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

This is my twelfth quarterly report on my Assurance and Appeals roles in relation to the RBS GRG complaints process.

**Overall progress on RBS’s GRG complaints process**

RBS (“the Bank”) has now completed its assessment of all 2,693 complaints that it has received. The process is closed to new Complainants. The Bank issued 387 outcome letters since my last report. This compares to 395 and 331 outcome letters respectively in the two previous quarters.

Customer complaints typically consisted of multiple allegations. Across all complaints the Bank assessed 23,087 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 £40.8m<sup>1</sup>, plus £13.1m of interest<sup>2</sup>. In addition, at the outset of this process the Bank automatically refunded a further £38.6m of complex fees to these 2,693 complainants on a no admission of liability basis<sup>3</sup>.

Whilst the Bank has completed its assessment of all complaints, the appeals process will continue well into 2020, which means that consideration of Consequential Loss appeals will extend into 2021.

**Assurance**

With the Bank’s process now substantially completed, I am able to say that overall the Bank has conducted a good quality complaints process. The complaints were complex to assess and required considerable effort and resources to do so at scale. The number of assurance issues I identified was low relative to the overall volumes. I provided my assurance observations to the Bank on a regular basis, and throughout the process it took my feedback constructively.

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<sup>1</sup> This includes recategorisation of applicable automatic fee refunds of £17.7m

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

<sup>3</sup> 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.

During the previous twelve quarters my team conducted a thorough and detailed review of a sample of the complaints as they passed through each step of the Bank's process. This scrutiny was broad in scope, encompassing records of any interactions between the Bank's helpdesk and the Customer, the Bank's subsequent interpretation and formulation of the Customer's allegations, the evidence base underpinning the assessment of the complaint, the thoroughness of the assessment, the logic and judgement applied in arriving at a complaint outcome, and the quality of any communications to the Customer (particularly the Bank's outcome letter recording the conclusions reached by the Bank and its reasoning).

I assured complaints in every month that the Bank was assessing them. In total I assured 175 complaints through the entire RBS complaints process<sup>4</sup>. This required scrutiny of hundreds of individual allegations, across cumulatively almost two thousand discrete steps. I am confident that reviewing this number was sufficient to ensure that I achieved a robust assurance sample. I am also satisfied that this sample sufficiently investigated complaints from all geographies and across all allegation themes, embracing the activities of a broad range of the Bank's assessment staff.

I assessed in-sample complaints at two levels: as they passed through each individual step of the process, and, more importantly, at an overall complaint level. A complaint could fail assurance at one or more steps of the process, but still pass assurance *overall* if the complaint outcome was one that was reasonably open for RBS to reach given the specific circumstances of the complaint.

Of the 175 complaints that I assessed, 170 passed assurance at an overall level. This represents a pass rate of 97%. I identified the fifth of the five complaints that did not pass assurance at an overall level in the most recent quarter. In this case, the Bank did not include in its assessment of interest margins the rate it charged on one of the Customer's loans. Having reviewed the relevant materials, I considered it likely that, had the Bank assessed this interest rate, it would have found it to have been too high. The Bank corrected this Customer outcome after my team intervened.

In a further 26 of the 175 complaints my team identified faults at individual steps of the complaints process that, left uncorrected, could have had a material impact on the overall complaint outcome. Two of these are new since my last quarterly report. The first of these related to the Bank not investigating an allegation raised in a Customer's complaint. However, having reviewed the underlying evidence, I was able to satisfy myself that the outcome reached by the Bank was appropriate and so this complaint did not fail assurance at an overall level. The second of these arose because the Bank did not consider some critical evidence in its initial assessment of a complaint. However, the Bank considered this evidence at a later stage of its own process and arrived at an appropriate outcome. This complaint did not, therefore, fail assurance at an overall level.

Reflecting on all the faults that I identified throughout the assurance process, the majority related to the Bank's preparation of its assessment document. This included instances in which particular pieces of evidence were not sufficiently considered by the Complaint Assessor, or where calculation errors were made in the Bank's analysis of fees or margins. The next most common type of fault identified, accounting for just under a fifth of the step faults I identified, related to the Bank defining the scope of an allegation too narrowly.

As I have mentioned in previous quarterly reports, the RBS complaints process has been a large-scale endeavour involving hundreds of people assessing vast amounts of detailed information covering an extended period of time. I am not surprised that my team's rigorous interrogation of the process identified some faults. I was reassured by the fact that almost all

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<sup>4</sup> As I describe at the conclusion of this section, for some complaints there are still a few final steps to complete.

such faults were identified and corrected by RBS itself as individual complaints ran their course.

In so far as it relates to the Bank's assessment of allegations and Direct Loss, the RBS complaints process is now largely complete, with all the most substantive elements completed. The main activities outstanding for the Bank are to assess any new allegations raised, or material new evidence provided, by Customers in their appeal, as well as the updating of its outcomes to incorporate my findings on appeal. My team will continue to assure the complaint sample through these remaining steps of the Bank's process. Given the more straightforward nature of these steps, I do not intend to report in depth on my progress of this work unless I identify any issues that cause me concern.

## Appeals

I have now received 811<sup>5</sup> in-scope appeals, of which 147 were received since my last quarterly report. I have reached a conclusion in 618 of these appeals, of which I have sent letters communicating my decision to 567 Customers - including 97 during this last quarter.

I expect to maintain a similar throughput going forward. I will continue to look for opportunities to increase further the efficiency with which I consider appeals, but as my priority remains delivering fair outcomes, I will not lower the quality and thoroughness of my assessment in order to achieve greater speed.

In some 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 process, I paused my assessment of these 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 further progress in reviewing the new matters remitted by me. This has allowed me to restart my assessment of many of these appeals.

My team have full access to the documentation stored on the Bank's main document retention system<sup>6</sup>, 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 submission. On every appeal I ask a legal expert and a banking expert<sup>7</sup> 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.

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.

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

<sup>6</sup> 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.

<sup>7</sup> Drawn from banks other than the RBS Group.

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.

Of the 567 appeal outcomes I have issued to Customers, I have fully or partially upheld 174 (31%). This uphold rate is broadly consistent with the previous quarter.

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 <sup>5</sup>	811
Decisions communicated to Customers	567
Decisions made, awaiting communication to Customers	51
Appeals awaiting decision	178
Appeals closed <sup>8</sup>	15
Appeals fully or partially upheld <sup>9</sup>	174 of 567 31%

Most appeals comprise several allegations. Across the 567 appeal outcomes shared with Customers I have assessed 3,497 allegations, of which 637 have been assessed since my last quarterly report. Of the 3,497 allegation outcomes that I have communicated, I have upheld 258, representing an allegation uphold rate of 7%. I note that the allegation uphold rate hovered around this level throughout last year.

Given that the Bank has now completed its assessment of all complaints<sup>10</sup> and I am more than halfway through my assessment of appeals, I thought it appropriate to reflect on the allegation themes that I have seen to date.

Around one third of the allegations in both the complaints and appeals populations concerns pricing. The majority of these allegations relate to the level of margin or arrangement fee charged by GRG, with just under a quarter relating to more complex fees (such as property participation fees). At both complaint and appeal level this is the allegation theme that has seen the highest uphold rate, at 37% and 10% respectively. In many of my pricing upholds, I have found that while it was reasonable in principle for GRG to have charged a fee or increased the margin, the fee or increased margin actually charged was inappropriately high (and often poorly communicated). The Bank upheld more than 60% of the allegations it received in relation to more complex fees, and I have upheld approximately 14% of those I have seen on Appeal. While complex fees often involved larger amounts, these upholds have not usually led to an additional compensation payment because most of these fees were automatically refunded by the Bank in 2017. An uphold in these cases is still significant, as it reflects the fact that the Bank’s pricing was unreasonable, and makes the complaint one on which a claim for

<sup>8</sup> Number of appeals closed for other reasons (four considered out of scope and eleven withdrawn by the Customer).

<sup>9</sup> Uphold rate based on decisions communicated to Customers.

<sup>10</sup> Other than where there has been a remittance.

Consequential Loss can be based – something that does not flow simply from the Bank's automatic refund of complex fees.

Approximately another third of the allegations relate to unfair treatment. This is the broadest category of complaint and includes allegations ranging from GRG's use of third parties to GRG forcing the sale of a Customer's asset(s). The Bank upheld 12% of these allegations. So far on appeal I have upheld 7% of the allegations I have seen under this theme. The most common allegation type that I have upheld has related to GRG's use of third parties, often to complete a security review or an independent business review. Some of these upholds relate to GRG unnecessarily engaging a third party at the Customer's cost. Others relate to cases where GRG reasonably required the engagement of a third party, but did not follow an appropriate process to appoint them (for example, it communicated poorly or it did not offer a choice of provider).

Approximately a fifth of the allegations relate to GRG's provision of finance. This theme includes complaints about GRG's restructuring proposals and GRG's demands for repayment. The Bank upheld 10% of these complaints, and so far on appeal I have upheld 7%. 232 of the allegations that I have seen on appeal under this theme relate to GRG's repayment demands. I have upheld 15 (or 6%) of these. In these cases I have concluded that either GRG did not offer the customer enough time before it demanded repayment, or that GRG did not follow a proper process in demanding repayment. I have seen 194 allegations relating to unsatisfactory restructuring proposals, of which I have upheld 22 (11%). In around a quarter of these cases, I considered that one or more elements of the proposals was unreasonable despite ultimately not being implemented.

About a tenth of the allegations relate to the transfer of a customer into or (less frequently) out of GRG. I have upheld 4% of these allegations on appeal. Of the 17 allegations under this theme that I have upheld on appeal, only two related to a Customer being transferred into GRG when I thought, in the circumstances, their accounts would have been best managed within the mainstream department of the Bank. The remainder of my upholds under this theme have related not to the underlying transfer decision, but to the poor process and quality of communications that accompanied it. It is therefore fair to say that the vast majority of the customers<sup>11</sup> that I have seen on appeal were already in financial difficulty prior to their transfer to GRG and the nature of their financial difficulty justified their transfer into GRG.

The remainder of the allegations sit across three further themes: relationship manager ("RM") behaviour, valuations and West Register. The Bank upheld 9% of RM behaviour allegations, and on appeal I have upheld 7% of those I have been asked to consider. In many ways this is the most challenging type of allegation to investigate. There are two main reasons for this. First, in most cases the allegation is unspecific as to date and occasion. Since many customer accounts were in GRG for extended periods, I have needed to review the whole course of the relationship to see whether there is any basis for upholding the complaint. Second, because most of the allegations relate to spoken exchanges that were not recorded, I have had to examine the evidence (both that contemporaneous to the events in question and any supplied with the complaint or appeal) to see if it is more likely than not that the alleged conduct occurred. In twelve cases I have seen sufficient evidence to conclude that a member of GRG staff acted inappropriately, and on a couple of isolated occasions egregiously so. When I find evidence of inappropriate behaviour by a GRG employee I also report the underlying evidence to the Bank so that it may conduct its own internal HR investigation into that individual should they still be employed by the Bank.

I have only upheld four allegations on appeal under the valuations theme. In three of these cases my decision to uphold was based on the inappropriate process GRG followed to obtain

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<sup>11</sup> By customer I mean the entity complaining, or in a small proportion of cases a connected entity appropriately treated by the Bank at the time as 'connected' to the Complainant.



a valuation of a Customer’s asset. In the other case, GRG excluded a likely future rental income when it was valuing a customer’s property. Separately, I have also upheld a small number of allegations under the pricing or provision of finance themes where I considered that the Bank used an inappropriate valuation methodology (typically where it used an internal valuation when – in my view – the importance of the associated action would have merited an independent valuation). To date, I have not seen any cases where I consider that GRG deliberately undervalued a Customer asset.

Finally, there have been relatively few allegations relating to the actions of West Register. Given the publicity that West Register’s relationship with GRG has attracted – and the suggestion that the Bank took advantage of this relationship to the detriment of customers – I have been very alert to those appeals where West Register had an involvement. The Bank received 69 such allegations, of which it upheld eight (or 12%). To date, fourteen of these have been appealed and I have not upheld any. It is worth noting that three of those appealed had already been upheld by the Bank and hence my investigation of those was limited to whether any Direct Loss was incurred. None was. Separately I have seen one additional appeal where the Customer did not directly complain about the actions of West Register but I discovered, during the course of my review, that confidential information was inappropriately shared between GRG and West Register. In the event, West Register did not bid for the property and consequently no Customer detriment was caused.

**Table 2. Summary of allegation outcomes communicated to Customers**

Allegation themes	Complaint outcomes by the Bank <sup>12</sup>			Appeal outcomes to date <sup>13</sup>		
	Number of allegations	Number upheld	Uphold Rate	Number of allegations	Number upheld	Uphold rate
Pricing	7,895	2,891	37%	986	99	10%
Unfair Treatment	6,465	796	12%	1,171	80	7%
Provision of Finance	4,527	439	10%	650	46	7%
Transfer In / Out of GRG	2,451	414	17%	404	17	4%
RM Behaviour	981	92	9%	170	12	7%
Valuations	699	54	8%	102	4	4%
West Register	69	8	12%	14	-	-
<b>Total</b>	<b>23,087</b>	<b>4,694</b>	<b>20%</b>	<b>3,497</b>	<b>258</b>	<b>7%</b>

For any allegation that I uphold, I then 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.

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 any award I make at this stage excludes sums that may subsequently be claimed by Customers as Consequential Loss, which is any financial loss stemming from an upheld complaint which does not fall within the definition of Direct Loss.

<sup>12</sup> Allegations associated with the 2,693 complaint decisions that the Bank has communicated to Customers.

<sup>13</sup> Allegations associated with the 567 appeal outcomes that I have communicated to Customers.

In the 567 appeals for which I have already communicated my decision, the Bank had already made Direct Loss awards totalling £9.9m<sup>14</sup> (plus 8% interest totalling £2.2m), plus paid a further £6.5m in automatic complex fee refunds. I have upheld 258 allegations on appeal, awarding further financial redress for Direct Loss in 102 instances, totalling £1.5m<sup>15</sup> (plus 8% interest totalling £0.4m).

### **Consequential Loss**

Customers who have had 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 by either 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 £13.1m in 8% interest on its own Direct Loss awards. In addition, to date, the Bank has offered a further £0.4m in 8% interest on Direct Loss awards I have made on appeal. The Consequential Loss process therefore exists for customers who feel their losses stemming from the unfair actions of GRG (as determined in their complaint and/or appeal outcome) exceeded the amount that they were compensated through their Direct Loss award plus 8% interest.

As of the end of this quarter, close to 140 Customers have submitted claims for CL to the Bank. The Bank has communicated its outcome to a third of these Customers, in which it has awarded a total of £0.5m in Consequential Loss<sup>16</sup>. I have now received thirteen in-scope CL appeals, of which three were received in the last quarter.

I have already reached an outcome on seven CL appeals, and have communicated my outcome in a letter to five of these Customers. To date, I have not upheld any CL appeals. Of these early CL appeals, none has successfully demonstrated that the CL alleged to have been suffered was caused, either directly or indirectly, by the unfair actions of the Bank. 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

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<sup>14</sup> This includes £5.9m of recategorised automatic fee refunds.

<sup>15</sup> This includes £0.7m of recategorised automatic fee refunds.

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