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

This is my twentieth and final quarterly report on my role in the RBS GRG complaints process.

Over this last quarter I completed my assessment of appeals received against the Bank's Consequential Loss (“CL”) outcomes (“CL Appeals”). This report provides an overview of that work. For a summary of my work on both Assurance and Complaint Appeals, please refer to my 16th Quarterly Report.

A. CL Appeal Process

Customers who had any part of their complaint upheld by the Bank in the first instance, or by me on appeal, were eligible to submit a claim for CL. My main role in regard to these CL claims was to consider Customer appeals.

It is worth noting that on every award of Direct Loss (DL) made as part of the complaints process (either by the Bank, or by me on appeal) the Bank automatically added 8% simple interest regardless of whether any additional loss had been proven. This was intended to (i) compensate the Customer for being deprived of the use of the amount they are awarded in DL and (ii) provide Customers who suffered limited CL immediate compensation without the need to submit a CL claim. In total, the Bank offered £13.2m in 8% interest on its own DL awards and a further £0.9m on DL awards I made on appeal. The CL process existed for Customers who considered that their losses stemming from the unfair actions of GRG exceeded the amount for which they were compensated through their DL award plus 8% interest.

In the CL process it was for the Customer to identify what further loss was caused by the unfair action(s) of the Bank and to provide the necessary arguments and evidence to support their claim. The Bank then assessed the Customer's claim on the basis of the arguments and evidence presented by the Customer. In making a CL appeal to me, it was for the Customer to identify the particular item(s) of their claim that they appealed, explain why the conclusion reached by the Bank on that item was incorrect, and (where appropriate) cite relevant evidence in support of their position. My task was then to reach a decision on the merits of their challenge to the Bank's outcome.

In order for a Customer's claim to succeed two key tests had to be met: (i) the Customer must have shown that it was more likely than not that, but for the Bank's unfair action, the loss

would not have otherwise occurred (i.e. *causation*)¹; and (ii) the Customer must have shown that the *quantum* of loss claimed was the loss actually incurred by the Customer having taken into account consideration of whether the Customer had made appropriate efforts to mitigate any loss.

Customers did not always base their CL claim on an eligible upheld complaint. In an effort to assist Customers, especially those who had not sought professional advice, the Bank, where possible, reformulated their claim, often involving compilation and analysis of the sequence of events that would have taken place had the Bank’s unfair actions not taken place. This willingness to assist was welcome. For the same reason, I saw 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 were, on the facts, logical and not obviously wrong. Having so satisfied myself, I then went on to apply the assessment criteria outlined above to the Customer’s appeal.

A number of Customers who made CL appeals through the RBS GRG complaints processes had made CL claims to the Bank through its earlier IRHP CL review. I gave careful consideration to whether a Customer making a claim in the GRG process that had already been unsuccessful in the earlier process should have that claim reconsidered in the light of subsequent findings that GRG had behaved unfairly towards these Customers.

B. CL Appeals summary

As of 1 January 2022, 322 Customers had submitted CL claims to the Bank. No further Customers are eligible to make CL claims. The Bank has communicated its outcome to all 322 Customers, partially upholding 52% of claims and awarding a total of £4.2m in CL².

I received 155 CL appeals, of which 2 were received in the last quarter. I have communicated my decision in letters to all of these Customers. Of the 153 total CL appeal outcomes I have issued to Customers, I have upheld or partially upheld 38 (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 received

Eligible CL Appeals received	155
Decisions communicated to Customers	153
CL Appeals closed ³	2
CL Appeals fully or partially upheld ⁴	39 of 155 25%

C. Heads of loss (HOL) summary

Each HOL describes a type of loss claimed by Customers. Across the 155 CL appeal outcomes shared with Customers I assessed 668 heads of loss.⁵ I upheld 54 of these heads of loss, representing a head of loss uphold rate of 8%. Of the 232 heads of loss specifically related to costs, I upheld 35, representing an uphold rate of 15%. Table 2 below presents further data by head of loss theme.

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

⁴ Uphold rate based on decisions communicated to Customers.

⁵ I have assessed 70 heads of loss since my last quarterly report.

Table 2. Summary of head of loss outcomes

Head of Loss	CL claim outcomes by the Bank ⁶			Appeal outcomes ⁷		
	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	188	118	63%	95	11	12%
Legal & Professional Fees	376	138	37%	137	24	18%
Other Heads of Loss						
Asset Disposal	174	9	5%	90	7	8%
Claim From a Guarantor	24	1	4%	8	0	0%
Increased Cost of Borrowing	247	28	11%	99	6	6%
Loss of Profit/Loss of Opportunity	317	16	5%	132	2	2%
Physical Inconvenience/Loss of Amenity	10	0	0%	8	0	0%
Stress	81	0	0%	48	0	0%
Tax Differential	39	4	10%	13	0	0%
Wasted Management Time	96	7	7%	37	4	11%
Total	1552	321	21%	668	54	8%

D. Further detail on specific Heads of loss (HOL)

Overview

CL appeals succeeded where i) the Customer was able to demonstrate a link between the Bank's unfair actions and the losses incurred ii) it was considered that the loss was reasonably foreseeable at the time iii) it was considered that the Customer could not have reasonably mitigated the loss at the time and iv) the Customer was able to attribute and evidence a quantum associated with the loss.

CL Appeals failed for a number of reasons. Across all heads of loss I observed certain common reasons for a claim failing, including where the Customer had not been sufficiently able to i) link the unfair actions of the Bank to the CL claimed ii) demonstrate that their loss exceeded the 8% simple interest paid by the Bank on any Direct Loss that had been awarded iii) justify the value of their loss and/or iv) base a claim on actions that were the subject of an upheld complaint raised by the Customer. In addition, some Customers made ineligible claims for losses that were suffered not by them but by a third-party to the GRG Complaints Process.

Some reasons for success and failure for CL Appeals were unique to particular HOLs. I explore these in more detail by HOL below.

Asset Disposal

174 Claims were made under this HOL, of which the Bank upheld 9. On appeal, I upheld 7 out of 90 (8%) Claims. Claims under this HOL arose where the Customer alleged that the unfair action(s) of the Bank resulted in that Customer's assets (typically properties but sometimes other physical assets) being sold for less than they could have been when they would otherwise have been retained or sold for a more advantageous price at a later date.

⁶ Heads of loss associated with the 322 CL claim decisions that the Bank has communicated to Customers.

⁷ Heads of loss associated with the 153 CL appeal outcomes that I communicated to Customers. 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.

Typical unfair actions giving rise to claims under this HOL included unreasonable restructuring of a Customer's facilities resulting in reduced lending being available to the Customer, or lending being advanced on less attractive terms. Other grounds for claims under this HOL included the imposition of unreasonably high fees by the Bank which constrained the Customer's cash flow so that they were forced to dispose of an asset or the imposition by the Bank of asset sales strategies (such as setting unreasonably high auction reserve prices) resulting in the Customer being unable to achieve a proper price for their asset.

For these claims to be successful the Customer had to demonstrate that it was more likely than not that it was the Bank's unfair actions or the financial pressure that arose from those unfair actions which triggered the loss claimed. Successful Customers were able to evidence a counterfactual scenario in which, for example, they would either have realised the benefit from retaining their assets for longer or have been able to manage the sales process in a more advantageous manner.

CL Appeals under this HOL failed for a number of reasons. For many Customers, their financial position was so impaired that irrespective of the Bank's actions they would have had to dispose of the assets at the time and in the manner that they did.

Loss of Profit and/or Loss of Opportunity

317 Claims were made under this HOL, of which the Bank upheld 16. On appeal, I upheld 2 out of 132 (2%) Claims. Claims under this HOL arose where the Customer alleged that the Bank's unfair action(s) in charging unfair fees and/or unreasonably delaying its response to Customer restructuring requests or proposals caused the Customer to suffer financial detriment.

Loss of Profit

For a claim for loss of profit to be successful the Customer had to prove that it was the Bank's unfair actions that prevented it from generating a profit from an opportunity that was available to it at the time. Lost profit claims typically occurred where the Customer alleged that the Bank's unfair actions had resulted in constraints to letting a property or completing a property development.

Loss of Opportunity

Lost opportunity claims occurred where the Customer alleged that the Bank's unfair actions caused it either to miss a specific business opportunity ('Specific Opportunity Claims') or to be unable to maintain its normal growth or revenue generating activities ('Momentum Claims'). Customers often based these claims on the unreasonable fees charged by the Bank or on unreasonable delays in processing certain requests such as providing consent for loan draw-downs.

For a Specific Opportunity Claim to be successful, the Customer needed to provide contemporaneous evidence that it was pursuing a credible tangible opportunity until the unfair action occurred, provide a reasonable logical argument as to why the Bank's unfair action prevented them from continuing to pursue this opportunity and finally provide evidence to substantiate the claimed return from the lost opportunity.

For a Momentum Claim to be successful, the Customer needed to demonstrate a successful track record of profit and/or growth prior to the Bank's unfair action, a reasonable logical argument that was consistent with the contemporaneous macroeconomic environment, and evidence that the Customer would have been able to have maintained this growth were it not for the Bank's unfair actions along with reasoned projections for what the returns would have been.

Increased Cost of Borrowing

247 Claims were made under this HOL, of which the Bank upheld 28. On appeal, I upheld 6 out of 99 (6%) Claims. These claims were based typically on allegations that conditions of borrowing imposed by the Bank such as the levying of unreasonable fees, the unreasonable demand for equity stakes or unreasonably seeking early debt repayment resulted in the Customer requiring – often in short order – an alternative lending solution, which often proved financially disadvantageous. Customers claimed for fees incurred in entering new loan agreements (with either the Bank or new lenders) or for recovery of the interest differential precipitated by the need either to accept the Bank’s unreasonable terms or re-bank on worse terms.

Customers who succeeded in their appeals were able to show that it was more likely than not either that but for the Bank’s unfair actions they would have been able to continue borrowing from the Bank at a lower cost than in fact they did or that they would have avoided some of the costs associated with refinancing with a new lender (and that the predominant reason for the refinancing was the Bank’s unfair action and not to secure more advantageous terms).

Wasted Management Time

96 Claims were made under this HOL, of which the Bank upheld 7. On appeal, I upheld 4 out of 38 (11%) Claims. Most claims related to compensation for additional managerial workload created by the Bank’s unfair actions, including time spent engaging with external advisors, attending additional internal meetings, reviewing documentation or responding to Bank emails.

In order for a Customer to succeed they had to demonstrate that: i) the Bank’s unfair actions resulted in a diversion of management time ii) causing significant business disruption iii) resulting in a quantifiable financial loss. More specifically, Appeals succeeded where the Customer was able to evidence that addressing the Bank’s actions represented a significant call on their time, and that the time taken was proportionate and unavoidable. Conversely, Customer appeals which failed to demonstrate that the Bank’s unfair actions resulted in a significant diversion of management time were unsuccessful. In keeping with legal practice, for those Customers able to show meaningful diversion of management time without being able to evidence how it translated into loss of profits, I awarded compensation for time spent based on reasonable evidence of the associated management costs.

Stress

81 Claims were made under this HOL, of which the Bank upheld none. On appeal, I upheld none of the 48 Claims. Most Claims were for losses due to the impact of contemporaneous mental health issues. Occasionally claims were also made for costs incurred as a result of inpatient hospital stays. Claims in relation to this HOL resulted from a broad range of upheld complaints in the complaints phase.

It was difficult for Customers to demonstrate that they had incurred losses as a result of stress caused by the Bank’s unfair actions. It is noteworthy in relation to this HOL that almost all Customers that were transferred into GRG were already in a state of financial difficulty (there were very few upheld complaints relating to unreasonable transfer to GRG). Against this backdrop it was difficult for Customers to demonstrate that the specific actions that were identified as being unfair during the complaint stage of the process were the cause of stress rather than other, wider financial pressures. Moreover, many claimants found it difficult to provide evidence that the stress resulted in a quantifiable financial loss. For instance, Customers were not able to demonstrate that any loss had been suffered when medical care had been provided by the NHS, a service which is free at the point of use.

Costs of HOLs: Legal and Professional Fees

376 Claims were made under this HOL, of which the Bank upheld 138. On appeal, I upheld 24 out of 137 (18%) Claims. To be successful under this HOL, the Customer had to demonstrate that it was reasonable to seek the assistance of a third party in the light of the Bank's unfair action, furnish evidence of the nature and cost of work undertaken by the third party and demonstrate that any invoice had indeed been paid. Many of the unsuccessful claims failed either because the Customer could not demonstrate that fees claimed on the basis of a generic invoice related in any way to the Bank's unfair actions given the lack of clarity over the work undertaken, or because the fees claimed were wholly disproportionate to the work undertaken.

Costs of HOLs: Claim Preparation Fees

188 Claims were made under this HOL, of which the Bank upheld 118. On appeal, I upheld 11 out of 95 (12%) Claims. Claims under this HOL were for costs incurred in preparing the CL Claim made to the Bank, and costs incurred in bringing the CL appeal to me. It is important to note that the Bank voluntarily funded up to £2,000 + VAT of costs for an initial meeting with an advisor on whether the Customer might have a CL Claim.

Claims succeeded if the fees claimed were clearly linked to the preparation of an upheld complaint or appeal, supported by invoices that were paid by the Customer and were proportionate to the complexity of the claim. Many Customers were only partially successful in either their claim or their appeal. These Customers were awarded partial upholds and compensated accordingly, again after having due regard to complexity and number of the upheld claims. In keeping with the principles governing the RBS GRG Complaints Process, contingent fees linked to the success of a claim or appeal as a proportion of the total award were not eligible for recovery.

Other HOLs

24 Claims were made under HOLs relating to claims from a Guarantor and 10 Claims were made for Physical Inconvenience/Loss of Amenity, the Bank upheld 1 and 0 respectively. I upheld none of these appeals and the limited number makes it unhelpful to comment more generally.

39 Claims were made under HOLs relating to tax differentials, of which the Bank upheld 3. 13 Claims were made to me under this HOL, none of which I upheld. Customers claimed for increased tax liabilities resulting from an award made either by the Bank or by me. I was unable to consider appeals where it was not possible to reach a full assessment of the Customer's tax liabilities. In such cases, the Customer was invited to make a claim to the Bank once their full and final tax position was known to them. The majority of claims for tax differential failed on appeal because the claim was contingent on the success of another element of the appeal which I had not upheld.

D. Concluding remarks

With the conclusion of the Consequential Loss appeals process I have completed my independent review of GRG's actions in accordance with the remit given to me.

In my approach to the many appeals that have reached me I have tried to provide outcomes that have been fair to the Customers in question, while respecting the applicable criteria for their assessment in accordance with the available evidence. Key to this has been the Bank's willingness to allow me unrestricted access to all of its records relevant to the appellant Customers (excepting only communications covered by legal professional privilege of which there were very few). This has included access to the material which was before the Bank's decision committees that assessed the claims which later came before me on appeal and to the minutes of the meetings at which the committees considered and reached their decisions.

This greatly facilitated my role on appeal and, coincidentally, enabled me to see the care and thoroughness with which the Bank had approached its task.

Inevitably, not all Customers will have been content with the outcomes reached. That is only to be expected given that most Customers nurtured a deep conviction of having been wronged by GRG's earlier treatment of them. I hope nevertheless that this process, while not satisfying all, will have provided most Customers with a sense of closure after what has been a difficult and protracted period for them.

Finally, I would like once more to place on record my gratitude to the many banking and legal experts, ITP delegates and others who have assisted me so ably throughout this process. Not the least among those others have been the members of the central team who from the start have provided me with the organisational and administrative support essential to my role, freeing me and my delegates and those advising us to focus on the just disposal of the many appeals. The good sense of the central team members has frequently helped me to avoid error while their good humour has enabled me to maintain my enthusiasm despite the five years that this assignment has taken. I thank them all.

Sir William Blackburne

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