1. Consequential Loss - the cost of being deprived of money

We have previously provided a definition and explanation of Direct Loss[1], which is overseen by the Independent Third Party. We now want to provide further clarity and guidance in relation to consequential loss, which has been defined for the purpose of the complaints process as financial loss that is not Direct Loss ("Consequential Loss").

The bank will consider claims for Consequential Loss involving quantifiable financial loss. Claims involving non-financial loss (for example stress or physical inconvenience) will not be recoverable through the new complaints process.

1.1. Starting point

In order to make a claim for Consequential Loss, your complaint will first need to have been upheld, you must have agreed with the outcome of your complaint and, where applicable, accepted the offer of Direct Loss.

1.2. Assistance

In order to assist customers who feel they have suffered a Consequential Loss, the bank will meet the reasonable cost of an initial meeting with a professional advisor e.g. loss assessor ("initial advice costs") to assist you in establishing whether you may have suffered a Consequential Loss, and if so, whether it is the type that could be adequately evidenced, and considered by the bank. In making this offer, the bank's purpose is to seek to ensure that all customers have the opportunity to obtain preliminarily professional advice to best inform their decision as to whether to make a claim.

The bank is willing to reimburse initial advice costs irrespective of whether or not you submit a Consequential Loss claim.

We consider that a reasonable cost would normally be no more than £2,000 + VAT. We believe £2,000 should be sufficient to cover:

- A review of the bank's outcome letter in respect of any complaints that have been upheld
- A meeting/discussion with the customer, potentially of a few hours to help them understand whether they might have grounds for a Consequential Loss claim and the conditions that they would have to meet in terms of evidence for that claim to be likely to be successful
- The preparation of a letter to the customer summarising the advice

This offer does not extend to the cost of preparing and pursuing a Consequential Loss claim, merely to the initial advice costs. Some or all of those other costs may be recoverable if (and to the extent that) the Consequential Loss claim succeeds.

In order to request reimbursement for initial advice costs or for more information please contact the GRG Helpdesk. To receive such a reimbursement you will be asked to provide evidence of the costs and confirm the purpose of the meeting (for example, an itemised invoice). The advice which you receive at any such initial meeting will be confidential to you. The bank will not be concerned (or entitled) to know its contents.

1.3. Legal tests

As the complaints process applies a fairness test, an upheld complaint does not equate to a breach of any legal obligations. However, and for the avoidance of doubt, where the bank has upheld your complaint you will not be required to demonstrate a breach of legal duty by the bank as part of a claim for Consequential Loss. However, Consequential Loss claims in relation to an upheld complaint will be assessed by the bank by reference to the established legal principles a court would apply when assessing claims for Consequential Loss. Customers should therefore be aware of the key legal tests which the bank will apply, which in broad terms are:

[1] https://www.rbs.com/content/dam/rbs_com/rbs/Documents/News/2016/November/New_complaints_process_principles.pdf

- The upheld complaint must have caused the loss (i.e. the loss would not have happened but for the unfair actions of the bank and/or the Direct Loss). In assessing claims for Consequential Loss, the bank will apply a 'but for' test to assess whether the loss was in fact caused by the unfair actions of the bank and/or any Direct Loss. In order to carry out this assessment, claims will be assessed by reference to a hypothetical scenario where the actions of the bank were fair and reasonable, and Direct Loss had not been incurred. This hypothetical scenario is often referred to as the 'counterfactual'.
- The loss must not be too remote (i.e. the loss must have been reasonably foreseeable at the time of the unfair actions of the bank that led to the Direct Loss)
- Only claims that can be supported by evidence will be considered (e.g. documents created at the time the loss was suffered) and
- The burden is on the customer to provide sufficient evidence to demonstrate that, on the balance of probabilities, a loss has in fact been incurred and was caused by the circumstances out of which the upheld complaint arose. In order to meet the 'balance of probabilities' threshold, it is necessary to provide sufficient evidence to demonstrate that it is more likely than not (i.e. a greater than 51% likelihood) that the loss would not have occurred but for the unfair actions of the bank and/or any Direct Loss.

Please note that the above is intended as a guide only; it is not an exhaustive list of the legal principles that may be applicable to any particular claim for Consequential Loss.

1.4 Types of Consequential Loss

We have already committed to refund Direct Loss, and will additionally compensate for the cost of being deprived of the Direct Loss funds by adding 8% simple interest per year to all Direct Loss payments. This interest payment is intended to compensate for consequential losses, and we hope this means that many customers will not need to make a Consequential Loss claim in order to receive a fair outcome to their complaint, on the basis they have already been fully compensated for any and all losses.

While Customers are able to pursue a claim for Consequential Loss where they consider they have incurred losses greater than the 8% interest payment, please note that Customers are not able to receive a Consequential Loss payment in addition to the 8% interest on Direct Loss where this would amount to double recovery. This means that where a claim for consequential loss is upheld, in quantifying any compensation offer we will take into account the 8% interest already paid.

There is no exhaustive list of the types of loss that can be claimed as Consequential Loss (assuming they meet the legal tests). However, we have set out below some examples of the types of claims customers may wish to pursue, and the sort of supporting evidence that would be required for a claim of that nature to potentially be successful.

Loss of profits / Loss of opportunity
A claim for loss of profits may relate to the loss of a new business opportunity, loss of revenue from an existing business or property, or the restriction of your ability to trade.

For these claims, it will be necessary to submit evidence to demonstrate a specific opportunity or course of action that you were aware of at the time of the relevant events and had intended to pursue but were prevented from doing so due to the unfair actions of the bank and/or Direct Loss. This will require evidence that you were aware of the opportunity at the time it arose, and intended to pursue it but were prevented from doing so due to the actions of the bank out of which the upheld complaint arose and/or the Direct Loss was incurred.
Claims that speculate (without supporting evidence) how money refunded as a Direct Loss could have been invested or what you may have done but for the unfair actions of the bank will not succeed.

Asset disposal
If your upheld complaint relates to you having to dispose of an asset (e.g. a property) which, but for the unfair actions of the bank, you otherwise would have retained, you may be able to make a claim for Consequential Loss. In order for such a claim to be successful, you will need to provide evidence that the unfair actions of the bank and/or the Direct Loss (as opposed to other factors) caused the disposal, as well as evidence of the amount of the Consequential Loss suffered as a result. The amount of loss suffered will generally be assessed by reference to the revenue you would have received from the asset, along with any increase in value of the asset since its disposal.

Increased cost of borrowing
Increased cost of borrowing, as a result of the unfair actions of the bank, may be recoverable (e.g. additional interest, loan arrangement fees). We will need evidence that the unfair actions of the bank and/or the Direct Loss caused the increased cost of borrowing to support such a claim.

Legal and professional fees

Fees incurred in relation to dealing with the actions of the bank (e.g. the cost of professional advice about restructuring the business) will be recoverable where it has been found that the actions of the bank were unfair. In addition, reasonable costs incurred in bringing a successful Consequential Loss claim will be recoverable. However, please note that in many instances professional fees incurred as a result of the unfair actions of the bank will have been reimbursed as part of an offer of Direct Loss.

In addition, while professional fees incurred in the process of recovering compensation are not legally recoverable as a Consequential Loss, the bank will offer reasonable costs incurred in bringing a successful Consequential Loss claim.

Tax loss
Depending on your circumstances and any offer made by the bank, the receipt of a Direct Loss or Consequential Loss payment may generate a tax liability. If you are able to prove that you are in a worse tax position as a result of receiving a payment, relative to the tax that would have been incurred at the time, then a claim for the tax loss will be considered. This will be determined on a case-by-case basis.

You can make a claim for tax loss after you have received the payment when you are fully aware of your final tax position.

Direct Loss where the bank had no visibility of costs incurred
For the purpose of the new complaints process, Direct Loss means sums of money paid by a customer to the bank or a customer's out of pocket costs of meeting the bank's requirements that were a direct result of an upheld complaint. Examples include:

- Arrangement fees
- Renewal fees
- Excess fees
- Increased interest payments made to the bank by a customer
- Costs and expenditure incurred by a customer in connection with an independent business review, a valuation report, a security review, or other actions required by the bank, or
- Costs and expenditure incurred by a customer for the appointment of a third party to the customer at the request of the bank.

Where we can see that such costs have been incurred, they will be offered as a part of the complaint outcome and reimbursed once the complaint outcome has been accepted. However, there may be instances where this type of cost was incurred but the bank had no visibility of it. If so, you can make a claim for this loss. If you can provide sufficient evidence of the costs incurred, and demonstrate that they were a result of the unfair actions of the bank, will

normally be reimbursed through an offer of Consequential Loss.

Wasted management time
Financial losses related to wasted or lost management time may in principle be recoverable as a Consequential Loss. However, in practice it is very difficult to demonstrate that such claims meet the relevant legal tests.

Customers would need to show that the unfair actions of the bank and/or the Direct Loss resulted in a diversion of management time that caused a significant disruption to the business, which in turn resulted in a quantifiable loss.

In some cases, it may be possible to directly quantify a loss of revenue attributable to the diversion of management time. However, where this is not possible, it is reasonable to infer that, but for the diversion, staff would have applied their time to activities which would have generated revenue (either directly or indirectly) for the business in an amount at least equal to the costs of employing them. As a result, we would accept a claim based on the cost of employing staff (i.e. by reference to their salary/wages) to be used as a proxy to quantify financial loss to the business as a result of the disruption.

Losses incurred by shareholders, directors and other third parties
The bank will only consider claims in relation to losses incurred by our customers. Therefore, individuals connected to a customer with a separate legal identity (for instance, a company or LLP) are unable to advance claims for Consequential Loss arising out of an upheld complaint, and losses suffered by shareholders, directors and other third parties will not be recoverable.

Physical inconvenience and loss of amenity
Physical inconvenience and loss of amenity relates to a claim that your quality of life has been impacted by the unfair actions of the bank. Customers are able to submit these types of claims, however in order for such a claim to be successful it will be necessary to provide sufficient evidence to demonstrate a quantifiable financial loss incurred as a result of the physical inconvenience or loss of amenity. In practice, this is likely to be difficult.

As outlined above, claims by shareholders, directors and other third parties will not be recoverable, including claims for physical inconvenience and loss of amenity submitted by individuals associated with a corporate customer.

If you were a partnership or sole trader, losses related to physical inconvenience and loss of amenity are in principle recoverable as a Consequential Loss. However, it is very unlikely that this type of claim will meet the applicable legal tests. In practice, it is unlikely that a customer will be able to demonstrate that such a loss was caused by the unfair actions of the bank, or that it was a reasonably foreseeable outcome.

Stress
We recognise that running a business experiencing financial difficulty, or worse still, seeing a business fail, is extremely stressful. Consequential loss claims relating to stress suffered as a result of the unfair actions of the bank may in principle be recoverable. However, to be successful, customers will need to provide sufficient evidence to meet the legal tests, as well as demonstrate how the stress resulted in a quantifiable financial loss (for example, through evidence of medical expenses).

As outlined above, claims by shareholders, directors and other third parties will not be recoverable, including claims for stress submitted by individuals associated with a corporate customer.

If you were a partnership or sole trader, losses related to stress are in principle recoverable as a Consequential Loss. In practice, it will be very difficult for a customer to demonstrate that stress was caused by the actions of the bank as opposed to the underlying circumstances of the

business at the time.

1.5. Level of evidence required

What is capable of being claimed as a Consequential Loss, along with the level of evidence required to meet the applicable legal tests, will depend on the facts of each case. You must provide sufficient evidence to demonstrate that it is more likely than not that the Consequential Loss you are claiming was caused by the unfair actions of the bank and/or the Direct Loss incurred. Therefore your claim should explain in as much detail as possible:

- The particular loss you are claiming
- The amount of loss you are claiming, and
- How this loss was caused by the Direct Loss and/or unfair actions of the bank.

We are only able to consider claims for Consequential Loss which are supported by evidence. Please provide us with any documents and information which you think are relevant to your Consequential Loss claim, such as evidence of the loss suffered and the circumstances which gave rise to it. We will consider all evidence provided to us.

As a general principle, greater weight will be attached to evidence that was created at the time of the claimed loss, known as contemporaneous evidence. Greater weight is also likely to be given to factual evidence that is undisputed and/or verifiable. An example of contemporaneous and verifiable evidence would be bank statements from the time showing the amount of additional borrowing and the cost of that borrowing.

While the burden is on customers to provide sufficient evidence to demonstrate their claim, we will also consider any relevant evidence we have on our files when assessing your claim. However, to ensure that we do not miss anything, please provide us with any evidence that you think may be relevant, and as much information as possible to allow us to assess what additional evidence we may hold that would be relevant to your claim.

Examples of the types of evidence we would expect to receive will depend on the nature of the claim but some non-exhaustive examples include:

- Bank statements
- Board minutes
- Statutory financial statements, management accounts or other financial records
- Correspondence with third parties relating to failed attempts to raise funds from other sources
- Correspondence relating to any business opportunity you would have pursued
- Projections of the additional income or profit you would have made by pursuing that business opportunity, including supporting evidence or business plans
- Copies of invoices for costs together with evidence of payment
- Copies of loan agreements together with the relevant interest rates
- Copies of contracts or written offers

1.6. Case studies

We have provided a set of case studies (see www.rbs.com/grg) that will give customers some examples of when Consequential Loss claims are likely to be successful or unsuccessful. Please note that these examples have been presented as illustrations only.