

The complaint

A limited company, which I'll refer to as 'K' is unhappy with the service it received from The Royal Bank of Scotland Plc ("RBS"), and specifically the department within RBS known as the Global Restructuring Group ("GRG").

What happened

K was engaged in three construction projects with two other limited companies – which I'll refer to as 'E1' and 'E2' respectively, and both of which have since been dissolved. The three companies, which I'll refer to collectively as 'The Connection', shared common ownership but didn't have any form of parent/subsidiary relationship.

The three construction projects were; a development of bungalows which was nearing completion ("Bungalow Project"); the development of a cottage and some land ("Cottage Project"); and a more complex project where the intention was to develop land owned by a diocese whereby a new clergy house would be built for the local vicar to move into, at which time the old clergy house would be demolished and four new houses built on the land and then sold ("Rectory Project").

Because of the complexity of the Rectory Project, contracts were entered into between RBS, K, and the diocese which owned the land to ensure that the project would be completed: K entered into an agreement with the diocese to buy the land and complete the development, and RBS entered into a separate agreement with the diocese confirming that it would provide funding to K to complete the Rectory Project. There was also a clause in this latter contract which stated that if for some reason RBS didn't provide funding to K then RBS would purchase the land and complete the development.

During the Rectory Project, RBS instructed a revaluation of the land and assets which resulted in the site being valued at approximately £300,000 less than it had been valued at previously. This caused RBS to reassess their appetite to lend to K, which in turn meant that K had to void their contract with the diocese and enter into a new contract with a third party for the project to be completed. This led to a financial loss for K of approximately £38,500.

The Rectory Project was ultimately completed, and the four new houses were all sold. The Bungalow Project was also completed as planned. However, the Cottage Project site was sold at a reduced price due to non-completion of the build.

K later raised a complaint with RBS as it was unhappy with several aspects of how RBS had managed the business relationship after the relationship was transferred by RBS to the GRG.

RBS looked at K's complaint. But while they did uphold some aspects of K's complaint and made offers of redress to K for those points, for the large part, RBS felt that they hadn't acted unfairly or unreasonably in how they'd managed the business relationship during the time the K had been transferred to the GRG, and so they didn't uphold the majority of K's complaints.

K wasn't satisfied with RBS's response, so it referred its complaint for review by an Independent Third Party. However, the Independent Third Party largely agreed with RBS's position and so didn't uphold K's appeal, with the exception of one point which the Independent Third Party did uphold but for which they didn't feel K had incurred any direct financial loss and so didn't award any compensation to K for.

K remained dissatisfied, so it referred its complaint to this service. One of our investigators looked at this complaint. But they felt that the response that RBS had already issued to K, including the offers of compensation already made to K by RBS, already represented a fair and reasonable resolution to what had taken place. So, while our investigator did uphold K's complaint, they did so on the same basis as that already offered to K by RBS in RBS's own complaint response.

K wasn't satisfied with the view of this complaint put forwards by our investigator, and 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.

One of the directors of K has sought to bring forwards a complaint against RBS in their capacity as a guarantor.

The rules that set out the parameters by which this service operates can be found in the Dispute Resolution ("DISP") section of the Financial Conduct Authority ("FCA") Handbook. The relevant section here is DISP 2.7, which outlines which complainants are considered as eligible complainants for the purposes of this service.

These rules include that for an individual to be an eligible complainant for this service, that individual needs to meet the definition of being a consumer, which is defined within DISP as 'an individual acting for purposes which are wholly or mainly outside that individuals trade, business, craft, or profession'.

In this instance, the director of K gave the guarantee that he did because RBS specifically sought a guarantee from a director of K following the issuance of new terms by RBS – with the guarantee requested by RBS as a condition of those new terms and to secure continued funding for K.

As such, I'm satisfied that, when providing the guarantee in question, the director of K was acting within his profession, and as such isn't an eligible complainant as per DISP for the purposes of this service.

It should be mentioned that from 1 April 2019, the powers of this service were extended to allow us to consider complaints from guarantors where the guarantee is in respect of the liabilities of certain types of businesses, even where the complainant isn't a "consumer" as defined above. However, this extension of powers isn't retrospective – in other words it only applies to guarantees signed after 1 April 2019 – and so it doesn't apply here.

The directors of K also sought to refer complaints to this service for the two other companies, E1 and E2, which were involved in the construction projects with K, but which have since been dissolved.

However, the DISP rules alluded to above also include that for this service to be able to

consider a complaint brought by a company, that company would still need to exist, and it would also still need to be an 'enterprise' – that is, it would still need to be engaged in some form of economic activity.

But E1 and E2 have been dissolved, and so no longer exist, and so cannot be considered as being an enterprise engaged in economic activity. Therefore, I'm satisfied that the complaints brought forwards on behalf of E1 and E2 are not eligible complaints for the purposes of this service.

This makes some aspects of K's complaint difficult to assess, where these aspects refer to RBS's interactions with the Connection, rather than to K as a separate entity. However, where this is the case, I have limited my assessment of this complaint to RBS's relationship with K solely.

It also should be noted that this assessment is only concerned with K's complaint as it relates to GRG, and not to any complaints that K might have against RBS for times when K's business relationship wasn't under the management of GRG, unless there is sufficient cause to do so.

K has brought forwards a number of complaint points which have been addressed under similar headings by RBS, the Independent Third Party, and our investigator. For ease of reference I will address these complaint points under those same headings here.

1a. RBS unreasonably transferred K to GRG.

K has stated that it feels that there was no reason for RBS to have transferred the business relationship to GRG and that there was enough funding available at the time of the transfer to cover the interest payments due on the borrowing and that there were funds due to come into the accounts sufficient to ensure that future loan repayments could continue to be met.

I can appreciate K's concerns here. But it's at the discretion of a business as to how it chooses to manage the accounts it holds, and this service wouldn't seek to tell a business, in a general sense, that it should have organised or managed its accounts differently.

What this service can consider is whether a business has conducted and communicated a transfer, such as took place in this instance, in a fair and reasonable manner. This point is addressed in complaint point 1b below.

1b. RBS didn't communicate the reasons for, or timing of, the transfer to GRG in a clear way.

A handover meeting was held in December 2008 where K's business relationship was transferred by RBS to GRG. However, it's evident from the information available to me that K weren't given any indication by RBS prior to this meeting that such a transfer was being considered or was due to take place.

In their response to K's complaint, RBS confirmed that they agreed that the communication they issued to K surrounding this point fell below the standards that they aspire to. RBS apologised for this and offered K a payment of £5,000 as compensation for this point.

This seems reasonable to me, and I feel that the £5,000 offered to K by RBS for not communicating with them more clearly about their intention to transfer K to GRG is a fair and reasonable resolution to this specific aspect of K's complaint. As such, I will be upholding this aspect of K's complaint on this same basis.

2a. GRG unreasonably ignored a credit balance which had been provided to act as interest cover.

K has explained that a £27,000 deposit was made with RBS to service the interest payments on the borrowing. However, from the information available to me it seems that these funds were held in an account in the name of one of the other companies of the Connection which has since dissolved. As such, as explained above, I'm unable to consider this aspect of K's complaint.

2b. GRG unreasonably withdrew the overdraft.

While K have acknowledged that, as per the terms and condition of RBS's business accounts, RBS have the right to remove an overdraft facility whenever it sees fit, K feel that RBS chose to remove the overdraft when they did on its own account so as deliberately cut off cash flow to K at a crucial time and to force K into a position of financial difficulty.

However, having reviewed the information available to me, I haven't seen any evidence that K held an authorised overdraft with RBS at any time. Indeed, the only authorised facility that I've seen was on an account in the name of one of the other companies in the Connection which has since dissolved, and which means, as explained previously, that this aspect of K's complaint is outside the jurisdiction of this service and cannot be considered here.

2c. GRG unreasonably withdrew a completion funding offer mid-development, forcing K to seek outside investment for the completion of the Rectory Project.

K have stated that because of the revaluation of the Rectory Project site instructed by RBS, and which resulted in the valuation of the site being amended downwards by £300,000, RBS withdrew its funding which meant that K were forced to find alternative investors.

In their response to K's complaint, RBS explained that the borrowing facilities present on the Rectory Project expired before K's business relationship was transferred to GRG. RBS therefore advised that this complaint point falls outside the GRG complaint review process.

While this seems correct, it's notable that RBS don't appear to have addressed this aspect of K's complaint under their usual (i.e. non-GRG) complaint process, as should have been the case, and so I feel that this aspect of K's complaint should be considered by this service within this complaint.

However, having reviewed the information available to me, I'm satisfied that it wasn't the case that RBS unreasonably withdrew funding mid-development, and I say this because it's evident that RBS didn't initially withdraw funding, but rather that they lowered the amount of funding that they were willing to provide to K as a result of the value of the Rectory Project site being amended downwards following the revaluation.

It's also evident that a revaluation of the site prior to the loan drawdown was a requirement of the loan agreement (see complaint point 6 below), and it seems reasonable to me that RBS would adjust their appetite to lend in consideration of the lower site value provided by the revaluation.

Finally, it's notable that another condition of the loan agreement was that K would provide the remaining funding for the land purchase, which was to be facilitated by the sale of properties developed on the other construction projects that the Connection were involved in. However, at the time of the loan drawdown, K were unable to meet this financial requirement, and because of this the loan facility was cancelled.

As such, I don't feel that it's the case that RBS unreasonably withdrew funding, but rather that decreasing property values and the financial crisis that was ongoing at that time led to a reduced valuation for the site. This in turn led to RBS reducing the amount of funding it was willing to offer, with K not being in a position at that time to cover the remaining amount needed to purchase the land as per the requirements of the loan facility – which meant that RBS weren't then willing to allow the loan facility to continue. And RBS's taking this position under these circumstances seems reasonable to me.

3a. GRG unreasonably restructured debt not yet due.

From the information available to me it's evident that at the time of the debt restructure, K had one loan with a balance outstanding of approximately £100,000 with an expiry date of 21 July 2009. K also had an unauthorised overdraft balance of approximately £7,000 at that same time.

While it was the case that RBS proposed restructuring terms in May 2009, it wasn't until August 2009 – which was after the previously existing loan facility had expired – that the restructuring terms were signed and accepted by K.

It's also notable that RBS had ongoing concerns with K and with the two associated companies, E1 and E2, about the ongoing ability of all three companies to be able to repay the borrowing that they had taken. And, given the difficult financial climate which persisted at that time, and that the loan facilities of both E1 and E2 had expired without repayment and so were in default, and the close relationship that those companies held with K, I don't feel that it was unreasonable for RBS to have held those concerns.

3b. GRG unreasonably proposed unreasonable restructuring terms in respect of the Connection's facilities, which included the requirement of a personal guarantee.

This complaint point relates to the change of circumstances in one of the now dissolved other companies within the Connection as well as to the requirement of a personal guarantee. These complaint aspects therefore fall outside of this service's jurisdiction, for the reasons explained previously in this letter.

- 4a. GRG charged an unreasonable arrangement fee of £30,000 and,*
- 4b. GRG charged an unreasonable arrangement fee of £795.*

These complaint points relate to one of the now dissolved other companies within the Connection. As such, these complaint points are outside of this service's jurisdiction as previously explained.

4c. GRG unreasonably increased interest margins.

K is unhappy that when its business relationship was moved to GRG, RBS increased margin costs. Prior to the move to GRG, K state had been paying a margin of 1.75%, and that after the refinancing at the time of the move, this was increased to 2.5%, and then later to 3.0%.

However, after reviewing the information available to me, it's evident that while there were increases in the margin rate, these increases were applied to loans in the names of E1 and E2, and as such these aspects of K's complaint also fall outside this service's jurisdiction for the reasons previously explained.

5a. GRG treated the Connection unfairly by acting in an unresponsive and adversarial manner.

K has stated that after K was transferred to GRG, the business relationship changed, becoming more adversarial in nature, and with a new relationship manager who was slow to respond to K's requests and correspondence, yet very persistent when chasing responses from K.

I can appreciate K's concerns here, and while I can only consider this aspect of K's complaint in regard to communications between RBS and K (and not in respect of any communications involving E1 and E2) it's evident from the information available to me that RBS were slow to communicate with K immediately following the transfer of K's business relationship to GRG. And I say this because while K were transferred to GRG in December 2008, it wasn't until May 2009 – some 19 weeks later – that RBS provided K with the new heads of terms in relation to the proposed restructuring of loan facilities.

RBS have accepted that this represents unresponsive behaviour and they upheld this aspect of K's complaint and offered a payment of £5,000 to compensate K for the poor standard of communication they received at that time.

This feels reasonable to me, and I consider that the offer of £5,000 compensation for this specific aspect of K's complaint represents a fair and reasonable resolution. As such, while I will be upholding this aspect of K's complaint, I will be doing so on the same basis as has already been put forwards by RBS, including that RBS must make a payment of £5,000 to K by way of compensation for this specific point.

5b. GRG treated the Connection unfairly by exerting unreasonable control over the Connection's finances and day-to-day business.

Again, I'm only able to consider this complaint point from the standpoint of RBS's interaction with K and not regarding how RBS interacted with the other members of the Connection, E1 and E2.

However, from the information available to me, I haven't seen anything that I feel would allow me to fairly and reasonably conclude that RBS exerted excessive control on the running of K or that RBS gave K any direct instructions on how K must run its business.

6. GRG acted unreasonably by devaluing the land at the Rectory Project.

In 2008, RBS instructed a revaluation of the Rectory Project site which resulted in the value of the site being amended down by £300,000. K feel that it was unfair for RBS to have instructed this valuation, given the difficult financial climate and deflated property and land values at that time. K also think that RBS instructed the revaluation knowing that the value of the site would be amended down and that it did so in order to avoid having to provide additional funding for the project in line with the agreements.

In their response to K's complaint, RBS noted that the instruction to revalue the land was issued before K's business relationship was transferred to GRG. RBS therefore felt that this complaint point falls outside the GRG complaint review process. RBS appear to be correct here, but it's notable that RBS don't appear to have addressed this aspect of K's complaint under their usual (i.e. non-GRG) complaint process as should have been the case, and so I feel that this aspect of K's complaint should be considered by this service within this complaint.

Having reviewed the information available to me, it's evident that the Rectory Project site was initially valued in 2007, when the contracts between K, RBS, and the diocese were signed. It was then revalued in late 2008, prior to K being transferred to GRG in December 2008.

It's also evident that one of the requirements for K to be able to drawdown on the loan was that the site would be revalued. And, given that the initial valuation took place over a year before the loan was required, it seems reasonable to me that such a requirement would be in place. I also note that it's common for banks such as RBS to want to maintain an ongoing understanding of the value of assets that they are lending against – especially when property and asset values are decreasing, as was the case at that time – and so I don't feel that it was unfair or unreasonable for RBS to have instructed such a revaluation.

Putting things right

Having assessed K's complaint against RBS here, I will be upholding this complaint as it relates to complaint points 1b and 5a only on the basis explained above.

RBS must pay K a total of £10,000, equating to two payments of £5,000, one for each of the two complaint points being upheld.

My final decision

My final decision is that I uphold this complaint against The Royal Bank of Scotland Plc on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 8 March 2022.

Paul Cooper
Ombudsman