

BBRS Post- Implementation Review – Part 2 (PIR2)

Post-Implementation Review – Part 2

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About this Report

This report is an evidence-based snapshot review of the status of the BBRS at the time of PIR2.

This is not an Audit and should not be considered as one. No legal advice is provided in our report. The report reflects the views of the INCOPA Independent Assurance Team, based on information provided and evaluated over the PIR2 period and is delivered to the SRO immediately at the conclusion of PIR2.

This report has been prepared for and only for the BBRS in accordance with our terms of reference (Appendix A). It has not been prepared for any other person and/or purpose. We do not accept or assume any liability or duty of care to anyone except the BBRS. Anyone other than the BBRS reading this report is not entitled to rely upon it or any aspect of it unless we are expressly asked by that person in respect of a particular matter and we agree in writing to such reliance. Anyone reading this report may do so only on the basis described in the previous sentence and on the basis that, except as may be expressly agreed by us, we shall not be liable to that person in respect of the contents of or any omissions from this report.

Acknowledgement

The INCOPA Independent Assurance Team thanks the BBRS and all participants for their support, openness and flexibility in accommodating the demands of this review. All of this has contributed to our understanding and the outcome of this PIR2.

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1. Executive Summary

The BBRS was established within a confined but agreed set of Scheme Rules and legal architecture in February 2021. The BBRS was designed for an anticipated number of customers, many of whom were expected to have a significant level of complexity to their cases. We found that neither of these had materialised and that the original assumptions were over estimated. The cost of running the BBRS is significant when set against the actual customer numbers, particularly in respect of contemporary cases which are generally simpler. There are some complex cases, but these generally come within the Historical Scheme which is closing to new entrants in February 2023. The time taken and the complexity within the Customer Journey was widely criticised. The process was also considered to be responsible for unnecessarily raising some customer expectations. A quicker and simpler route to decision making was considered to be preferable.

We received a large amount of evidence and were given unfettered access to everything we asked for. We interviewed 40 of the 45 people requested (89% sign up).

We found that the BBRS is doing what it was set up to do in addressing complaints that have not been resolved by the participating banks under the Historical and Contemporary Schemes. Cases are assessed by competent people and both schemes are widely accessible. We found no evidence to indicate that the decisions on eligibility and awards reached by the BBRS are anything other than independent. For some ineligible cases, the BBRS may use the Concessionary Route, but each case requires approval by the individual bank to progress.

The board of the BBRS contains independent Non-Executive Directors (NED). The management and operation of the BBRS is independent. Acceptance of the BBRS into the Ombudsman Association as a Complaint Handler Member, with its stringent criteria on independence, provides additional assurance.

Whilst the BBRS submits regular funding requests to the banks for the normal and proper operation of the BBRS, we found no evidence to indicate that funding was being withheld or being used to influence the operation of the BBRS or the outcome of decisions. The Bank Approved Member (BAM) is a representative consortium of the banks to prevent changes to the agreed Scheme Rules and legal architecture by any party without approval.

We heard that 400+ customers registered on the Case Management System (CMS) prior to the formal launch of the BBRS. The majority were ineligible, and this resulted in a significant 'clogging up' of the dispute resolution process. Delays were then caused, affecting eligible claims. We found that subsequent steps taken to deal with the backlog and speed up the decision process for eligibility have improved operational performance although the backlog took some time to clear.

We found many concerns on the length of time taken before decisions are reached on eligibility and award as well as the total costs of the BBRS and costs per case. There is opportunity to simplify Customer Journeys with the aim of improving customer experience, customer expectation, reducing timescales and associated costs. Whilst the costs per case are universally recognised as very high, we did find some other 'qualitative' benefits of the BBRS. Examples include re-building SME and wider confidence in the 'fairness' of the banking sector; the banks themselves improving their own complaints procedures and the BBRS acting to encourage the banks to resolve cases internally. The existence of an ADR scheme such as the BBRS contributes to assurance on the fairness of the banking sector. It was noted that whilst the BBRS' future remains undecided, the assurance it delivers should not be lost.

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The primary customer journey is the Investigative Adjudication Customer Journey. We heard that there is some use of the Concessionary Route and increasing use of mediation, conciliation and bank direct settlement. The use of Customer Champions has both helped Customers through the process but also, in part, led to unrealistic expectations, particularly for ineligible complaints under the Historical Scheme.

The use of Customer Champions and the Concessionary route are additional novel features to customers and would not normally be found in other ADR schemes. We also found that considerable effort and funding had been put into promoting the services of the BBS through advertising and marketing to attract all potential customers, including improvements to the BBS website.

We note the legal complexity around complaints involving dissolved companies and the rules requiring permission from the insolvency practitioner before a case can be heard, assuming that the case is eligible in all other respects. We note that considerable time has been spent during by the Implementation Steering Group (ISG) as well as post Go Live on this matter. We did hear that complaints relating to companies going through the insolvency process and from personal guarantors relating to dissolved companies can be heard by the BBS.

Formal stakeholder engagement with the BBS is via the SME Liaison Panel and Bank Liaison Panel. The SME Liaison Panel has to date commented on some aspects that fall well outside the remit of the BBS. The recent submission to the banks however is more targeted but could be improved further by focussing on what is more likely to be achieved and looking forward to improvements to the Contemporary Scheme.

The gap between the agreed remit of the BBS and the expectations of some SME representatives has caused considerable frustration to date, primarily in relation to the Historical Scheme. This has not been helped by the inaccurate forecasting of case numbers and the initial processing of ineligible cases.

We note that it would be helpful to the BBS if the banks could do more in providing regular data on bank decisions and the outcome of direct awards.

Finally, the challenge remains to confirm the future role of the BBS and its scale, (as envisaged in April 2019), to coincide with the closure of the Historical Scheme to new entrants in February 2023. Whatever the future decision in relation to the BBS, there is opportunity to review and significantly improve the process and experience of Customer Journeys and for the BBS to play an active role in its facilitation and delivery.

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2. Summary table of PIR2 report recommendations

The following is a summary of our recommendations, for which there are detailed reasons noted in the body of the report below:

Rec No.	Report Section	Recommendation	Due By
1	7.1.2	The BBRS should prepare a paper on case volumes to confirm weaknesses in the original estimates and reset expectations on volumes of historical and contemporary cases and communicate this as a priority.	31/12/22
2	7.1.2	The BBRS should consult with the Banks and SME Liaison Panel on the future of the Contemporary Scheme in view of the low volume of case numbers. This should include consideration of the appropriate notice period for any proposed scheme closure to be given to potential customers prior to any change.	14/2/23
3	7.1.2	With the data available to it, the BBRS should consider which, if any, eligibility criteria should be amended to make the Contemporary Scheme more effective. Inflation alone since inception of an ADR scheme, would indicate that upper levels of turnover and asset value should be increased.	14/2/23
4	7.2.1	The BBRS should review the Customer Journeys to remove unnecessary steps, reduce overall timescales, reduce costs and achieve earlier decisions. This should include a review of the appeal process to identify how it may be simplified to reduce timescales and resources required.	14/2/23
5	7.2.4	The BBRS should consider improving the transparency and effectiveness of its current approach to triaging cases and (where appropriate) advancing the use of conciliation and mediation over the investigative adjudication process.	14/2/23
6	7.2.5	For historical cases relating to personal guarantors of dissolved companies that are too small for the BBRS but eligible in every other respect and which otherwise do not have a fora to be heard, the BBRS should consider putting them all forward as concessionary cases.	31/12/22
7	7.3.1	The BBRS should undertake more detailed analysis, and share the outcomes, of the time taken at various stages by each party within the Customer Journeys, to ensure they are as efficient and effective as possible.	14/2/23
8	7.4.1	The SME Liaison Panel could refine its focus on ‘what might be possible’ within the remit of the BBRS, with particular attention on the future of the Contemporary Scheme and the recommendations made in this report.	14/2/23

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9	7.4.1	The BBRS should request that each bank provides data at regular intervals on all decision letters issued.	31/12/22
10	7.4.1	The BBRS should request that each bank provides regular feedback on the outcome of directly resolved cases taken back from the BBRS.	31/12/22

3. Comments from SRO

I would like to thank the Review Team for their professional attitude throughout this somewhat complex and challenging review and for the thorough approach they took to ensure all opinions and experiences regarding the BBRS were sought out and considered.

I am also grateful to all those that gave up their time to be interviewed and the considered but often candid comments that were made.

The review team engaged fully with all interviewees and delivered at pace having considered a wealth of material from multiple sources.

The review covers in full all the requirements set out in the Terms of Reference and rightly raises several recommendations for the BBRS to consider and act on.

The review also provides helpful signposting for the BBRS and its stakeholders when considering the future of the organisation

I am particularly pleased to see that the review has recognised that the BBRS is doing what it was set up to do, albeit that eligibility criteria, and the speed of the end-to-end Customer journey would benefit from further review and simplification.

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4. Background

The BBRS was established as a voluntary scheme funded by the seven participating banks to address historical and contemporary complaints by eligible SMEs against those banks, where redress was not available from other schemes. The BBRS was designed to fit within the terms set down by the UK Finance Response to the Walker Review¹. The BBRS' Scheme Rules and legal architecture were signed off by the banks and SME community at a meeting held on 9 February 2021 with the BBRS going live shortly afterwards on 15 February 2021. The Scheme Rules identify eligibility criteria for historical and contemporary cases and allow for some otherwise ineligible cases to be considered through a concessionary route.

The service is free and is open to those SME customers who are too large to take their complaint to the Financial Ombudsman Service (FOS) but cannot afford to or choose not 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 dovetail, largely, with the appropriate FOS eligibility criteria. The Historical Scheme is open to SME customers with complaints against their banks dating back to December 2001 that are not eligible for another independent review scheme. The Contemporary Scheme looks at complaints from 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 banks established the ISG chaired by the now chair of the BBRS, comprising members from the banking sponsors and a range of SME representatives, together with observers from the FCA, FOS, HM Treasury, and the All-Party Parliamentary Group (APPG) on Fair Business Banking. The ISG adopted terms of reference for the implementation of the proposed scheme in early 2019, and the terms of reference were amended from time-to-time following discussions between the banks and the SME representatives.

As part of the final sign off for the BBRS, it was agreed by the ISG that a Post Implementation Review (PIR) of the BBRS would be commissioned. The responsibility for the PIR was handed to the BBRS at the time of its launch and the disbandment of the ISG.

The BBRS board decided that delivery of the PIR would be split into two parts:

- PIR 1 – This would focus on the establishment of the BBRS by the ISG (Concluded February 2022 and a copy of the report is available on the BBRS website)²
- PIR 2 – This would focus on the operational effectiveness and impact of the BBRS, and whether it is delivering against the scheme rules and operational plans

The review team to conduct PIR2 was appointed following a competitive tender in which 79 organisations were invited to tender, 17 of which expressed an interest. Four organisations went on to submit tenders from which the INCOPA Independent Assurance Team was selected after detailed consideration of the merits of its tender in comparison with the other three.

¹ UK Finance Response to the Walker Review into the complaints and alternative dispute resolution landscape for the UK's SME market, hereinafter referred to as 'UK Finance Response to the Walker Review'

² [PIR Report BBRS Final Issued 1.0 \(thebbrs.org\)](https://www.thebbrs.org/PIR-Report-BBRS-Final-Issued-1.0)

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5. Terms of Reference PIR2

The BBRS developed the PIR2 Terms of Reference in conjunction with its key stakeholders including Bank Liaison Panel and SME Liaison Panel representatives, consistent with good practice. It was clear that both panels would have chosen some different terms, however both parties accepted the need for compromise and signed up to PIR2.

Appendix A contains the full PIR2 Terms of Reference.

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6. Methodology for the conduct of this review

The core methodology for this PIR2 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.

In conducting our review, we have adopted the following Code of Conduct:

- **Professional** – *The review team will work and interface with interviewees in a business-like and professional manner;*
- **Focussed** – *The review team will have a strong and determined focus so that it can produce a forward-looking report that adds the maximum value;*
- **Non-Attributable** – *What is said to the review team during the review will help inform the final shape of the report, but confidentiality is paramount to a successful review outcome, so nothing in the interview process or the report will be specifically referenced or be attributed to any individual;*
- **Non-Judgemental and supportive** – *The review team will not make decisions nor make judgements on any individual in the report. The review is not a grievance or arbitration process, neither is it an audit;*
- **Objective and factual** – *We will recycle information as required to confirm accuracy. We will be receptive to report changes where facts are inaccurately recorded, but if facts are correct recommendations will not be changed;*
- **Honest** – *Report and recommendations will be based on evidence gathered during the review. The review team will report what we find, to do otherwise does not benefit the review;*
- **Mutual Respect** – *It is important that there's mutual respect between the interviewees and review teams;*
- **Timely** – *The review team will present its report findings to the BBRS immediately on conclusion.*

Our report is based on evidence that we found from documents, research and interviews. In addition to assessing performance against the PIR2 Terms of Reference, we have drawn on best practice benchmarks from the UK and internationally to inform our analysis. These include: the Ombudsman Association's *Guide to Principles of Good Governance*, *Guide to Principles of Good Complaint Handling*, *Service Standards Framework*, and *Casework Competency Framework*; the European Union's *ADR Directive Quality Criteria* (Articles 6 – 11); and the Australian Government's *Benchmarks and Key Practices for Industry-based Dispute Resolution*.

We were given unfettered access to any information we asked for and were shown every part of the CMS that we asked to see, save for the confidential customer details. The BBRS staff were very helpful in ensuring that we saw everything that we asked to see.

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7. Detailed PIR2 findings

We have structured the report to follow the PIR2 Terms of Reference as follows:

- Scheme Governance and Independence
- Operational Performance
- Customer Experience
- Communications and Stakeholder Engagement.

In order to address each of the headings and sub headings in their own right we acknowledge an element of repetition to ensure each set of findings are self-contained as well as forming the basis of our overall report.

7.1 Scheme Governance and Independence

7.1.1 An assessment of the independence of the BBRS leadership and operations.

We have assessed the independence of the BBRS under the following headings using the simple definition of independence as ‘free from any outside control or undue influence’:

- Organisational,
- Individual Case Handling and decisions; and,
- External perceptions.

Organisational

Since its establishment, the BBRS has appointed a fully functioning board of directors. This includes executive and non-executive directors. There is an appropriate level of challenge that exists within the organisation. The parties who were involved from the ISG, namely the Participating Banks and the SME community are represented within the overall governance by two advisory liaison panels. The Funding Agreement requires the banks to provide the funding necessary for the operation of the BBRS. The banks are also represented by the Bank Appointed Member (BAM) to ensure that the Scheme Rules and legal architecture remain as agreed at establishment but not to participate in its operations or decisions.

At organisational level, in part to negate some negative perceptions which have been levelled at the organisation (see below), the BBRS has chosen to submit itself to the scrutiny and judgement of the Ombudsman Association³ whose assessment criteria cover: Independence; Openness and Transparency; Accountability; Integrity; Clarity of Purpose and Effectiveness. The BBRS was successfully accepted as a Complaint Handler Member to this body in October 2022. This would be a significant factor to any organisation seeking to evidence its independence.

Where the BBRS is not entirely independent is in terms of its funding and its ability to change core principles of its setup and operations away from those agreed by ISG on 9th February 2021. The reserved Powers (via the Reserved Matters) of the banks are

³ [Ombudsman Association | Ombudsman Association](#)

The Ombudsman Association (OA) is a membership body for ombudsman schemes and other complaint handling bodies. Our criteria and standards are recognised as industry best practice. The OA was established in 1993 and includes as members all public and private sector Ombudsman schemes and major complaint handling bodies in the United Kingdom, Ireland, the British Crown Dependencies, and the British Overseas Territories.

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reasonable and necessary to meet financial governance requirements and do not directly impact the running of the BBRS or its decision making. We found no evidence that funding had been or could be used to influence the operation of the BBRS.

We have seen no evidence to indicate that the banks collectively or individually have either withheld funding or reduced it to the detriment of the proper functioning of the BBRS. Indeed, the banks have recently confirmed the BBRS's full funding request for next year's operations (January to December 2023).

Individual Case Handling and Decision Making

The BBRS is set up with a dual governance structure. It separates the role of the CEO which is effectively the operational lead, from that of the Chief Adjudicator, Dispute Resolution lead. By its very nature this separation of roles helps to ensure the independence of decision making when it comes to individual case consideration.

We were given unfettered access to examine anonymised cases in the Case Management System (CMS) run by the Centre for Effective Dispute Resolution (CEDR). Individual case adjudications are completely independent and without any interference from third parties including banks, the BBRS business operational leadership team or SME groups. A Customer Champion is allocated to aid each customer. All customer discussions are recorded and sampled to check that agreed practices are being followed. Banks have no role or say over individual adjudication decisions.

During the establishment of the BBRS, the banks accepted the concept of Concessionary Cases (each with bank approval) which do not meet the precise eligibility criteria. It is considered by some we spoke to, that the BBRS should have the right to have these confirmed without agreement from the banks. However, the organisational set up dictates that these cases whilst they can be presented by the BBRS have to be agreed by the banks involved to be considered. We note that of the 34 cases presented to date for consideration under the Concessionary Route, only 24% had been accepted, 70% had been denied, with 6% pending.

We found there was no evidence of anything other than the BBRS independence within the existing Scheme Rules. The fact, both the banks and SME bodies we spoke to had different frustrations with the BBRS, in part, demonstrates just 'how far removed' they are from being able to influence or alter outcomes. Examples are provided later in this report.

External perceptions

Industry funded ombudsman's schemes across many industry sectors are regularly criticised for their lack of independence from the industry sector that funds them. The BBRS is no different in this regard.

The purpose of the BBRS is to consider within its Scheme Rules the resolution of historical and contemporary complaints from SMEs who have unresolved disputes with the participating banks. Particularly with the historical claims and most especially with those that are deemed to be ineligible under the scheme rules, there is going to be a degree of dissatisfaction, and this is strongly felt by some SMEs.

It would be difficult to quantify the life changing challenges that some individuals and families have experienced. For some of those, there is and will remain a deep distrust of the parties they feel to have been responsible for their situations. Where the BBRS is unable (under its current rules) to help, this view becomes reinforced.

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The establishment of the BBRS and the rules under which it operates involved compromise and this has meant there are some stakeholders who will always consider the organisation to 'fall short' of a perceived ideal. Indeed, the very fact that compromises were made by all parties in developing the BBRS, reinforces the fact that a 'perfect' model considering and challenging a wider range of new complaints as well as established decisions was unlikely to succeed.

BAM is the representative body of the banks to ensure that the Scheme Rules and the legal architecture cannot be changed from that agreed on 9 February 2021 without the banks' agreement. This seems a reasonable approach. We note that the perception of the role of BAM is not really understood by many and generates an incorrect albeit minority view that the BBRS is not independent.

It should be noted that industry funding is common across the ADR sector. This generally operates to the benefit of complainants, who are provided with a means to resolve their complaints at the expense of the relevant industry. While complainants are sometimes sceptical of the independence of schemes funded in this way, there are well-established safeguards within the ADR sector to ensure that being industry-funded does not encroach on independence. We are satisfied that such safeguards are in place in the case of the BBRS.

In summary, the structure and governance in place, the independent verification, the roles and scrutiny of the NED's as well as the individual views and documented evidence we saw as part of this review process, leaves us to consider that the governance and independence of the BBRS is satisfactory. Nevertheless, we found a minority of those we spoke to hold the view that the organisation was not independent.

7.1.2 Consideration of the BBRS' performance, against the critical factors developed by the ISG and the commitments made by the banking and finance industry following the Simon Walker Review.

Estimated Complaints Volumes

When considering the performance of the BBRS against the high-level success factors and commitments arising from the UK Finance Response to the Walker Review, it is essential to understand the background.

Key to understanding this is the question of 'how many potential customers are there?' Basically, we found two polarised views.

The one view was that the demand for services would be significant and that the establishment of the BBRS would and will 'act as a magnet' to draw out those who are waiting for such a service. During our review we found that, whilst this was once a common view, it is now held by a very small minority. The view originates, in part, from a misunderstanding of the figures presented to the ISG meeting in April 2019. The other view holds that those original figures do not represent the original or current level of eligible cases which are, in fact, somewhat lower. We examine this further below.

The figures presented to the ISG meeting held on the 25th April 2019, based on data provided by the banks and data from other ombudsman schemes, indicated a 'market' of 400 to 900 total likely candidates for the Historical Scheme. To do a sense check on these figures, consultants made an assessment that there were

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about 625,000 small businesses of which 10% (60,000) might make a complaint to their bank and of those, 10% (6,000) might not be content with their bank's response. Consultants took the view that a figure of 2,100 total case numbers was appropriate. This amounts to 700 cases per year for the three years life of the Historical Scheme. We also heard that this number was increased when the start date for the Historical Scheme was moved back to 2001.

Misapprehensions continue to exist. We were quoted 60,000 potential cases by a few interviewees whereas the 60,000 figure was the potential total number of complaints to banks. We also heard an estimated figure quoted by many interviewees of 6,000 customers over the projected 3-year life of the Historical Scheme.

For the Contemporary Scheme, the April 2019 estimates based on data from banks and other Ombudsman schemes suggested that there might be between 63 and 420 cases per annum. The figure settled on was an estimate of 110 cases per annum.

Despite running the Live Pilot during the BBRS' development which demonstrated lower than expected case numbers, the figure of 6,000 cases appears to have prevailed as the basis for the 'build' of the BBRS. There was insufficient learning from the Pilot Study to reduce the total number of eligible complaints upon which the structure and resource commitment of the scheme was based.

Considerable time, effort and money has been expended because of the initial forecast assumptions in creating an organisation and systems that are significantly larger and more complicated than required. The disparity in numbers led the BBRS to commission in September 2022, a report by Bayes Business School which confirmed that the number of cases under the Historical Scheme would not exceed 1,400. Significant funds have been spent on marketing and advertising to ensure every avenue has been explored to attract customers.

At the 25 April 2019 meeting, there was an expectation that when the Historical Scheme closed, case numbers would drop significantly and that the size of the BBRS would also need to reduce. Now that the closing date for Historical Scheme applications on the 14 February 2023 is approaching, there is an opportunity for the BBRS to review its operations and pivot around the demands of a low volume of Contemporary Scheme applications, consistent with that envisaged in 2019.

The debate on complaint volumes should now be concluded by the BBRS and its key stakeholders. Expectations should be reset and the baseline assumption on volumes of historical and contemporary cases communicated as a priority.

Recommendation 1: The BBRS should prepare a paper on case volumes to confirm weaknesses in the original estimates and reset expectations on volumes of historical and contemporary cases and communicate this as a priority.

Recommendation 2: The BBRS should consult with the Banks and SME Liaison Panel on the future of the Contemporary Scheme in view of the low volume of case numbers. This should include consideration of the appropriate notice period for any proposed scheme closure to be given to potential customers prior to any change.

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Performance against ISG Critical Success Factors

Overall, in judging performance against expectation, especially considering the perception of customer numbers which prevailed at the establishment of the BBSR, all parties agree that the performance has been poor in terms of achieving a high level of outcomes (even when allowing for potential impacts from COVID-19).

The table below from a presentation dated October 2019 and we understand shared with ISG, summarises the high-level critical success factors and commitments that the BBSR was established to fulfil. Some of these have been converted by the BBSR into Service Level Agreements (SLA) with metrics for measuring operational performance.

	Delivered	Accessible	Fair	Transparent	Timely
Independence	<ul style="list-style-type: none"> Service is sufficiently developed to pilot complaints by [30 September] Clear plan to full operational delivery in place, including iterative learning across the scheme Clear communications plan by DRS and banks to ensure awareness and encourage eligible SMEs to use the service and that SME's engage with the DRS as a consequence Website and contact centre live to manage queries and receive claims Simple – scheme to be easy to understand and use 	<ul style="list-style-type: none"> Clear eligibility criteria and relevant customers aware of the Scheme Scheme is easy to access on a timely basis, with no unnecessary barriers Make it simple to use, especially for vulnerable customers in terms of those who might struggle with the process Mechanisms in place to provide flexibility for boundary cases Low fall out rate of registered complaints 	<ul style="list-style-type: none"> Banks are demonstrably bound by the service Expert, rigorous and consistent decision making Majority of cases settled without appeal Determinations are made by competent individuals Decisions to be fair and consistent. Differences with other schemes/wider environment to be understood where they are identified Published appeals criteria 	<ul style="list-style-type: none"> Rationale for decisions and redress is communicated in a clear and understandable way Parameters for appeal are clear, transparent and reflect the power imbalance of the customer All communications are clear, fair and not misleading Differences between initial decision and appeal are clearly articulated Award payments to be tracked both within binding limit and above 	<ul style="list-style-type: none"> Case registration is straightforward SLAs for case completion established, published and delivered (including exceptions) covering decisions and appeal elements Customers are notified of factors that could accelerate resolution Process can quickly respond to changes in volumes, without compromising consistency
	<ul style="list-style-type: none"> SME representatives advocate the Scheme as independent and a solution to their concerns Pledge card published outlining committed behaviours of scheme participants 	<ul style="list-style-type: none"> Appropriate support to register complete complaints without needing to employ advisers Review cycle with customer groups to adapt where necessary 	<ul style="list-style-type: none"> Scheme is both independent and is perceived to be independent Customers feel they have been heard and listened to throughout the process 	<ul style="list-style-type: none"> Information sufficient for the customer to understand the determination to be shared Scheme details are transparent and publicly available and there is a feedback mechanism for customers and their representatives Publication of adjudicated decisions and appeals 	<ul style="list-style-type: none"> Customers are clear on status of their case at all times Most vulnerable cases are prioritised (i.e. close to bankruptcy) No timing bias in communicating outcomes

Looking in more detail against each of the main headings above, our findings are as follows:

Delivered – The BBSR is established and functioning. It has updated and simplified its website. It has made significant efforts to reach out and communicate to potential SME customers including advertising campaigns in 2021 and 2022. In addition, we note the upgrade work on the website, with its accessibility improvements. It would be difficult to describe the principal customer journey which we understand has up to 30 touch points as being simple to use and understand.

Accessible – The BBSR was conceived as operating a widely accessible service whereby complaints could be registered in many ways to suit the Customer. There is support available in the role of the Customer Champion which is applicable to all applicants. We are not aware that this is available in any other ADR schemes. The BBSR was established with fixed eligibility criteria. We understand that many perceive these to be too rigid and prescriptive although they were signed off. Many of those who first apply 'fall out' because they do not fit the eligibility criteria which are visible on the BBSR website. The Concessionary Route for cases that fall outside the eligibility criteria, but which the Chief Adjudicator considers to have merit, has been limited in use with 70% of the cases being proposed not being accepted by the banks for further consideration. Although on the positive side, it could be seen as the opportunity for up to 30% of cases to be successful, which the banks did not have to consider. Concessionary routes are also not available in most other ADR schemes.

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The website update (noted above) includes a ring back option. An anonymous survey is used to understand customers better in relation to accessibility and diversity. In addition, in August 2022, 72% of customers confirmed they were able to complete their applications without support from the BBRs.

Fair – We have not seen anything other than fairness in decision making. There has been success with direct settlements with banks, but this is difficult to assess based on fairness as there is no formal feedback loop to the BBRs (this is consistent with normal business practice when a deal is reached). There is a published appeals process, but only a very small number have been upheld. Despite a documented Competency Assessment process applied to case assessors, and the inclusion of peer supervision and Quality Assurance sampling, the goal of ‘perceived independence’ remains elusive amongst a small number of those we spoke to.

Transparent – The BBRs publishes a range of casework data including monthly statistical updates, quarterly insight reports, customer satisfaction reports, and organisational performance data (such as annual reports). The Scheme Rules are publicly available, including clear information about appeals. Also published is detailed information about how the organisation is governed and what customers and stakeholders can expect from it. Customers can complain about the service they have received from the BBRs and a summary of the outcomes of those complaints is published. In relation to casework decision-making, the BBRs has produced an insights report which provides an analysis of key themes arising in casework up to 30 July 2022. This could provide feedback to both SME stakeholders and participating banks about casework decisions and important themes identified across cases. Despite the low volume of cases, useful and meaningful points have emerged from this analysis. An analysis of a sample of decided cases, showed that decisions were based on a clear rationale; were taken following a fair decision-making process and were clearly communicated to both parties simultaneously.

Timely – The average time taken to process a case can be between 32 weeks and more than 60 weeks. Whilst there is a clear requirement for due process, careful consideration, and thorough analysis, it can take a significant time to confirm eligibility. Several people we spoke to referenced the ‘raised expectations’ at the beginning of this process, exacerbated with the time taken in many cases to be assessed as non-eligible for the scheme. We found very little evidence to support the scheme as being timely, although it was pointed out that ‘it performed within its current SLAs’. There were plenty of concerns expressed in this regard (including the August 2022 survey which showed only 56% considering the application process to be simple to complete) leading this to be an obvious candidate for process improvement and streamlining.

In summary, we found that the lack of case volume, the restrictions on eligibility, the limited use of the Concessionary Route, the cost to run and the ‘small numbers’ of actual awards, mean that perceptions relating to the BBRs, override the areas and the presentation of where it has achieved success.

Recommendation 3: With the data available to it, the BBRs should consider which, if any, eligibility criteria should be amended to make the Contemporary Scheme more effective. Inflation alone since inception of an ADR scheme by Walker, would indicate that upper levels of turnover and asset value should be increased.

BBRS Post- Implementation Review – Part 2 (PIR2)

7.1.3 An assessment of whether the BBRS is adequately funded and that the funding model supports an independent, efficient BBRS.

The prevailing assumption in the design and sizing of the BBRS was that case numbers would be in the region of 6,000 over 3 years. We have dealt with the inaccuracy of this earlier in this report.

The establishment cost of the BBRS we understand was circa £23m and the current annual running cost is around £8.5m. These are not insignificant amounts.

Whilst there is a significant element of 'fixed cost' for operating the BBRS, almost everyone we spoke to said that the system was very expensive especially relative to the small numbers. Most recognised that the system was gold plated. The necessity was partly driven by the banks' strict requirements on data security.

As noted earlier, we have seen no evidence to indicate that the banks collectively or individually have either withheld funding or reduced it to the detriment of the proper functioning of the BBRS. Very few we spoke to felt anything other than the fact that the organisation was very well funded, with a prevailing view that given the outputs it was expensive and process rationalisation and savings need to be made.

Within the wider ADR sector, schemes can struggle to secure and maintain adequate funding to meet demand for their services. The BBRS is in the unusual position of receiving the funding that it requires. In this context, there are concerns about the cost effectiveness of the scheme and its value for money. According to the Ombudsman Association, "*... a scheme can be said to deliver value for money if the outputs and outcomes it achieves merit the running costs of the scheme.*"

On the other hand, the lower-than-expected volume of cases and high levels of funding have allowed the BBRS to provide a service to customers that exceeds that which would be routinely available in other ADR settings. The individualised and highly supportive service provided by Customer Champions, the BBRS' approach of seeking to explore all opportunities for considering a case to be eligible, and the highly participative nature of the dispute resolution process are all features that would be difficult in a more constrained cost environment.

While the current disproportionate level of funding to the number of cases resolved may not be desirable, it is worth noting that it has been of benefit to customers of the scheme to date.

BBS Post- Implementation Review – Part 2 (PIR2)

7.2 Operational Performance

7.2.1 Review of the Customer Journey performance including volume, time taken to progress cases, costs, and the accuracy and confidence in determinations.

Cases are registered in the PEGA CMS by the customer or by the Case Officer. The customer is always assisted by a Customer Champion whose role it is to help the customer navigate the Customer Journey process. The Customer Champion is in regular contact with the customer. The Case Assessor does not have any direct contact with the customer or bank, with the intention of remaining independent of both.

During the development of the BBS, a Live Pilot was conducted with data from 48 cases out of the 295 that expressed an interest. The Live Pilot found that of the 48 cases, 22 were found to be unsuitable due to insolvency or other complexity and 13 others ineligible. Of the remaining 13 cases, two settled before draft determination stage and another seven reached draft determination. Four of these involved 'push payment fraud'; two were complaints about fixed rate loans and one was a complaint about customer service failure.

Unfortunately, the lessons from the Live Pilot in terms of total number of cases and the proportion that were eligible does not appear to have been taken into account in the final go live version of the BBS. We heard that the 295 data sets from the Live Pilot were introduced into CMS including all the ineligible cases. These ineligible cases caused a considerable backlog and delays within the BBS during its first months of operation, as they went through the two-stage appeals process following rejection from the formal eligibility assessment. To sort out the problem with ineligible cases blocking up the system, the BBS acted in the following two ways:

- An accelerated eligibility assessment was introduced by obtaining relevant customer data and indicating to customers their likelihood of meeting eligibility criteria at an early stage.
- De-registering the numerous cases where there had been no contact from the customer after a substantial period of time.

We heard a variety of views on the benefit or otherwise of the Customer Champion. Some interviewees expressed the benefit of there being someone to help them through the process. Other views were that the Customer Champion got in the way of the application and did not add anything. There were some reports of the Customer Champions giving customers unrealistically optimistic expectations, and some suggested that the name 'Customer Champion' might in itself be misleading and raise expectations.

While the implementation of Customer Champions and their effectiveness in practice was questioned by some, they are – in principle at least – an innovative and potentially useful means of ensuring complainants are supported, particularly where they may be vulnerable. There is increasing recognition in the ADR sector that complainants, in certain settings, require support to make complaints effectively and to feel confident in approaching and using complaint systems. This is an area where practice is developing, and the Customer Champion approach represents an interesting experiment in providing additional support and assistance to customers. We return to this point below when discussing the accessibility of the BBS.

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We found that CMS is an appropriate system for handling complaints of this nature but is capable of and was set up to handle much larger volumes.

During the review, we were given access to CMS and the detailed associated Management Information System. In addition to seeing the path of individual cases going through the system, we could see the total case numbers, the numbers that did not meet each of the evaluation criteria, the number of cases that had undergone the detailed eligibility assessment, the number which had reached a decision and the number of cases that had gone through each of the appeals processes for eligibility assessment and decision.

The BBRS recent customer insight on cases that are reaching decisions stage:

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

Valuation of Property – 17 complaints about the valuation of property are closely linked to complaints about personal guarantees

Personal Guarantees – 38 personal guarantees remain most prevalent complaints.

Fraud – Fraud remains a key area of complaint for 26 customers

Bank Administration Issues - 16 complaints concerning administration issues and 9 concerning closure of bank accounts with no reason being disclosed.

Customers have new evidence – 10 complaints of this nature.

We were pleased to find that the BBRS regularly shares this level of customer insight with both banks and SMEs so that they understand better one another's operating environment and work together to create a better environment for SMEs.

The BBRS publishes customer insight summary data on a regular basis on its website⁴.

There is significant variation across the ADR sector in relation to target dates for decisions and in relation to actual performance. This reflects differences in the nature and complexity of the disputes being dealt with, as well as variations in mandates, scheme rules, approaches to dispute resolution, and stakeholder requirements. In 2021/22, the BBRS' closest comparator, FOS, resolved cases in a median time of 6.4 months from case conversion (i.e., from the time at which an eligibility decision had been reached).

The Investigative Adjudication Customer Journey is the primary route for all cases. It is lengthy and complicated with around 34 steps. We heard numerous comments about the time taken to reach an eligibility assessment and a preliminary determination. Based on this data, a particular bottleneck appears to be in relation to eligibility assessments, which should be a relatively straightforward aspect of casework compared with determining the substance of cases.

There is an understandable concern, particularly amongst the banks, that these lengthy timescales are providing a poor customer experience, prolonging the uncertainty that the customer faces with all the impacts that entails, including financial hardship, increased risk

⁴ The most recent report is available at: [BBRS Reporting Data – as of the close of business 30 September 2022 - BBRS \(thebbrs.org\)](https://www.thebbrs.org/reports-and-publications)

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of bankruptcy and mental anguish. Some of the BBRS customers remain customers of the bank to which the complaint relates, and the banks are concerned about the poor customer experience.

During the review, we requested and were provided with data for both the Historical and Contemporary Schemes that shows the average times per month taken for each part of the Customer Journey. We were able to see on average how long it takes each of the customer and bank to provide documents/information and how long CEDR and the BBRS take to process claims as well as the length of time the case sits inactive within CMS. This information will be useful to the BBRS in reviewing its operations to improve efficiency, reduce timescales and costs. We also heard that some ineligible customers are using every opportunity to stay in the system in the hope that the scheme rules will change so that their case will become eligible and be heard.

We heard that the Customer Journeys and, in particular, the primary Investigative Adjudication Customer Journey are not part of the Scheme Rules or legal architecture although some elements of those journeys are. For example, the Scheme Rules set timescales for specific activities. This gives the BBRS the opportunity to simplify Customer Journeys to make them more efficient although care will be needed to retain all of those elements that form part of the Scheme Rules.

There are no timescales that require either the bank or customer to provide documents or information within specific timescales for either the Historical or Contemporary Schemes. However, the BBRS Case Progression Framework requires case workers to follow up with customers and banks typically after 7 or 14 days.

The eligibility assessment process can be lengthy, typically 34 weeks. To help speed up the eligibility assessment, the BBRS now asks for additional information at the outset of the process to maximise the opportunity to provide an early indication on eligibility. This was introduced as a pragmatic step to unclog the system of the large number of ineligible cases. We did hear that the BBRS philosophy is to ensure that the customer is heard and given every opportunity to present their case, almost irrespective of time and cost. We also noted however that some customers on the historical scheme have deliberately attempted to stay in the system for as long as possible despite not being eligible. Customer Champions have also improved the management of customer expectations with regards to eligibility.

The Customer Journey process could be shortened without sacrificing fairness. Particularly in the Contemporary Scheme, the SME and the bank will be dealing with a recent issue in the internal complaint process. Many of the procedural steps around drawing up formal complaint points and exchanging information and providing opportunities to comment could be dispensed with.

The BBRS interviewees told us that for the Contemporary Scheme, there are several changes that could now be made to shorten the process by amending the Customer Journey to remove some of the steps that do not add much value, including the appeals process that currently requires appeals to be heard by a panel of three Case Assessors. This appeals process is important; however, it is considerably more complex and resource intensive than would be the norm in the ADR sector. Changes to the Customer Journeys could usefully incorporate other ADR options, explicitly at the front end, immediately after the initial eligibility assessment. We are of the view that there are significant opportunities to simplify and shorten the customer journey and reducing time and cost.

The current appeal process is over-elaborate. There still needs to be a process by which the initial decision (eligibility or award) can be challenged and reconsidered but it could be

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much simpler. The FOS model of provisional view/ opportunity to comment/ final determination is more light touch and suited particularly to the less complex cases that will be coming through the Contemporary Scheme.

Indeed, it is now common for ADR schemes to use a variety of approaches to ensure “early resolution”. Common bottlenecks include difficulties confirming complaints and securing initial complaint files and the existence of complex jurisdictional questions that may slow down initial casework progression. A focus on identifying and addressing such bottlenecks is key to enhancing the potential for early decision-making.

More broadly, the provision of a greater range of informal options for the resolution of complaints can lead to quicker outcomes. Not all complaints will require the BBRS to undertake a lengthy investigative process, nor do they require a formal mediation process. Early resolutions can be achieved using a variety of complementary techniques including early neutral evaluation, brokering, shuttle negotiation, and the use of non-binding provisional views. The BBRS’ use of conciliation, which remains in its infancy but is growing, represents a similar approach and this is discussed below.

Lengthy timescales are clearly inefficient, costly, and insufficiently customer focused. That said, the BBRS’ current dispute resolution is notable for its very high levels of procedural fairness, transparency, and potential for participation by both parties. These are important features of the scheme, which conforms to very high standards when compared with national and international benchmarks.

Recommendation 4: The BBRS should review the Customer Journeys to remove unnecessary steps, reduce overall timescales, reduce costs and achieve earlier decisions. This should include a review of the appeal process to identify how it may be simplified to reduce timescales and resources required.

In relation to the accuracy of, and ability to have confidence in, the BBRS’ decisions, we found that the scheme is operating well. The investigative adjudication process, while it is currently overly lengthy, allows for the full ventilation of the dispute by both parties. Cases are dealt with by appropriately qualified and supervised staff and are subject to a robust appeals process. Staff are provided with appropriate training and a range of guidance documentation to support the delivery of high-quality decision-making (e.g. guidance on how to treat evidence, guidance on communication decision, guidance in relation to dealing with particular types of complaints, etc.)

Appeals are dealt with by a panel chaired by the Chief Adjudicator. Both of the Chief Adjudicators appointed to the role to date have impressive CVs and senior legal expertise and provide confidence as to the accuracy and robustness of the BBRS’ decision-making. Data on appeals show that 63 appeal notices have been received so far. All of the appeals (eligibility or decision) determined to date (48) have been denied with the exception of one case. This suggests that case assessors are determining cases fairly, according to the scheme’s criteria (fair and reasonable, law, good industry practice) and in line with the Chief Adjudicator’s expectations.

The BBRS also operates an extensive quality assurance process. This involves regular peer review of case assessors’ work and a mechanism to provide for feedback (see section 6.2.6 below where these arrangements are discussed in more detail). As part of our review, we examined a sample of decided cases, reviewed cases that had been subject to appeal, and examined feedback provided in the course of quality assurance processes. We found that the decision-making process was robust and produced accurate decisions.

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7.2.2 Review of overall case volumes and proportions deemed eligible/ineligible, including differences in the original scheme forecast, consequent stakeholder expectations, subsequent research, and actual volumes.

(See our findings on Operational Performance earlier in this report)

The BBRS must comply with the Scheme Rules that were set by ISG. This means the BBRS can only assess eligibility, process complaints, and deliver adjudications as provided for by the Scheme Rules.

The BBRS is not, and cannot become, an appeals body for other organisations where complaints have been made. The BBRS cannot examine the decisions made by FOS, the courts, an excluded scheme or where there has already been a contractual settlement with the banks. However, the BBRS does provide adjudication and mediation services for eligible customers who are not eligible for one of these institutions.

There are several benefits arising from the BBRS in addition to handling/resolving cases. These include the potential encouragement for banks to improve their own complaints systems. The BBRS also acts as a deterrent to banks so as to encourage them to solve complaints internally as far as possible rather than allow them to come to the BBRS. The BBRS has a role in re-building SME and wider confidence in the 'fairness' of the banking sector. The existence of an ADR scheme such as the BBRS contributes to that assurance. It was noted that whilst the BBRS' future remains undecided, the assurance it delivers should not be lost.

In relation to the eligibility criteria, we heard from some sectors of the SME community that these were overly restrictive. In response to this view, the BBRS has recently issued a document clarifying the process through which any changes to the Scheme Rules could be delivered. It is now up to stakeholders to make and agree a case for change.

In considering any future changes to the scope of the BBRS, reference should be made to good practice benchmarks. Restricted jurisdictions tend to be a problem across the ADR sector, with schemes spending a disproportionate amount of time explaining why they cannot deal with particular disputes. This creates raised expectations followed by disappointment and dissatisfaction for complainants.

As a matter of principle, it is good practice for schemes to be able to deal with most complaints in the relevant industry or service sector covered by the ADR scheme. We note that as the UK moves into recession, there is a likelihood of more complaints against banks by SMEs and the opportunity for a greater number of cases to come to the BBRS under the Contemporary Scheme.

7.2.3 Review of the accessibility of the scheme to all potentially eligible groups.

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. Each has its own eligibility criteria that aim to dovetail with those of FOS. Applications for the Historical Scheme close on the 14 February 2023.

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Both schemes were always intended to be accessible to customers to make their complaints over the phone, online, by email and by post. The Customer Champion is there to help customers make their claim. We note the recent development that when users have used the online eligibility tool and then left the site without registering a complaint, sufficient user data is captured to offer a call back option.

The Historical and Contemporary Schemes are accessible to SMEs who meet the eligibility criteria set out in the Scheme Rules. Most of the eligibility criteria are set to be consistent with those explicit and implicit in the UK Finance Response to the Walker Review and avoid the following:

- Being an appeals body for other resolution fora.
- Overlapping with FOS.
- Conflicting with the laws of England, Wales, Scotland and Northern Ireland.

The BBRS has engaged with FOS to develop a 'warm' transfer process so that the BBRS registrations that do not meet the BBRS eligibility criteria are transferred across to FOS and vice-versa. We heard that in the region of 40 cases have been received from FOS and in the region of 20 cases sent to FOS.

There remains a deal of concern from some parts of the SME Community that the system is perceived as flawed because, so few cases are being registered and that the Scheme Rules are unreasonably restrictive.

We note the legal complexity around complaints involving dissolved companies and the rules requiring permission from the insolvency practitioner before a case can be heard, assuming that the case is eligible in all other respects. We heard that complaints relating to companies going through insolvency and from personal guarantors of dissolved companies can be heard by the BBRS.

While there is currently limited information about the demographic characteristics of customers, such that an assessment of the scheme's accessibility is empirically challenging, various aspects of the BBRS' design and operation conform to high standards in relation to accessibility. For instance:

- The BBRS is accessible via all channels of communication and there are few procedural barriers to accessing the scheme. Arrangements exist to ensure that the scheme is accessible to those with language or literacy issues. The BBRS' Vulnerability Policy Statement and Reasonable Adjustments Guidance conform to good practice standards.
- The one-to-one service provided by Customer Champions, who help customers formulate complaints, navigate the system, and explain the dispute resolution process is particularly noteworthy in terms of ensuring that the BBRS provides an accessible service. While there were mixed views about how they are operating in practice (see above), in terms of ensuring that those who would otherwise struggle have easy access to the scheme, Customer Champions provide obvious accessibility benefits.
- Other aspects of the scheme also appear to us to meet high standards in relation to accessibility. For instance, we heard that Case Assessors were going the extra mile to see whether complaints could be considered within the scheme. We also note that the Concessionary Case process provides an additional route to redress that would not exist in many other ADR contexts.

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- As with Customer Champions, there may be questions around whether the existence of Concessionary Case process raises expectations that cannot, realistically, be met in practice.

In terms of public awareness of the BBRS, particularly among hard-to-reach groups, we are not aware of any data currently being available. We would encourage the BBRS and SME Liaison Panel members to seek to maximise their inclusion in the ongoing update and extension of customer information, website accessibility and additional means of promotion. Awareness of ADR schemes is often challenging and the most effective means of ensuring participation by hard-to-reach groups lies in securing commitment of the industry to promote the scheme directly to customers at various points in the process (e.g., pre-contract, within contractual terms and conditions, as part of any complaint handling process).

There is also increasing recognition in the ADR sector of the value in schemes seeking to influence the upstream complaint handling processes of organisations they oversee, with a view to helping ensure that most complaints are resolved fairly by organisations and that external redress is not required. It has been remarked that for most customers ‘the corporation is the courthouse’ in that they may complain to the organisation but are unlikely to ever reach an ADR scheme.

Seeking to influence good practice within organisational complaint systems is therefore essential to enhancing the accessibility and fairness of redress. The BBRS has taken some steps in this direction through the insights report and more developments may be possible in this area in future.

7.2.4 Review of the use of non-adjudication dispute resolution methods in terms of both degree of use and performance.

The Investigative Adjudication option that currently forms the primary Customer Journey for dispute resolution does not refer to mediation or conciliation at any step in the process. There is a separate flowchart for mediation once that option is agreed by both customer and bank.

We heard that the Customer Champions and Case Assessors look out for cases that might be suitable for other ADR methods and then attempt to initiate either formal mediation (whereby a Mediator is appointed by CEDR) or conciliation whereby the Customer Champion acts as the go-between the customer and bank, to reach a resolution. We understand that one of the reasons for the BBRS sub-contracting to CEDR was that CEDR’s core business is ADR and hence best placed to use ADR to resolve disputes. There has been a slight increase in use of mediation and conciliation routes. As of September 2022, 27 cases had moved to mediation or conciliation, compared with 21 cases as at 30 June 2022.

We heard that customers like the use of mediation and conciliation for a variety of reasons, including that it brings customers into contact with the banks. We were advised that the banks are not so keen on mediation because it requires a bank officer of sufficient seniority to take part in the mediation who can make decisions without recourse and whom is also sufficiently familiar with the case. In this regard, the use of conciliation approaches – which can take place asynchronously – may address the concerns of those who have to take account of decision-making hierarchies when settling cases.

The criteria by which complaints are identified for either conciliation or mediation are not currently clear. Drawing up formal criteria may help ensure that a greater proportion of cases are identified as being suitable for diversion to these processes. In addition, while there is an

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organisational flowchart for the 'Mediation Customer Journey', the same is not true of the conciliation process. Currently, the outcomes of non-adjudicative ADR are reported rather briefly within quarterly insight reports published on the BBRS website, with few details provided about the nature of any settlements achieved.

It is also notable that mediation and conciliation are processes that currently take place out with the Scheme Rules (brief mention is made in section CD2 of the Scheme Rules). If these processes are to become a more important feature of the BBRS' work in future, the mediation and conciliation processes may need to be set out explicitly within the scheme rules themselves, or within a separate document, in order to ensure transparency and provide clarity with regard to the operation of these processes for public viewing.

In relation to the conciliation process, this is currently undertaken by Customer Champions. As noted above, we were told by some interviewees that this job title could be misleading/raise expectations. In relation to the conciliation process, it is particularly problematic, as it implies that the Customer Champion is acting on behalf of the customer rather than acting as an honest (and impartial) broker between the parties.

If the BBRS wishes to increase the use of non-adjudicative ADR as we recommend in this report, there may need to be consideration of who is best placed to undertake the conciliation process and whether the roles of customer support/ advice and conciliation should be carried out by the same person. The Customer Journeys and training materials are updated to reflect whatever is decided upon.

Recommendation 5: The BBRS should consider improving the transparency and effectiveness of their current approach to triaging cases and (where appropriate) advancing the use of conciliation and mediation over the investigative adjudication process.

7.2.5 An assessment of concessionary case activity and supporting processes.

The use of Concessionary Cases (referred to as Boundary Cases during the earlier part of ISG) was not originally envisaged or referred to in the UK Finance Response to the Walker Review.

The introduction of Concessionary Cases was a compromise on the banks' part. It allows the Chief Adjudicator to put forward cases (that have normally not met the eligibility criteria) on a case-by-case basis to the banks. For each case the individual bank then decides whether it will allow the case to be heard. As noted above, this process is unusual and, while seeking to maximise accessibility to redress, may also unduly raise expectations and contribute to dissatisfaction among SMEs if the rate of acceptance (see below) remains low.

Approximately 24% of the Concessionary Cases put forward by the Chief Adjudicator have been accepted by the banks. In several Concessionary Cases, the bank has decided to review the case themselves and make an award without further recourse to the BBRS. Whilst some parts of the SME community see this as a negative, others see it as a positive concession by the banks to hear cases that have not met the eligibility criteria.

We heard that there is a small group of historical cases relating to personal guarantors of dissolved companies that are too small for the BBRS but are ineligible for FOS so do not have a forum to be heard in.

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Recommendation 6: For historical cases relating to personal guarantors of dissolved companies that are too small for the BBRS but eligible in every other respect and which otherwise do not have a forum to be heard, the BBRS should consider putting them all forward as concessionary cases.

7.2.6 Consideration of the competence, independence and capability of key roles delivering the customer journey, including service delivery partners.

We have been given access to the BBRS training and competency documents for Case Assessors and Customer Champions.

The Chief Adjudicator performs periodic reviews through Quality Assurance Evaluation, ensuring sampling of cases across Case Assessor personnel and case types. The Quality Assurance Evaluation is recorded against the competency record of the Case Assessor.

The non-Case Assessor roles involved in case management – Call Centre, Case Handler, and Customer Champion - have a central role in the success of the service – representing the service to customers and having a significant bearing on the efficiency and effectiveness of case management. The pool of people in these roles and their competency are managed by CEDR Head of Customer Champions, who determines competency for the role and monitors Customer Champion performance.

The arrangements for competence, including individual competence, are periodically monitored by the Director of Quality and Change, through management information (of case progression etc), and consideration following customer feedback and/or complaints.

We have found no evidence to question the competence and capabilities of the staff involved in case handling and decision making.

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7.3 Customer Experience

7.3.1 An assessment of the customer experience for the BBRS customers – regardless of eligibility. This should include, but not be limited to; the time taken to manage cases, accessibility, customer expectation management, customer communication and handling of eligibility assessment.

The BBRS was never set up to be an appeals panel for the courts, FOS or other resolution schemes. Continued attempts by the SME Community to try and challenge this get in the way of making progress on potential improvements to the BBRS and could be putting off genuine complainants from using the BBRS.

When a bank decides on a customer complaint, it concludes its letter to the Complainant with the advice that if they are not satisfied with the decision, their complaint might be eligible for consideration by FOS or the BBRS.

The current Investigative Adjudication Customer Journey was developed by design working groups and signed off by ISG. It was developed in difficult and at times adversarial circumstances during the Covid lockdown. Whilst it does what it needs to, it is lengthy and complicated.

Customer Champions were included in the Customer Journeys to assist the customer through the process, provide a personal service and go some way to ensuring that the customer is heard, particularly in respect of Historical cases. In most cases the Customer Champion appears to have been helpful, however there were cases where the customer considered that the Champion had raised expectations of a successful outcome. If there is a review of the Customer Journeys, there may be an opportunity to replace the individual Customer Champions with a single Helpdesk.

As noted earlier, we heard that some customers like the use of mediation and conciliation for a variety of reasons, including that it brings customers into contact with the banks. We were advised that the banks are not so keen on mediation because it requires a bank officer of sufficient seniority to take part in the mediation who can make decisions without recourse and whom is also sufficiently familiar with the case.

We heard that banks had taken back some cases that they had initially rejected and subsequently made awards. The BBRS does not have any information on those awards. We heard some concerns that the customer may not be aware of whether the award made by the bank in this way was fair and reasonable. However, our view is that if an award is offered, it is up to the individual customer to decide whether it is fair and reasonable and whether they should agree to any non-disclosure agreements. Non-disclosure agreements are normal practice for mediation.

The purpose of the BBRS is to consider within its Scheme Rules, the resolution of historical and contemporary complaints from SMEs who have unresolved disputes with the participating banks. Particularly with historical claims and most especially with those that are deemed to be ineligible under the BBRS's rules, there is going to be a degree of dissatisfaction. Consequentially, dissatisfaction is strongly felt by some SMEs.

The BBRS carries out quarterly Customer Satisfaction surveys and publishes these on its website. The Customer Satisfaction questionnaire used by the BBRS covers the process of setting up a case and satisfaction with the substantive decision. These are rather limited measures, which do not include other aspects that commonly feature in surveys measuring

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satisfaction with complaint handling such as: satisfaction with early resolution processes; satisfaction with investigative processes (including procedural fairness, respectful treatment, opportunities for participation, expertise of the adjudicator); and satisfaction with the timeliness of the overall process.

Currently, the customer satisfaction data show that most customers are generally satisfied with the case set-up process: in the September 2022 Quarterly Customer Satisfaction Report, 80% of customers reported having received a great deal of help from a Customer Champion, while the remaining 20% reported they had been helped somewhat. Satisfaction with the application process and the process of submitting supporting documentation was less high: 56% of customers agreed or strongly agreed that the application process was simple; while 44% of customers agreed or strongly agreed that the process of submitting supporting documents was simple.

There have not been sufficient responses from customers who have completed the process and been given a decision to say anything meaningful about satisfaction with decision-making at this time.

A further source of customer insight data comes from complaints that have been lodged by customers about the service provided by the BBRS. 17 complaints have been received between the launch of the BBRS and September 2022. None of these complaints has been upheld to date. The service complaints made to date and responses were examined during this review. This examination revealed that the service complaints process was operating effectively and reaching fair decisions on complaints.

It is clear from our interviews with some members of the SME community that there is dissatisfaction with aspects of the BBRS scheme, particularly where customers have been excluded on the grounds of eligibility. However, it is not clear how far these views are anecdotal and how far they reflect the experiences of those who are making use of the BBRS. Collection of more extensive customer satisfaction data may help provide a more accurate perception of satisfaction with the scheme and highlight what is working well and less well.

Indeed, some of the concerns around eligibility relate to fundamental aspects of the scheme design. While these highlight issues that stakeholders need to address, they do not tell us much about the operational performance and experiences of customers using the scheme as it is currently designed.

In summary, current customer satisfaction data reveals that: there is scope for improving the simplicity of the application and document submission process; and there is a high level of satisfaction with the help provided by Customer Champions. More data will be available in due course about satisfaction with substantive decisions, although experience in the ADR sector suggests that satisfaction with outcomes is often determined by whether a case is decided in a customer's favour. Insights are often limited.

The customer satisfaction data is currently inadequate for a full understanding of customer experiences of the schemes. It focusses on the start and end of the process and misses the main section in between.

As a result, there would be benefit in collecting data that seeks to measure other aspects of the process, as noted above. There would also be benefit in ensuring that future approaches are able to capture satisfaction with conciliation and mediation processes, where these are used.

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Recommendation 7: The BBRS should undertake more detailed analysis, and share the outcomes, of the time taken at various stages and by each party within the Customer Journeys, to ensure they are as efficient and effective as possible.

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7.4 Communications & Stakeholder Management

7.4.1 Consideration of the performance and contribution of the Liaison Panels, and wider customer and stakeholder communications.

Contribution of Liaison Panel

The primary vehicle for stakeholder input to the BBRs is centred on the two Liaison Panels. Both panels are set up to act as independent and transparent advisory bodies to the BBRs, forming part of a two-way feed-back loop between the BBRs and the member banks/SME community respectively. The aim is to encourage discussions around and understanding of key issues and changes to policy and practice that may be of relevance in the context of the BBRs' operations.

The Bank Liaison and the SME Liaison advise the BBRs but are not involved in decision-making or in case assessment. The key objectives for each of these panels are summarised at Appendix C of this report.

We found that the Bank Liaison Panel has a range of representation from the participating banks, in terms of roles and functions, generally orientated towards the 'customer complaints/ satisfaction functions. Whilst there is a range of seniority within the Bank Liaison Panel it was noted that any discussions of substance are taken back within the individual bank and to Bank Working Group (BWG – a representation of the 7 banks) for clarification and agreement. The minutes of the Bank Liaison Panel, BWG and meetings are not published.

The task for the SME Panel is considerable. The SME community holds widely differing views on a range of subjects including the role of the BBRs. They are fiercely independent in these views which reflect a wide spectrum. Put simply there is 'no single voice' amongst SMEs. We understand this was reflected throughout establishment of the BBRs and continues to the present. It means that the SME Liaison Panel will never meet the needs of everyone. The minutes of the SME Liaison Panel are published on the BBRs website at the request of the Panel.

In summary, we consider that the Liaison Panels do present a visible point of engagement with the BBRs. Indeed, we understand that they are a requirement of the ISG in the establishment of the BBRs. However, we note the time that both parties spend in isolation from each other.

The heart of the BBRs 'raison d'être' is around reconciliation of customer complaints, overall service and customer improvements and greater customer awareness to risks and obligations. Whilst individual cases are outside the purview of both groups, there may be benefit in exploring a joint liaison panel, or at least a joint session periodically.

At the time of the review, the SME Liaison Panel had recently submitted a paper to the banks asking for several changes to the Scheme Rules, including changes to specific eligibility criteria.

To provide a better understanding of the impact of each change proposed by the SME Liaison Panel, it would be helpful if BBRs could use the data in its possession (and the SMEs if they have any data) to estimate the number of cases that might become eligible. This will give context for any subsequent discussions. If the potential number of cases is low,

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there possibly could be existing ways of handling some of the current proposals though the Concessionary Route rather than change to Scheme Rules.

The BBRS has published its 9-step process for handling of any proposed changes from any stakeholders. The banks will be considering these requests. At the time of PIR2 there was no conclusion to the discussions.

The fact that the SME Panel is looking to work with some greater focus on the possible, gives an opportunity for system improvements and better considerations of customer disputes. It could be constructive if the banks participated and contributed to the dialogue.

Recommendation 8: The SME Liaison Panel could refine its focus on ‘what might be possible’ within the remit of the BBRS, with particular attention on the future of the Contemporary Scheme and the recommendations made in this report.

In the context of taking a pragmatic approach we would encourage all parties to conclude the debate on complaint volumes and focus on the improvements that are within the remit of the BBRS. In the context of limited time on Historical Cases, the focus of energy on all options including use of the Concessionary Route (with its potential flexibility) will give the greatest opportunity for timely resolution. From the interviewees across the board, the greatest concern appears to be around the treatment of insolvency cases and related personal guarantees.

Wider customer and stakeholder communications

We have referenced the issue regarding the ‘size of the market/problem etc’ potential number of customers. We found no compelling evidence to suggest that the number of ‘historical claims customers’ eligible for the BBRS services, is any greater than those already visible to the BBRS.

The media and communications strategies are clear with several notable threads.

The aim of advertising in 2021 was the desire to find the ‘missing customers’ and was driven in part by the inaccurate forecasting which underpinned the establishment of the BBRS. In 2022 this has moved into a principle of ‘leave no stone unturned’, leading up to the closure of the Historical Scheme. We also understand that this included specific targeting of hard-to-reach groups with advertising in places which would be considered more accessible. The budgets for these two campaigns are significant. It is difficult therefore to conceive what else the BBRS could be doing regarding paid advertising. We understand that SME businesses are difficult to target.

In parallel, the BBRS has been updating and simplifying its website. The focus of this has been to ensure it is ‘customer focused’ and ‘easy to register’. This includes trialling the opening on the website for a call back service offering and chat box for support.

An important and financially neutral aspect of the strategy is to maximise the role of the banks in advising the customer of this service. We understand that the participating banks all refer to the BBRS service alongside FOS in the complaints section of their website. In addition, we understand that the same information is contained within the letter from each bank informing any customer that their complaints have been unsuccessful.

There may be other areas where the banks can be more proactive, and the obvious one is in the confirmation and communications of complaint numbers. Whilst we heard comments

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about 'difficulty in accessing bank customer information systems', sort ability and granularity of complaints; confidentiality etc – the data provided by the participating banks back in 2019 was extremely helpful and shows it can be achieved if there is a mind to do it. We would strongly suggest that this is considered as a matter of priority. It can be done so in a confidential and aggregated fashion if required and still prove to be extremely helpful.

Recommendation 9: The BBRS should request that each bank provides data at regular intervals on all decision letters issued.

Recommendation 10: The BBRS should request that each bank provides regular feedback on the outcome of directly resolved cases taken back from the BBRS.

In summary, the need for successful communications beyond the reach of the Bank and SME Liaison Panels is important to the BBRS success. The negative publicity that has existed may have impacted on the willingness of SMEs to engage with the organisation. This has been fuelled by two key factors. The first has been around unrealistic expectations as to what the role and scope of the BBRS is, the second has been the amount of time, energy and distraction which resulted from the inaccurate forecasting underpinning the size and scale of the BBRS.

Overall, the awareness of the BBRS remains questionable, but in relation to the size of its market and the effort that we see going into reaching potential customers, it would be difficult to justify increasing spend and effort leading up to February 2023 or indeed to maintaining it beyond.

7.4.2 Consider to what extent the BBRS and its core agreements have met the documented requirements of key stakeholder groups.

There are several key factors that affect the ability of the BBRS to be recognised as an 'effective delivery' organisation. The first point is the size and scale of its anticipated operation and the second is perception as to what it was set up to do.

However hard any single party tries to revise the events leading up to the establishment of the BBRS, there are several realities that do not change. The BBRS was established as a voluntary scheme funded by the banks rather than by legislation and so its constitution and operation was always going to represent a compromise between the SMEs and the banks. The resulting BBRS organisation was never intended to be an appeals body; It was never intended to overrule pre considered judgements or agreements either from the Courts, FOS or other resolution schemes. Its parameters were always intended to abut to FOS and never for it to be seen as an alternative.

There are some areas of the documented requirements that remain 'unsatisfactory' in the eyes of one or other party. A particular example of this is around cases involving dissolved companies. In essence we found that the BBRS meets the stated requirements of its key stakeholders as agreed in February 2021.

The issue is that as the reality of those documented requirements have become evident in practice, they don't meet the aspirations of some. These aspirations are for broader eligibility criteria. Many of these would conflict with the points above and so this makes them either undeliverable for legal reasons or simply that they remain as unacceptable to one or other of the parties as they were on the day of agreeing and signing up to the BBRS go live documentation, for the same reasons that they are now. This issue has become conflated

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with the simple fact that there are not many cases in total and therefore the settlements reached appear small in relation to the cost to the banks of establishing and funding the BBRS.

In summary, however unsatisfactory individuals may feel with either outcomes, scope or volume of cases, the BBRS remains compliant within all parties documented requirements as at the establishment of the BBRS. There remains further opportunity to address and communicate this point prior to the closure of the Historical Scheme. There is also opportunity to consider improvements in the Contemporary Scheme arrangements.

7.5 In addition to the specific TORs and consistent with the Review Methodology points 3.1.2 and 3.1.5 we have included other items for consideration.

In addition to the points below the following recommendations are as a result of Methodology point 3.1.5

Recommendations 2, 3, 6, 8

For FOS eligible claims, a banking customer can go to FOS if a bank has not responded to a complaint within eight weeks. There is no similar time limit for the BBRS eligible claims. For future plans for the BBRS, consideration could be given to having a similar time limit that cases can come to the BBRS if a bank has not resolved a claim within a set time period.

Resources should be put into conciliation rather than formal mediation. The latter is again overly formal (mediation done by lawyers). Conciliation and flexible early resolution should be considered as a matter of course and should be initiated by the Case Assessor. It should not require consent of the parties but should be for the BBRS to determine that it is the best/ quickest/ most appropriate route.

The value add of CEDR at this stage is limited beyond ownership of CMS and the Contact Centre capability. The Customer Champion role could be replaced with a single help desk.

There is scope to stress to SMEs that in the current scheme they are getting a Rolls Royce service – Customer Champions, Concessionary Routes, opportunities to participate at every stage and to control the dispute resolution process. These are unusual features for this kind of ADR scheme. This may have been appropriate for complex historical claims, but this level of service is not necessary for contemporary cases. A challenge is that a high standard has been set.

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Appendix A - PIR2 - Terms of Reference

The BBRS has developed these ToR in conjunction with its key stakeholders including SME representatives. This is good practice, and we note, the reviewers may make any recommendations to improve the operational effectiveness and impact of the BBRS.

The purpose of the second part of the Post Implementation Review – Part 2 (PIR2) of the BBRS will be to review whether the service, as developed by the Implementation Steering Group (ISG) through its terms of reference and modus operandi, has delivered on the relevant commitments made by the banking and finance industry following the Simon Walker Review. PIR2 will consider the operational effectiveness and impact of the BBRS, and whether it is delivering against the scheme rules and operational plans through the following areas of review.

2.1 Scheme Governance & Independence

2.1.1 An assessment of the independence of the BBRS leadership and operations.

2.1.2 Consideration of the BBRS performance, against the critical factors developed by the ISG and the commitments made by the banking and finance industry following the Simon Walker Review.

2.1.3 An assessment of whether the BBRS is adequately funded and that the funding model supports an independent, efficient the BBRS.

2.2 Operational Performance

2.2.1 Review of the Customer Journey performance – including volume, time taken to progress cases, costs, and the accuracy and confidence in determinations.

2.2.2 Review of overall case volumes and proportions deemed eligible/ineligible, including differences in the original scheme forecast, consequent stakeholder expectations, subsequent research, and actual volumes.

2.2.3 Review of the accessibility of the scheme to all potentially eligible groups.

2.2.4 Review of the use of non-adjudication dispute resolution methods in terms of both degree of use and performance.

2.2.5 An assessment of concessionary case activity and supporting processes.

2.2.6 Consideration of the competence, independence and capability of key roles delivering the customer journey, including service delivery partners.

2.3 Customer Experience

2.3.1 An assessment of the customer experience for the BBRS customers – regardless of eligibility. This should include, but not be limited to; the time taken to manage cases, accessibility, customer expectation management, customer communication and handling of eligibility assessment.

2.4 Communications & Stakeholder Management

2.4.1 Consideration of the performance and contribution of the Liaison Panels, and wider customer and stakeholder communications.

2.4.2 Consider to what extent the BBRS and its core agreements have met the documented requirements of key stakeholder groups.

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3 Review Methodology

The following features of the review have been promoted by stakeholder groups and are considered as principles of the review activity;

3.1.1 There should be limited or no overlap with the PIR part 1 review, with no requirement to revisit topics within the scope of part 1.

3.1.2 The reviewer may make any recommendations to improve the operational effectiveness and impact of the BBRS, and is not constrained by the existing rules and architecture.

3.1.3 The reviewer will have the ability to select and review anonymised case information and customer correspondence.

3.1.4 The reviewer will have adequate time and access to the relevant stakeholders and customers (subject to stakeholder/customer agreement)

3.1.5 The reviewer has the scope to make general recommendations in line with these Terms of Reference, taking into account the findings of the review.

Out of Scope - The review is not intended to revisit any of the conclusions of PIR1.

Appendix B - Bank Liaison Panel and SME Liaison Panel Objectives

Banks Liaison Panel

The key objectives of the Bank Liaison Panel are to:

- consider emerging trends, issues and areas of concern regarding access to finance and treatment of SMEs.
- make recommendations to the BBRS on identified issues (including thematic issues) and areas of concern to address potential issues and challenges early and effectively and with a view to providing appropriate support to SMEs.
- ensure that there is an on-going dialogue between the BBRS, member banks and other stakeholders.
- provide on-going independent assessment of how identified issues and concerns are being addressed.
- provide a two-way feedback loop between member banks and the BBRS to encourage dialogue on, and understanding of, key issues and changes to policy and practice that may be of relevance in the context of the operation of the Scheme, including with a view to improving customer service and meeting the needs of stakeholders.
- facilitate learning from previous significant complaints to inform the handling of future complaints.

SME Liaison Panel

The key objectives of the SME Panel are to:

- consider emerging trends, issues and areas of concern regarding access to finance and treatment of SMEs.
- make recommendations to the BBRS on identified issues (including thematic issues) and areas of concern to address potential issues and challenges early and effectively and with a view to providing appropriate support to SMEs.
- ensure that there is an on-going dialogue between the BBRS, SMEs and other stakeholders.
- provide on-going independent assessment of how identified issues and concerns are being addressed.
- provide a two-way feedback loop between SMEs and the BBRS to encourage dialogue on, and understanding of, key issues and changes to policy and practice that may be of relevance in the context of the operation of the Scheme, including with a view to improving customer service and meeting the needs of stakeholders.
- facilitate learning from previous significant complaints to inform the handling of future complaints.
- act as a consultative body on certain matters determined by the BBRS' Board and, always, in relation to those matters set out in the Terms of Reference

Appendix C - Interviewees - Organisation and Roles

Name	Organisation & role
Mark Grimshaw	BBRS CEO, BBRS Board Member, Review SRO
Lewis Shand Smith	BBRS Board Chair, ISG Chair
Graham Atkinson	BBRS interim secondee
Sally Berlin	BBRS Chief Adjudicator, BBRS Board Member
Chris Moore	BBRS Director of Corporate Services
Mike Robinson	BBRS Deputy Director of Operations
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
Mike Conroy	UK Finance, Director Commercial Finance
Chris Joyce	UK Finance, Strategic Initiatives
Paul Hayes	BBRS Director of Quality & Change (Interim)
Dirk Paterson	BBRS Customer Director
Greg Barham	BBRS Regulatory and Technical Manager
Shamila Begum	BBRS Senior Analyst – Customer Strategy and Correspondence
Lucy Armstrong	ISG Member, BBRS Board Member, CEO The Alchemists
Interviewee*	Stakeholder representative
Sarah Fortt	FCA Senior Associate
Tony Baron	SME Liaison Panel Member, FSB – Chair, Finance Tax and Economy Committee
John Munton	CEDR Director of Dispute Resolution Services
Doug Hill	HSBC Head of Complaints Policy and Risk
Interviewee*	SME representative
Senior Manager*	Lloyds Banking Group
Senior Manager*	Barclays
Senior Manager*	Virgin Money UK Plc
Senior Manager x 3*	NatWest
Senior Manager*	HMT
Simon Walker	Author of Walker report
Antony Townsend	Chair SME Liaison Panel
Heather Buchanan	SME Liaison Panel Member, Director of Policy and Strategy APPG Fair Business Banking
Elaine Bailie	SME Customer
Stephen Prince	SME Customer
Ammo Khan	SME Customer
Matthew Akroyd	SME Customer
Nish Kotecha	SMELP member
Interviewee*	SME Customer
Glenn Collins	ACCA

*The personal information of some interviewees has not been included at the request of the individual.