## THE BBRS AND THE CON TRICK OVER ELIGIBILITY

*After one year of operations, the scheme is not disclosing how badly it has done*

**December was a particularly unfortunate month for the Business Banking Resolution Service (BBRS). Admittedly, things had never gone well for the supposed mediation service for victims of banking serious misconduct and fraud, ever since it was launched in February 2021.**

**In late October, the BBRS disclosed that in its first eight months of operation, just one case out of the 626 registered with the scheme had been settled. However, in December, the Swift report enabled BBRS applicants to recognise that the same trick over eligibility, which the authorities had used to drastically restrict compensation for the victims of Interest Rate Hedging Product mis-selling in 2013, had been repeated for the BBRS.**

**This week, the BBRS announced a "post implementation review", which appears to have taken the place of its third Quarterly Insights report. Why - because the number of cases settled in its first year of operation, and after c. £30mn has been spent on the scheme, has been so abysmally low – reportedly just four out of 626 cases - that they dare not disclose it. So, the participating banks are doing the next best thing and kicking the can down the road. The BBRS has lost all credibility.**

### First eligibility con – Interest Rate Hedging Product redress (2013-2016)

In June 2019, John Swift QC was commissioned by Andrew Bailey, then the chief executive of the Financial Conduct Authority (FCA), to conduct a "lessons learned" review over the mis-selling of Interest Rate Hedging Products (IRHPs). These products were invariably unwanted but were sold by banks to customers usually as a condition of lending taking place. They enabled the banks to profit at the expense of their customers and as long ago as 2012, the financial regulator had concluded that over 90% of them had been mis-sold and the victims should be compensated.

In October 2012, a pilot review was launched and by January 2013, its findings including the likely cost of compensation were delivered to Chancellor Osborne and HM Treasury. The Swift report [1] has now tellingly revealed that HM Treasury had been lobbied hard by the chief executives of Royal Bank of Scotland (RBS) and Lloyds and that Osborne decided that the total costs of redress "needed to be reduced"[2]. The report also describes how Martin Wheatley, FCA chief executive, subsequently misled the Treasury Select Committee, when he denied that there had been pressure from Government to go easy on the banks[3].

So later in January, the financial regulator complied with the Chancellor's directions and subsequently, the costs of redress were drastically reduced from an estimated £15-20bn to just £2.2bn. Using entirely arbitrary and subjective methods, including excel spread sheets "until the resulting number felt about right"[4], FCA staff denied eligibility to thousands of customers. Of the total of 30,000 IRHP cases, eligibility was denied outright to 10,000, who were deemed to be sophisticated and offers of "basic redress and interest" were made to 14,000, which averaged £157k per case, an amount which was significantly inadequate for most, being only slightly higher than the maximum award available at that time from the Financial Ombudsman Service (FOS).

[1] www.fca.org.uk/publication/corporate//independent-review-of-interest-rate-hedging-products-final-report.pdf
[2] Swift p.188, para 116.
[3] Swift p.189, para 119.
[4] Swift p.195, para 131.

**Second eligibility con – the Post Office mediation scheme (2013-2015)**

The Post Office scandal lasted more than two decades and involved the wrongful prosecution of over 700 sub-postmasters for theft and false accounting, when its Horizon computer system was actually shown to be at fault. In July 2013, the Post Office received the Clarke advice, which confirmed the existence of bugs in Horizon and indicated that its prosecutions were unsafe. Nevertheless, the Post Office spent more than £100mn over the next six years, defending its wrongful position including most notably, in court.

In October 2013, only three months after it had received the Clarke Advice, the Post Office whose sole shareholder is the Government via BEIS with oversight by the Treasury-owned UKGI, [5] offered a mediation scheme under Sir Anthony Hooper. However, over 90% of applicants were ruled as ineligible and the scheme collapsed in March 2015, with the Post Office accused of "having spent public money on a scheme which it deliberately set out to sabotage." [6] Four more years elapsed before the sub-postmasters won in court and only recently, seven years after the collapse of the flawed mediation scheme, have the victims been offered genuine compensation, reported to be over £1bn.

**The third eligibility con – the Business Banking Resolution Scheme (BBRS) – 2021 et seq.**

The BBRS was announced in November 2018, following the Walker Review but two years were deliberately wasted in discussing eligibility with interested parties. A Live Pilot was undertaken in early 2020 (cf. the IRHP pilot of October 2012) and its results were later described as "a great success", even though reportedly, only one case out of 47 was settled. Consequently, when the scheme was officially launched in February 2021, all those responsible for the scheme already knew that due to the severely restricted eligibility criteria, few if any cases would be settled.

In July, the chairman of the All Party Parliamentary Group (APPG) for Fair Business Banking, Rt. Hon Kevin Hollinrake MP wrote with significant questions still on eligibility to the Chancellor [7] and in late October, coinciding with the lamentable BBRS second Quarterly Insights report, the bank victims' group, SME Alliance withdrew its support for the scheme, saying that it had excluded "most if not all of those seeking redress". Major eligibility issues remained unresolved and the banks, supported by HM Treasury, have been determined that they should stay that way.[8]

With its third Quarterly Insights report overdue, the BBRS has stated in its 3rd February press release that the board of directors has agreed that "it is too early in the life of the organisation to evaluate the operational effectiveness of the BBRS". Surely, an indefensible statement, after a full year of operations and c. £30mn spent ? It also indicated that the second stage of the post implementation review (PIR) will consider "the effectiveness of the BBRS and how well it is delivering against scheme rules and operational plans". The comparison is always "against scheme rules" because they were drafted so tightly by the banks in order to rule almost all cases as ineligible. So, when the second stage of the PIR eventually reports, it will be able to say: "No problem ! We have been strictly abiding by the scheme rules". Transparency has been abandoned in preference for obfuscation, while concepts such as justice and genuine fairness were never there from the start.

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[5] Post Office Ltd is wholly owned by the Department of Business, Energy and Industrial Strategy (BEIS), which holds a special share in the company. BEIS monitors its performance via UK Government Investments (UKGI) Ltd. The latter is owned by HM Treasury.

[6] Rt. Hon James Arbuthnot MP, July 2018.

[7] www.appgbanking.org.uk/wp-content/uploads/2021/07/APPG-to-Chancellor-July-2021-Final.pdf

[8] On 13th February 2021, the BBRS' Articles of Association were amended to prevent the BBRS amending the rules of its scheme without the approval of an unnamed representative of the banks.