THE BUSINESS BANKING RESOLUTION SERVICE (BBRS)

A TOTALLY FLAWED SCHEME

1. True purpose – to cover up all wrongdoing and award minimal compensation

The Business Banking Resolution Service (BBRS) was devised after the Walker Review in November 2018 by the former Chief Executive of the Financial Conduct Authority, Andrew Bailey and HM Treasury ostensibly to compensate the historical victims of serious banking misconduct. However, its true purpose is to cover up the illegal wrongdoing, which they had together initiated in 2009 with the Asset Protection Scheme (APS). Lloyds paid £2.5bn to opt out of the APS and reverted to its existing scheme, which had been turned into a profit centre two years earlier. After more than a decade of cover up of bank wrongdoing, the BBRS is designed to euthanase the remaining victims at the lowest possible cost. It is an entirely voluntary arrangement with no statutory powers and makes a mockery of due and proper process.

There is nothing satisfactory about the BBRS. Proper compensation, transparency and accountability are nowhere to be seen.

2. Eligibility criteria – should be entirely waived

There should be no reason for <u>any</u> eligibility criteria. Why should the long-standing victims of serious banking misconduct and criminal fraud have to compete to enter a compensation scheme ? The BBRS criteria for eligibility – minimum turnover of £1mn and gross assets up to £5mn – are unfair and unreasonable and represent an overzealous and bank-biased topping and tailing of eligible complaints. They appear designed to exclude, rather than include, as many cases as possible.

The Implementation Steering Group (ISG) concluded that the BBRS should not overlap with the Financial Ombudsman Service (FOS). However, many cases eligible for FOS based on turnover and size were refused access for a range of reasons including complexity, insolvency or as a result of evidence or allegations of criminal conduct. These cases have now also been unfairly excluded from the main BBRS scheme, as well as from any independent investigation and adjudication, which does not first rely on the goodwill of the bank. This is a preposterous and indefensible scenario, given that the bank would not be faced with a potentially serious BBRS investigation, were it not for the fact that it had already critically failed to properly deal with the customer's complaint in the first place.

Caroline Wayman resigned as Chief Executive of FOS in March against the background of 158,000 outstanding complaints. The emphasis of the BBRS should be placed on resolving complaints, rather than worrying about any overlap with another failing financial regulator.

Prior to the BBRS launch in February 2021, most reference to business size eligibility on the BBRS website, registration and pilot application forms referred to net assets. Following the launch, this was altered to gross assets, with the BBRS claiming the previous references to net assets were caused by numerous administrative errors. These have unfairly served the banks' position by

ensuring the greatest possible blanket exclusion of SMEs, and in this case of those with assets, which were demonstrably the largest group historically targeted by the banks including Lloyds / HBOS, Lloyds BSU, RBS-GRG and Interest Rate Hedging Product (IRHP) mis-selling.

The BBRS eligibility criteria should be entirely waived - or the scheme is in danger of collapse.

3. Concessionary / boundary cases – improper adjudication

The BBRS policy adviser, Laurenz Gerger wrote on 26th May: "We may be able to consider complaints that fall outside our eligibility criteria provided that we, the customer and the bank agree. Where the BBRS considers that we should be able to look into a complaint, we will ask for the bank's agreement."

It is entirely improper that banks, which are accused of serious professional misconduct and criminal fraud, should have any say whatever in deciding whether concessionary cases are admitted to the scheme. They are being allowed to act as judge and jury over their own wrongdoing.

This represents a complete mockery of due process.

4. Criminal cases - total lack of accountability

Since the first BBRS webinar, when victims were told that the BBRS would not consider criminal cases and they should always be referred to the Police, there has been a modest but unconvincing change of stance to suggest that cases, which involve criminality, can still be submitted. So, in May, Gerger still recommended: "Where a customer alleges or suspects criminal conduct, we would urge them to notify the relevant authorities."

However, it has long been evident to victims that the "relevant authorities" have been instructed and have absolutely no intention of investigating serious banking misconduct and fraud.

Instead of recognising the seriousness of cases which involve criminality, the stance of the BBRS has been to downplay this and be complicit with a process, which would never hold anyone to account. The Rule of Law is applied rigorously by the creditors of victims defrauded by their banks but every effort continues to be made to shield the perpetrators of such wrongdoing from the same Rule of Law.

The only thing which corrupt and dishonest bank staff and their professionals are afraid of is being sent to jail, so it is a strict condition of the BBRS is that there should be no accountability.

This is straight-forwardly corrupt.

5. Award limits – set deliberately low

The BBRS claims that award limits "were agreed by the bank participants and the SME representatives on the ISG, recognising the award limits applicable to the FOS for smaller SMEs". In fact, the award limit for historical cases of £350,000 has been set to be in line with, and no better than, that of the FOS in order to restrict the banks' liabilities. In many, if not most, cases this ceiling will prove totally inadequate but the bar has been set deliberately low, so that any awards above that level will be regarded as exceptional.

Gerger: "We are able to recommend a higher award. The banks have contractually agreed to consider our recommendations for higher awards….If a bank disagrees with our recommendations, it must provide its reasons." So, the perpetrators of wrongdoing are allowed to consider, but are certainly not required to agree with, awards above the £350,000 ceiling.

This is purposefully unjust.

6. Proper compensation – always denied

Gerger: "We can make an award for distress and inconvenience as well as for direct financial loss, consequential loss, interest and costs". Everyone knows that amounts paid for distress & inconvenience (D&I) are paltry, hence the banks have agreed to pay them. Redress for direct & consequential loss (D&C) and the payment of statutory compound interest are an essential requirement but where is there any penalty for the banks having acted frequently in the criminal manner they have ? Where is the deterrent to prevent the banks acting similarly in the future ?

There is no deterrent. Bank officers and their professional agents are "a protected species", able to act entirely as they wish and not to be restricted by the Rule of Law.

7. Board members – numerous questions about suitability

There is no justification for any bank representatives to sit on the board of a supposedly independent compensation scheme.

While at the Gibraltar Financial Services Commission (GFSC), **Samantha Barrass** and **Peter Taylor**, its Chief Executive and legal director respectively, were named in a libel action brought against them by a local lawyer, which was launched in November 2018. Barrass subsequently resigned as Chief Executive of the GFSC in October 2019, a full year and a half before her contract was due to expire and in the following month, she was announced as CEO of the BBRS. The libel suit continued throughout her term of office at the BBRS and in March this year, the Gibraltar Appeal Court rejected the attempts of Barrass and Taylor to have the case struck out. This decision presumably precipitated her resignation in April as CEO of the BBRS, because she considered that her position was no longer tenable.

Questions

1. Given the libel suit and the controversy when she accepted a non-executive role on PWC's Public Interest Body while still chief executive of the GFSC, why was Samantha Barrass chosen as Chief Executive of the BBRS in the first place ?

2. Why did she not resign her position at the BBRS considerably earlier than April this year ?

3. Why has Mr Taylor remained the legal director of the BBRS and not resigned also ?

4. Why did Lloyds nominate as a board member someone so damaging to the confidence of victims as **Stephen Pegge**? He ran a notorious SME unit at Lloyds and was the bank's chosen spokesman for the Panorama programme "Did the bank wreck my business" (Nov. 2014) and defended the actions of Lloyds' Business Support Unit, which from January 2007 had been turned into a profit centre, designed to benefit at the expense of troubled business customers.

5. Why was **Anthony Townsend** appointed Chairman of the SME Liason Panel, given that he failed to deal with numerous complaints involving gross misconduct by the FCA and Banks, when he was Complaints Commissioner, which demonstrated his bias in favour of those institutions ?

The clear impression is that those, who designed the BBRS, do not care at all about bank victims.

Summary – a totally flawed scheme

Given the appalling track record of Lloyds Banking Group in relation to the Griggs and Cranston reviews of the major HBoS Reading fraud, and following now the postponement of publication of the Dobbs review for the third time, there remains a total lack of trust in the BBRS.

The BBRS looks uncannily like the Post Office mediation process, which was launched in 2013 but collapsed two years later, with the Post Office accused of sabotaging its own scheme.

In 2018, Chancellor Hammond suggested that it was vital that the newly-constituted BBRS considers as many complaints as possible. That objective appears more unachievable today than ever.