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

This is my ninth quarterly report on my Assurance and Appeals roles in relation to the RBS GRG Complaints Process.

**Overall observations on RBS's Complaints Process**

Since my last quarterly report, RBS has continued to operate a robust Complaints Process that is designed to collect and carefully consider the evidence relevant to Customers' Complaints. As I have noted in my previous reports, these Complaints are complex to assess and require considerable effort and resources to do so at scale.

RBS has maintained an appropriate level of quality at each stage of the Complaints Process, and the number of Assurance issues identified remains low relative to the overall volumes. The Bank has continued to take my feedback constructively, refining its operations in areas where I have identified opportunities for it to do so.

The Complaints Process is now closed to new Complaint submissions from both UK and Irish Customers. The overall size of the Complaints population is now known to be just under 2,700. To date, RBS has communicated decisions to Customers in almost 60% of these Complaints. The Bank has continued to focus on reviewing its oldest Complaints; nearly all the Complaints yet to be assessed were submitted near to the closure of the submission window.

In the most recent quarter, the throughput of the Bank's Complaints Process accelerated, with RBS issuing 300 outcome letters to Customers. This compares to 256 and 239 respectively in the previous two quarters. Notwithstanding this increase in throughput, RBS shows every sign of maintaining an appropriate level of quality at each stage of the Complaints Process.

RBS has told me that it hopes to maintain these volumes for the remainder of the Complaints Process. This would result in the majority of outstanding Complaints being considered in 2019. I will continue to assure the quality of the Complaints Process until it is completed.

**Assurance**

My team conducts a thorough and detailed review of a sample of Complaints as they pass through each step of the RBS Complaints Process. This scrutiny is broad in scope, encompassing records of any interactions between the RBS helpdesk and the Customer, the Bank's subsequent interpretation and formulation of the allegations, the evidence base underpinning the assessment of the Complaint, 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 letters recording the conclusions reached by the Bank and its reasoning).

I assess in-sample Complaints at two levels: as they pass through each step of the process, and, more importantly, at an overall Complaint level. A Complaint may 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 case.

Now that the final Complaint tally is known, I am able to report that I intend to assure at least 170 Complaints. This is a number that is sufficient to ensure that I achieve a robust Assurance sample. As of the end of this quarter, I have assured 137 Complaints up to and including the critical Decision Committee step, with 108 assured to the outcome letter stage. This represents scrutiny of hundreds of individual allegations, across what amounts cumulatively to more than a thousand discrete steps.

Of the 137 Complaints assessed up to Decision Committee, 134 have passed Assurance representing a pass rate of 98%. All three Assurance failures at the overall Complaint level were described in my earlier reports as they were detected in earlier quarters. In all three cases the Bank corrected the Customer outcomes after my team intervened.

In a further 18 of the 137 Complaints assured up to the Decision Committee step, my team have identified faults at individual steps of the Complaints Process that could have had a material impact on the overall Complaint outcome. Three are new since my last quarterly report:

- I. RBS incorrectly categorised an allegation as non-ringfenced (a classification giving the Customer no right to appeal that specific outcome). However, having reviewed the case I concluded that, notwithstanding the categorisation error, the outcome was one that was reasonably open for the Bank to reach so the Complaint did not fail Assurance at an overall level;
- II. RBS did not investigate a specific aspect of one particular allegation raised in a Customer's Complaint. Again, I was able to satisfy myself that the outcome reached by the Bank was appropriate and so this Complaint did not fail at an overall level; and
- III. RBS incorrectly excluded one legal entity from a multi-entity Complaint when completing its assessment of a specific allegation. This error was corrected by the Bank itself at a later stage of its own process and so this Complaint did not fail at an overall level.

The Bank undertakes three important steps post Decision Committee: calculating any Direct Loss award due, sending an outcome letter to the Customer and sending a final outcome letter subsequent to any Appeal. Of the 108 Complaints assured to the outcome letter stage, two have failed a step of the Complaints Process subsequent to the Decision Committee. One of these is new since my last quarterly report and relates to a typographical error in the Bank's final outcome letter. In this instance RBS correctly stated the Customer's Complaint outcome but the typographical error resulted in the Bank incorrectly reporting the rationale for that outcome. The Bank will be issuing a new outcome letter to the affected Customer.

As I have mentioned in previous quarterly reports, the RBS Complaints Process is a large-scale endeavour involving hundreds of people assessing vast amounts of detailed information as they execute a complex process covering an extended period. I am not surprised that my team's rigorous interrogation of the process has identified some faults. I am reassured that almost all such faults are identified and corrected by RBS itself as individual Complaints run their course. Nevertheless, I continue to provide RBS with detailed Assurance observations on a regular basis, and I note that the Bank continues to take this feedback constructively as it continues to refine and strengthen its process.

## Appeals

I have now received 432<sup>1</sup> in-scope Appeals, of which 92 were received since my last quarterly report. I have reached a conclusion on 311 of these Appeals, of which I have sent letters communicating my decision to 262 Customers - including 107 during this last quarter.

This increase in productivity reflects the scaling-up of my team throughout the second half of 2018 as I responded to the increasing Appeal volumes submitted by Customers. 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 my priority remains delivering a fair outcome to Customers, and I will not lower the quality and thoroughness of my assessment in order to achieve such an increase.

Of the 262 Appeal outcomes shared with Customers, I have fully or partially upheld 70 (27%). This uphold rate is broadly consistent with the position at the end of the previous quarter.

Table 1. Summary of Appeals received to date

Eligible Appeals received <sup>1</sup>		432
Decisions communicated to Customers		262
Decisions made, awaiting communication to Customers		49
Appeals awaiting decision		113
Appeals closed <sup>2</sup>		8
<b>Appeals fully or partially upheld<sup>3</sup></b>		<b>70 of 262      27%</b>

As I have noted in previous reports, most Appeals comprise several allegations. Across the 262 Appeal outcomes shared with Customers I have assessed 1,212 allegations, of which 580 have been assessed since my last quarterly report. The average number of allegations per Appeal has continued to increase significantly and is now more than double what it was a year ago. This reflects both a continued increase in the complexity of the Appeals that I have been assessing and an increasing tendency for Customers and the Bank to split Complaints into a larger number of more discrete allegations.

Of the 1,212 allegations that I have assessed<sup>4</sup>, I have upheld 89, representing an allegation uphold rate of 7%. This uphold rate has declined slightly in recent months. I have examined the reasons for this small reduction in the allegation uphold rate and would make two observations at this stage: first, the Bank continues to adopt the principles implicit in my Appeal findings and applies them in its own subsequent Complaints assessments; and second, Complaints are split into a greater number of more granular allegations thereby enabling a correspondingly more granular determination of which specific Bank action, if any, merits an uphold; this approach does not, of course, change the overall outcome for the Customer.

The themes that I have so far observed on Appeal continue to reflect the themes of the overall Complaints population received by RBS. 34% of allegations fall into the broad category of unfair treatment - primarily the imposition of 3<sup>rd</sup> parties (for example, RBS requiring the Customer to undertake a security review) and the costs associated with these. Pricing and Provision of Finance account for 26% and 20% respectively of the allegations considered on

<sup>1</sup> Total number eligible Appeals received by the ITP. Excludes Appeals which have been remitted to the Bank because they included new allegations or material new evidence.

<sup>2</sup> Number of Appeals closed for other reasons (four identified as out of scope, three withdrawn by the Appellant and one remitted to the Bank and not subsequently appealed).

<sup>3</sup> Uphold rate based on decisions communicated to Customers.

<sup>4</sup> Relating to the 262 Appeals where I have communicated an outcome to the Customer.

Appeal. Of the rest, most relate to the transfer into GRG or staff behaviour. I have upheld 10% of allegations relating to Pricing; my uphold rates for all other allegation themes are lower. It is worth noting that I have not upheld any allegations within the Valuations theme. This reflects the fact that I have not seen any cases where the Bank deliberately undervalued a Customer asset. However, I have 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).

**Table 2. Summary of Appeal allegation outcomes communicated to Customers<sup>5</sup>**

<b>Allegation theme</b>	<b>Number of Allegations</b>	<b>Number upheld</b>	<b>Uphold rate</b>
Transfer In/Out of GRG	139	7	5%
Pricing	311	32	10%
Valuations	28	0	0%
West Register	5	0	0%
Unfair Treatment	412	27	7%
Provision of Finance	241	18	7%
RM Behaviour	76	5	7%
<b>Total</b>	<b>1,212</b>	<b>89</b>	<b>7%</b>

As I have noted in previous quarterly reports, in considering each Appeal on a *de novo* basis, I am not pronouncing on the reasonableness of the Bank's determination under its Complaints Process. Each Appeal outcome requires detailed consideration of the allegation 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 I may reach different conclusions to those of the Bank based on my interpretation of the specific circumstances of a case. 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 any allegation that I uphold, I then assess whether there is compensation due to the Customer for Direct Loss resulting from RBS's actions during the relevant period. Direct Loss is defined as either sums of money paid by a Customer to RBS or a Customer's out-of-pocket costs of meeting the Bank's requirements. Any Direct Loss I award is in addition to payments already made by the Bank to Customers - either i) under the Automatic Fee Refund (AFR) scheme for complex fees, or ii) awards for Direct Loss made by RBS following the Bank's consideration of the Complaint.

The compensation I award on Appeal is impacted by 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.

In the 262 Appeals for which I have already communicated my decision, payments totalling £4.3m had already been made by the Bank under the AFR scheme, with further Direct Loss awards from the Bank of £1.6m (plus 8% interest). I have upheld 89 allegations on Appeal, awarding further financial redress for Direct Loss in 31 instances. The total amount of Direct Loss I have awarded in excess of AFR and Bank Direct Loss awards amounts to approximately £253,000 (plus 8% interest).

<sup>5</sup> Allegations associated with the 262 Appeal decisions communicated to Customers.

## Consequential Loss

With many Complaints having been upheld by the Bank in the first instance, or by me on Appeal, some Customers are beginning to submit claims for Consequential Loss (“CL”). I have two roles in regard to CL: to assure the Bank’s process design and to hear Customer Appeals.

As stated in the CL Principles published last summer, and in particular Principle 6.1.1, my Assurance role in relation to CL is to establish whether RBS’s CL process is appropriately designed, and provides a framework that enables a thorough and robust assessment by RBS of such claims.

To this end, I have reviewed RBS’s process documents, conducted several detailed ‘walk-throughs’ of the CL process and considered jointly instructed legal advice relating to how similar claims are assessed in the courts. It has also been helpful for me to observe the Bank’s assessment of their initial ‘pathfinder’ CL claims. As part of this process I have reviewed assessment materials prepared by the RBS CL team, attended one of the Bank’s CL Decision Meetings and examined several Customer CL outcome letters from the pathfinder cases.

I consider the RBS CL process to be robustly designed and to include an appropriate number of checks and balances. I have suggested a number of amendments to the Bank’s CL process which have been adopted by RBS. I should note that the Bank is still finalising some minor design elements; consequently I will continue to engage with it to ensure I remain satisfied with the process as it is refined.

I have also designed and documented in detail my own proposed approach to considering CL Appeals. It is too early to know their likely number or complexity. However I should emphasise an important difference in my approach to assessing CL Appeals compared to Complaint Appeals.

Under the Complaints Process, it is for the Bank to justify its treatment of the Customer when assessing the original Complaint. This is done primarily by reference to the Bank’s own records. I then assess a Customer’s Appeal against their original Complaint outcome on a *de novo* basis, reaching an independent outcome by examining each allegation afresh against all of the available evidence.

Under the CL process, the Bank is unlikely to have information in its own records which will be relevant to most CL claims. So, it is for the Customer to identify what loss was caused by the wrongful 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 RBS 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.

From the initial pathfinder claims that the Bank has assessed I have now received 3 CL Appeals and I shall soon be in a position to consider the first of these. I will provide 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  
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