

Transparency Task Force presentation 16 February 2023

The BBRS – What's left to be said?

The BBRS executives and board have been fully aware, throughout the whole process, of the extremely contentious nature of both the draft and final approved eligibility criteria. Not least as a result of the significant objections repeatedly raised by campaign and victim support groups, individual applicants, expert commentators, the press and members of the ISG.

The BBRS event transcripts provide extremely telling evidence of public statements repeatedly made by numerous BBRS executives which gave potential applicants – (*who were told not to self-exclude*) – the clear understanding that the BBRS board and executives were entirely independent and had both **the intention** and **the powers** to carry out regular reviews and make necessary changes to the scheme to ensure it was flexible, reflected lessons learned and was able to deliver on its aims and objectives – (*as defined by Phillip Hammond and the Walker Report*) – **without requiring the explicit permission of the banks** or indeed of the SME representatives to do so.

At no time during the webinars / events did the BBRS executives mention the Bank Appointed Member – the BAM – that it was an entity made up of an employee / representative from each of the 7 banks and that it held critical control powers over the BBRS.

By contrast, and rather bizarrely however, the executives were more than keen to highlight to potential applicants that the service was going further '*than originally intentioned*' – "*thanks to the generosity of the banks*" – by implementing a 'boundary case function' and approving the set up of a post launch SME Liaison panel – to provide a balanced 'consulting' function to the BBRS board to assist with such processes and changes to the scheme moving forwards.

The fact the same BBRS executives failed to mention the existence of the BAM entity and that it would have the power to veto recommendations put forward by the SME Liaison Panel and/or BBRS Board, (*in the same way that the individual banks had power of veto over any cases put forward for 'boundary' consideration by the BBRS*), obviously raises some very serious questions for those BBRS executives and board members regarding their personal competency and ethics.

Unsurprisingly, it also shows up 'the banks' so-called 'good faith' and 'generosity' in these matters as being nothing of the sort and just another false flag exercise, like so many previous 'review' schemes.

It is also worth noting that despite being repeatedly questioned on such eligibility issues, the executives also failed to mention the critical £1 million minimum turnover and the illogical and very likely illegitimate distinction between gross and net accounting assessment practices.

Mr Shand Smith was both Chair of the BBRS Board and of the Independent Steering Group, so has no excuses for failing to mention all of these extremely critical factors, and especially the BAM, while at the same time waxing lyrical and explicitly assuring the public and MPs that the **BBRS Board itself would not sign off on ANY documentation that would compromise its independence.**

The entity that is the BAM absolutely compromises the BBRS boards integrity and independent ability to make necessary changes to the scheme, especially in the light of the way that the service was publicly presented and promoted by the responsible BBRS executives and board members.

Irrespective of any recommendations made by the Bank and SME representatives on the Independent Steering Group, Mr Shand Smith and the BBRS board had very clear duties and responsibilities and would appear to be personally at fault for allowing the BAM entity to be established and afforded such a controlling position over the ultimate effectiveness of the BBRS.

By failing to openly discuss the existence and purpose of the BAM, it seems clear the BBRS executives have potentially mislead the public, potential and actual applicants to the service, as well as any MPs and Ministers watching or attending the webinars and events.

If the existence of the BAM and its controlling powers had been made publicly known before the launch, I think it very likely that this issue would have further strengthened allegations raised at that time that the BBRS was not independent, was entirely unfit for purpose and was just another bank review scam being perpetrated on victims of historic bank misconduct.

One final note... I very much doubt it is a coincidence that the BBRS event transcripts and videos have all mysteriously vanished without trace from the BBRS website.

JON McLEOD: Samantha, thanks for that. I would like to turn to Lewis because independence is about governance as well. Could you share a little on how you have satisfied yourself that you will be able to act genuinely independently and have an independent board supporting you in doing that? It is an issue that has been raised across a number of questions, and indeed outwith this round table process. Lewis, I would be interested in your comments on that.

LEWIS SHAND SMITH: As Sam said, independence is absolutely crucial. We have a board. It is a board of a company limited by guarantee. The BBRS is an independent company with an independent board. That board is responsible for its own independence as individuals on the board but also responsible for the independence of the BBRS. They are subject to the Companies Act. If there should be any hint that they are not independent, they would be in breach of the Companies Act. Believe me, every single member of the board takes that really seriously. We are going through the final stages of documentation now and the board is scrutinising that, and if there was anything in that documentation that would compromise their independence as non-executive directors or compromise the independence of the BBRS, they would not accept them. I can categorically assure you that the BBRS board will be independent, the BBRS company will be independent and because that is independent, crucially, and this really matters most, the decision-making when we deal with complaints will be completely independent.

JON McLEOD: Alexandra, thank you for that. Even as I speak, we continue to receive questions about time limits and our decision-making schedules. We will answer those in writing after the event, and indeed, any other questions that we have not been able to address today. I am going to hand back to Lewis for some brief closing words before he hands back to me to close today's proceedings. A brief closing thought from you please, Lewis.

LEWIS SHAND SMITH: The first thing I want to do is say thank you to all of you who have contributed and who have sent in questions, to those of you on the panel who have been answering the questions, but also to the experts who give the presentations earlier. It is much appreciated. I will reiterate what I said before. We do not under-estimate the complexity of what we are taking on and the need to ensure that the approach is tailor made to each person and each complaint.

I would also like to emphasise the point that we are going further than the original remit. The banks have done this in good faith. The boundary mechanism is taking us much further than we originally envisaged. We must be grateful to the banks for that. The banks are setting up this scheme on a voluntary basis. They are doing so in good faith. The documentation is now going through its final phases and, as Rachel has said, every detail is being scrutinised. The board is independent and will ensure the independence not only of the company but the independence of the complaint handling function.

One thing we have not mentioned of course, and again it is going further than was part of our remit, is we are setting up an SME liaison panel, so there will be continuous dialogue with the SME community. You asked me the question about the SME community. I got that one right but not quite right. We have people on the board who have run SMEs in the past. Of course, I forgot about myself. I was the chief executive of an SME for ten years. I have that experience. It started off as a small SME with a turnover of about £3 million and by the time I left it it was a much larger company, but none the less it was an SME. So I have been the chief executive of an SME and I am on the board.

SAMANTHA BARRASS: OK. Well, the seven participating banks will be funding the BBRS and, with very strong reference to Lucy, one of our board members' comments earlier: there has been, from the beginning, a very clear understanding on the part of the banks and the SME stakeholders, all who have been sitting around the table at the Implementation Steering Group, that the governance arrangements for the BBRS needed to be consistent with the BBRS operating independently from the funders. And that is set out, that is in the process of being set out in the formal governance documents, including the Articles of Association, for the board. Those Articles of Association will be adopted by the board. The board has been appointed and is up and going, and they will need to be confident that the governance structure, and any detail, is completely consistent with the BBRS operating independently.

Throughout, from when I was first going through my appointment process to become the CEO of the BBRS, to the present, the banks have been unambiguous in their commitment to making sure that the BBRS could operate independently.

And this is important for them as well, again to Lucy's points. This is not just about the issue of resolving disputes and bringing resolution to disputes. This is about, for banks and for SMEs, providing a service which enables ongoing trust and confidence in the lending environment and it is particularly important in the current context.

And so, it is in our DNA, as an organisation and certainly on the part of the stakeholders operating with us, that we need to not just be independent, but be demonstrably independent and that there is confidence in that.

And to that end, there will be full transparency of our governance documents on the website. People will be able to understand how we are operating and we will be publishing annual reports. It will all be very open and transparent.

JON McLEOD: Thanks, Alexandra. The point about the burden of evidence and the slight David and Goliath element that needs to be guarded against in all this reminds me that we have Rachel Couter on the line. She has been representing and advising the SME groups during the formation and design of the BBRS scheme. Rachel is a partner in the law firm Osborne Clarke. I wondered, Rachel, whether you could comment on the extent to which you are now satisfied that the scheme does deal with that issue of inequality of arms and that it will be a scheme in which customers can genuinely have confidence they will be supported to deliver their cases effectively and not be overwhelmed by a much mightier entity on the other side. I would be interested in your views on that, Rachel.

RACHEL COUTER: Thanks, Jon. The role that I have taken during the course of this process is to review the contractual documents, the articles of association and the related operational agreements and also the scheme rules to make sure that what the BBRS is being set up to achieve, in effect, will be able to achieve that. Obviously, from a bank's perspective, they have vast swathes of internal lawyers. They also have external lawyers and they have the finances to pay for those swathes of lawyers. The concern from the SME groups was that they did not have the equivalent representation to make sure the banks were not pulling the wool over their eyes and were not sneaking things into the documents that would negatively impact them and make the scheme not work as it should. That is a role I have been undertaking.

Picking up on Lewis's point about independence, we have had corporate lawyers look at it to make sure that the articles of association work from a corporate perspective to ensure the BBRS is independent from the banks and can make operational and other decisions without you needing to go cap in hand to the banks on a regular basis.

JON MCLEOD: And then a couple of quick questions. So effectively the eligibility criteria will be finalised at the conclusion of the live pilot and clearly ahead of the launch this autumn?

ALEXANDRA MARKS: Correct.

JON MCLEOD: That is the timeline. Will those criteria be reviewed, and will that be an annual review, or how does that work in terms of an evolving perspective on eligibility?

ALEXANDRA MARKS: Yes, they will be reviewed. It is important for me to say that the policies before we go live are to be signed off by the implementation steering group. They are not policies that are going to be made by the BBRS. Indeed, one might say that it would be wrong for us to do so, because we are implementing them. But the policies are going to be signed off in time, obviously, for go live. But once we go live, we will be reviewing that eligibility policy, along with all our other policies, on at least an annual basis so that we can reflect things that we have learned from seeing cases. Obviously, we will not do it just off our own bat. We will consult with stakeholders, so that will include obviously the banks, but it will include the SME community as well, and that is one of the reasons that we are setting up liaison panels, which will be part of our governance structure, to ensure that those voices are heard within the BBRS once we go live.