

The Royal Bank of Scotland plc
Principles governing RBS's new complaints process for SME customers
in GRG

1 Scope and background

- 1.1** The Royal Bank of Scotland plc ("**RBS**") has designed a new complaints process to assess complaints brought by in-scope customers about their treatment by RBS's Global Restructuring Group ("**GRG**"). A customer is in-scope for the new complaints process if they were a small or medium sized enterprise under the control of GRG in the United Kingdom or Republic of Ireland between 1 January 2008 and 31 December 2013 (referred to as "**Customers**" in this document).
- 1.2** Complaints brought by Customers about their treatment by GRG are referred to in this document as "**Complaints**".
- 1.3** Upon the receipt of a Complaint, RBS will:
- 1.3.1** assess the Complaint, applying the standards set out in paragraph 2.3 below; and
 - 1.3.2** if the Complaint is upheld, determine whether any compensation is due to the Customer for Direct Loss (as defined in paragraph 1.7 below) and consider whether any changes should be made to the banking relationship between the Customer and RBS,

(the "**RBS Complaints Process**").
- 1.4** Additionally, if the Complaint is upheld RBS may, at its discretion, award a Goodwill Payment to the Customer. A "**Goodwill Payment**" is a payment by RBS to a Customer, of an amount to be determined at the sole discretion of RBS, in respect of disruption that was caused to the business because the conduct of RBS fell below the standard in paragraph 2.3. This award will be determined by the same team within RBS that conducted the RBS Complaints Process. For the avoidance of doubt, any Goodwill Payment by RBS will not be overseen by the Independent Third Party ("**ITP**") and there will be no right of appeal to the ITP.
- 1.5** The ITP will perform an "assurance and appeal" role for the RBS Complaints Process. The ITP will therefore:
- 1.5.1** provide assurance that the methods used in the RBS Complaints Process are appropriate and provide a framework that enables a thorough and robust assessment of Complaints both:
 - (i) at the outset; and
 - (ii) on an ongoing basis; and
 - 1.5.2** operate a process to consider appeals against decisions made in the RBS Complaints Process (the "**ITP Appeals Process**").
- 1.6** If the RBS Complaints Process or the ITP Appeals Process determine that a Complaint should be upheld, the Customer may pursue any claim they may have for Consequential Loss (as defined in paragraph 1.7 below) based on the findings. In considering any claim for Consequential Loss, RBS will apply established legal principles to determine whether

the loss is factually and legally attributable to it. This will be considered by the same team in RBS that conducted the RBS Complaints Process.

1.7 For the purposes of the RBS Complaints Process and the ITP Appeals Process:

1.7.1 “**Direct Loss**” means:

- (i) sums of money paid by a Customer to RBS; or
- (ii) a Customer’s out of pocket costs of meeting RBS’s requirements.

1.7.2 “**Consequential Loss**” means financial loss that is not Direct Loss.

1.8 This document sets out the principles for the operation of the RBS Complaints Process and ITP Appeals Process. Nothing in these principles confers, or purports to confer, on any third party any right to enforce these principles.

2 Considerations

2.1 The design of the RBS Complaints Process and the “assurance and appeal” role of the ITP have been guided by a number of considerations. These are set out below.

2.2 **Summary review:** In the interests of ensuring that the process operates as swiftly as possible and is accessible for all Customers, the RBS Complaints Process and the ITP Appeals Process will be of a summary nature. This means that, while the process will involve the consideration of documentary evidence held by RBS and provided by Customers, there will be no requirement for, for instance, detailed written arguments from Customers or oral evidence. If a Customer believes that a more intensive process is necessary for their Complaint to be resolved satisfactorily, then they can opt not to participate in the RBS Complaints Process and instead pursue their Complaint through other means (for instance, through the Financial Ombudsman Service (“**FOS**”) in the United Kingdom, the Financial Services and Pensions Ombudsman (“**FSPO**”) in the Republic of Ireland or the courts).

2.3 **Basis of assessment:** The objective of the RBS Complaints Process and the ITP Appeal Process is to deliver fair outcomes for Customers. Complaints will be assessed having regard to the following standards:

2.3.1 *reasonableness* – i.e. whether RBS’s actions were appropriate and justifiable taking into account factors including:

- (i) good market practice and context;
- (ii) the individual circumstances of the Customer at the relevant time; and
- (iii) any relevant contractual rights;

2.3.2 *transparency* – i.e. the timeliness and clarity of communication;

2.3.3 where relevant, *compliance* with relevant RBS policies and procedures.

The assessment is not a test of legality and a finding in favour of the Customer will not amount to an admission of legal liability by RBS.

2.4 **Root causes of issues:** The RBS Complaints Process and the ITP Appeals Process will only consider the actions of RBS in the specific instance of the Complaint that is under review, not the root causes of inappropriate action. As such, the review process will not attempt to establish whether poor behaviour was the result of poor culture or other factors.

- 2.5 Conflicts of interest:** In the unlikely event of the ITP feeling he may have a conflict of interest in relation to a particular Complaint which has been appealed, RBS will approach the Customer to obtain confirmation that, notwithstanding this potential conflict, the Customer nonetheless wishes the appeal to be heard. Should the Customer object to the ITP hearing the appeal then they will be directed to the FOS/FSPO (if eligible) or the case will be closed and an appeal will not be available for that Customer.
- 2.6 Timescales and communication:** RBS and the ITP will endeavour to ensure that Complaints are resolved in a timely fashion, having regard to the FCA's Dispute Resolution: Complaints (DISP) handbook and the Central Bank of Ireland's Consumer Protection Code, and SME Regulations where applicable, and will ensure that Customers are kept suitably informed about the progress of their Complaint.
- 2.7 ITP resourcing:** If the number of appeals initiated by Customers means that it would be impractical for the ITP to personally consider every case, the ITP may arrange for appropriately qualified and independent reviewers to consider cases under his supervision. How appeals are determined and what necessary resources are required is for the ITP to determine. The ITP will be responsible for the ITP Appeals Process and will ultimately be accountable for it.

3 Limitations of the RBS Complaints Process and ITP Appeal Process

- 3.1** The RBS Complaints Process and the ITP Appeals Process will not:
- 3.1.1** within a Complaint, determine whether any conduct by RBS or its staff which forms part of the Complaint was also criminal or fraudulent or dishonest. Customers wishing to assert that any conduct was also criminal or fraudulent or dishonest must refer the matter to the appropriate authorities. The RBS Complaints Process and the ITP Appeals Process will consider all other aspects of the Complaint in accordance with the standards set out in paragraph 2.3 above;
 - 3.1.2** make any determination on legal causes of action. The RBS Complaints Process and the ITP Appeals Process will instead apply the standards set out in paragraph 2.3 above;
 - 3.1.3** consider Complaints the subject matter of which is the subject of:
 - (i) ongoing litigation against RBS, unless the Customer and RBS agree to suspend those proceedings while the Complaint is being considered; or
 - (ii) litigation that has been threatened in a letter before claim, unless the Customer agrees not to pursue the claim while the Complaint is being considered.
 - 3.1.4** consider Complaints the subject matter of which has previously been the subject of:
 - (i) a full and final settlement of litigation or litigation threatened in a letter before claim;
 - (ii) a decision by the FOS/FSPO; or
 - (iii) a decision of the courts.

However, the RBS Complaints Process and the ITP Appeals Process will consider a Complaint notwithstanding that its subject matter has previously been the subject

of a complaint to RBS provided it has not been settled in the course of litigation commenced or threatened in a letter before claim, or considered and been the subject of a finding by the FOS/FSPO or the courts. Any payments that have previously been made by RBS to Customers in these circumstances will be taken into account for the purposes of calculating any Direct Loss or Consequential Loss that will be paid to the Customer in relation to their Complaint.

3.2 In addition, the ITP Appeals Process will not:

3.2.1 make decisions in relation to any payments by RBS to Customers, except for payments in relation to Direct Loss. As noted in paragraph 1.6, Customers' claims for Consequential Loss will be considered by RBS after completion of the RBS Complaints Process and, if applicable, the ITP Appeals Process;

3.2.2 be required to assess costs incurred by Customers in bringing a Complaint, albeit the ITP may direct RBS to pay some or all of a Customer's reasonable costs.

4 RBS Complaints Process: Process and assurance

4.1 Prior to implementation, the ITP will review and confirm that the methods adopted in the RBS Complaints Process are appropriate and provide a framework that enables a thorough and robust assessment of Complaints.

4.2 RBS will consider all Complaints within the RBS Complaints Process and will be the decision maker in the first instance. All Complaints will be replied to directly without the involvement of the ITP in the first instance.

4.3 On an ongoing basis the ITP will be required to assess and satisfy himself that the methods used in the RBS Complaints Process remain appropriate and are enabling thorough and robust assessments, including whether RBS is operating within the spirit of seeking fair outcomes for Customers. To provide this assurance, the ITP will undertake a review of a sample of Complaints considered within the RBS Complaints Process and provide commentary to RBS, including in cases where RBS has found in the Customer's favour. If the ITP identifies that for a particular Complaint the methods adopted in the RBS Complaints Process have not been appropriate or did not enable a thorough and robust assessment, he will inform RBS of this. RBS, and not the ITP, will then consider again the original decision taken in the RBS Complaints Process.

4.4 On an ongoing basis, the ITP will also be required to consider and assure any enhancements to the methods adopted in the RBS Complaints Process that become necessary or desirable.

4.5 The ITP will provide periodic reports to the Board of RBS and, separately, to the Financial Conduct Authority on both his assurance and appeals roles. The reports will be provided on at least a quarterly basis.

4.6 Once RBS has completed the RBS Complaints Process for a Complaint, it will advise the Customer of its decision in a decision letter. The decision letter will set out whether the Customer's Complaint:

4.6.1 has been upheld (in part or in full); and

4.6.2 if so, whether RBS proposes to pay any compensation for Direct Loss to the Customer and if so the amount of that compensation; and

4.6.3 whilst outside of the ITP Appeals Process, RBS may, at its discretion, make a Goodwill Payment to the Customer.

4.7 The Customer will then have the option to appeal this decision in writing to the ITP within 56 days of the date of the outcome letter. A Customer can appeal against any aspect of the decision reached by the RBS Complaints Process, as described in paragraph 1.3. This includes appealing against Complaints that have been upheld by RBS but where the Customer is unhappy with the outcome determined by RBS. If the outcome letter includes an offer, that offer will remain open for acceptance for 56 days from the date of the letter, after which, if not accepted in the meantime, it will lapse. It will also lapse immediately upon any appeal against a decision being made to the ITP.

4.8 If the Customer accepts the decision made in the RBS Complaints Process, the Customer will be required to enter into a full and final settlement of any claims they may have against RBS in relation to the Complaint or similar issues, with the exception of any claim for Consequential Loss. The Customer may still pursue any claim for Consequential Loss based on the findings set out in the outcome letter and should submit evidence or information to support their claim. Once RBS has assessed this, it will send a final letter to the Customer setting out its findings and any offer of compensation for Consequential Loss. If the Customer chooses to accept the offer, the Customer will be required to enter into a full and final settlement of any Consequential Loss claims they may have against RBS in relation to the Complaint or similar issues.

5 The ITP Appeals Process

5.1 Any appeals by a Customer against decisions made in the RBS Complaints Process will be considered in the ITP Appeals Process. As stated in paragraph 4.7, any offer from RBS set out in the outcome letter will lapse immediately upon any appeal against a decision being made to the ITP.

5.2 Subject to the limitations set out in section 3, the ITP will consider all aspects of a Complaint when considering an appeal, unless the Customer accepts parts of the decision made by the RBS Complaints Process in which case the ITP will confine his review to those aspects that are disputed. To assist the ITP in assessing their appeal an appeal form will be made available in which Customers will be asked to identify which aspects of the RBS decision set out in the outcome letter they are appealing. Customers will be encouraged to explain in the appeal form the reasons why they feel RBS's decision was wrong. If:

5.2.1 the Customer raises a new Complaint during their appeal;

5.2.2 the Customer introduces significant new information not previously considered by RBS; or

5.2.3 the ITP identifies a new issue that the Customer has not complained about, but the ITP believes could form the basis of a Complaint;

that aspect will be considered by the RBS Complaints Process in the first instance and the ITP Appeals Process will be suspended until that consideration has been completed.

5.3 The ITP's review of Complaints will be based on the contemporaneous documents gathered by RBS, documents submitted by Customers, and the materials created during the RBS Complaints Process. In exceptional cases where the ITP believes it is appropriate to do so, the ITP will have the option to ask a Customer to provide evidence or arguments

in person. There will be no obligation on the Customer to provide evidence in person and deciding not to do so will not affect the ITP's duty to deliver a fair outcome for the Customer.

- 5.4** The ITP will reach his own conclusion on whether the Complaint should be upheld or not and on what basis. The ITP will record his decision, including any award for Direct Loss and a brief summary of his reasons, in a short document that will be provided to RBS and the Customer. The ITP's decision may be less favourable to the Customer than the decision made in the RBS Complaints Process. Subject to the Customer accepting the ITP's decision (as described in paragraph 5.8 below), the decision of the ITP will be binding on RBS.
- 5.5** Once an appeal decision has been issued by the ITP, RBS will issue a second and final outcome letter which will incorporate the appeal decision in full. RBS will also carry forward to the second and final outcome letter any decisions or offers not appealed by the Customer, including any offer of a Goodwill Payment.
- 5.6** If the appeal decision includes a direction by the ITP for RBS to pay some or all of a Customer's reasonable costs incurred in bringing a Complaint or an appeal, RBS will include or update an offer for costs in the second and final outcome letter.
- 5.7** An offer will remain open for acceptance for 56 days from the date of the second and final outcome letter, after which it will lapse.
- 5.8** If the Customer accepts the ITP's decision, they will be required to enter into a full and final settlement of any claims they may have against RBS in relation to the Complaint or similar issues, with the exception of any claim for Consequential Loss. The Customer may then pursue any claim for Consequential Loss following the same process set out in paragraph 4.8 above.
- 5.9** If the Customer does not accept the ITP's findings or proposed compensation, then the Customer will not be entitled to any award for Direct Loss made by the ITP and will not have any claim for Consequential Loss considered by RBS. In that event, the Customer will be free to pursue any other form of recourse available to them (for instance, through the FOS/FSPO or the courts).
- 5.10** There will be no further recourse to the ITP available to either RBS or the Customer once the ITP has reached his conclusion on an appeal, save for any appeal to the ITP on any eligible CL claim.

6 Representation

- 6.1** Customers may be represented, for example, by solicitors and/or registered claims management companies.
- 6.2** The amount of the costs to be paid pursuant to a direction given under paragraph 3.2.2 shall be determined by RBS and shall be reasonable and proportionate in amount having regard to the terms of such direction.