



UK Finance response
to the Walker Review
into the complaints
and alternative dispute
resolution (ADR)
landscape for the UK's
SME market

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Introduction

In March 2018, UK Finance set broad terms of reference for an independent review into the complaints and alternative dispute resolution (ADR) landscape for the UK's SME market. Simon Walker CBE – the former Director General of the Institute of Directors – was selected as the chair of the review by an independent panel that included representation from the All-Party Parliamentary Group (APPG) on Fair Business Banking.¹

The independent Walker Review (“the Review”) consisted of an evidence-based, comprehensive analysis of the scale and complexity of banking complaints from SMEs. It focused particularly on disputes between providers of financial services (excluding insurance products) and SME customers that remain unresolved through existing customer complaints procedures and may be unsuitable for court processes. The findings of the Review were published by Simon Walker on 23 October 2018.²

While all banks have robust complaints arrangements in place, the Review makes it clear that, in a small number of cases, complaints go unresolved to the satisfaction of the customer or cannot be dealt with by these internal procedures. A key objective of the Review was to identify solutions that could produce fair outcomes for this small group of SMEs. In support of this aim, the Review set out key three areas where action could be taken.

1. The role of the Financial Ombudsman Service (FOS).
 - **FOS SME-bank dispute division:** a new division within the FOS tasked with resolving SME-bank disputes, and a new

expert advisory body to advise the FOS on legal and banking issues.

2. A role for voluntary ombudsman arrangements in providing ADR.
 - **Voluntary ombudsman scheme for larger businesses:** a voluntary ombudsman scheme to support larger businesses that are not eligible complainants to the FOS.
 - **Voluntary ombudsman scheme for historic cases:** a voluntary scheme to consider legacy SME-bank disputes that arose following the 2008 financial crisis and have not been eligible for other forms of dispute resolution.
3. The need for better monitoring, information and dialogue to rebuild the relationship between banks and SMEs.
 - **Better monitoring and intelligence:** real-time data links between the SME-bank ombudsman facilities, the Financial Conduct Authority (FCA) and key Government departments to provide an early warning system regarding any future malpractice.
 - **Building a new relationship between SMEs and the banking sector:** a formal process, supported by senior representatives of the major banks, that seeks to achieve reconciliation and closure and a commitment to a new system of dispute resolution and other measures to ensure past issues do not infect the future relationship between SMEs and the banking sector.

¹ <https://www.ukfinance.org.uk/simon-walker-cbe-appointed-independent-chair-of-uk-sme-complaints-and-resolution-review>

² <https://www.ukfinance.org.uk/review-into-the-complaints-and-alternative-dispute-resolution-adr-landscape-for-the-uks-sme-market>

UK Finance has been working with member firms, the Government and regulatory authorities to consider the proposals set out in the Walker Review and to consider how the industry can address the important issues raised.

In responding to the Walker Review, the seven UK banks³ operating in this market have agreed a series of proposals to deliver stronger, fairer outcomes for SME customers.

1. **Support for the extension of the scope and capability of the FOS to enable a significantly strengthened service for businesses with turnover of up to £6.5 million and balance sheets up to £5 million, covering 99.5 per cent of all existing SMEs.**⁴ The industry supports the implementation of the FCA's proposed expanded scope and mandate from April 2019. Under this expansion, 99.5 per cent of all SMEs would be able to access a simple, independent complaints review and redress mechanism via the FOS.
2. **Access to an appropriate ombudsman scheme for SMEs with turnover of between £6.5 million and £10 million and a balance sheet up to £7.5 million.** The seven initial participating banks are willing to establish an interim voluntary ADR process for this cohort with the expertise and powers to address larger and more complex cases. We believe that the natural home for the review of these cases would be the FOS under its voluntary jurisdiction in line with the principles set out below. While it will be

for the Government, the FCA and FOS to assess whether the FOS should take on this expanded remit, the industry fully supports establishing a voluntary ombudsman process for this cohort and will work to develop the necessary proposals for delivery as quickly as possible, with appropriate input from Government and regulators.

3. **Voluntary business ombudsman scheme for eligible historic cases.** The industry will establish an independent process for reviewing legacy disputes brought forward by SMEs. This review will be for disputes involving small businesses that have arisen since 2008 and not already been addressed by an independent review process.
4. **Independent SME Advisory Council.** The industry will support the creation of an independent and transparent advisory council with the ability to consider emerging trends and issues regarding access to finance, the treatment of SME customers by financial services providers and the provision of appropriate support to SMEs to ensure there is an ongoing dialogue to address potential challenges early and effectively.

This paper considers each of these four proposals in further detail. **We believe that their effectiveness would be enhanced by the broadest possible participation, including from non-bank lenders and new providers in the marketplace serving eligible SMEs.**

³ Barclays, CYBG, Danske Bank, HSBC, Lloyds Banking Group, Royal Bank of Scotland, Santander.

⁴ FCA press release, 16 October 2018: <https://www.fca.org.uk/news/press-releases/fca-confirms-greater-access-smes-financial-ombudsman-service> - 30,000 SMEs would be outside the FOS's remit after the extension, which equates to 0.5% of the UK's 5.6 million SMEs (99.9 per cent of 5.7 million private-sector business at the start of 2017 according to the Department for Business, Energy & Industrial Strategy's Business Population Estimates for the UK and Regions, 30 November 2017: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663235/bpe_2017_statistical_release.pdf).

Context

Regulatory reform since the financial crisis has been widespread and profound, with a focus on improving the conduct of financial services providers. Lending standards are tighter, underpinned by a requirement to treat customers fairly, and accountability of individual senior managers within regulated finance firms for decisions within their area of responsibility has been significantly enhanced. Moreover, regulators have enforced these tighter rules, with fines for misconduct totalling billions of pounds. As the Walker Review observes, “The majority of those SMEs affected by the crash era scandals simply would never have been given the loans they received then in today’s marketplace.”⁵

Research undertaken for the Review considered a data set of more than 415,000 businesses and their complaints to high-street banks between 2015 and 2018. The most frequently raised complaints related to general administrative and customer-service issues, followed by errors/not following instructions and delays/timescales. Complaints about unsuitable advice and product disclosure amounted to just 3.1 per cent of the total. More than 60 per cent of complaints were settled and upheld by the banks themselves.⁶ Less than one per cent of the businesses involved were in a bank “turnaround unit” or otherwise in financial distress.

The research undertaken for the Review found that 56 per cent of the complaints considered were from firms with an annual turnover below £250,000 and 93.5 per cent from firms with

turnover below £6.5 million. This nonetheless left 6,000 complaints a year from SMEs with a turnover between £6.5 million and £25 million.

A separate survey commissioned by the Review from BVA BDRC, the UK’s largest independent research consultancy, found that 79 per cent of businesses had no cause for complaint in the previous five years, and 71 per cent of those that did complain had the complaint resolved to their satisfaction. More than a half of complainants did not seek compensation, and 60 per cent said there had been no negative effect on their business.

The FCA’s proposals to increase the threshold for SME eligibility to complain to the FOS (to a turnover up to £6.5 million, an annual balance sheet below £5 million and up to 50 employees) would encompass some 210,000 more SMEs than captured under existing FOS jurisdiction – 99.5 per cent of all SMEs. Based on the 2015-2018 data, around 4,000 complaints a year would still fall outside FCA-proposed FOS eligibility, and about 1,200 of these a year on average would not be resolved through bank complaints processes.

The Walker Review notes the costs of launching court action and the rapidity with which such costs could escalate. This, it observes, “inhibits all but the wealthiest businesses.” Notwithstanding the emergence of litigation funding by private entities, the Review does not see this as viable for smaller SMEs.

⁵ Walker Review, pg. 24.

⁶ Walker Review, appendix 3.4: BDRC Online Complaints Survey, September 2018.

The role of the Financial Ombudsman Service

When considering the potential role of the FOS in addressing how SME complaints could be handled, the Walker Review recommends establishing a new division tasked with resolving SME-bank disputes and a new expert advisory body to advise the FOS on legal and banking issues. This section considers these proposals in further detail and how their aim will be supported by the banking industry.

Providing access to a redress mechanism for SMEs that has the necessary technical skills, expertise and resource to address their specific needs is a key tenet of building an ADR mechanism that SMEs can trust and access effectively.

As the Walker Review notes, the FCA's extension of the FOS eligibility criteria (see box 1) is a welcome development in helping to achieve this. The successful implementation of this expanded scope would ensure that, from April 2019, 99.5 per cent of all SMEs would be able to access a complaints review and redress mechanism via the FOS. The industry supports these and the FCA's proposal to increase the award limit that is binding on banks to £350,000 while retaining the FOS's ability to recommend payments above this level and believes the proposed expansion of the FOS is the most appropriate solution to address the issues raised in the Walker Review.

However, the industry also acknowledges some parties' concerns about the FOS's current resources to meet this expanded mandate. We believe it is critical that the FOS's robust, respected mechanism is suitably upgraded to meet the expanded remit,

Box 1: summary of proposed FCA extension of FOS eligibility criteria and mandate

The FOS is the ombudsman put in place by Parliament to provide independent resolution when a financial services firm and a customer cannot resolve a complaint between themselves.

Currently, eligible firms are those defined as microenterprises (employing fewer than 10 people and with a turnover and annual balance sheet that do not exceed €2 million). The FCA has confirmed this will be increased from 1 April 2019 to cover businesses with an annual turnover of less than £6.5 million and either employing fewer than 50 people or with a balance sheet total of less than £5 million. The FCA estimates that 210,000 additional UK SMEs will become eligible for the FOS, which will result in 99.5 per cent of all SMEs being covered.

The industry has fully supported such an extension. However, we believe that the employee test should be removed so that SMEs are only required to meet the turnover and balance-sheet tests. This will address challenges for small businesses that rely on seasonal or temporary workers and remove most complex holding-company structures from the process.

providing fair outcomes for all concerned. While it will be for the Government, the FCA and the FOS to assess what formal steps need to be taken to ensure it has the necessary skills and resources in place for a broader set of business complainants, the industry fully supports this process and will offer all reasonable assistance in delivering it. This will include providing data and insight on the nature of complaints and the profile of businesses, providing funding to the expanded service on a proportional basis across the market and supporting use of the FOS's wide-ranging powers. The industry also supports the recommendations of Richard Lloyd's July 2018 Independent Review of the FOS and notes that these proposals now need to be embedded.⁷ We endorse the Walker Review's suggestion that a specialist ombudsman and complement of staff with business skills and experience is required.

The FOS already has the right to hear in-person testimony and provide face-to-face mediation. In accordance with the Dispute Resolution: Complaints part of the FCA's Handbook (DISP – see box 2), the FOS also has the power to recommend payment of appropriate additional sums and require disclosure by banks of any information required. These are important tenets that should be maintained in the FOS's newly expanded mandate. However, we recommend that the FOS should not simply adopt its existing approach for personal customers in setting up the ring-fenced specialist unit but also use the evidence in the Walker Review to consider how best to apply the powers it has under DISP to deal with SME disputes.⁸

Box 2: summary of DISP

This part of the FCA's Handbook sets out how the industry should handle and respond to complaints from customers. DISP also sets out the role and powers of the FOS in considering unresolved complaints as well as the eligibility of complainants.

The rules set out in detail how firms are expected to treat complainants fairly, addressing the process, investigation and communication required. They also set out relevant factors to be considered in a firm's response to a complaint.

To ensure appropriate treatment of SME customers, we believe it is important that SME disputes be considered as such rather than as a subset of consumer disputes. The FOS must use the full range of its powers, and should the Government, the FCA or the FOS conclude that these powers need to be reviewed in light of the proposed wider remit, the industry would respond appropriately to any consultation on such changes.

⁷ <https://www.financial-ombudsman.org.uk/publications/pdf/independent-review-2018.pdf>

⁸ <https://www.handbook.fca.org.uk/handbook/DISP/INTRO/?view=chapter>

Expanding access to ADR arrangements

The Walker Review rightly focuses on the treatment of SME customers in the 10 years following the financial crisis, particularly those firms that made a complaint to their financial services provider but may not have had access to an ADR process if they were unhappy with the outcome. The Review recognises the importance of addressing past weaknesses in the treatment of SME customers and in particular of ensuring that appropriate access to dispute resolution is available to those SME customers that may not have been able to present their case through such a mechanism.

The Review recognises the importance of ensuring that appropriate structures are developed to ensure that future complaints are addressed appropriately and considers whether the eligibility criteria for access to ADR mechanisms should be expanded to fill the gap for larger businesses. Building on the expansion of the FOS's scope proposed by the FCA and addressed above, the Review proposes the development of a further voluntary ombudsman scheme for businesses with turnover between £6.5 million and £10 million.

The industry supports the need to put in place appropriate arrangements to address these two areas. To ensure appropriate treatment of SME customers, we believe it is important that SME disputes be considered as such rather than as a subset of consumer disputes. These arrangements must as far as practical use the existing framework FOS currently operates within, working with the banking industry and other stakeholders to agree the design of evidential and decision-making

processes that are suitable for resolving the more complex disputes than may currently need to be adjudicated.

1. A voluntary ombudsman scheme to support larger businesses

The industry has considered this recommendation and agrees with the need to expand access to ADR beyond the proposed extended "small business" threshold being introduced for the FOS in April 2019.

In support of this aim, we believe that the natural home for the delivery of this ADR mechanism would be for this expansion to be undertaken by the FOS through a further expansion of its remit to incorporate these eligible larger businesses. Undertaking this activity through the FOS would provide this cohort of larger SMEs with access to an ADR mechanism through a trusted, independent and credible entity. Any expansion of FOS's mandate would need to be supported by the FCA and Government to ensure that FOS has the necessary skills and resources in place for a broader set of business complainants. Moreover, using FOS would help deliver wider industry participation than a standalone voluntary scheme. However, the industry acknowledges some stakeholders' concerns about the capacity of the FOS to take on a further expanded mandate beyond the current FCA proposals in the short term.

The seven initial participating banks are willing to establish an interim voluntary ADR process for this cohort.

While it will be for the Government, the FCA and FOS to assess whether the FOS should take on this expanded remit, the industry fully supports establishing a voluntary ombudsman process for this cohort and will work to develop the necessary proposals with the aim to deliver by a target date of September 2019, with appropriate input from Government and regulators.

Eligibility criteria

In meeting the desire to widen access to the ADR process through either the expansion of FOS or an alternative approach, the UK's main banks support the prompt establishment of an ADR mechanism for businesses exceeding the expanded "small business" criteria, up to £10 million turnover and a balance sheet of less than £7.5 million at the time of complaint. This threshold was identified as appropriate by the Walker Review based on analysis of data from the Legal Services Board's legal needs survey,¹⁰ which suggests that this is the size of business at which court processes are not readily accessible.

Award values

When considering the award values for these eligible firms, we support the Walker Review recommendation of a binding award value up to £600,000. Under such an approach either the FOS or a voluntary ombudsman arrangement would be able to recommend payment of appropriate additional sums, as the FOS can now for smaller SMEs. Should a bank choose not to follow the recommendation for a payment over the binding level, the business would

retain the right either to accept the award up to £600,000 or to take legal action and use the findings of the service in support of their case. In line with the principles of DISP, the dispute resolution service ("DRS") panel will have the power to recommend reimbursement of costs in relation to professional advice but not court costs.

2. A voluntary ombudsman scheme for historic cases

The Review also considered the treatment of SME customers in the 10 years following the financial crisis, with a focus on those that made a complaint to their financial services provider but may not have had access to an ADR process. The Review rightly recognises the importance of addressing past weaknesses in the treatment of SME customers, in particular ensuring that appropriate access to dispute resolution is available to those that may not have been able to bring their case through such a mechanism.

In support of addressing the concerns set out in the Review regarding the historic treatment of customers, the largest UK banking providers have agreed to support the establishment of a voluntary DRS based on the principles set out below for historic cases. This will provide access to an ADR process for those businesses that were not previously eligible to bring their case to the FOS but would be eligible under its proposed expanded scope and jurisdiction and whose unresolved dispute arose from an event that occurred on or after 1 January 2008. In considering the management of historic cases, we note that any review of data will need to comply with the General Data Protection Regulation and relevant supporting laws and regulations.

⁹ https://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2018/20180214LSB_Publishes_Its_Third_Wave_Of_SMEs_Legal_Needs_Research.html and BDRC's SME Finance Monitor suggest that businesses are significantly more likely to spend money on financial and legal resources when their annual turnover reaches £5-10 million.

Committing to this process is a significant indication of the industry's willingness to offer SME customers the opportunity to resolve eligible historic disputes without infringing on individual schemes already in place and subject to regulatory oversight or reopening business disputes that have been addressed.

Eligibility criteria

In developing this commitment in consultation with stakeholders, regulators and the Government, the industry has identified the following criteria for firms seeking to access the DRS process.

a) **Eligibility.** This process will be put in place for complaints from businesses meeting all the criteria below:

- complaints registered by a business with its provider between 1 January 2008 and 30 November 2018 relating to an event during this period;
- complaints brought by a business that has not had settlement offered by the provider and accepted by it;
- complaints raised by a business where that complaint was not subject to an independent review process (for example IRHP Skilled Persons Reviews, GRG, Griggs HBOS Reading or another skilled-persons review); and
- complaints raised by a business that was previously ineligible for the FOS but would be under the expanded scope from 1 April 2019. Guarantors that would have been eligible under post-April 2019 rules will also be eligible for this scheme (subject to other criteria).

We recognise that dispute resolution for insolvent/dissolved firms, particularly when the dispute relates to historic complaints, is challenging. We are committed to working

with members and other stakeholders to establish the most appropriate mechanisms for directors and shareholders of such firms eligible under the criteria above. A DRS Implementation Steering Group will consider how this can be addressed on a basis that is compatible with company and insolvency law, policy and practice and recognising that in such circumstances an award may not vest in the directors or shareholders.

b) **Exclusions.** This scheme will not be available to:

- businesses that are in the process of live litigation or have been through a court process in relation to the dispute; or
- businesses that have not made a complaint over the period; or
- businesses that raised a complaint which was already time-barred cannot now have that complaint re-opened in order to reflect rules on limitation.

Award values

In considering award values for the eligible historical cases given the potential scope and size of businesses accessing the DRS, it is proposed that the DRS be able to recommend clear binding awards up to £350,000 to align with the proposed extension of the FOS award. The DRS would be able to recommend payment of additional sums, as the FOS can for smaller SMEs. Should a bank choose not to follow the recommended payment over £350,000, the business would retain the right either to accept the award up to £350,000 or to take legal action and use the findings of the service in support of their case. In line with DISP, the DRS panel will have the power to recommend reimbursement of costs in relation to professional advice but not court costs.

To support the delivery of the DRS for eligible historic cases and following consultation with business groups, the Government and the FCA, UK Finance with the support of the [main UK banks] has developed a set of key principles for the operation and establishment of a voluntary Dispute Resolution Service (DRS).

1. **Independent leadership and governance.** The DRS would be overseen by a former senior judge who would act as Head of the DRS, with a maximum term of three years. The DRS would operate under an independent board of directors with representation from the mainstream business community, e.g. the Federation of Small Businesses (FSB) and the British Chambers of Commerce (BCC).
2. **Expertise.** The DRS must be expertly resourced and rigorous in its decision making. Given the size of business that may require access to the DRS (and therefore the potential complexity of disputes), we would expect at a minimum its expertise to include those with accounting backgrounds, business representatives and legal, commercial-banking and insolvency experts. The Head of the DRS would be supported in their activity and decision making by an appropriate panel of technical experts to ensure the DRS had access to the necessary expertise to hear disputes of a complex nature.
3. **Legal expertise.** The Head of the DRS would also be supported by an independent panel of legal experts approved by the independent board of directors to assist in the review and resolution of cases.
4. **Decision making.** It is proposed that the basis of decisions made by the DRS be on a fair and reasonable basis as applied by the FOS.
5. **Transparency.** Businesses would have the right to a robust hearing, including the opportunity to provide in-person and written testimony. In line with the approach taken by the FOS, detailed data on complaints would be accessible to and reviewed by the FCA, and while initial decisions of the DRS would remain private; appeal decisions would be published.
6. **Appeals.** Disputes not settled through the first stage of the DRS process would have the right to be reviewed by an expert appeals panel, with a final appeal decision made by the Head of the DRS.
7. **Disclosure.** The service would be given the power under contract with participating providers to call for relevant evidence on specific issues at any stage and for further or specific evidence from either party.
8. **Consequential loss.** The DRS would be able to consider consequential loss claims for eligible businesses on the same basis as the FOS. This would include the ability to recommend support is sought by a Business in the form of specialist professional advice, in order to make out a specific element of their claim, such as accountancy experts or property experts with the costs of this being met by the relevant eligible firms. The costs would be agreed before any such professional advice is sought to ensure the complainant is not out of pocket.

Developing the DRS process

Having identified and agreed the principles and eligibility criteria that would underpin the development of the DRS for eligible historic cases, the seven initial participating banks have agreed to support and fund (through an appropriate mechanism) its establishment for historic cases and by a target date of September 2019 subject to the DRS Implementation Steering Group setting out a clear timetable and funding mechanism for delivery (see below).

While we believe that the natural home for the review of future cases for eligible larger SMEs would be the FOS acting under its voluntary jurisdiction, the industry has also agreed to support and fund the scoping of a voluntary ombudsman arrangement for this cohort by the DRS Implementation Steering Group. In looking at how a voluntary arrangement could be applied to this cohort the DRS Implementation Steering Group will consider the requirements for implementation with the aim to deliver a voluntary arrangement by September 2019.

DRS Implementation Steering Group

To deliver this commitment, we will establish an independent DRS Implementation Steering Group to undertake:

1. further work to develop the scope, operation and funding of the DRS for eligible historic cases; and
2. to consider the options for the scope, application, delivery and funding of a voluntary ombudsman scheme (potentially based on the DRS).

The Steering Group will be chaired by a suitably independent individual with the requisite skill and experience and supported by an independent secretariat. The proposed composition and terms of reference for the Steering Group are set out in the annex to this paper. It is proposed that the Chair and Secretariat be appointed by the seven initial participating banks in consultation with the Co-Chairs of the APPG on Fair Business Banking and representatives from the BCC and the FSB acting in consultation with HMT, the FCA and the FOS as appropriate.

The Steering Group will be established and commence work in December 2018. UK Finance will provide secretariat support for the establishment of the group until an independent chair and secretariat have been appointed.

Rebuilding the relationship between banks and SMEs

The Walker Review identifies the need for better monitoring, information and dialogue to help rebuild the relationship between banks and SMEs. In considering this issue and identifying potential approaches, it makes two proposals:

- real-time data links between the bank ombudsman facilities, the FCA and key Government departments to provide an early warning system against future malpractice; and
- a formal process, supported by senior representatives of the major banks, that seeks to achieve reconciliation and closure and a commitment to a new system of dispute resolution and other measures to ensure past issues do not affect the future relationship between SMEs and the banking sector.

UK Finance and our members agree it is critical that the construction of the future ADR landscape learn the lessons of the past. While most future SME issues and disputes with their providers will remain operational, issues and trends in significant complaints must be identified early and acted upon. This includes both those that are firm or product specific and those that are cross-industry.

In support of addressing these two Review recommendations and following further consultation with business groups, the Government and regulators, we propose that an independent SME Advisory Council be established.

The Council should be made up of experts and senior representatives from across the research community, relevant business groups and the banking sector and be chaired by a senior figure commanding the confidence of the business community. We believe there would also be benefit in HMT, the Department for Business, Energy and Industrial Strategy, the FCA and the FOS attending the Council as observers. An effectively constituted Council with clear terms of reference and clear policies to manage potential conflicts of interest would provide an important platform to both identify emerging issues and areas for concern and make recommendations on areas of focus while providing a critical and independent assessment of how issues are being addressed.

We also recognise that a key design feature of the Council should be a willingness to provide an appropriate platform to facilitate the personal testimony of individuals with complaints to ensure issues are heard, understood and acknowledged.

We believe that the involvement of the Government, the FCA and the FOS as observers alongside relevant business groups and industry representatives would help to ensure an important ongoing dialogue whereby relevant findings can be shared, considered and acted on in the interest of a well-functioning SME banking market.

Additional Walker Review recommendations

The Review makes a number of secondary recommendations, to which we will develop our responses in discussion with the Government and regulatory authorities as appropriate.

Annex: Independent DRS Implementation Steering Group

The Independent DRS Implementation Steering Group will be responsible for proposing the detailed design and implementation of the voluntary business ombudsman scheme for eligible historic cases and considering the potential implementation of an appropriate ADR mechanism for a forward-looking scheme for SMEs initially outside the FOS remit (i.e. with a turnover between £6.5 million and £10 million turnover and a balance sheet up to £7.5 million). These proposals will be consulted on, following which the Steering Group will be responsible for the implementation of its final recommendations.

- Legal status: Company Limited by Guarantee.
- Secretariat: an independent organisation.
- Decision making: by majority of a quorate attendance of a Steering Group meeting.
- Funding: on a case-fee basis decided upon by an independently conducted analysis of funding mechanisms by the seven initial participating banks.

We envisage the Steering Group will include representation from the industry, the Federation of Small Business and the British Chambers of Commerce and a Parliamentary Officer of the All-Party Parliamentary Group of Fair Business Banking. HMT, the FCA, the FOS and other relevant stakeholders as invited by the chair will be invited to attend as appropriate in an observer capacity.

Draft terms of reference

Preamble

1. The DRS Implementation Steering Group (“the Steering Group”) has been set up to establish the detailed design and implementation of the Dispute Resolution Scheme (DRS) process for the review of historic cases within the parameters laid out in the UK Finance response to the Walker Review. The Steering Group will also consider the potential implementation of a voluntary ADR mechanism for forward looking cases for SMEs outside the FOS remit that meet the necessary eligibility criteria.
2. The independent Walker Review consisted of an evidence-based, comprehensive analysis of the scale and complexity of banking complaints from SMEs. It focused particularly on disputes between providers of financial services (excluding insurance products) and small business customers that remain unresolved through the normal customer complaint procedure. The findings of the Review were published by Simon Walker in October 2018.

A. The Steering Group

Objectives

3. The overall objectives of the Steering Group will be to agree proposals on:
 - a) the operating process for the historic review process;
 - b) the resourcing requirement for the historic review process;
 - c) the delivery partner for the historic review process (including the potential of a new entity);
 - d) the timescale for the historic review process;
 - e) the funding mechanism for the historic review process;
 - f) a post implementation review of the historic review process;
 - g) the implementation of a forward-looking ADR mechanism (including through the DRS) for eligible larger SMEs with the aim to deliver by a target date of September 2019; and
 - h) scoping the operating processes, resourcing requirements, funding mechanisms and delivery process for a forward-looking ADR mechanism.

Constitution of the Steering Group

THE CHAIR

4. The Steering Group will have a Chair who is independent of banking-industry interests. The Chair will have been appointed by 21 December 2018.
5. The Chair is responsible for leadership of the Steering Group and ensuring its effectiveness in all aspects of its role.
6. The Chair is responsible for providing updates to HM Treasury and the Financial Conduct Authority as required from time to time.

THE STEERING GROUP

7. The Steering Group will facilitate collaborative discussions and reach majority decisions on the objectives stated under point 3 above. It will have members in senior positions, with the ability to shape and make decisions on these areas.
8. The Steering Group will comprise industry representatives, mainstream business groups and other relevant stakeholders and will be confirmed by the Chair.
9. As the Steering Group is to design and oversee voluntary commitments, it will include representatives of the initial group of participant banks.
10. The Steering Group will conclude at the point of both schemes' implementation and a short post-implementation review.

MEMBERSHIP AND APPOINTMENTS

11. The Chair will be appointed to oversee the Steering Group for its duration.
12. The Chair will appoint the Steering Group members. The membership is likely to be made up of representatives from CYBG, Danske Bank, HSBC, Barclays, Lloyds Banking Group, RBS, Santander, the Federation of Small Businesses, the British Chambers of Commerce, the Lending Standards Board, a Parliamentary Officer of the All-Party Parliamentary Group on Fair Business Banking; and appropriate professional advisors as identified and required by the Chair. UK Finance, the Government and regulatory authorities will be invited to participate as observers.
13. Members who are no longer able to participate in the Steering Group's discussions may be replaced for the remainder of its work at the discretion of the Chair.

14. The Chair may terminate the Steering Group if s/he considers it is not working effectively or is not expected to meet its objectives as set out under point 4 above.

Key principles for the operation and establishment of a voluntary Dispute Resolution Service (DRS)

15. Independent leadership and governance. The DRS would be overseen by a former senior judge who would act as Head of the DRS, with a maximum term of three years. The DRS would operate under an independent board of directors with representation from the mainstream business community, e.g. the Federation of Small Businesses (FSB) and the British Chambers of Commerce (BCC).
16. Expertise. The DRS must be expertly resourced and rigorous in its decision making. Given the size of business that may require access to the DRS (and therefore the potential complexity of disputes), we would expect at a minimum its expertise to include those with accounting backgrounds, business representatives and legal, commercial-banking and insolvency experts. The Head of the DRS would be supported in their activity and decision making by an appropriate panel of technical experts to ensure the DRS had access to the necessary expertise to hear disputes of a complex nature.
17. Legal expertise. The Head of the DRS would also be supported by an independent panel of legal experts approved by the independent board of directors to assist in the review and resolution of cases.
18. Decision making. It is proposed that the basis of decisions made by the DRS be on a fair and reasonable basis as applied by the FOS.
19. Transparency. Businesses would have the right to a robust hearing, including the opportunity to provide in-person and written testimony. In line with the approach taken by the FOS, detailed data on complaints would be accessible to and reviewed by the FCA, and while initial decisions of the DRS would remain private, appeal decisions would be published.
20. Appeals. Disputes not settled through the first stage of the DRS process would have the right to be reviewed by an expert appeals panel, with a final appeal decision made by the Head of the DRS.
21. Disclosure. The service would be given the power under contract with participating providers to call for relevant evidence on specific issues at any stage and for further or specific evidence from either party.
22. Consequential loss. The DRS would be able to consider consequential loss claims for eligible businesses on the same basis as the FOS.

ELIGIBILITY OF BUSINESSES FOR THE VOLUNTARY OMBUDSMAN SCHEME FOR HISTORIC CASES

23. As per the industry response to the Walker Review, businesses are required to meet all of the criteria below:
 - a) complaints registered by a business with its provider between 1 January 2008 and 30 November 2018 relating to an event during this period.
 - b) complaints brought by a business that has not had settlement offered by the provider and accepted by it; complaints raised by a business where that complaint was not subject to an independent review process (for example IRHP Skilled Persons Reviews, GRG, Griggs HBOS Reading or another skilled-persons review);
 - c) complaints raised by a business that was previously ineligible for the FOS but would be under the expanded scope from 1 April 2019. Guarantors that would

have been eligible under post-April 2019 rules will also be eligible for this scheme (subject to other criteria).

- d) The implementation steering group will make a proposal on the inclusion of former directors and shareholders of insolvent companies eligible under the criteria above. However, this must be done on a basis that is compatible with company and insolvency law, policy and practice.
- e) This scheme will be subject to the exclusion of businesses that are in the process of live litigation or have been through a court process in relation to the dispute.

ELIGIBILITY OF BUSINESSES FOR POTENTIAL VOLUNTARY OMBUDSMAN SCHEME

- 24. As per the industry response to the Walker Review, eligible businesses must exceed the expanded "small business" criteria, up to £10 million turnover and a balance sheet of less than £7.5 million at the time of complaint.

C. Functioning of the Steering Group

- 25. It is expected that appointed members will be present at all meetings of the Steering Group. Alternates will not be permitted. Written input, via the Chair, will be permitted in the case of members' unavailability for individual meetings.
- 26. The Chair will endeavour to achieve consensus between Steering Group members on key issues and proposals under discussion. Dissenting opinions will be reflected in the minutes of the meeting.
- 27. Progress toward reaching consensus will be supported by evaluating options using robust evidence and consistency with the objectives set for the Steering Group. Should consensus not be possible, decisions will be taken on a majority basis.

- 28. The agreed proposals will be subject to consultation with all interested parties.
- 29. Following consultation, the Steering Group will seek to agree final proposals on a consensus basis. Should this not be possible, decisions will be taken on a majority basis.

The role of the Government and regulatory authorities

- 30. HM Treasury, the Financial Conduct Authority, the Financial Ombudsman Service and other relevant stakeholders as invited by the Chair will be invited to attend as appropriate in an observer capacity. For the avoidance of doubt, attendance in this capacity confers neither decision-making authority nor a right of attendance without the Chair's invitation.
- 31. The Chair may invite other regulatory authorities to attend Steering Group meetings where appropriate to provide relevant input into discussions.

Meetings

- 32. It is expected that the Steering Group will meet at least once a fortnight through Q1 2019. Additional meetings may take place if members believe these are required in order to achieve the Steering Group's objectives.
- 33. A summary of the discussions will be provided to Steering Group members.

Secretariat

- 34. The Chair will be supported by a secretariat. The secretariat will be appointed by the Chair in consultation with the Steering Group.
- 35. The secretariat will be responsible for supporting the Steering Group, its meetings and relevant papers for the meetings. All Steering Group-related communications between members outside of meetings will be exchanged through the secretariat.

36. Staff providing secretariat support will report to the Chair in the performance of their duties.

Agenda

37. The agenda and meeting papers will be circulated in advance of Steering Group meetings.

Information sharing

38. The Steering Group may need to share sensitive information from time to time.
39. The responsibility for ensuring the lawfulness of any exchange of sensitive information between competitors rests solely with the undertakings concerned and their representatives. The secretariat may issue guidance to the Steering Group on such exchanges for competition law purposes.

Funding

40. The participant banks will cover the costs of running the Steering Group split by market share of business current accounts in the UK.