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HOUSE OF COMMONS
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Rt Hon Rishi Sunak MP
Chancellor of the Exchequer

cc John Glen, Economic Secretary to the Treasury
cc David Postings, CEO UK Finance
cc Mark Grimshaw, Interim CEO, Business Bank Resolution Service

By email

23 July 2021

Dear Chancellor,

Following seven years of campaigning by the APPG, SME Alliance and others for justice for those who had been mistreated, often egregiously, by their bank, the Business Bank Resolution Service (BBRS) was established as a voluntary scheme by the UK's seven largest banks. Quite rightly, HM Treasury played a key role in its inception and the setting of its overall aims and objectives.

Whilst our preference was, and is, for a statutory scheme, this requires legislation bringing business lending within the regulatory perimeter, which could not have been retrospective and the statute of limitations would also have prevented many cases being heard by such a scheme. We have therefore had to accept a voluntary scheme; at least while this is given the chance to prove itself.

The creation of the BBRS has been a long and painstaking process and all parties, banks, SME representatives, the secretariat and the BBRS team have worked tirelessly over these last two years to make the service fit for purpose and help to rebuild trust between business and banks. To this end, the SME representatives who sit on the Implementation Steering Group (the APPG, SME Alliance, FSB, IoD, CBI, Lucy Armstrong, Chair of the Enterprise Research Centre and Dame Teresa Graham, Chair of the SME Advisory Group of UK Finance) have secured a number of important changes including the mistreatment event date being moved back from 2008 to 2001, and, with the support of the former Chancellor, moving the expectation that the default position for a bank is to pay the award determined by the BBRS even when that goes above the contractually binding limit of £350,000.

As members of the Implementation Steering Group ('ISG'), the APPG signed off on the architecture for the BBRS and believe it can potentially reach fair and reasonable outcomes for businesses which fall in its scope. But this sign off was conditional on the BBRS achieving its stated aims, as detailed in former Chancellor Philip Hammond's letter to the head of UK Finance of 19th January 2019, of securing satisfactory, proper redress for outstanding past cases and, generally, providing redress for SME businesses who are otherwise denied it, including those too large for the FOS but not large enough to access legal redress.

However, the APPG continues to have considerable concerns that the BBRS is falling significantly short of its stated aims and purpose and is pressing for the essential improvements and will be taking an active part in the post-implementation review of the BBRS and seek your support.

Our principle, long-standing concerns with the BBRS relate to eligibility:

1. **Financial Limits:** To be eligible to apply to the BBRS businesses must be below both maximum Turnover and Balance Sheet limits, with lower limits in turn applying to historical cases. These limits are currently simply too low and unfairly restrict access to the BBRS to a considerable proportion of otherwise claimants, particularly as businesses need to be significantly larger than this to take High Court proceedings, the BBRS's key purpose.

These business size criteria limiting eligibility are currently:

- Claims from 1 April 2019: Turnover under £10 million; Balance Sheet under £7.5 million gross assets
- Cases from 2001 to April 2019: Turnover under £6.5 million; Balance Sheet under £5 million gross assets

This constriction includes the limits themselves and their restrictive and/or arbitrary application.

The Turnover and Balance Sheet limits were, I understand, agreed with the Treasury and I ask that you issue an updating determination and endorsement stating it is, firstly, appropriate to increase these limits and, secondly, abolishing separate lower limits for past cases in both instances to ensure the BBRS achieves its stated aims and purpose.

There are also inhibiting, arbitrary constrictions in the application of the size criteria which need rectifying, with all the following just as it should rightfully be:

- The Balance Sheet criteria based on the net, not gross assets (the latter entirely meaningless but penalises any capital intensive or investment led business e.g. property or manufacturing).
- Claimants need only be under either, not both Turnover and Balance Sheet limits (requiring both unfair and unwarranted, with legitimate claimants excluded one way if not the other).

2. **Other eligibility restrictions** – Cases are currently ineligible for the BBRS if they have (i) been through a designated 'excluded scheme'; (ii) subject to a previous settlement; or (iii) been the subject of legal litigation; all on the basis the matter had already been "independently, properly and fairly addressed". These provisions are all widely drawn and the presumption to the bank, with the case automatically excluded if caught by any of them.

Many unresolved cases are excluded as a result as in none of these circumstances had/has the case necessarily been independently, properly or fairly addressed, indeed in many instances the opposite. This is potentially a fatal flaw and seriously undermines confidence in the BBRS, while failing to draw a line under past events.

With excluded schemes, the SME representatives on the ISG Group secured agreement that where businesses can demonstrate material evidence was not properly considered in their case, they qualify for consideration under a 'concessionary cases' procedure where the BBRS will assist the complainant to secure a fair and reasonable outcome with the bank, but at present there are considerable problems with this procedure.

- i) **Excluded schemes** – The problem is none of the designated schemes were fully independent, proper or fair. Rather all were bank administered schemes save for the FCA IRHP scheme, but with varying degrees of in-built prejudice and unfairness and, conversely, some independence and fairness.

Firstly, the list of excluding schemes needs updating. The Lloyds-Griggs Review and RBS-GRG schemes need removing entirely as they have now been expressly confirmed as inadequate and/or prejudicial.

Regardless, there are, as said, considerable concerns with the 'concessionary cases' procedure generally. It relies entirely on the goodwill and good faith of the participating banks and whilst the BBRS can assist a complainant in discussions with the bank it cannot bring what it determines to be a valid complaint into the BBRS without the bank's consent – the bank, not BBRS determine whether the case qualifies.

Qualifying as a 'concessionary case' and determining the procedure's rules and their application must be adjudicated the BBRS, not the bank, if the whole process is not to be undermined.

- ii) **Previous settlements** - Concessionary cases needs to include those where there has been a prior settlement but can demonstrate there was prejudicially arrived at e.g. by legal or financial duress, hidden information or actions by the bank, other demonstrable prejudice or for historical cases want of other means of redress.

- iii) **Previous legal proceedings** – Concessionary cases needs to include those which have been subject to litigation, but can demonstrate their case was not as a result properly addressed e.g. because the case did not reach a determination or the only limited legal grounds of action as business lending is unregulated.

Here the former Chancellor and Treasury Ministers since have stated cases being excluded from eligibility was on the basis they had on the basis “independently, properly and fairly addressed” and in turn in the context of the measure of the BBRS its securing satisfactory, proper resolution for outstanding past cases and, generally, providing redress for SME businesses who are otherwise denied it. We are therefore asking that as the current Chancellor you reiterate these as the BBRS’s purpose and essential measure.

- iv) **Gaps between FOS and BBRS limits for historical cases** – There are gaps where historic cases fall between the FOS upper and BBRS lower size criteria and/or were not eligible for the FOS, due to e.g. complexity, personal guarantees or insolvency, but that fall within the relevant financial eligibility thresholds of the FOS at that time and are therefore excluded from the BBRS. The gaps must be closed
- v) **Businesses needing resurrecting** - While in historical cases claims can be brought by those resurrecting a company that no longer exists; cases from April 2019 onward can no longer do so. Yet business being liquidated by the banks remains just as likely as ever, indeed more likely as a result of the Covid crisis.

In order to ensure the BBRS achieves its stated aims and purpose, the APPG is therefore looking for your support in these key areas.

Accordingly, we respectfully ask you to write to the Chief Executives of UK Finance and the BBRS member banks reiterating the purpose and measure of the BBRS success and that they are therefore expected to adopt a constructive and collaborative approach to resolving the outstanding issues:

- Significant changes to the financial limits and their application
- Updating and revision of the eligibility restrictions
- Qualifying and determination as ‘concessionary cases’ being adjudicated by the BBRS

I look forward to hearing from you

Kind regards



Kevin Hollinrake MP
Member of Parliament for Thirsk & Malton Constituency
Co-Chair, APPG on Fair Business Banking