

## The complaint

A limited company, which I'll refer to as 'J', is unhappy with a series of fees for services it believes The Royal Bank of Scotland Plc ("RBS") unreasonably compelled it to instruct. J is also unhappy that RBS forced it to sell a property asset at a time when market conditions were particularly unfavourable.

## What happened

J was a construction company. In 1997 it entered into a contract to purchase 75 acres of land for a fee of £1.4m. RBS provided J with a loan to fund the deposit for the site and a further loan to pay for associated fees totalling £1m. However, by 2005 the purchase of the site had not completed, and the seller claimed that the price of the land had increased.

In 2006, J purchased a warehouse building for approximately £2.1m. RBS provided J with a loan for £1.2m over a 15-year term to facilitate the purchase of the warehouse, along with a £895,000 bridging loan.

In 2007, RBS provided J with a loan of £1.9m to allow J to restructure lending it held with another bank which had been taken to fund the development of two other properties and so that J could also repay some other loans that it held at that time.

In 2008, following some legal action, J agreed to a renegotiation of the land purchase agreement it had made in 1997 and agreed to purchase 24 acres of land at the site for approximately £1.1m.

In 2009, after RBS appointed a new relationship manager and a security review was carried out, it was found that the bank didn't hold a charge over the 24 acres to support the lending it had already provided to J. This was because legal proceedings were still ongoing, and the purchase of the land had not been completed.

Because of this, RBS wrote to J in order to restructure the loans that J already held so that the borrowing was held on a shorter term. RBS also gave J a further loan of £600,000 to allow J to repay an overdraft and requested that one of J's directors provide a personal guarantee to RBS of £250,000. These agreements were finalised at the end of April 2009, with the term of the restructured loans expiring in September 2009.

In September 2009, the restructured loans agreed in April 2009 reached the end of their term without being repaid. At this point the loans were in default and RBS could now require the loans to be repaid.

J's account was transferred to RBS's Global Restructuring Group ("GRG") in October 2009, and the bank held a handover meeting with J in November 2009.

In 2011, J's appointed valuers sent a summary of J's assets and liabilities to J's solicitor which set out that there was an approximately £1.2m deficit between assets and liabilities. Following this, J instructed a company to provide it with insolvency and restructuring advice.

In 2012, RBS was provided with a debt restructuring plan by J which detailed that J wouldn't be able to meet the loan repayments that would be due over the coming year. The plan also detailed that it would be necessary for several of J's properties to be sold, with there being an option for J's directors to purchase J's properties if funding could be raised.

J submitted a second debt reduction proposal to RBS later in 2012. This included that the warehouse property be retained, as it was leased and profitable, and that the outstanding lending be repaid through rental income from the warehouse as well as from the sale of J's other properties. This proposal also included that any balance still outstanding after the sale of J's other properties would be written off by the bank.

RBS rejected the second proposal put forwards by J and put forward an alternative plan which involved selling all of J's assets, including the warehouse. RBS's proposal entailed that all of J's property assets should be placed on the market for sale by 5 October 2012. This proposal was ultimately agreed to by J.

In January 2013, RBS learned that the warehouse hadn't been placed on the market for sale. The warehouse was placed on the open market in December 2013. Around the same time, the personal guarantee given by one of J's directors was reduced from £250,000 to £200,000.

In early 2014 several offers had been received for the warehouse. The highest offer was accepted and the net sale proceeds of around £1.4m were paid to RBS.

In April 2014, the management of J's account was transferred out of GRG, and RBS and J came to an agreed repayment plan. A further debt reduction plan was put forward by J's accountant in December 2014. Finally, RBS made the decision to write off approximately £2.5m of J's outstanding debt.

In 2018, J raised a complaint with RBS as it wasn't happy with how its account had been managed by the GRG. RBS looked at J's complaint, but it didn't feel that it had acted unfairly or unreasonably in how it had managed J's account at that time, so it didn't uphold the complaint.

J appealed the decision of RBS not to uphold its complaint, and because of this J's complaint was subject to an Independent Third Party ("ITP") review. However, the ITP also didn't feel that RBS had acted unfairly towards J in how its GRG had managed J's business relationship, and so it also didn't uphold J's complaint.

J wasn't satisfied by the ITP's review, so it referred its complaint to this service. One of our investigators looked at this complaint. But they also didn't feel that RBS had managed J's account unreasonably whilst the account had been managed by the GRG, so they also didn't uphold J's complaint.

J remained dissatisfied, so the matter was escalated to an ombudsman for a final decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

J has stated that it was unreasonably and unnecessarily compelled by the GRG to undertake a series of professional services for which it was charged fees totalling approximately £57,000. These include fees for insolvency and debt restructuring advice, accountancy fees, solicitor fees, property valuation fees, and fees for financial advice. J has provided the

testimony of one of its directors who confirms that his recollection of the meetings he had with the GRG are that J were given no choice by RBS and had to instruct the services listed such that fees totalling approximately £57,000 were incurred.

I'd like to thank J's director for providing his recollection of events. However, RBS's position on this matter is that, while there were occasions where it suggested to J that professional services should be sought, it never compelled J to undertake such services and that the decision of whether to instruct a service, and who to instruct, was J's to take.

In circumstances such as this, where one party's recollection of events is at odds with what another party recalls, this service would look to the available documentary evidence to seek to corroborate, as much as possible, what took place. In this instance, to seek to confirm J's version of events, I've looked for any documented instances of J being told by RBS that it had to instruct a particular service unreasonably and unnecessarily. However, having reviewed all the information and evidence available to me, I've been unable to find any evidence that RBS did insist that J undertake a service in the manner that J alleges here.

For instance, the largest fee that J incurred was for insolvency and debt restructuring advice. I note that RBS did recommend that J seek such professional advice. But given the status of J's asset and liability deficit at that time, it doesn't seem unreasonable to me that RBS would make this recommendation. And I'm also satisfied from the information available to me that it was a recommendation, and I haven't seen any evidence to suggest that RBS made any stronger form insistence that J had to receive debt restructuring advice, beyond it being a recommendation.

It also must be noted that the company that J instructed to provide debt restructuring advice had been used previously by J as its company auditor, and it therefore seems reasonable to me that J would want to use that company to provide any debt restructuring advice it was seeking. And there doesn't appear to be any evidence to suggest that J were compelled by RBS to use that specific company for the provision of debt restructuring advice.

Of course, I wasn't present at any face to face meetings or telephone conversations that may have taken place between J and RBS, but there is nothing in the documentary evidence on which I have to rely which gives me any reason to conclude that RBS did insist unreasonably and unnecessarily that J instruct a professional service and thus incur fees unfairly. And this includes fees for such things as property valuations, solicitors, and accountants, which I would expect J to have incurred reasonably because of its financial position at that time.

J has also expressed dissatisfaction that RBS insisted on the sale of the warehouse property at a time when property prices were low and as such that it lost out on the rental income that would have been received had J retained the asset as it proposed.

I can appreciate why J might be unhappy that RBS insisted that the warehouse be sold. However, given that J had defaulted on the loan agreements it held with RBS, and given that RBS held a charge over the warehouse property as security for the loan agreements that were in default, I can't reasonably conclude that RBS acted unfairly by seeking to recover its losses by insisting on the encashment of that asset, regardless of the state of the property market at that time. And this is especially the case given that RBS allowed the loans to persist in default for several years, and gave J time to find alternative solutions, before insisting on the sale of the warehouse property - as RBS were within their rights to do.

Finally, J have complained that RBS failed to honour an agreement to reduce the personal liability of one of its directors. However, I don't feel that this aspect of J's complaint is one which this service has the remit to consider.

In the first instance, this is because this complaint has been brought to this service by J, the limited company, but this aspect of the complaint refers to a personal guarantee given by one of J's directors. As such this is a personal complaint of that director, rather than a complaint that can be made by J as a company.

Secondly, while from 1 April 2019, the powers of the Financial Ombudsman Service were extended to make more complainants eligible for this service, and while this extension of powers included complaints about personal guarantees, this extension of powers wasn't applied retrospectively, which means that the extension of powers only applies regarding events that took place after that date.

And, given that the director of J is complaining about events that took place before 1 April 2019, this means that the extension of powers doesn't apply here which in turn means that I'm satisfied that the director of J wouldn't be considered as being an eligible complainant in this instance.

The rules by which this service must abide can be found in the Dispute Resolution ("DISP") section of the Financial Conduct Authority ("FCA") Handbook. One of these rules sets out who is eligible to refer complaints to this service. The only type of complainant I feel it relevant in this instance is that of 'consumer', which is defined in DISP as '*an individual acting for purposes which are wholly or mainly outside that individuals trade, business, craft, or profession.*'

But in this instance that director of J was providing a personal liability precisely because of his status as a director of J, and therefore wasn't mainly outside his business, which means that I'm satisfied that the director doesn't meet the definition of 'consumer' referred to above.

And, given that I'm also satisfied that none of the other categories of eligible complainant described in DISP apply here, and that the events being complained about occurred before the extension of powers on 1 April 2019, as mentioned previously, I can only conclude that the director of J isn't an eligible complainant here and therefore that this aspect of J's complaint can't be considered by this service.

All of which means that I find it difficult to conclude that RBS has acted unfairly or unreasonably towards J here, and it follows from this that I won't be upholding this complaint or instructing RBS to take any further action at this time.

I realise that this won't be the outcome that J was wanting here, but I trust that it will understand, given all that I've explained, why I've made the final decision that I have.

## **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 15 November 2021.

Paul Cooper  
**Ombudsman**