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Royal Bank of Scotland (“RBS”): Review of treatment of SME customers by Global Restructuring Group (“GRG”)

This is my fifteenth quarterly report on my role in the RBS GRG complaints process.

Overall progress on RBS’s GRG complaints process

RBS (“the Bank”) has completed its assessment of all 2,693 complaints that it had received. The process has been long closed to new Complainants.

Customer complaints typically consisted of multiple allegations. Across all complaints the Bank assessed 23,323 allegations. The Bank upheld 20% of all allegations raised, with 51% of Customers having one or more of their allegations upheld.

In respect of upheld allegations, the Bank made Direct Loss offers totalling £41.0m¹, plus £13.2m of interest². In addition, at the outset of this process the Bank automatically refunded a further £40.5m of complex fees to many of these 2,693 complainants on a no admission of liability basis³.

Although the Bank’s assessment of complaints and any associated Direct Loss is now complete, my team will continue to assure the small number of largely administrative steps which still remain. As was the case in my fourteenth quarterly report, I have no new assurance findings to report from their work. More detail on my previous assurance findings can be found in my twelfth report.

Given that the Bank has completed its assessment of all complaints, the process for appealing against its complaint and Direct Loss outcomes is likely to be concluded this year. I refer to these appeals in this report as “complaint appeals”, to distinguish them from appeals against the Bank’s Consequential Loss outcomes (“Consequential Loss appeals”). The Bank is now focused on considering claims for Consequential Loss stemming from upheld allegations so my consideration of Consequential Loss appeals will necessarily extend into 2021.

Complaint appeals

I have received 994⁴ complaint appeals, of which four were received since my last quarterly report. No Customers remain eligible to appeal. So far, I have sent letters communicating my

¹ This includes recategorisation of applicable automatic fee refunds of £17.7m

² The Bank offers 8% interest on all of its Direct Loss awards as I explain in more detail later in this report.

³ In addition, the Bank automatically refunded a further £57.6m of complex fees to 1,816 customers who did not submit a complaint in this process.

⁴ Total number of eligible appeals received by the ITP.

decision to 959 Customers - including 107 during this last quarter. In a further nine appeals, I have reached a conclusion, but not yet communicated it to the Customer. 22 appeals have been closed, of which seven concerned matters outside the scope of my role and 15 were withdrawn by the Customer.

In some of the complaint appeals that I have received the Customer has raised a new allegation or submitted material new evidence. In accordance with the Principles governing the RBS GRG complaints process⁵, I paused my assessment of those appeals in order to allow the Bank to complete an assessment of these new matters in the first instance. In some cases, this has led to a significant and regrettable delay in providing these Customers with an outcome to their appeal. In this quarter, the Bank completed its review of the new matters remitted by me.

My team has full access to the documentation stored on the Bank's main document retention system⁶, and this is the primary evidence base against which I assess complaints, alongside any evidence that a customer chooses to submit in their complaint or subsequent appeal. On every appeal I ask a legal expert and a banking expert⁷ to review the evidence afresh, placing no reliance on the Bank's own summary of the relevant documentation. I have also put in place a number of measures to ensure that my outcomes remain consistent across the large number of appeals that I am assessing.

As I have noted in previous quarterly reports, in considering each complaint appeal I am not pronouncing on the reasonableness of the Bank's determination under its complaints process but am conducting a fresh review of GRG's conduct. Each appeal outcome therefore requires detailed consideration of the allegation(s) and often relies on a matter of careful judgement as to what constituted a reasonable action on the part of GRG at the time. This means that in assessing any particular action I may reach different conclusions to those of the Bank. In many of the instances in which my conclusions have differed from those of RBS, my decisions have rested on a finely balanced exercise of judgement.

For each complaint when reviewing the evidence, I assess the reasonableness of GRG's actions with regard to good market practice at the time, the individual circumstances of the complainant, and any relevant contractual rights. I also consider the appropriateness of the process that GRG followed to execute that action, and the quality of GRG's communications. It is therefore worth noting that, in some cases, my upholds can reflect the fact that, while I considered the underlying action of GRG to have been reasonable, the process by which it executed or communicated that action was not. It should also be noted that when a Customer appeals an allegation that the Bank has already upheld, I limit my assessment to whether the Bank's compensation offer was appropriate (and, accordingly, so as not to double count a complaint outcome, such allegations are only upheld on appeal when I consider the Bank's offer to have been too low).

Once I have reached a decision on a complaint appeal, I send an outcome letter to the Customer. At the same time I provide a copy of the letter to the Bank. The Bank must accept my findings where they differ from its own. In my outcome letters I seek to explain my findings in sufficient detail so that both parties can understand why I have concluded that GRG acted, or did not act, reasonably.

The Covid-19 pandemic has necessarily changed the way many people work. Since my previous quarterly report, my team has continued to work remotely. However, we still have access to the same information sources. We are still able to discuss – as we have always done

⁵ The Principles can be found on the website www.rbs.com/grg

⁶ With the exception of legally privileged material and suspicious activity reports which I am unable to access. In those cases, I draw my conclusions based on the evidence available to me, making sure that no Customer is disadvantaged on the very small number of occasions where the Bank has asserted privilege.

⁷ Drawn from banks other than the RBS Group.

– all the substantive issues, but are now doing so by telephone or video-conference. I am confident that our revised ways of working have not impacted either the quality and thoroughness of the assessment, or the fairness of the outcomes reached. I continue to expect to conclude my review of the small number of remaining complaint appeals in the course of the next few weeks.

Turning now to the 959 complaint appeal outcomes I have issued to Customers, I have fully or partially upheld 286 (30%). This uphold rate is consistent with that in previous quarters.

Table 1. Summary of complaint appeals received to date

Eligible appeals received ⁵	994
Decisions communicated to Customers	959
Decisions made, awaiting communication to Customers	9
Appeals awaiting decision	4
Appeals closed	22
Appeals fully or partially upheld⁸	286 of 959 30%

Most complaint appeals comprise several allegations. Across the 959 appeal outcomes shared with Customers I have assessed 6,276 allegations, of which 942 have been assessed since my last quarterly report. Of the 6,276 allegation outcomes that I have communicated, I have upheld 434, representing an allegation uphold rate of 7%. The allegation uphold rate has remained relatively constant over the last year.

Table 2 below presents the latest data by allegation theme. In my twelfth quarterly report I commented extensively on these themes. I next propose providing more detailed comments on the allegation themes when I have concluded my assessment of all complaint appeals.

Table 2. Summary of allegation outcomes communicated to Customers

Allegation themes	Complaint outcomes by the Bank ⁹			Appeal outcomes to date ¹⁰		
	Number of allegations	Number upheld	Uphold Rate	Number of allegations	Number Upheld	Uphold rate
Pricing	7,933	2,911	37%	1,795	150	8%
Unfair Treatment	6,562	805	12%	1,932	137	7%
Provision of Finance	4,562	446	10%	1,238	78	6%
Transfer In / Out of GRG	2,473	419	17%	723	29	4%
RM Behaviour	998	94	9%	294	20	7%
Valuations	725	65	9%	257	16	6%
West Register	70	8	11%	37	4	11%
Total	23,323	4,748	20%	6,276	434	7%

For any allegation that I uphold in the complaint appeals process, I assess whether there is compensation due to the Customer for Direct Loss resulting from the Bank’s unreasonable

⁸ Uphold rate based on decisions communicated to Customers.

⁹ Allegations associated with the 2,693 complaint decisions that the Bank has communicated to Customers. The assessment of a small number of cases where I have remitted a complaint back to the Bank on the basis that material new evidence was provided, or new allegations were raised, by the Customer on appeal explains why the data on the Bank’s assessments has changed slightly since my last report.

¹⁰ Allegations associated with the 959 complaint appeal outcomes that I have communicated to Customers.

actions. Direct Loss is defined as either sums of money paid by a Customer to the Bank or a Customer's out-of-pocket costs of meeting the Bank's requirements.

Any Direct Loss that I award is in addition to awards for Direct Loss made by the Bank following its consideration of the complaint, and compensation it has offered by way of discretionary goodwill payments. My award also reflects the fact that certain fees the Bank sought to charge - and which I have judged to be unreasonable - were not, in the event, levied by RBS and so, although wrong in principle, no financial redress for Direct Loss is due. I should also point out that, irrespective of whether an award of Direct Loss is made, an upheld complaint entitles a Customer subsequently to submit a claim for Consequential Loss, which is any financial loss stemming from that upheld complaint that has not already been awarded as Direct Loss.

In the 959 complaint appeals for which I have already communicated my decision, the Bank had already made Direct Loss awards totalling £15.6m¹¹ (plus 8% interest amounting to £3.9m), as well as paying a further £8.7m in automatic complex fee refunds. I have upheld 434 allegations on appeal, awarding further financial redress for Direct Loss in 166 instances totalling £1.9m¹² (plus 8% interest amounting to £0.6m).

Consequential Loss appeals

Customers who have had any part of their complaint upheld by the Bank in the first instance, or by me on appeal of their complaint outcome, are eligible to submit a claim for Consequential Loss ("CL"). My main role in regard to these CL claims is to hear Customer appeals.

It is worth noting that on every award of Direct Loss (made either by the Bank, or by me on appeal) the Bank automatically adds 8% simple interest. This is intended to compensate the Customer for being deprived of the use of the amount they are awarded in Direct Loss. In total, the Bank offered £13.2m in 8% interest on its own Direct Loss awards. In addition (as noted above), to date the Bank has offered a further £0.6m in 8% interest on Direct Loss awards I have made on appeal. The Consequential Loss process exists for Customers who feel that their losses stemming from the unfair actions of GRG exceed the amount for which they were compensated through their Direct Loss award plus 8% interest, as well as for customers who have had some part of their complaint upheld but have not received any Direct Loss award.

In the CL process it is for the Customer to identify what (further) loss was caused by the unfair action of the Bank and to provide the evidence needed to support their claim. The Bank's role is then to assess the Customer's claim on the basis of the arguments and evidence presented by the Customer. In making a CL appeal, it is for the Customer to identify the particular item(s) of their claim that they are appealing, explain why the conclusion reached by the Bank on that item is incorrect, and (where appropriate) cite relevant evidence in support of their position. My task is to then reach a decision on the merits of their challenge to the Bank's outcome. In making a CL assessment two key tests must be met: (i) the Customer must show that it is more likely than not that the loss was *caused*, either directly or indirectly, by the Bank's unfair action (as determined in the outcome to an eligible complaint or on appeal)¹³; and (ii) the Customer must show that the *quantum* (or amount) of loss claimed was loss actually incurred by the Customer.

¹¹ This includes £9.1m of recategorised automatic fee refunds.

¹² This includes £0.7m of recategorised automatic fee refunds.

¹³ As part of establishing *causation*, it must also be determined whether a loss was reasonably foreseeable at the time of the unfair action (i.e. the loss must not be too *remote*) and whether the loss, in whole or in part, could have reasonably been *mitigated* by the Customer. However, the questions of *remoteness* and *mitigation* are not critical to most assessments, and hence for simplicity in this report I refer to them as part of *causation*.

Customers do not always base their CL claim on an eligible upheld complaint. In an effort to assist Customers, especially those who have not sought professional advice, the Bank has, where possible, reformulated their claim, often involving detailing the sequence of events that would have taken place had the Bank's unreasonable actions not taken place. This willingness to assist is welcome. For the same reason I see my role as including an initial check on whether the Bank's reformulation of the claim and (in all cases) its assessment of the claim are, on the facts, logical and not obviously wrong. Having so satisfied myself, I then go on to apply the assessment criteria outlined above to the Customer's appeal.

As of the end of this last quarter, 245 Customers had submitted CL claims to the Bank. The Bank has communicated its outcome to over three quarters of these Customers, awarding a total of £2.7m in Consequential Loss¹⁴.

I have now received 81 CL appeals, of which 28 were received in the last quarter. I have already communicated my outcome in letters to 23 of these Customers.

Most CL appeals contain claims for multiple heads of loss. Across the 23 CL appeal outcome letters that I have sent, the Customers had appealed 60 heads of loss¹⁵. There is no exhaustive list of the types of loss that can be claimed as CL. However, examples of heads of loss that have recently been appealed include losses which the Customers assert resulted from: the forced disposal of an asset; the professional fees incurred in meeting the Bank's requirements; the cost of wasted management time; having had to forgo a business opportunity; and the increased cost of borrowing from needing to make new banking arrangements.

Of the 23 CL appeal outcomes I have issued to Customers, I have partially upheld two (9%). These outcomes address 60 heads of loss appeals of which I have upheld two (3%). On each occasion after careful consideration, I concluded that, on the balance of probabilities, the Bank's unfair actions had *caused* (either directly or indirectly) at least some of the loss claimed.

In accordance with the agreed process for assessing CL, I have passed these claims back to the Bank for it to assess, in the first instance, the *quantum* of compensation due (if any). Should the Bank's compensation offer be for less than the full amount claimed, the Customer will have the right to appeal it to me.

In addition, where I have upheld part of a Customer's CL appeal and they have incurred costs in bringing that part of their CL claim and CL appeal, I have directed the Bank to reimburse the Customer for those costs.

I will provide further updates on my progress in considering CL appeals in my future quarterly reports.

I hope this report is helpful in setting out the key activities of the last quarter, and the progress made to date.

Sir William Blackburne
Independent Third Party

¹⁴ This excludes the 8% interest already made on these Customer's Direct Loss awards, and excludes Claim Preparation Fees.

¹⁵ This excludes claims by Customers for the costs they incurred in making their CL claim and/or CL appeal.