



*'Empowering colleagues to deliver SME finance and support in a fair and innovative way to address financial inequality and improve the social & financial well-being of our communities.'*



BACFI Presentation

# A bit about BEF

- Started in Nov 2004 – 20 years
- Loaned £132m
- £580m of economic growth for our regions
- 35 members of staff
- 5 locations
- Lend up to £250k
- Currently manage over £100m of funds

**Amity BREW CO**

AMITY BREW CO

Amity Brew Co is a Leeds-based craft beer producer founded by Ross Clark and Richard Degan. The business previously received £30,000 in Start Up Loans from BEF to secure the lease on their premises at Sunny Bank Mills in Farley.

The business performed well despite the pandemic and is now set for growth following a second BEF investment, £15,000 of which was match funded by ADVENTURE, a business growth programme for early stage businesses in North and West Yorkshire.

Loan	Purpose	Impact	UNSDGs
£40,000 RLS-backed BEF	Equipment purchase and working capital	8 jobs safeguarded	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

WE TAKE A DIFFERENT VIEW





# **“Managing the Challenges of Commerciality along with your Legal duty to your Employer”**

**Considering the complex tensions of commerciality versus your duty to  
being a full legal service provider to your employer**





# General Principles

- in a way that upholds the rule of law and the proper administration of justice
- in a way that upholds public trust and confidence in the legal profession
- with independence
- with honesty
- with integrity
- in a way that encourages equality, diversity and inclusion
- in the best interests of each client

# FCA specific Principles

1 Integrity	A <a href="#">firm</a> must conduct its business with integrity.
2 Skill, care and diligence	A <a href="#">firm</a> must conduct its business with due skill, care and diligence.
3 Management and control	A <a href="#">firm</a> must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4 Financial prudence	A <a href="#">firm</a> must maintain adequate financial resources.
5 Market conduct	A <a href="#">firm</a> must observe proper standards of market conduct.
6 Customers' interests	A <a href="#">firm</a> must pay due regard to the interests of its <a href="#">customers</a> and treat them fairly.
7 Communications with clients	A <a href="#">firm</a> must pay due regard to the information needs of its <a href="#">clients</a> , and communicate information to them in a way which is clear, fair and not misleading.
8 Conflicts of interest	A <a href="#">firm</a> must manage conflicts of interest fairly, both between itself and its <a href="#">customers</a> and between a <a href="#">customer</a> and another <a href="#">client</a> .
9 Customers: relationships of trust	A <a href="#">firm</a> must take reasonable care to ensure the suitability of its advice and discretionary decisions for any <a href="#">customer</a> who is entitled to rely upon its judgment.
10 Clients' assets	A <a href="#">firm</a> must arrange adequate protection for <a href="#">clients'</a> assets when it is responsible for them.
11 Relations with regulators	A <a href="#">firm</a> must deal with its regulators in an open and cooperative way, and must disclose to the <a href="#">FCA</a> appropriately anything relating to the <a href="#">firm</a> of which that regulator would reasonably expect notice.
12 Consumer Duty	A <a href="#">firm</a> must act to deliver good outcomes for <a href="#">retail customers</a> .



# *A Balancing Act*





# In House counsel's Balancing Act

Firstly, from personal experience some issues, pressures and tensions are around the following issues;

- **Time pressures** - to do job/work/assignments properly without compromising because of time pressure (need it now, today) and an increased potential risk to business or bad outcome.
- **Specialist Expertise** – expectation of being an instant expert on whatever area is required or needed, on -demand, to meet current commercial objective.
- **Resources** – as a single In -House lawyer with no team or supporting junior colleagues can sometimes lead to situations where there isn't sufficient capacity and becoming overburdened with a particular task or set of tasks.
- **External Fees** – being on the other side of the fence, fees charged by external firms can seem exorbitant and hard to justify/manage.

# In House counsel's Balancing Act...cont

- **Instruction** – its handy having
- **Being a strategic thinker** – the reality is you need to be way more than just a lawyer
- **Being a salesperson** – you are representing the firm therefore sometimes you need to sell the firm
- **Advice** - Providing practical advice versus the usual lawyer advice
- **Conflicts** – Treating customers fairly – vulnerability.
- **Resource** - Knowing when to sub the work or not
- **Commerciality** - Managing the commercial imperative with the business objectives
- **Doing Good** - We are a social enterprise – so not everything is about the bottom line!
- **Loneliness** – It can be desperately lonely sometimes and wellbeing is major issue
- **Professional development** – We believe in developing and supporting our staff



# The Tensions



Second, some examples you can perhaps offer from BEF to illustrate commercial challenges etc:

- 1. A loan transaction** - Just had an incident where we are taking court action against a severely disabled PG holder to recover loan finance. More information has belatedly come to light to suggest that the transaction may have been entered into with an element of fraud and or coercion unknown to the PG security provider. Preliminary enquiries internally (retrospective) could support this scenario though not conclusive. Raises ethical-commercial issues, – does BEF proceed with claim considering the new info; how balance (regulatory) issues of treatment of vulnerable clients, how does BEF cover (re-cover) or mitigate the potential financial loss.
- 2. Lloyds Bank deal** – this was a complex structured finance deal, involving multiple parties and Govt. back commercial guarantees. The tension in this case was a party taking things to the ‘n-th’ degree insisting on there being a second further ‘back-up’ provider put in place following hard-work already carried out to set up the existing ‘back-up’ service provider. In other words a back-up for the back-up!

# The Tensions



- 1. Regulation/FCA** – Financial Services is highly regulated by the Financial Conduct Authority, such that BEF's founding single member and controlling interest was forced to relinquish any control of the business in order for BEF to obtain the necessary regulatory authorisations to operate commercially. This highlights unpalatable yet unavoidable advice to be heeded by the board
- 2. Governance** – a legal investigation and enquiry found historical payments by Directors to be unlawful distributions and ultra-vires of the particular firm's written constitution. This raised issues of personal liability for breaches of directors' duties under the Companies Act. This firm is a social enterprise whereby profit distributions are prohibited, the touchstone legal principle was the question of 'substance over form'. (*Progress Property Company Ltd v Moorgarth Group Ltd [2011] 2 All ER 432*)



# Questions?

