DRN-3591445

The complaint

Mr V, a sole trader, complains that The Royal Bank of Scotland Plc (RBS) acted unfairly when his borrowing was managed by the bank's Global Restructuring Group (GRG), and that the bank hasn't offered enough compensation for consequential losses.

What happened

From 2003, Mr V had borrowing facilities with RBS for his property business. He had two loans – one due to expire in 2018 and the other in 2023. These were secured on three properties.

In August 2009, RBS transferred its management of Mr V's accounts to the bank's GRG, along with the accounts of other businesses connected with Mr V.

In mid-2011, Mr V's sole-trader loans were consolidated into a single loan with a reduced term. The new expiry date was the end of December 2012.

During 2012, Mr V sold the three properties and the proceeds were used for repayment of the consolidated loan.

In January 2013, Mr V and RBS signed a guarantee settlement agreement. Under this settlement, Mr V paid the bank £7,200 and the bank agreed not to pursue Mr V for the personal guarantees he had given in relation to his connected businesses.

Mr V complained to RBS in 2018, mainly about the bank's actions during the period of GRG management of his accounts. RBS reviewed the complaint under its voluntary GRG complaints scheme and at the same time considered complaint points from the companies connected with Mr V. The outcome for Mr V in respect of his sole-trader business was that the bank upheld his complaint in part and made an offer of compensation for direct loss. Mr V accepted that offer.

The upheld complaint points for Mr V were as follows:

- The bank's communication of the reasons for transfer to GRG wasn't sufficiently clear.
- The bank unreasonably required Mr V to restructure his borrowing in 2011.
- The bank unreasonably caused Mr V to sell properties as a result of 2011 restructure.

As part of the GRG complaint settlement agreement, Mr V retained the option to submit a claim for any consequential losses which may have flowed from the upheld complaint points. Mr V accordingly made a claim for consequential losses as follows:

- Lost appreciation of the value of the three properties sold in 2012, and rent income that would have been received from them.

- Professional costs incurred when selling the properties.

- Professional costs incurred and management time wasted in preparing the GRG complaint and the consequential loss claim.

RBS considered Mr V's claim and offered a total of £15,000 for professional costs and management time related to the GRG complaint and claim. This was much lower than Mr V's claim under the same headings. The bank didn't accept the other points of Mr V's claim.

The bank's main argument in respect of the claimed property losses was that in the absence of the 2011 restructure which led to the sale of the properties in 2012, the properties would still have been sold at the time of the settlement of Mr V's guarantee liabilities in early 2013. RBS therefore concluded that the properties wouldn't have been retained beyond that time, and Mr V wouldn't have benefitted from any appreciation in value or from rental income.

After its initial findings had also been considered by the Independent Third Party, which was the appeal stage of the GRG review process, the bank confirmed that its offer for consequential loss was unchanged.

Mr V didn't accept the bank's consequential loss findings or its offer, and referred his complaint to us.

Our investigator didn't think the bank's argument was unreasonable. He thought it likely that in the absence of the 2011 restructure, the bank would have required Mr V to sell the three properties before removing his guarantee liability, and that the proceeds would have been used first towards the outstanding loan debt then any surplus would have been put towards the guarantee liabilities.

The investigator also thought that the bank's offer of £15,000 for professional costs and management time was fair and reasonable.

Mr V didn't agree with the investigator's conclusions. In particular, he didn't agree that the bank would have required the sale of the three properties if the loans hadn't been restructured. His representative made the following points, in summary:

- The sale of the three flats generated losses for Mr V, so the bank would have received nothing towards the outstanding loans or guarantee liabilities.

- Mr V still held some other assets after the guarantee settlement agreement, such as company G with a portfolio of £1m, a flat overseas, his car etc. Why would Mr V have been forced to sell the three flats if he were not forced to sell these other assets?

- Mr V doesn't believe that the bank acted fairly in demanding the personal guarantees held for company G.

- The invoices already provided from the professionals engaged by Mr V in pursuit of his complaint and claim show reasonable costs, which should be reimbursed.

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.

Because the issues upheld in the GRG review have already been the subject of a settlement between the parties, the starting point of my decision is that the 2011 restructure of Mr V's loans shouldn't have happened and the term of the lending shouldn't have shortened. I won't be re-opening those matters. Mr V's complaint is now about his claim for consequential losses.

Losses claimed for the sale of the three properties

It's common ground that Mr V sold the three flats in 2012 as a result of the bank's unreasonable shortening of the repayment term for the lending. What I need to consider is whether, if the repayment term hadn't been shortened in 2011, the bank would have required the flats to be sold around the time of the 2013 guarantee settlement agreement or would have left the flats with Mr V after that agreement.

It's not possible to determine exactly what would have happened if Mr V's loans hadn't been restructured in 2011, so I need to decide what I think was most likely.

When the parties were engaged in discussions about the guarantee settlement during 2012, the background was that the properties belonging to Mr V's companies had been and were being sold to pay off the companies' outstanding loan debts, and the parties knew there was likely to be a large shortfall. The bank would have been able to take action to pursue Mr V's guarantee liabilities for part of that shortfall. It seems that during the negotiations, both parties wished to avoid Mr V having to face insolvency proceedings. Alongside the sales of the remaining company properties, the settlement would bring to an end the bank's actions regarding the company debts and Mr V's liabilities arising from them.

In the circumstances, I think it would be unrealistic to believe that the bank would have done anything other than seek to maximise its recovery of Mr V's outstanding debt where that could be achieved in line with the broad aims of the settlement. Had the three flats not been sold as a result of the restructuring, I think RBS would have regarded the value in them as an opportunity to recover Mr V's sole-trader debt and, if possible, to receive some additional funds in respect of the guarantee liabilities.

At the time, RBS wouldn't have known the exact sales prices that would be achieved for the three flats, but I believe the bank would have expected that all or most of the loan debt on those properties would be recovered. And, given that payments on the original loans were capital and interest, rather than the interest-only payments on the consolidated loan, more of the capital would have been repaid, so the bank might reasonably have expected the sales to deliver some surplus. I therefore think it likely that alongside the guarantee settlement negotiations, the bank would have required the sale of the three flats.

The rental cover and conduct of repayments on Mr V's sole-trader loans with RBS had been good. But I don't think that would have led the bank to take a different view regarding recovery of the debt. RBS was facing the prospect of settling for a tiny fraction of the sum that it regarded as Mr V's guarantee liability – which was, in turn, far less than the overall amount that would be left outstanding on the property lending to the companies. In these circumstances, I think it's likely that the bank would reasonably have sought to maximise recovery from its sole-trader lending to Mr V and to bring matters to a close.

Mr V's representative says that the bank left Mr V in possession of company G, which he says had a property portfolio of over £1m. But I note that it was understood by both parties at the time of the guarantee settlement that all the RBS-secured properties in that portfolio would very soon be sold in completion of an asset disposal programme, and that a considerable debt to RBS would remain after the sale proceeds were applied to company G's loan balances. Moreover, the net assets of company G, as shown in its published

accounts, were negative and remained so. I therefore don't accept that the bank left Mr V with a valuable portfolio through his ownership of company G. So I don't think that his continued ownership of company G demonstrates that RBS wouldn't have required the sale of Mr V's three properties around the time of the guarantee settlement.

Mr V also had a flat in another European country. Mr V's representative asks why, if the bank allowed him to keep this asset, whose value was just below its outstanding mortgage, would the bank have required the sale of the three flats? But my understanding is that the bank had no security over the overseas flat. This, combined with the negative equity and the inevitable difficulty that would be involved in pursuing the sale of a property in another country, means that Mr V's ownership of the overseas flat can't be reasonably compared to his ownership of the three UK properties over which the bank had charges and on which it had outstanding lending. So I don't think that Mr V's continued ownership of the overseas flat demonstrates that RBS wouldn't have required the sale of his three UK flats around the time of the guarantee settlement.

I'm not persuaded that the fact that Mr V was permitted to keep his car and various other personal assets is evidence that the bank wouldn't have required the sale of the three flats around the time of the guarantee settlement. Again, these personal assets can't in my view be reasonably compared to the three properties over which the bank had charges and on which it had outstanding lending.

Mr V's representative also questions whether it was fair for RBS, at the time of the guarantee settlement negotiation, to have held Mr V liable for his personal guarantees to a sum of £820,000. But I note that Mr V acknowledged his guarantee liability to that amount in the 2013 settlement agreement. Mr V's representative says that at the time it was easier for Mr V to accept the full liability rather than to contest part of it. I should say that the complaint I'm determining here is about the consequential losses that flowed from the 2011 consolidation of Mr V's loans, and it's not about the level of Mr V's personal guarantee liability. In any event, I have no powers to determine a complaint about such a liability that dates from a guarantee given before April 2019.

To summarise, the 2011 loan restructure led to the sale of the three properties in 2012, but I conclude that, for the reasons given above, it's likely that the properties would have been sold around the time of the 2013 guarantee settlement anyway, even if the restructure hadn't happened. After the guarantee settlement and the sales, Mr V wouldn't have possessed the properties, so he wouldn't have benefited from any increases in value or from any rent. Mr V would also have incurred professional costs during the sales process, just as he did with the actual sales.

I therefore find that the bank's actions in restructuring the lending in 2011 didn't cause Mr V any losses in respect of the value of the properties or rent from the properties, or in respect of professional costs incurred when selling the properties.

Professional costs and wasted management time for bringing the complaints

RBS offered Mr V £10,000, plus 8% interest, for professional costs incurred and in acknowledgement of management time spent in bringing the original complaint to the GRG review scheme.

The GRG review was designed to enable complaints to be made unassisted. Mr V was of course entitled to obtain professional help, but that was his own choice and I don't think it would be fair or reasonable to require the bank to pay more for these costs than it has already offered. I haven't seen supporting evidence showing that management time was diverted causing a significant disruption to Mr V's sole-trader business. For these reasons, I

don’t require the bank to increase its offer for costs of bringing the complaint to the GRG review.

In addition, RBS agreed at the outset to pay up to £2,000 for initial professional advice about whether customers would have cause to bring a consequential loss claim. In its final response, the bank increased that to an offer of £5,000, plus 8% interest, for professional costs for bringing the consequential loss claim. The main parts of the consequential loss claim haven’t been upheld, and in my view, it wouldn’t be reasonable to require RBS to pay professional costs for bringing those parts of the claim. I therefore don’t require the bank to increase its offer for professional costs for bringing the consequential loss claim.

For completeness, I should say similarly that the Financial Ombudsman Service is set up to consider complaints without professional representation, so I wouldn’t require RBS to increase its offer in order to cover professional help in bringing Mr V’s complaint here.

I therefore conclude that RBS has made a fair and reasonable offer to settle this complaint.

My final decision

The Royal Bank of Scotland Plc has already made an offer to settle this complaint and I think the offer is fair and reasonable in all the circumstances.

My final decision is therefore that I require The Royal Bank of Scotland Plc to pay Mr V £15,000 in respect of the costs of raising the GRG complaint and bringing the consequential loss claim, plus 8% interest simple, as offered in the bank’s letter of 4 August 2021. I don’t require the bank to pay Mr V any other compensation for consequential losses.

If RBS believes it’s legally obliged to deduct tax from the interest, it should send a tax deduction certificate with the payment.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr V to accept or reject my decision before 21 March 2024.

Colin Brown
Ombudsman