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

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

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 on 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 30 June 2021, 318 Customers had submitted CL claims to the Bank. The Bank has communicated its outcome to over 98% of these Customers, partially upholding 51% of claims and awarding a total of £4.1m in CL^{2 3}.

In total, I have now received 139 CL appeals⁴, of which 16 were received in the last quarter.⁵ I have already communicated my decision in letters to 113 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 113 CL appeal outcome letters that I have sent, the Customers had appealed 388 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 113 total CL appeal outcomes I have issued to Customers, I have partially upheld 29 (25%). 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 30 June 2021.

⁴ Accurate as of 30 June 2021.

⁵ It is noted that 3 additional CL appeals have already been received in Q3 2021.

⁶ Accurate as of 30 June 2021.

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

⁸ Accurate as of 30 June 2021.

Eligible CL Appeals received	139
Decisions communicated to Customers	113
CL Appeals closed ⁹	2
CL Appeals fully or partially upheld ¹⁰	29 of 113 25%

I have assessed 534 heads of loss across the 113 CL appeal outcomes shared with Customers.¹¹ I upheld 62 of these heads of loss, representing a head of loss uphold rate of 12%. Of the 185 heads of loss specifically related to costs, I upheld 24, representing an uphold rate of 13% in relation to costs. 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 ¹²			Appeal outcomes ¹³		
	Number of heads of loss	Number upheld	Uphold Rate	Number of heads of loss	Number Upheld	Uphold rate
<i>Cost Heads of Loss</i>						
Claim Preparation Fees	178	108	61%	75	9	12%
Legal & Professional Fees	365	132	36%	110	15	14%
<i>Other Heads of Loss</i>						
Asset Disposal	171	9	5%	68	5	7%
Claim From a Guarantor	24	1	4%	8	0	0%
Increased Cost of Borrowing	239	26	11%	85	4	5%
Loss of Profit/Loss of Opportunity	304	15	5%	103	1	1%
Physical Inconvenience/Loss of Amenity	10	0	0%	7	0	0%
Stress	79	0	0%	41	0	0%
Tax Differential	27	1	4%	9	0	0%
Wasted Management Time	93	7	8%	28	4	14%
Total	1490	299	20%	534	62	12%

(i) Recent outcomes of causation appeals

In the last quarter I partially upheld 12 appeals on causation, which included a total of 19 upheld heads of loss. 14 of the upheld heads of loss related to costs incurred by the Customer in making a successful CL claim. In three 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 two upheld heads of loss related to loss of profit and increased costs of borrowing.

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 a Customer has indeed

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 I have assessed 171 heads of loss since my last quarterly report.

¹² Heads of loss associated with the 314 CL claim decisions that the Bank has communicated to Customers.

¹³ Heads of loss associated with the 113 CL appeal outcomes that I communicated to Customers, data accurate as of 19/07/21. Appeal Outcome data reflects output from the Bank's internal records. A single Head of Loss and Outcome may be recorded more than once if the Customer is associated with multiple entities making a complaint, if the customer has made repeated complaints or if an appeal is remitted back to the Bank.

suffered loss (and where the valuation of this loss is uncontentious), I have simply referred calculation back to the Bank, scrutinised its approach and then communicated the outcome directly to the Customers without requiring the Bank to issue an interim communication.

(ii) Recent outcomes of quantum appeals

In the last quarter I also partially upheld one appeal from a Customer who appealed the quantum of compensation awarded by the Bank. In this upheld quantum appeal I awarded approximately £25,000 in additional CL. This upheld quantum appeal related to loss of profit.

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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