

CRANSTON REVIEW APPEALS PROCESS

The Cranston Report was published in December 2019. In that report, Sir Ross Cranston made the following recommendations:

(i) Recommendation 1, which related to de facto directors:

“Recommendation 1.1: The Bank must reconsider all cases where an individual sought inclusion in the Customer Review on the basis that they were a de facto director or were otherwise involved in the running of the business.

Recommendation 1.2: In determining whether an individual was a de facto director or actively involved in the running of the business, the Bank should take into account all relevant evidence, and give weight to the individual’s written statement and any corroborative statements of others involved in the running of the business at the relevant time.

Recommendation 1.3: Where an individual who is found to qualify for inclusion in the Customer Review in this way is a spouse or partner of another director of the business, in the absence of evidence to the contrary, the Bank should consider each of them to have suffered the same or similar distress.”

(ii) Recommendation 2, which related to debt relief:

“... the Bank must reconsider customers’ eligibility for debt relief payments where such debt existed at the time of the IAR fraud, and that debt was subsequently repaid or refinanced before the commencement of the Customer Review.”

The Bank is seeking to implement these recommendations and is making decisions on customers’ applications for their claims to be assessed on the ground that they were, or ought to be treated as, de facto directors, and on their applications for debt relief.

If a customer is not content with the Bank’s decision on his/her application, the customer is entitled to appeal that decision to Rory Phillips QC of 3 Verulam Buildings, provided that they first accept that the appeal decision in their case will be final and binding on them and on the Bank.

The provision of this simple appeals system was another recommendation of Sir Ross Cranston. In overseeing the appeals process and deciding the appeals, Mr Phillips will act independently of the Bank.

The procedure for these appeals will be as follows.

Time limit for making an appeal

1. If a customer wishes to appeal the Bank's decision, the customer must do so within 28 days of the Bank's decision. Within that time limit, the customer must:
 - i. notify the Bank and Mr Phillips of his/her intention to appeal the decision; and
 - ii. submit all relevant documents and information to Mr Phillips.
2. Contact details for the appeals process will be provided to the customer when the Bank issues its final decision on the customer's application.

Relevant documents and information

3. The customer should provide Mr Phillips with all documents and information which he/she considers relevant to the appeal, including:
 - i. all documents and information which were submitted to the Bank;
 - ii. the Bank's decision letters and supporting documentation;
 - iii. copies of any other correspondence between the Bank and the customer; and
 - iv. any further material which the customer would like Mr Phillips to take into account, including, if possible, a short explanation of why the customer considers the Bank's decision to be incorrect.
4. If Mr Phillips considers that there are any gaps in the material provided to him, he may request further documents and/or information from the customer or the Bank, as he sees fit.

The decision-making process

5. Mr Phillips will be assisted in the decision-making process by a team comprising:
 - i. Simon Kirkhope of FTI Consulting LLP (who assisted with the Cranston Review) and members of his team; and
 - ii. barristers from 3 Verulam Buildings.

6. Once Mr Phillips has received the customer's appeal documents provided under paragraph 3 above, he and his team will consider those documents and any further material requested under paragraph 4 above in order to determine whether the Bank's decision should be upheld, overturned or varied.
7. In their work on each appeal, Mr Phillips and his team will have regard to:
 - i. the recommendations made in the Cranston Report in relation to de facto directors and debt relief (set out above);
 - ii. the guidance given in the Cranston Report at paragraphs 15.31 to 15.38 (regarding de facto directors) and paragraphs 15.39 to 15.47 (regarding debt relief); and
 - iii. the further guidance given in the "Response to LBG's request for clarification of Recommendations made in the Cranston Report" published by Sir Ross Cranston on 3 April 2020.
8. The decision on each appeal will be made by Mr Phillips.

Finality of the decision

9. Mr Phillips' decision on each appeal shall be final, and binding on both the Bank and the customer.