



ALL PARTY PARLIAMENTARY GROUP  
on FAIR BUSINESS BANKING

**Royal Bank of Scotland (RBS) Global Restructuring Group (GRG) - Interim comments from the APPG on Fair Business Banking on the measures proposed by RBS to address “poor outcomes faced by certain SME customers who were referred to GRG between 2008 and 2013”**

**Documents and Statements Reviewed**

The following documents and statements have been reviewed:

**RBS announcement of 8 November 2016:** <http://www.rbs.com/news/2016/november/GRG.html>

**Financial Conduct Authority (FCA) statement of 8 November 2016**, ‘an update on the Financial Conduct Authority’s (FCA) review of Royal Bank of Scotland’s (RBS) treatment of small and medium enterprise (SME) customers in financial difficulty’: <https://www.fca.org.uk/news/press-releases/review-royal-bank-scotland-treatment-customers-referred-global-restructuring-group>

**The RBS update of 14 December 2016:** <http://www.rbs.com/news/2016/november/GRG.html>

This includes **FAQs for new complaints process principles** and a further set of **Frequently Asked Questions** with the following subject headings:

- Our Announcement
- Customers affected by our announcement
- New complaints process
- Automatic refund of complex fees
- Contact details
- FCA update and ongoing review

And the following PDF documents accessed via links on the website:

**New Complaints Principles:**

<http://www.rbs.com/content/dam/rbs/Documents/News/2016/November/New%20complaints%20process%20principles.pdf>

**Customer Journey through the Complaints Process:**

<http://www.rbs.com/content/dam/rbs/Documents/News/2016/November/Customer%20journey%20through%20the%20complaints%20process.pdf>

### **Our Commitment to Disp:**

<http://www.rbs.com/content/dam/rbs/Documents/News/2016/November/Our%20commitment%20to%20DISP.pdf>

### **Complaints Form:**

<http://www.rbs.com/content/dam/rbs/Documents/News/2016/November/GRG%20Complaint%20Form.pdf>

### **Restructuring Explained:**

<http://www.rbs.com/content/dam/rbs/Documents/News/2016/November/RBSRestructuringExplained.pdf>

## **The measures proposed by RBS**

RBS has proposed that it will provide for certain SME customers in GRG between 2008 and 2013

- a new complaints review process; and
- an automatic refund for complex fees charged to SME customers in GRG.

## **What can in scope customers hope to achieve?**

There is an automatic refund of so-called “complex” fees but not of some other fees/costs incurred by in scope customers. However it appears that the cost of some of these other fees/costs may be additionally awarded as “direct costs” if they are the subject of an upheld complaint submitted through the complaints process. There may also/alternatively be a discretionary “Goodwill” payment made to some customers. There may also be some changes made to the “banking relationship”, eg changes to the interest rate, loan covenants or security arrangements. There could then also be an opportunity for some to claim consequential losses, based on the extent to which and reasons why their complaint has been upheld.

Early indications suggest that the average amount of redress per customer will not be very large as the amount of money set aside does not appear substantial - especially since it is supposed to cover everything, ie all anticipated redress for all in scope customers and operational costs of both processes:

*RBS: “The bank estimates the costs associated with the new complaints review process and the automatic refund of complex fees to be approximately £400m, to be provided in Q4 2016. This includes the operational costs of both the fee refund and the new complaints process, together with the refund of complex fees and additional estimated redress costs arising from the new complaints process.”*

## Key Concerns of the APPG

### 1. General concerns about whether the proposals address the findings of the S166 investigation and about FCA involvement/approval

Since neither the completed Promontory Report nor the complete and unredacted full terms of engagement/scope of the S166 investigation have yet been made public, **it is difficult to properly assess the extent to which the measures proposed by RBS are likely to adequately address all damage caused and compensate affected businesses with respect to the key failings identified by the investigation.**

**It is also unclear the extent to which the measures proposed by RBS have the confidence and backing of the FCA**, bearing in mind that the FCA has made it clear that its review into GRG is yet to be completed.

RBS and FCA made a similarly carefully worded statement in their respective announcements of 8 November 2016. At this point the full details/principles of the Complaints Process were yet to be released by RBS:

**FCA:** “RBS’s proposals were developed with our involvement. We agree these are appropriate steps for RBS to take.”

**RBS:** “These proposals have been developed with the involvement of the FCA which agrees that these are appropriate steps for the bank to take.”

Once RBS published more details about the Complaints process including a set of principles it stated in the same paragraph that the principles had been ‘**agreed**’ with Sir William Blackburne but just ‘**shared**’ with the FCA. We have seen no further clarification on this from either FCA or RBS.

**RBS (14 Dec 2016):** “New complaints process principles: The complaints principles have been agreed with Sir William Blackburne, the Independent Third Party overseeing the complaints process. The principles have also been shared with the Financial Conduct Authority (FCA).”

We also note that the FCA has stated that it is “currently assessing what further work may be needed given the findings in the Report.”

It is also unclear the extent to which the FCA will be monitoring both of the measures proposed by RBS and whether, if the FCA has any concerns about any aspect of either of the measures, it could actually require or even request that RBS varies or alters them in any way.

We note both the FCA’s acknowledgement that the “activities carried out by GRG and addressed by RBS’s proposals are largely unregulated; therefore, the FCA’s powers are limited in this area” and that under section 1.8 of the Complaints Principles it is stated: “Nothing in these principles confers, or purports to confer, on any third party any right to enforce these principles.”

## 2. Limitations/Exclusions

The measures to be put in place by RBS are limited to **certain customers** - some SME customers in the UK and Republic of Ireland~ who were transferred to GRG *and* were in GRG within a defined **time period** of 6 years (1 January 2008 to 31<sup>st</sup> December 2013)

These limitations are likely to exclude a number of businesses that may have suffered particularly badly as a result of being transferred to GRG, eg those with high value income streams and/or assets. No information is provided as to whether customers who fall outside the time and in-scope customer restrictions will have recourse to any form of redress.

We note the following customers are not likely to be able to access redress through either one or both measures proposed by RBS:

- Many customers who would otherwise fall into the generally accepted definition of an SME (eg European Commission\*) but are outside the financial and structural limits set by RBS for the purposes of these two schemes, e.g. businesses with debt facilities and/or turnover only a little over £20m, which should be well within a usually accepted definition of an SME .
- Insolvent businesses
- Those who have had a previous relevant complaint decision by FOS (it doesn't appear necessary to have accepted any such?) (see section 1.3 of Complaint Principles)
- Those who have previously had a settlement through litigation or litigation threatened in a letter before claim. (see section 1.3 of Complaint Principles)
- Those who have had a previous relevant Court decision (whether successful or not?) (see section 1.3 of Complaint Principles)
- Those who are involved in any ongoing litigation, unless both parties agree to a suspension (see section 3.1.3 of Complaints Principles)
- Those who have threatened litigation "unless the customer agrees not to pursue the claim while the Complaint is being considered". (see section 3.1.3 of Complaints Principles)
- Those who are unhappy with a potential conflict of interest with the Independent Third Party ( and/or presumably any other party to whom he is permitted under the scheme to outsource an aspect of his work) (see Section 2.5 and Section 2.7 of the Complaint Principles)
- Those who object to the "summary" nature of the complaints scheme and believe that "a more intensive process is necessary for their complaint to be resolved". (See Section 2.2)

\*Subject to certain other criteria with respect to ownership and control: A small or medium-sized enterprise, or SME, as defined by the European Commission is a business or company:

- that has fewer than 250 employees; and
- has either (a) annual turnover not exceeding €50 million (approximately £40 million) or (b) an annual balance-sheet total not exceeding €43 million (approximately £34 million)

~ According to the RBS website proposals for ROI customers are yet to be clarified due to different regulation by the Central Bank of Ireland (CBI).

### 3. Lack of clarity as to what constitutes an eligible complaint

Although RBS has stated that the complaints process is simple to use, and the supplied complaints form is clearly not particularly detailed, we are concerned that RBS have left any definition as to what is likely to constitute legitimate grounds for complaint vague and ill-defined. This means that making a complaint that stands a likelihood of being upheld is not necessarily going to be that simple.

Even if they do read all of the not inconsiderable information provided by the FCA in their statement and by RBS in the form of numerous FAQs on the website and several PDF documents, customers are likely to be unsure as to what types of complaints are likely to be upheld and result in payment of redress in the Complaints Process and how much and what kinds of evidence they should submit in support of any Complaint.

RBS has stated on its website from Dec 2016:

“You are able to complain about anything that you wish to raise with us relating to your transfer to or time in GRG. However, when considering whether you have been impacted by any of the issues that have been identified you may find it helpful to read the failings that were outlined in the FCA’s statement on 8 November 2016. You can read the statement in full on the FCA website by clicking [here](#).”

A potential problem is that RBS has not really admitted to having done much wrong:

*RBS: “As the bank has acknowledged, in some areas, it could have done better for SME customers in GRG. Specifically, the bank could have managed the transition to GRG better and should have better explained to customers any changes to the prices or complex fees it was charging. The bank accepts that it did not always communicate as well or as clearly as it should have done. The bank also did not always handle customer complaints well.” and*

*“RBS notes that the FCA’s update confirms that no evidence was found that the bank artificially engineered a position to cause or facilitate the transfer of a customer to GRG or identified customers for transfer for inappropriate reasons and that all SME customers transferred to GRG were exhibiting clear signs of financial difficulty. The update makes clear that there were no cases where the purchase of a property by West Register alone gave rise to a financial loss to the customer and that there was no evidence of intent for West Register to purchase assets being formed prior to the transfer to GRG. It also states that, in a significant majority of cases, it was likely that RBS’s actions did not result in material financial distress to these customers.”*

The FCA has outlined various failings that are identified in the S166 report but has acknowledged that it is limited in any action it can take against RBS as the relevant activities are largely unregulated, and RBS has not clarified whether or not it will uphold complaints that involve failings identified by the S166 report but that it has not accepted or admitted to.

The Basis of Assessment given in section 2.3 of the Complaints Principles is not really particularly helpful to complainants either and some of the qualifications made within it are of concern, particularly the reference under “reasonableness” to “any relevant contractual rights”: This could absolve RBS (in its own scheme) of many of the aspects of behaviour that may be complained about if they are provided for in contractual terms or covenants previously agreed by the customer, whether or not those contractual terms are actually fair or reasonable:

*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.*

The definitions of potential redress provided in the Complaints Principles are also very vague:

*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*

We are particularly concerned that aspects of complaints which relate to a customer’s treatment by RBS prior to their transfer to GRG may be dismissed as outside the scope of this RBS complaints process even where it is likely that actions or inactions of RBS prior to the transfer, and in some cases prior to 2008, were a major contributory cause of that customer’s transfer to GRG.

It is also unclear whether eligibility to have a complaint assessed in this process will be affected by a customer’s previous acceptance of redress through another scheme, such as the Interest Rate Hedging Product review, under the terms of which customers were required to sign a full and final settlement in order to accept a redress payment.

Some customers may waste a great deal of time and energy in submitting what may be assessed by the complaints process as little more than a rant about what they experienced as a result of being transferred to GRG.

Additionally customers may not be aware of or understand the distinctions made between the “complex” fees that qualify for automatic refund and other fees, particularly since the key area that RBS has admitted to failing in is in its communication of such matters to affected customers. How will customers necessarily know whether or not RBS has correctly refunded all of the ‘complex’ fees a customer paid if the customer was not made fully aware of what the various fees were being imposed for at the time?

We are concerned that the lack of clarity around what constitutes eligible complaints could result in many businesses relying on solicitors, claims companies and/or other advisors (who may have no more clear idea than the customer about the best way to proceed with a complaint) to help make their complaints at a considerable cost to them which is not guaranteed to be reimbursed under the complaints process.

#### **4. Lack of Transparency**

There does not appear to be any intention of or requirement for either RBS or the Independent Third Party to share information including details of which evidence is to be used for the purposes of the assessment of a complaint and/or appeal.

It is also unclear how much detail customers will be given as to how decisions have been reached about whether or not to uphold some or all aspects of a complaint and whether or not redress is to be offered. The information reviewed only specifies that the decision on a complaint and advice of any payments for direct losses or “goodwill” will be communicated to the customer but does not state that any explanation will be given as to how or why a decision has been reached (see section 4.6 of the Complaints Principles. It states that the ITP will only supply a “short document” including a summary of the reasons for his decision. (See section 5.4 of the Complaints Principles)

#### **5. Quality of evidence**

It appears that the Complaints process and ITP will for the most part rely on the same evidence and that unless customers make a proactive effort to supply their own information and evidence, most of this evidence will be gathered from internal records and documents held by RBS. In the light of previous allegations raised against RBS of manipulating customer data and of point 4 with respect to transparency above, some customers are likely to have legitimate concerns about the possible accuracy and completeness of the evidence relied upon by RBS and/or the ITP in the Complaints Process and potentially also when assessing whether or not a customer is eligible for an automatic refund of complex fees.

There don't appear to be any plans to hold customer “fact finds” in the same way as the IRHP review did. It is up to the customer to supply whatever information or evidence they believe may

be necessary and relevant. This may not be easy for many customers (and customers' advisers) to assess without a more informed idea of what will constitute an eligible complaint.

We also note the possibility for RBS to award a 'discretionary' "Good will payment", the amount of which will be determined "at the sole discretion of RBS" and without any oversight from or right of appeal to the ITP. (See Section 1.4 of the Complaints Principles) There does not appear to be any need for RBS to explain how any such payment is calculated or even why it is being awarded, which could lead to unaccountable inconsistency in customer outcomes.

**6. No clearly defined timescales or deadlines have been provided in what could potentially be a long drawn out process.**

The two processes of automatic refund of complex fees coupled with complaints scheme for consideration of other direct costs, possible appeal, *and then* any consequential losses could result in an overall experience for customers that is complex, clunky and long drawn out. No absolute or even anticipated completion dates have been provided for either individual customer reviews or the entire process.

Obviously the measures being taken here relate to events and possible losses that occurred some years ago in most cases. If the process is allowed to go on for a long time, this could not only add to the economic detriment of many customers but is likely also to affect legal limitation periods, denying some the opportunity to ultimately take legal action where dissatisfied with their outcome.

Possible potential stages involved include:

- Information sent out about whether customer is in scope for automatic refund of complex fees.
- In most cases the customer will need to wait for an actual statement of complex fees refund to see what/how much is refunded in each case before deciding whether to complain.
- Compile and submit complaint to complaints process, which may require third party help
- Assessed by RBS, with no time limit given but likely to take minimum of a few months and could possibly take 1 or more years (based on experience of IRHP review) . RBS has already stated that most won't have a result within the standard 8 weeks DISP complaints handling timescales.
- If no outcome after 8 weeks DISP eligible customers can go to FOS, but any acceptance of FOS decision renders them ineligible for continuing in Complaints Process
- Where a complaint is upheld, only after acceptance of any direct loss award with full and final settlement can the customer go on to make claim for Consequential Loss
- If the customer is unhappy with their complain outcome they can appeal (within 28 days), but if this introduces significant new arguments/evidence then the appeal will be suspended pending return to complaints team. There is no time limit given for this stage.



- Following any further decision on any new complaint element, the appeal can resume. There is no time limit for this stage.
- Once in receipt of the appeal result, if this is upheld the customer can go on to make a consequential loss claim but only if the customer accepts full and final settlement of direct loss award.
- If unhappy at this stage the customer can go to FOS, where eligible, but acceptance of any decision renders customer ineligible to continue with RBS Complaints process.
- Consequential Loss Claim - no clearly defined time scales. No oversight or input from ITP.
- If unhappy with the outcome the customer can go to FOS, where eligible, or else take legal action - subject to still being within limitation period.

## **7. Limitations of the Independent oversight**

While the inclusion of the Independent Third Party (ITP) is a welcome attribute of the RBS complaints process, there appear to be some significant limitations to his role. He will have no involvement in the assessment of consequential loss claims, for instance.

We note that where the ITP has been required “at the outset” to “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” he is unlikely to identify any problems with the scheme “on an ongoing basis”. (See Section 1.5.1 of the Complaints Principles).

We note the following limit placed on the ITP’s ongoing assurance role in section 4.3 of the Complaints Principles:

*“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.”*

We also note Section 2.7 of the Complaints Principles which states:

*“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.”*

The appointment of a retired judge to the position of ITP has been widely welcomed as bringing to the function not just very desirable qualifications and experience, but also a rare level of authority, independence and prestige. However it is not clear how many appeal cases he will actually be personally involved with and how many will be outsourced to other reviewers whose qualifications and experience are unlikely to be a match for his own.

With reference to the final sentence of the paragraph above from section 2.7 of the Complaints Principles, it is also unclear to whom Sir William Blackburne will ultimately be accountable for the ITP Appeals Process - whether to customers, to the FCA or to RBS, which could be a very important distinction.

Obviously any appeal process will only be as good as the evidence that is put before it. According to the Complaints Principles (section 5.3):

*“(t)he 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”*

and it appears from the Complaints Principles that, notwithstanding the ITP can *“in exceptional cases” “ask a Customer to provide evidence or arguments in person”*, the appeal can only actually consider evidence and information that have previously been assessed by an RBS complaints team:

*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.*

## **8. Customers need to accept a decision on direct losses and agree to a full and final settlement of those direct losses prior to making a consequential loss claim**

This provision will cause the same kinds of insurmountable problems for certain groups of businesses, especially those in insolvency, as it did in the IRHP review. It will ensure that many thousands of customers have no access to any redress, and minimise the likelihood of successful consequential loss claims for others.

## **9. There is not a set amount of interest that will be paid to all customers on redress, such as the 8% interest paid in the IRHP review.**

RBS: *“We will pay interest on the refunded fees at the prevailing (credit or borrowing) rate applicable at the relevant time to the account which the fees were charged.”*

This is likely to lead to inconsistencies in the quantum of payments received by customers, which will depend both on the date the original fees were charged and also on whether the originating account was in debit or credit. Most business current accounts receive no credit interest, so it

appears that customers that were lucky enough to be in credit at the time fees were debited will receive no interest payment on those refunded fees.

## **Conclusion**

Until both the scope of the S166 investigation into RBS GRG's treatment of business customers and the full report of the investigation are made public in their entirety it is difficult to assess the extent to which RBS is attempting to address the detriment caused to customers of GRG with its two proposed schemes.

We have examined carefully the documents produced by RBS and statements made by RBS and the FCA with respect to the proposed measures for customers affected by GRG and have identified a number of potential problems with the proposed provisions. We are very concerned that if the process is allowed to proceed in its current proposed form then many of the business customers who suffered detriment as a result of being transferred to the Global Restructuring Group will not be adequately compensated for their losses. It is extremely likely that the majority of the most severely impacted customers, those affected businesses that became insolvent following transfer to GRG, will receive no compensation at all.

It should by now be clear to all that a piecemeal approach to redressing banks' business customers, such as in this RBS scheme and the IRHP mis-selling review, which involves looking at a single issue of mis-selling or misconduct in isolation from other connected or related instances of poor bank behaviour is likely to result in an inadequate provision of compensation for affected customers. This is of particular significance with respect to claims for consequential losses for which a heavy burden of proof is placed on the complainant to show that their losses were caused by a single misconduct issue when in fact those losses may have been affected and compounded by more than one aspect of poor bank behaviour.

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An All Party Parliamentary Group (APPG) is an interest group that occupies a strategic and effective position within Parliament. It is cross-party, with a minimum number of parliamentarians from the Government and the official opposition, and cross-house, made up of both peers and MPs. The APPG on Fair Business Banking is a platform through which businesses, professionals and trade bodies can discuss issues regarding commercial banking and its role in the life cycle of a business, and through which parliamentarians can access information on banking, finance and related issues, including business rescue and insolvency, on behalf of constituents. As a cross-party group, the APPG is an effective vehicle to effect meaningful change via the Parliamentary system. The Group's status is that of an APPG is bound by the rules set out by [The Office of the Parliamentary Commissioner for Standards](#). It does not have charitable status, or official status in the House, nor is it funded by Parliament. It relies wholly on the participation and contribution of parliamentarians, industry members and stakeholders committed to creating a strong platform for business in the UK to thrive. The APPG is co-ordinated and administered via the APPG on Fair Business Banking Secretariat, the FBB Foundation.