



HOUSE OF COMMONS

LONDON SW1A 0AA

Stephen Jones  
Chief Executive  
UK Finance  
5<sup>th</sup> Floor, 1 Angel Court  
London EC2R 7HJ

24<sup>th</sup> July 2019

Dear Stephen,

Thank you for your letter dated 23<sup>rd</sup> July and for meeting with the APPG and representatives of SME Alliance on 17<sup>th</sup> July.

You are aware that the APPG has for some time consistently expressed concerns about some aspects of the DRS/BBRS. The APPG has had very constructive conversations with yourself and other stakeholders, but we feel that we have reached an impasse. For the avoidance of doubt, we feel that we must address these issues if we are to remain part of the steering group.

**Eligibility**

We note that you suggest that the BBRS should not be opened to complainants who are “unhappy” with the outcome of a previous independent review and that we should engage with the reviews of past Reviews to offer evidence that outcomes have not been fair and reasonable. This, however, misses the point. We are not suggesting that there should be a wholesale re-opening of cases if a complainant is simply “unhappy”, but rather a sensible exceptions process for individuals that have documentary evidence to support their assertions that the outcome of their past redress scheme was not fair or reasonable.

As the Chancellor said in his letter of 19<sup>th</sup> January 2019, this scheme “*must bring closure to a meaningful number of complainants. If the scheme is not going to achieve this, then further discussions of scope and eligibility should be discussed*”. It is clear that the current scope of the scheme will not achieve this aim and there must now be further discussions regarding the scope and eligibility. As things stand, around 85% of the cases the APPG deals with are excluded.

The turnover limit of £6.5m will exclude a significant number of potential claimants. It appears illogical to have a forward-looking scheme with a turnover threshold of £10m but an historic scheme with a lower threshold. We propose that a balance sheet of £7.5m is used as the eligibility criteria for the historic scheme and have no turnover threshold for either scheme.

The exclusion of cases that have been considered by ad hoc redress schemes e.g. IRHP/Griggs/Blackburne/CYBG TBLs/FOS or by the courts is fundamentally unfair.

- Bank-led schemes were not sufficiently independent, and their parameters were significantly limiting and designed by the banks themselves.
- The FOS has been widely criticised for its shortcomings. The Walker Review stated that the service “*currently lacks the skill and specialisation to deal with complex financial disputes*”.
- Courts make decisions on a fundamentally different basis to the proposed BBRS based on the letter of the contract and with no ‘fair and reasonable’ test.

The Chancellor noted in his letter to you that *"I do of course expect the backward-looking scheme to carefully consider the merits of taking forward work on each case presented to it by a business"*.

We accept that we need to avoid opening the floodgates and facilitating spurious complaints. A sensible exceptions process could be developed to allow consideration of cases that have merit and provide closure to a meaningful number of complainants without revisiting the vast majority of cases that have been settled.

### **Binding Limit and Appeals Process**

The current positions on the Binding Limit and Appeals Process are not fit for purpose, will potentially deter SMEs from entering the process and are a clear risk factor for the reputation of the BBRS.

The APPG has consistently argued that the term 'Binding Limit' should be renamed as it will give claimants the misleading impression that compensation will be limited to £350k. It also potentially has an implied ceiling on the minds of those assessing claims, in behavioural economics this is called anchoring. The term 'Award Limit', as used by the Financial Ombudsman Service, is an even worse term. We recommended 'Appealable Threshold'.

Courts makes decisions on a different basis to the BBRS and on the strict letter of contract and not on a 'fair and reasonable' basis and that the statute of limitations would apply.

The current process could lead to a number of iniquitous situations e.g. where a bank simply refuses to pay anything higher than £350k and the complainant would then have to go to court. This would be hugely damaging for the reputation of the BBRS.

As we have consistently said, the appeal process should be the mechanism for any disagreements on judgements or on the level of compensation awarded. We cannot see how we can move forward without a clear understanding of how the appeal process would work and that the outcome on judgement and compensation paid should be binding on both parties, even if above £350,000. As the Chancellor said in his letter *"There should be no reason to doubt the outcome determined by the scheme and it would not be helpful to prolong the process for businesses who have sought resolution for their complaint."*

Our preferred solution

- The 'default position' is clearly recognised within the BBRS
- The term Binding Limit is changed to Appealable Threshold
- The appeal process is set out clearly and is heard within the BBRS and includes an option for the matter to go to arbitration
- Banks have to accept the outcome of the appeal and pay the entire award, even if above £350,000

### **Insolvency**

Whilst we acknowledge that there is an ongoing working group focusing on insolvency, this must give meaningful redress to the people that have lost their businesses. The BBRS must ensure that the directors

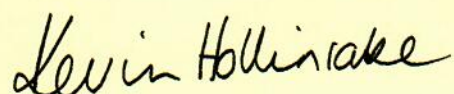
and shareholders of insolvent businesses must have a mechanism to bring a claim against a bank if they have reasonable grounds to do so.

### **Representation of SMEs**

We have repeatedly requested that the BBRS has professionals that have represented SMEs in individual cases to be involved in the detailed construction of the process. We are very clear that this has been lacking thus far, and our attempts to bring in further expertise have been rebuffed. The process and award determination groups require the input of independent advisors who have worked on behalf of businesses in past redress schemes. The current design, as it stands, will not work and we must now have the input of professional advisors.

We very much hope that we can find a way forward that is acceptable to all parties. I will place this letter in the public domain.

Yours sincerely,

A handwritten signature in black ink that reads "Kevin Hollinrake". The signature is written in a cursive, slightly slanted style.

Kevin Hollinrake MP  
Co-Chair of the All-Party Parliamentary Group on Fair Business Banking