an appeals body for other organisations where complaints have been made. The BBRS cannot examine the decisions made by the FOS, the courts or where there has already been a contractual settlement with the banks. The BBRS can, however, help eligible customers who did not fall within the jurisdiction of the FOS and who have not had their case dealt with by an excluded scheme.

## 3. BBRS analysis of common dispute themes – Decision-stage cases

From our review of the 165 cases which reached decision stage<sup>5</sup> by late April 2022, we found five themes that featured prominently:

- I. **Clarity of communication** – which impacts on all of the issues, below – of course, bank communications need to address the various legal requirements, but increased focus on making the core communication practical, useful and easily-

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<sup>4</sup> Cases that had received a Provisional Determination or Determination, Concessionary cases, directly settled cases, mediated cases, conciliated cases, and cases which had received an Eligibility Assessment

<sup>5</sup> Cases that had received a Provisional Determination or Determination, Concessionary cases, directly settled cases, mediated cases, conciliated cases, and cases which had received an Eligibility Assessment

understandable, from the Customer's point-of-view would aid clarity and help to avoid misunderstandings.

- II. **Effective engagement** with what matters to the Customer – including handling of customer complaints. Sometimes, the real issue bothering the Customer is perfectly plain on the surface, but not always, especially when multiple matters are raised. A short pause to consider whether there's any (even oblique) evidence, in what the Customer has said, to indicate a deeper or slightly tangential issue behind the Customer's complaint/ representations and addressing that proactively moves customer service from being satisfactory most of the time to gold standard all of the time, with minimal additional effort.
- III. **Personal Guarantees** – providing absolute clarity around the potential long lasting impact of providing a personal guarantee, its breadth and release mechanisms. The observations at point I, above, are very relevant here. This has particular value when the individual providing the personal guarantee is also the sole trader or director of the business receiving the banking service which is backed by the personal guarantee. Overlapping with point V, below, the importance, at the point of sale, of the distinction between the responsibilities of the business and the individual's responsibilities as personal guarantor can't be overstated.
- IV. **Fraud prevention** and clarity over who does what when it happens. Fraud prevention is a topical issue and banks are better armed with knowledge of what might indicate a fraud than a customer, even a business customer, is. A sub-category is clear communication and expectation management to ensure BBRS business customers understand how to report a suspected fraud to the bank, quickly, and what, then, to expect.
- V. **Sales** – appropriateness of product and transparency of fees – bearing in mind the, sometimes, limited business/financial knowledge of SME owners.

#### **4. BBRS analysis of disputes by products and services – All registered cases**

Our review of all registered cases highlighted the following banking products and services as the most common areas of focus for SMEs complaints:

##### **I. Loans**

One of the most complained about products was loans, with BBRS receiving 101 complaints concerning various types of loans.

The types of loans complained of include fixed rate loans (13 cases), Interest Rate Hedging Products (IRHP) (20 cases) and Enterprise Finance Guarantee lending (EFG) (14 cases).

The complaint reasons provided by customers were varied and include concerns about:

- Lack of clarity around how the loan would work
- The language used in loan documentation being difficult to understand
- Being given the wrong advice or the loan being mis-sold
- Breach of contract (this is particularly prevalent in the property development industry where complaints centre on the bank withdrawing support at key stages of the development project). BBRS has received 20 such complaints.

- Sale of security at undervalue. BBSRS has received seven such complaints.

Breaking down the data by loan type, we can see that of the 13 **fixed rate loans** complaints, 11 were about the mis-sale of the loan and included concerns about break costs not being adequately disclosed or not being made clear within the loan documentation. BBSRS has not, as yet, upheld any complaints about the mis-sale of a fixed rate loan, but a complaint about clarity of break costs was upheld as was a case about the lack of communication following concerns being raised. Complaints about fixed rate loans generally relate to events that occurred between 1996 and 2017.

The 20 **IRHP** complaints also relate to concerns about mis-sale, with concerns about additional fees and charges not being clear and independent valuations also featuring highly. These complaints relate to events that took place between 2001 and 2011 with the Financial Services Authority, the regulator (at that time), agreeing a review scheme in 2012.

One IRHP complaint that had previously been subject to an independent review was settled after BBSRS intervention, with the bank agreeing to honour a previous IRHP review outcome. The data also shows five of the 20 complaints related to consequential losses, which customers felt hadn't been considered under a previous review.

The information available for these complaints is limited due to all 20 complaints being ineligible for BBSRS, having previously either been considered by the Financial Ombudsman Service or having been subject to an independent review.

Of the 13 **EFG loan** complaints, 11 related to the mis-sale of the loan as customers said they believed they were only responsible for 25 per cent of the loan in the event of default, with the remaining 75 per cent being covered by a government guarantee. In reality, customers were liable for the entirety of the loan. All 13 EFG cases related to events that occurred between 2009 and 2017. Eight complaints were deemed ineligible for BBSRS with four being eligible for the Financial Ombudsman Service and four having been subject to litigation.

A further complaint point relates to **Loan Restructuring**. BBSRS has received 14 such complaints, which generally centre on the restructuring of loans and additional fees and charges, causing further financial hardship for SMEs that had accounts transferred to the restructuring business unit.

Most customers have been party to an independent review but say that they feel their consequential losses were not considered and so would like BBSRS to consider this element of their complaint. These cases are generally ineligible for BBSRS, having already been subject to an independent review. The act or omission generally occurred between 2008 and 2012, which coincides with the 2008 economic crash that led to many businesses struggling and being taken under the control of the restructuring business and 2013 when the restructuring business ceased to operate.

Looking at complaints about loans overall, it is clear that many of the concerns correlate with the findings of our previous case review, which highlighted that clarity of communication, and the sale of products and services were some of the principal areas of concern for BBSRS customers.

## II. Valuation of property

There have been 17 cases about the valuation of an SMEs property, which the SME believes were undervalued by the bank appointed surveyor – this may be the valuation of one asset or a group of assets.

Customers generally believe the undervaluation of assets led to them being refused additional lending – this could also include being refused the second or third tranche of pre-agreed borrowing. Many customers hold the belief that the refusal of additional lending caused their business to fail.

Complaints about the valuation of property are closely linked to complaints about personal guarantees. Customers feel the sale of any assets at undervalue, meant their debt was only partially repaid and this led to their personal guarantee being called upon.

Ten of the 17 SMEs raising complaints about the under-valuation of property were from the property development industry, which suggests this sector was disproportionately impacted by lending that was agreed in tranches, as is common for this sector. In most cases the act or omission complained of took place between 2002 and 2020.

The undervaluation of assets is a key concern for customers, but BBRS have also received two complaints about the over-valuation of property, by a bank appointed surveyor, at the time of purchase. In both instances customers felt they had made a loss by borrowing a greater amount than needed and subsequently making higher repayments or making a loss when selling the property.

## III. Personal Guarantees

As per our previous review, complaints about personal guarantees remain prevalent with BBRS receiving 38 complaints about personal guarantees.

The main complaint reasons raised by customers include:

- The customer being unaware they had signed a personal guarantee (three cases).
- Customers not understanding the implication of signing a personal guarantee (four cases).
- Customers being unaware the personal guarantee would not be discharged after retirement or resignation (13 cases).
- Safeguarding failures by banks (i.e., allowing further lending to be agreed without notifying the individual who has provided the guarantee). This is generally an issue in cases where there are multiple directors/partners of a business.

Complaint about personal guarantees feature acts or omissions dating between 2000 and 2022, indicating this is a current issue.

Of the 38 Personal Guarantee cases, one case was partially upheld due to the excessive time taken by the bank to respond to the customer's concerns and another case was successfully conciliated with the bank offering the customer a settlement. Ten cases were deemed to be ineligible for BBRS due to not fulfilling financial criteria relating to the size (in terms of annual turnover, balance sheet or

net asset value) of SMEs which are eligible for our review, as defined by our Scheme Rules.

There is also an issue of third parties who are not subject to the personal guarantee being impacted by it. These individuals have no direct relationship with the SME but have shared assets that would have to be sold if the personal guarantee were to be called upon (e.g., spouse of business owner and their shared house).

BBRS has received four such complaints. In most cases, the complainant is not a customer of the bank, and the complaint is not a business banking complaint. These customers may be eligible for the Financial Ombudsman Service, if they were acting for purposes outside their trade, business, or profession (DISP 2.7.3(1)) or the personal guarantee was signed after 1 April 2019. All four cases were referred to the Financial Ombudsman Service.

#### IV. **Fraud**

As with our previous research, fraud remains a key area of complaint for customers with 26 fraud related complaints registered with the BBRS up until 31 July 2022 with one case being upheld in the customer's favour by the BBRS. A further case was settled directly by the bank after BBRS involvement, and another was settled following mediation.

- Push payment fraud in the most common type of fraud complained about with 22 cases being brought to BBRS. A large portion of cases involve the hacking of emails or fraudulent emails being received.
- Fraud internally within the SME accounts for four of the 26 cases. In these types of cases the main point of complaint is that the bank failed to detect abnormal activity on the account.

The main complaint point raised by customers in fraud cases is that the bank breached its duty of care to the SME by not having systems in place that could have prevented the fraud from occurring. To date, this is not a complaint BBRS has found to be justified.

A second point, which is also common and is often upheld, is about the bank's lack of engagement with the customer after they reported the fraud. BBRS has upheld six cases relating to delayed responses, a lack of empathy and inadequate responses to customers' concerns and questions following the SME being a victim of fraud.

The complaint data also suggests customers believe banks do not have set processes for dealing with cases of fraud, or if there is a process in place it is not widely understood. Customers complain of being passed between departments within the bank with some suggesting they were offered little help when they reported fraudulent activity. This in turn causes further frustration and upset for customers.

#### V. **Bank administration issues**

Up until the end of July 2022, BBRS has received 16 complaints concerning administration issues. These cover a variety of issues but include:

- The bank transferring money to the wrong account or not making the transfer at the agreed time. Most complaints of this nature are ineligible for BBRS due to the small size of the business, making them eligible for the Financial Ombudsman Service.
- Not closing an account after this had been agreed leading the SME to incur additional bank charges.
- Incorrectly administering a loan account – an example of this is where the bank did not make the customer aware the monthly repayments, they were making by standing order, were lower than the contractually agreed monthly repayments. This only came to light several years later, after the company was dissolved, and the personal guarantee called upon.

This is a contemporary issue with complaints dating from 1994 onwards.

#### VI. **Closure of bank accounts with no reason being disclosed**

BBRS has received nine complaints about bank accounts being closed.

The main complaint issues are that the accounts were closed without consent or communication and in some cases without the appropriate notice periods being given. In most cases, customers made various attempts to contact the bank to seek an explanation, but one was not forthcoming.

The closure of bank accounts led to various problems for SMEs including not being able to receive pre-agreed grant funding, not being able to make loan repayments, having business transactions interrupted and delayed – all of which caused undue stress.

There may be legitimate reasons for banks closing accounts, including not operating in the business or sector the customer operates in any more or suspecting the customer of fraudulent or criminal activity.

One complaint about the closure of a bank account was upheld with the remaining nine being ineligible for BBRS. This was predominantly due to the SMEs being too small to be eligible for the BBRS and instead being eligible for the FOS.

In most cases, the act or omission complained of took place between 2020 and 2022.

#### VII. **Customers have new evidence**

BBRS has received ten complaints of this nature.

These types of complaints are generally long-standing historical complaints. In most cases, the customers complain that they were unable to take legal action due to supporting documents not being available to them as evidence of their claim.

Customers generally believe banks withheld the document and suggest that by the time the bank released the documents, the case is no longer eligible for consideration due to being time barred under the Limitations Act.

All ten cases were ineligible for BBRS. This was for various reasons including: being of a size to be eligible for the FOS; the case already having been settled; having been

through the courts; or had been considered under an excluded scheme. All cases related to acts or omissions dating between 2009 and 2019.

## VIII. **Miscellaneous**

During the review of our casework data, we identified several complaints that were not eligible for BBRS or the Financial Ombudsman Service.

Thirteen cases involved personal guarantees signed before 2019. These cases do not fall into the jurisdiction of the Financial Ombudsman Service if the individual providing the guarantee had any direct links to the business. These cases were ineligible for BBRS, as most SMEs were of a size to be eligible for the FOS. However, one such case was conciliated with the help of BBRS, and one is being considered under the Concessionary case process.

## 5. **Conclusions and next steps**

### I. **Consideration one: better communications**

This analysis has highlighted several common and recurring themes among cases that have progressed to decision stage. Among the 165 cases that progressed to decision stage, the need for clear communication, effective engagement, appropriate targeting of products and transparency around key features, such as fees, is clear.

In particular, personal guarantees feature as an area where SME customers would benefit from absolute clarity around their scope and the release mechanisms.

Fraud prevention is an area where SMEs would benefit from better communication and expectation management.

### II. **Consideration two: products and services where complaints are most likely to occur**

The review of our broader caseload, which considered all registered cases, highlighted several products and services which have attracted the focus of complaints.

These areas are chiefly: loans, property valuations, personal guarantees, fraud, administration issues and account closures.

While many of these cases could not offer deep insights, it is interesting to see the areas which most commonly attract complaints, could have benefited from clarity and communication which should be considered to avoid future complaints.

### III. **Next steps**

It is not for the BBRS to make recommendations to any particular party. Rather, as a neutral body, our intention is that these findings inform both banks and SMEs so that they better understand one another's operating environment and work together to create a better environment for SMEs. Representative bodies of both the banking industry and the SME community may wish to consider the findings of this paper together.