

Sir William Blackburne
Independent Third Party
Maitland Chambers
7 Stone Buildings
Lincoln's Inn
London WC2A 3SZ

15 April 2020

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

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

Overall progress on RBS’s GRG complaints process

In the first week of 2020 RBS (“the Bank”) completed its assessment of all 2,693 complaints that it had received. The process is now closed to new Complainants.

Customer complaints typically consisted of multiple allegations. Across all complaints the Bank assessed 23,236 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 £13.3m of interest². In addition, at the outset of this process the Bank automatically refunded a further £38.6m of complex fees to many of these 2,693 complainants on a no admission of liability basis³.

In so far as it relates to the Bank’s assessment of allegations and Direct Loss, the RBS complaints process is now complete⁴. My team will continue to assure the small number of largely administrative steps which still remain. 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.

Whilst the Bank has completed its assessment of all complaints, both the appeals and Consequential Loss processes remain ongoing.

Appeals

I have received 977⁵ appeals, of which 166 were received since my last quarterly report. Only approximately ten Customers remain eligible to appeal.

¹ This includes recategorisation of applicable automatic fee refunds of £17.6m

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 Other than in 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. This additional assessment work also explains why the data on the Bank’s assessments has changed slightly since my last report.

⁵ Total number of eligible appeals received by the ITP. This includes appeals which I have paused in order to remit them to the Bank because they included new allegations or material new evidence.

In some of the 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 process⁶, 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 made significant further progress in reviewing the new matters remitted by me. Consequently, the few remitted appeals that now remain with the Bank were only received by me in recent months.

So far, I have sent letters communicating my decision to 696 Customers - including 129 during this last quarter. I have reached a conclusion, but not yet communicated it to the Customer, in a further 67 appeals.

My team have full access to the documentation stored on the Bank's main document retention system⁷, 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 expert⁸ to review the evidence afresh, placing no reliance on the Bank's own summary of the relevant documentation. 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 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.

Once I have reached a decision on an 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 detail so that both parties can understand why I have concluded that GRG acted, or did not act, reasonably.

The Covid-19 crisis has necessarily changed the way so many people work. My team, too, has had to adapt. I take this opportunity to thank them for how they have responded to the challenging circumstances. Although we are all working remotely at present, we still have access to the same information sources. We are still able to discuss – as we have always done – all the substantive issues, but are now doing so by telephone or video-conference. I am confident that our revised ways of working will not impact either the quality and thoroughness of the assessment, or the fairness of the outcomes reached. Despite the challenges, I hope to maintain the rate at which I assess appeals, and to conclude my review of them all later this year.

Turning now to the 696 appeal outcomes I have issued to Customers, I have fully or partially upheld 206 (30%). This uphold rate is broadly consistent with that in previous quarters.

Within every complaint, I consider the reasonableness of GRG's action, 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, such allegations are only upheld when I consider the Bank's offer to have been too low).

⁶ The Principles can be found on the website www.rbs.com/grg

⁷ 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.

⁸ Drawn from banks other than the RBS Group.

As I have noted in previous quarterly reports, in considering each 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.

Table 1. Summary of appeals received to date

Eligible appeals received ⁵	977
Decisions communicated to Customers	696
Decisions made, awaiting communication to Customers	67
Appeals awaiting decision	194
Appeals closed ⁹	20
Appeals fully or partially upheld¹⁰	206 of 696 30%

Most appeals comprise several allegations. Across the 696 appeal outcomes shared with Customers I have assessed 4,296 allegations, of which 799 have been assessed since my last quarterly report. Of the 4,296 allegation outcomes that I have communicated, I have upheld 307, 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 last 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 appeals.

Table 2. Summary of allegation outcomes communicated to Customers

Allegation themes	Complaint outcomes by the Bank ¹¹			Appeal outcomes to date ¹²		
	Number of allegations	Number upheld	Uphold Rate	Number of allegations	Number upheld	Uphold rate
Pricing	7,921	2,906	37%	1,246	114	9%
Unfair Treatment	6,533	801	12%	1,398	92	7%
Provision of Finance	4,542	443	10%	793	59	7%
Transfer In / Out of GRG	2,458	417	17%	489	19	4%
RM Behaviour	992	93	9%	208	14	7%
Valuations	720	64	9%	139	7	5%
West Register	70	8	11%	23	2	9%
Total	23,236	4,732	20%	4,296	307	7%

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

⁹ Number closed for other reasons (six considered out of scope and fourteen withdrawn by the Customer).

¹⁰ Uphold rate based on decisions communicated to Customers.

¹¹ Allegations associated with the 2,693 complaint decisions that the Bank has communicated to Customers.

¹² Allegations associated with the 696 appeal outcomes that I have communicated to Customers.

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 to subsequently 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 696 appeals for which I have already communicated my decision, the Bank had already made Direct Loss awards totalling £12.0m¹³ (plus 8% interest totalling £2.5m), as well as paying a further £7.6m in automatic complex fee refunds. I have upheld 307 allegations on appeal, awarding further financial redress for Direct Loss in 122 instances totalling £1.6m¹⁴ (plus 8% interest amounting to £0.5m).

Consequential Loss

Customers who have had any part of their complaint upheld by the Bank in the first instance, or by me on appeal, 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 £13.3m in 8% interest on its own Direct Loss awards. In addition (as noted above), to date, the Bank has offered a further £0.5m in 8% interest on Direct Loss awards I have made on appeal. The Consequential Loss process therefore exists for customers who feel that their losses stemming from the unfair actions of GRG exceeded the amount for which they were compensated through their Direct Loss award plus 8% interest.

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) it must be shown 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)¹⁵; and (ii) it must be shown that the *quantum* (or amount) of loss claimed was the loss actually incurred by the Customer.

As of the end of this last quarter, just over 180 Customers had submitted CL claims to the Bank. The Bank has communicated its outcome to over half of these Customers, in which it has awarded a total of £1.3m in Consequential Loss¹⁶.

¹³ This includes £7.2m of recategorised automatic fee refunds.

¹⁴ This includes £0.7m of recategorised automatic fee refunds.

¹⁵ 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*.

¹⁶ This excludes the 8% interest already made on these Customer’s Direct Loss awards.

I have now received 18 in-scope CL appeals, of which five were received in the last quarter. I have already communicated my outcome in letters to 11 of these Customers.

Most CL appeals contain claims for multiple heads of loss. Across the 11 CL appeal outcomes that I have communicated, the Customers had appealed 26 heads of loss¹⁷. 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 26 heads of loss outcomes that I have now communicated, I have upheld two (8%). On both occasions, 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.

Having upheld the two heads of loss on a *causation* basis, in accordance with the agreed process for assessing CL, I have now passed both 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

¹⁷ This excludes claims by Customers for the costs they incurred in making their CL claim and/or CL appeal.