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

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

As detailed in my sixteenth quarterly report, I have concluded my assessment of the appeals I received against the Bank’s complaint outcomes. I am continuing my assessment of appeals received against the Bank’s Consequential Loss (“CL”) outcomes (“CL Appeals”). This brief report provides information about the progress of that work.

A. CL Appeals process

As I have noted in previous quarterly reports, 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 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 as part of the complaints process (made either by the Bank, or by me on appeal) the Bank automatically adds 8% simple interest (regardless of whether any additional loss has been proven). This is intended to (i) compensate the Customer for being deprived of the use of the amount they are awarded in Direct Loss and (ii) allow customers who suffered limited CL to obtain compensation without the need to submit a CL claim. In total, the Bank offered £13.2m in 8% interest on its own Direct Loss awards and a further £0.9m on Direct Loss awards I have made on appeal. The CL process exists for Customers who feel that their losses stemming from the unfair actions of GRG exceed 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(s) of the Bank and to provide the evidence needed to support their claim. The Bank then assesses 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 then to 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) the Customer must show that it is more likely than not that, but for the Bank’s unfair action (as determined in the outcome to an

eligible complaint or on appeal), the loss would not have otherwise occurred (i.e. *causation*)¹; and (ii) the Customer must show that the *quantum* (or amount) of loss claimed was the loss actually incurred by the Customer.

Customers do not always base their CL claim on an eligible upheld complaint. In an effort to assist Customers, especially those who have not sought professional advice, the Bank has, where possible, reformulated their claim, often involving an analysis of the sequence of events that would have taken place had the Bank's unreasonable actions not taken place. This willingness to assist is welcome. For the same reason I see my role as including an initial check of whether the Bank's reformulation of the claim and (in all cases) its assessment of the claim are, on the facts, logical and not obviously wrong. Having so satisfied myself, I then go on to apply the assessment criteria outlined above to the Customer's appeal.

B. CL Appeals progress

As of 31 March 2021, 309 Customers had submitted CL claims to the Bank. The Bank has communicated its outcome to over 90% of these Customers, partially upholding 49% of claims and awarding a total of £3.4m in CL² ³. All CL claims have now been received by the Bank, except for a small number of claims that are subject to agreed submission deadline extensions.

In total, I have now received 123 CL appeals⁴, of which 20 were received in the last quarter.⁵ I have already communicated my decision in letters to 87 of these Customers.⁶

Most CL appeals contain claims for multiple heads of loss, ranging from loss of profits to professional fees⁷. The costs of a Customer bringing a complaint or CL claim under the GRG process are treated as a distinct head of loss. Such costs are only awarded where at least one of the Customer's other claims succeeds (and then the costs claimed need to be reasonable and proportionate). Across the 87 CL appeal outcome letters that I sent, the Customers had appealed 363 heads of loss. 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 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 due to the need to make new banking arrangements.

C. CL Appeals outcome

Of the 87 total CL appeal outcomes I have issued to Customers, I have partially upheld 16 (18%). On each occasion 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. Further details are provided in Table 1 below.

Table 1. Summary of CL Appeals received⁸

¹ 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*.

² This includes Claim Preparation Fees, but excludes the 8% interest already made on these Customer's Direct Loss awards.

³ Accurate as of 31 March 2021.

⁴ Accurate as of 12 April 2021.

⁵ It is noted that one additional CL appeal has already been received in Q2 2021.

⁶ Accurate as of 12 April 2021.

⁷ 'Head of Loss' refers to categories of damage that a Customer may have incurred.

⁸ Accurate as of 12 April 2021.

Eligible CL Appeals received	123
Decisions communicated to Customers	87
CL Appeals closed ⁹	2
CL Appeals fully or partially upheld ¹⁰	16 of 87 18%

Across the 87 total CL appeal outcomes shared with Customers, I assessed 363 heads of loss, of which 211 were assessed since my last quarterly report. Of the 363 heads of loss outcomes that I have so far communicated, I upheld 18, representing a head of loss uphold rate of 5%. Of the 118 heads of loss specifically related to costs, I upheld nine, representing a costs uphold rate of 8%. Table 2 below presents further data by head of loss theme.

Table 2. Summary of head of loss outcomes

Head of Loss	CL claim outcomes by the Bank ¹¹			Appeal outcomes ¹²		
	Number of heads of loss	Number upheld	Uphold Rate	Number of heads of loss	Number Upheld	Uphold rate
Cost Heads of Loss						
Claim Preparation Fees	157	92	59%	45	3	7%
Legal & Professional Fees	329	110	33%	73	6	8%
Other Heads of Loss						
Asset Disposal	164	9	5%	51	2	4%
Claim From a Guarantor	24	1	4%	6	0	0%
Increased Cost of Borrowing	224	23	10%	58	3	5%
Loss of Profit/Loss of Opportunity	264	9	3%	65	0	0%
Physical Inconvenience/Loss of Amenity	10	0	0%	7	0	0%
Stress	72	0	0%	29	0	0%
Tax Differential	27	1	4%	9	0	0%
Wasted Management Time	76	6	8%	20	4	15%
Total	1347	251	19%	363	18	5%

(i) Recent outcomes of causation appeals

In the last quarter I partially upheld eight appeals on causation, comprising a total of nine heads of loss. Four of the upheld heads of loss related to costs incurred by the Customer in making a successful CL claim. In one of these instances I also upheld a separate element of the appeal, and therefore considered that an award for the corresponding legal and professional fees incurred in bringing the CL appeal was due. The other five upheld heads of loss related to matters ranging from increased borrowing costs to losses stemming from the sale of an asset.

I have generally passed these upheld claims back to the Bank for it to assess, in the first instance, the quantum of compensation due (if any). However, in order to accelerate the speed by which Customers receive their outcome, where I have identified that Customers have indeed suffered loss (and where this is uncontentious), I have simply referred calculation back

⁹ This refers to the number of CL appeals that have been settled outside the CL Appeals process.

¹⁰ Uphold rate based on decisions communicated to Customers.

¹¹ Heads of loss associated with the 289 CL claim decisions that the Bank has communicated to Customers.

¹² Heads of loss associated with the 87 CL appeal outcomes that I communicated to Customers.

to the Bank, scrutinised their approach and then communicated the outcome directly to the Customers without requiring the Bank to issue interim communication.

(ii) Recent outcomes of quantum appeals

In the last quarter I also partially upheld four appeals from customers who appealed the quantum of compensation awarded by the Bank. In these upheld quantum appeals I awarded an extra £21,738 in CL. Three of the four upheld quantum appeals related to awards for costs incurred in making a successful complaint or CL claim. In these instances I considered that the customer was due compensation for an amount of fees greater than that which the Bank had initially awarded.

I hope this report is helpful in setting out the key activities of the last quarter, and the overall progress made to date.

Sir William Blackburne
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