DRN-4534582

The complaint

A limited company, which I'll refer to as O, complains that The Royal Bank of Scotland Plc treated it unfairly, effectively forcing it out of business. In particular, O complains that RBS unreasonably imposed overdraft reductions without notice and reneged on promises to lend under the Enterprise Finance Guarantee Scheme ("EFGS").

O is represented by one of its directors, Mr R.

What happened

O moved its banking to RBS in 2006 and was given a £750,000 multi-option facility and an invoice discounting facility.

At the time, O had a plan to expand into a new market, but this plan failed as an overseas supplier didn't deliver in time. This caused O to fail to meet its projections and it made a loss for its 2007 financial year.

In early 2008, RBS reduced O's multi-option facility in line with O's utilisation to £380,000. Not long afterwards, the limit was reduced again to £300,000. RBS told O that additional security would be required before they would consider any increased borrowing.

In September 2008, the bank told O that they wouldn't increase O's limit The bank reduced O's limit by a further £25,000 in December 2008 and March 2009.

In early 2009, the Government launched the Enterprise Finance Guarantee ("EFG") scheme, under which the Government would guarantee 75% of lending to eligible borrowers. Mr R asked the bank to consider lending under this scheme. O also engaged a venture capital firm to seek an equity injection.

There were various discussions about a possible EFG facility throughout 2009 and into 2010. In October 2009, the bank told Mr R that O didn't meet the eligibility criteria. In December 2009, a third party consultant was employed at O's expense to produce some due diligence on O to enable the proposal to be reconsidered.

The venture capital firm failed to secure O any equity investors. In March 2010, the bank informed O that it would not consider an EFG facility without third party equity. In its absence, they said they would hold O's limit at £250,000 for four months and then would seek repayment over the next year.

In late 2010/early 2011, the bank made three further small reductions in O's limit, which then remained at £230,000 throughout 2011.

In August 2012, Mr R informed the bank that he was selling O's assets to a rival on a nil consideration "earnout" based deal, which should generate enough income to service a loan.

In September 2012, O's outstanding balance was converted to an 8 year term loan.

In 2017, RBS wrote to O to say that it would be refunding £25,000 of fees paid by O and adding interest to the refund. In 2018, the bank told O it was eligible to complain under the GRG review scheme.

O complained to RBS in October 2018, later referring the complaint to the Independent Third Party ("ITP") for a further review. Part of the complaint was also looked at separately, because it related to the first overdraft reduction, which happened before the dates of the GRG review scheme.

RBS didn't uphold most of O's complaint, although they made an offer to refund the cost of the consultant's review of £5,875 and one excess fee of £250, adding interest at 8% to these amounts.

O rejected this offer and referred its complaint to the Financial Ombudsman. Mr R and has made several lengthy submissions since.

One of our investigators looked into the complaint. He thought that RBS' offer of compensation was fair and didn't think the bank needed to do anything more. Mr R disagreed and asked for an ombudsman to look at the matter again.

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.

Having done so, I'm sorry to disappoint Mr R, but I have reached the same conclusion as our investigator, for essentially the same reasons. I think that the offer the bank made after the ITP review is fair. I'll explain why in detail below.

First, for clarity, I'm not going to cover here the matter of the withdrawal of O's invoice discounting facility. I agree with our investigator that this was carried out by a separate company and would not fall within my jurisdiction on several counts. I also won't be commenting on any of the actions of RBS or the ITP in carrying on their reviews into O's complaint. This is a question of complaint handling, which I also don't have jurisdiction to consider.

Should the bank have told O that it had been transferred to GRG?

When Mr R received a communication inviting him to participate in the GRG complaints process, he was taken aback because he had no idea that O had ever been a GRG account. Moreover, he has told us that he emptied a storage facility full of banking documentation in 2017. Mr R says he wouldn't have destroyed this evidence had he known that O's accounts had been handled by GRG and he might therefore be able to complain.

In fact, as our investigator explained, the evidence shows that O wasn't in fact transferred to GRG. What happened in O's case was that the credit decisions were handled by a unit of the bank called the Strategy Management Unit ("SMU"). SMU sat within GRG and RBS have chosen to include customers whose credit decisions were being made by SMU in its GRG complaints review. The bank's letters about the fee refund and the complaints process didn't explain this distinction. So they led Mr R to conclude something that was not in fact the case.

O's relationship managers ("RMs") didn't change when its credit sanctioning was taken over by SMU. It remained part of Specialised Relationship Management, which as I understand it, was part of the mainstream bank not part of GRG.

I know Mr R has argued that it makes no difference whether O was a "fully fledged" GRG customer or not. But I think it does make a difference to whether the bank should reasonably have communicated the move or not. It would be highly unusual for a bank to tell a customer where its credit sanctioning was being handled. There is a deliberate separation between front line relationship management and credit, which is generally considered good practice. So it simply wouldn't be fair to expect RBS to have told Mr R that its credit sanctioning had moved from one unspecified internal department to another.

I appreciate that it's highly frustrating for Mr R that he disposed of a lot of banking documentation shortly before he was informed of O's eligibility to participate in the GRG complaints scheme. I don't think it would be useful to speculate on whether anything disposed of would have changed the outcome of this complaint or not. But I don't think the bank did anything wrong by not communicating the change of sanctioning official.

Did the bank act unfairly in reducing O's overdraft facility?

The reduction in O's overdraft facility (originally a multi-option facility) from £750,000 to £380,000 occurred before the credit control of O's relationship was passed to GRG. The evidence relating to this reduction is very limited, but it seems clear that it wasn't a major problem for O, as Mr R has said more than once that it didn't cause O hardship as they weren't using the total limit.

However, it is clear that the subsequent reductions did have a major impact on O, putting a significant strain on cashflow. In fact, Mr R says that the cuts effectively made it impossible to trade. He also says the lack of bank support stopped O from raising any of the new capital the bank wanted it to raise.

Banks are of course entitled to decide to whom they lend, although they should act fairly and communicate clearly in the course of such decisions. They are also entitled to change their view on the level of support they wish to provide. The exception to this is where they provide committed facilities and there has been no event of default. The bank have been unable to locate almost all the facility agreements in this case. So I can't know for certain what the terms and conditions of the multi-option facility and overdrafts were. But I've seen no reference to committed facilities in the bank's files and I think this would have been mentioned. Mr R also hasn't argued that the bank weren't entitled to reduce the limits, only that they should have given notice before doing so.

In cases such as this, I have to rely on the balance of probabilities. In this instance, that means I need to decide what I think the overdraft agreement is more likely than not to have said. Overdraft facilities and multi-option facilities are generally repayable on demand. So I think it's more likely than not that O's facility was also repayable on demand. It follows that RBS were entitled to reduce the limit if they chose to do so. And in any case, they would have been entitled to reduce the limit on expiry.

I know Mr R would like me to take into account what he calls GRG's toxic history in considering the bank's actions here. He feels O's experience matches a pattern of unethical bank behaviour. But the Financial Ombudsman only considers complaints individually on their individual facts. I don't think it would be fair to draw adverse conclusions on the bank's behaviour in this case based on other examples of how GRG treated certain customers, particularly when, as discussed, O was not in fact a GRG customer.

I know from Mr R's perspective it feels like RBS's actions were deliberately taken to put him out of business. But I am not persuaded that RBS acted unfairly in this case. Since they took over O's banking, O had become loss-making, had failed to meet projections and had made a significant business mis-step. By the 2008 year end, its balance sheet also showed it to be technically insolvent. I appreciate that it had made profits in the past and believed the prospects for its core business to be positive, but I don't think I can fairly say the bank acted unreasonably in wanting less exposure against this backdrop.

Mr R believes that the bank deliberately left things unclear so that he never knew when the axe would fall next. I don't think this is a fair characterisation of the bank's position. I think RBS made it clear, repeatedly, that they wanted the overdraft to reduce. On occasion, they were persuaded to postpone reductions due to lobbying by O, but I don't think that meant that the trajectory wasn't clear.

O has also cited RBS' public pledge of 1 December 2008 about maintaining its lending to business customers at this time as further evidence of the bank's bad faith. RBS have told us that this pledge wasn't reported accurately in the press and didn't apply to commercial customers such as O. I haven't seen evidence of this, but I have seen that the pledge only applied for the duration of an agreement – and only then if all terms and conditions were adhered to. I think it's likely that O's overdraft limits (particularly the reduction to £275,000 from 1 December 2009) were not agreed for the duration of the pledge, but for shorter periods, given the bank's desire for further reductions.

Mr R believes the bank should refund the £5,000 + VAT fee O paid the venture capital firm to try and find new equity investors for O in 2009. He says this would be fair because the bank's actions regarding the overdraft acted as a deterrent for external investors. He has provided a letter from a former employee in the venture capital firm written in February 2020 as evidence of the impact of the bank's stance. This letter says "although several investors were keen to invest, it soon became apparent that O's bank, RBS was not supportive of the business in a way that provided financial stability…which undermined initial confidence shown by investors".

This is a claim for a consequential loss resulting from the overdraft reductions. However, I've concluded that the bank did not do anything wrong by reducing O's overdraft. I'm therefore not going to consider a consequential loss claim arising from this action. In any case, I do not agree that the failure of the capital-raising was caused exclusively by the overdraft reductions, since other factors may well have deterred investors as well and even Mr R has conceded it was a difficult time to raise equity.

And should the bank have given notice before reducing the overdraft?

I note that Mr R believes he remembers seeing the 30 days' notice period in some of the bank's documentation. And O certainly wrote to the bank at least once at the time of one of the reductions demanding due notice be given in line with the terms. So I think it's possible that, on at least some of the renewals, a 30 day notice period was included in the agreement.

I also agree with the ITP that it would in any case have been good practice to give a month's notice for the reduction from £380,000 to £300,000, given the magnitude of the drop. I haven't seen evidence of any such notification in that particular instance, although in the case of most of the other reductions, I can see that they followed extensive discussion and O were well aware of the bank's intention even if there was no formal notice.

Because the documentation is missing, I've thought about the impact of not providing 30 days' notice on O. But I'm not persuaded that it would have made a material difference to O. Mr R has told us about the severe constraints the reductions had on O's business. He argues that they effectively put O out of business, because even when O won new contracts, it couldn't fulfil them because it didn't have the working capital it needed. I don't think these kind of difficulties would have been resolved by giving O a month's notice.

I also note that the bank showed some flexibility in allowing excesses in the month after reductions and didn't return items unpaid. RBS also says that they did not charge O unauthorised borrowing interest on excesses. My conclusion is therefore that, even if the bank should have given O a month's notice (which is unclear), I don't think O suffered any losses as a result of the absence of formal notice.

Did the bank demand excessive security?

O has made a number of allegations here, including that the bank demanded title deed security but then rejected it when it was offered and that the bank demanded security in excess of the value of the facilities provided to O. Mr R also says the bank acted unfairly by admitting that, even if the requested security was provided, they might still look to reduce O's limit.

First, I don't think there's any debate that the bank was entitled to ask for additional security. Such a request is in line with normal banking practice where banks perceive their risk exposure has changed. Whilst I appreciate that Mr R argues that O's financial position remained strong, from the bank's perspective, they were dealing with a loss-making business with a weak balance sheet and cashflow, the security for which was only an unsupported personal guarantee from Mr R, a guarantee from a non-UK linked company and a debenture over O's assets.

I've looked carefully at the evidence of what happened in the second half of 2008 in relation to security. I can see that in August 2008, Mr R offered security in the form of a charge over one of his two properties, in exchange for the reinstatement of O's overdraft at £380,000. RBS replied confirming that the property was acceptable as security, subject to valuation, but I haven't seen any evidence that the bank ever agreed they would reinstate the overdraft at £380,000. Indeed, in September 2008, the bank confirmed categorically that they would not agree to this. They set out some very clear options, one of which was "provide sufficient tangible security acceptable to the bank on a written down basis for the full amount of your overdraft requirement". I don't think this indicates any unfair action on the part of the bank.

Despite the bank declining O's request, discussions continued and on 2 December 2008, O emailed the bank offering security over both Mr R's properties and the other director's property, in exchange for the limit remaining at £300,000 (it had actually already been reduced to £275,000 the day before), or preferably returning to £380,000. I haven't seen the bank's email in response to this, but both sides refer to it as saying that the bank would reinstate the limit at £300,000 if security was in place by 23 January 2009. The bank also reiterated that the bank had no appetite for the overdraft to return to £380,000.

At some point after the bank's email referred to above, the directors of O seem to have decided not to go ahead and pledge the security they had offered. Mr R says that this was because their RM told him in a telephone conversation that the bank might still require further reductions to the overdraft even if property security was in place. Mr R's email of December 2008 to another contact in the bank also said "we're struggling to come up with available assets to the required amount", suggesting that they might not have had enough unencumbered assets anyway.

O argues that the security the bank was seeking was excessive. But the offer of the three properties mentioned was initiated by the directors. In any case, it is not unusual, or, in my view, unreasonable practice for banks to be cautious in their treatment of valuations and calculation of loan-to-value margins, particularly where properties are already mortgaged.

Mr R regards their RM's statement that the bank might still require further reductions to O's overdraft as "unbelievable". Mr R says this occurred in a phone call and I have no evidence of what exactly was said. But it seems to me that the RM may just have been giving the directors fair warning that, even if the bank agreed to maintain the overdraft in exchange for tangible security, this might not be the case forever. The bank would always reserve their right to change their position in the future and I don't think that would be unfair.

In summary, I haven't been persuaded that the bank acted unreasonably in relation to security. I think RBS's position that they wanted tangible security was reasonable and was clearly communicated. I haven't seen any evidence that they rejected the security offered. I'm satisfied that it was ultimately the directors' decision not to proceed with granting this security. I have seen no evidence to support O's argument that the bank only wanted to force O into liquidation and seize the residential properties pledged.

Finally, I've considered O's claims that RBS demanded security over Mr R's home for the EFG facility, even though this wasn't permitted under the EFG scheme. I can see that in February 2010, the bank asked Mr R for confirmation of what properties he owned and what mortgages were outstanding on them. I don't think this was an unreasonable request, particularly as EFG facilities were for companies with no or insufficient security. This indicates that at that point, the RM was uncertain what security was available. Mr R confirmed that he had sold his investment property around this time. I haven't seen any evidence that the bank then – or at any point - requested security over his home to support an EFG loan.

Did the bank act unfairly in not agreeing an Enterprise Finance Guarantee facility?

Mr R regards this as the pivotal part of O's complaint. He says the bank changed its position on the EFG facility repeatedly, sought security over Mr R's home when this was expressly forbidden by the scheme, invented eligibility criteria that did not exist and lied about their reasons for ultimately declining to grant the facility.

Mr R started requesting an EFG facility almost as soon as the scheme was announced in January 2009. He says that in April 2009, O's RM agreed to provide an EFG-backed facility of £300,000 if O could arrange an equity cash injection of £450,000. Mr R says this occurred in a meeting, so there is no evidence of it. The bank does not appear to have any record of it. In any case, any such agreement would always be subject to credit approval and therefore not a contractual commitment – and in this case, it was evidently contingent on an equity injection as well.

At the same time as these discussion about the EFG, I can see that the bank agreed to put the overdraft reductions on hold for a period, with the limit at £250,000 from March 2009. Also at the same time, O had engaged the venture capital firm to seek equity investors to raise the £450,000, but this ultimately proved unsuccessful.

In October 2009, the bank's RM told Mr R that the bank wouldn't give O an EFG facility. Mr R then threatened to complain and the RM agreed to put a formal application forward for sanction. The bank then commissioned independent consultants to produce an independent review of O's business at R's expense. Mr R says he was told that if the review was positive, the facility would be granted. I can see that the RM sent an email in late October saying he was "still hopeful of obtaining a positive outcome for you". I don't doubt that the RM was expressing optimism at this stage, although I think it's likely that he would have made clear that this was subject to credit approval – and Mr R knew this was how it worked. So I don't think it's fair to say that this was a promise that the bank then reneged upon,

There is always a tension in banking between the frontline relationship managers and the credit officials, with the former generally more optimistic than the latter. For this reason, I don't think the evidence shows anything wrong in the actions of the bank here. Mr R had lobbied hard for the facility to be considered and his RM had agreed to do his best. I accept that the bank may not have mentioned the new equity at that point, but that didn't mean that they were no longer looking for it.

In March 2010, the RM told Mr R that the EFG would not be granted in the absence of any new equity. This was clearly extremely disappointing for Mr R, who thought an EFG facility might be the lifeline O needed.

Mr R has also said that he would have converted his directors' loans to equity if the bank had asked him to. But the bank had told him that they wouldn't grant the facility because of the absence of new equity. So I think it would have been clear to him at the time that additional equity was what was needed.

As a result of the GRG review, Mr R now thinks that the bank lied about the reason for turning down the EFG facility in 2010. He thinks the real reason was that the independent review wasn't fit for purpose. He says this because the bank upheld O's complaint about the review and offered to refund its cost. This was on the basis that, whilst the bank thought it was appropriate to commission it, they had failed to ensure that the contents addressed the bank's principal concerns.

I agree with the bank's conclusion that RBS made an error in commissioning this report, which didn't provide what they wanted. I therefore agree that the bank should refund its cost, which was £5,000 + VAT. O has said that VAT should be added to this, but the bank have offered a refund of £5,875 (+ interest on this sum), which includes the VAT paid, so I don't think there is a need to add anything further.

However, I don't think it's fair to deduce from this that the reason the bank declined the EFG facility was because the report failed to allay their concerns. Mr R is presupposing that a different report might have addressed everything satisfactorily. I'm not persuaded that this was the case. I say this because, despite cash injected by the directors during 2009/2010, O remained short of cash, loss-making and undercapitalised. I realise that Mr R believes that this was all caused by the bank's prior actions, but that doesn't alter the position.

Ultimately, although EFG facilities were in principle available to all viable small businesses with insufficient security, they were not a right, but rather subject to bank approval. The bank didn't have to lend just because there was a 75% Government guarantee. The Government actually put in place a cap on bank claims to encourage prudent lending. RBS gave O some time to find additional equity but in the end, the bank chose not to provide the EFG facility. This was a decision they were entitled to make, so I don't think I can fairly say the bank acted wrongly in declining it.

That said, I can see that the bank could have communicated better about their decision. They were less transparent than they might have been about their stance, leading O to believe that it was about eligibility. They also wasted some time with an essentially useless report. All this when, in my view, the bank just didn't want to lend to O any more. But I don't think this poor communication caused O to suffer a loss. In fact, it may well have bought O some time. I still think the bank was entitled to decide whether to lend or not.

Did the bank force the sale of O's business and unreasonably insist on the restructure of O's overdraft into a loan?

Mr R has referred to a point where the bank turned down the EFG facility and informed him that "the best and worst I could hope for was that RBS would support O by converting the existing £250,000 facility into a two or three year term loan with a six month repayment holiday". I haven't seen any other evidence of this, but this indicates to me an RM suggesting a potential way forward, but making it clear that this was just a hope – that is, neither a commitment nor a requirement. Many suggestions are made in the course of commercial negotiations and I don't see any wrongdoing by the bank here.

This suggestion appears to have been followed shortly after by an email from O's RM declining the EFG facility and saying "the bank will look for repayment over 9-12 months as the cash flow suggests this is manageable. The continued support of the bank will be subject to a second charge over your property…" I accept that this proposal would have been extremely unwelcome to Mr R, but I think it was one the bank were entitled to make. It was also not an EFG facility, so I don't think the bank were wrong to say they required security at this point.

Mr R says this proposal would have put O out of business, by absorbing cash required to purchase new stock. But in any case, it didn't go ahead and the bank appears to have given more leeway than the email had suggested. It wasn't until October 2010 that the bank reduced O's overdraft limit again, by £5,000. From then on, over the next year and a half, the bank put through several further small reductions to the overdraft until it reached £224,000 in July 2012. So it seems to me that, despite saying they wanted the overdraft repaid to various short timescales, the bank gave O more time to generate cash without insisting on converting the overdraft to a loan.

By the summer of 2012, Mr R had concluded that O was not going to be able to trade properly in the light of the bank's unwillingness to provide additional support. So he decided to sell O's business. This deal involved no upfront consideration, thereby leaving O still owing the bank money, but having no assets or trade. As the bank held a debenture, the deal couldn't go ahead without the bank's permission. Mr R says RBS used this opportunity to hold O to ransom by insisting that the debt be transferred to a term loan. The bank, on the other hand, says that the request to convert the facility into a term loan came from O, although I haven't seen evidence for this.

I'm sorry to disappoint Mr R but I don't think it was unreasonable of the bank to insist on a term loan at this point. Overdrafts are designed to cover the fluctuations of a trading business. But the position at this point was that the bank was looking to be repaid from the earnout proceeds. A term loan seems to me an appropriate vehicle for this process. I also note that the overdraft would have expired in October 2012 and the bank would have been legally entitled to demand repayment in full at that point.

O has asked for all costs and fees associated with this term loan to be refunded, together with the amount of the loan, on the basis that if O had been granted the EFG facility and allowed to trade, the facility would have been repaid from trading and the business wouldn't have been sold. Naturally, we can't know what might have happened in those circumstances. But as I've already explained, whilst I don't doubt their impact on trading, I think the bank's decisions regarding the overdraft and the EFG facility were decisions they were entitled to make to protect their own position. It follows that I don't think it would be fair to expect the bank to refund the amount of the loan.

I agree with the ITP that it is normal market practice to charge an arrangement fee for a loan in these circumstances. I've looked at the arrangement fee and interest rate charged on the term loan and I'm satisfied that they were in line with or below industry norms at that time. So I don't intend to require the bank to refund them.

Did the bank fail to produce any turnaround proposals?

This allegation seems to stem from the fact that GRG was the bank's turnaround division. As previously discussed, O was not in fact in this division, although the credit decisions were being made there so it's perhaps not unreasonable to expect some turnaround expertise to have been involved.

I can see that in 2008, the bank wrote to O with four suggestions: provide tangible security to cover the full overdraft; obtain outside equity to cover working capital needs; explore whether any customers were willing to provide an element of upfront funding and move O's banking elsewhere. Mr R says none of these options were viable for various reasons, but I don't think they were unreasonable suggestions at that time.

Given the above, I don't think it's fair to say the bank failed to produce any turnaround proposals. Later on, there were various talks about EFG facilities and term loans that I have previously discussed. But clearly, there is a limit to what the bank can propose without weakening their own position. In this case, Mr R's principal argument is that O needed more cash from the bank to support its trading needs, or at least a consistent limit rather than a reducing one. Given that the bank weren't willing to offer this, because they considered the risk too high, it is difficult to see what other suggestions might have turned O around.

Did the bank charge unreasonable fees or interest?

First, I have already mentioned the bank's offer to refund the fee for the independent business review, which I think is fair. RBS have also offered to refund a £250 excess fee, which I also agree is appropriate. They have already refunded £25,000 of other fees, plus interest. This £25,000 comprised five quarters of a £5,000 flat fee, not related to the size of the facility and without any evidence of how it was calculated or when it was agreed. So it was in my view appropriate to refund this amount and offer an apology for charging these fees.

O has also asked for the remaining fees charged by the bank to be refunded. These comprise £6,612 of arrangement or renewal fees on the overdraft and a £4,450 arrangement fee for the term loan in 2012. This type of fee is part of general banking practice and is different from the £5,000 quarterly flat fees mentioned above. Although I haven't seen copies of most of the facility documentation, I think it's unlikely that the agreements would not have provided for the charging of arrangement fees. I know that Mr R feels the fees "skyrocketed" once GRG were involved. But because these fees are standard practice, I think it more likely than not that they would have been charged without any GRG involvement. I don't think it was unfair to charge them here.

I also note that the percentage charged on an annualised basis for arranging the overdraft was around 1% (even less if I take the whole time O's sanctioning was in the hands of GRG). This level is if anything below normal mainstream banking market practice at that time based on what I've seen. And the fee for the loan was around 2%, which is within normal ranges. I'm therefore not going to direct the bank to refund these arrangement fees.

Mr R has also asked for O's legal fees incurred in preparing his GRG complaint and the preparation of the appeal to the ITP to be refunded. I agree with our investigator that it wouldn't be fair to direct RBS to pay these. The bank's complaints process did not require legal expertise, this was something that Mr R chose to use. I haven't seen that the bank recommended O seek legal advice at any point nor do I think that the bank ever indicated that they would cover these costs.

On the question of interest, Mr R has also said that this "skyrocketed" under GRG's influence. I can see that O was paying base + 2% originally and there were several increases in the interest rate on the overdraft over the period, reaching a maximum of base + 7% from March 2010. However, I think it's fair to note that the bank's view of the risk of offering facilities to O had also increased markedly.

O's original interest rate dated from before O made losses, albeit for specific reasons. This practice of seeking a higher return when risk increases is normal banking practice, it is not specific to GRG. I don't think it was unreasonable for the bank to conclude that they were exposed to more risk than they had been and to charge accordingly. Neither do I consider the quantum of the increases to be exceptional for that time.

As noted on several occasions in this decision, I haven't seen most of the facility documentation in this case, but I haven't seen anything to suggest that O wasn't aware of the interest rates it was paying or hadn't agreed to them by signing overdraft agreements. Mr O has referred to documentation being lost when he dispensed with his storage facility. So I think it's more likely than not that the overdrafts were properly documented and the interest rates therefore communicated at the time.

Finally, I note that Mr R has said that the bank charged an additional 2% whenever O exceeded its overdraft limit, bringing the interest rate at its peak to 9.25% over base rate. But the bank found no evidence that such unauthorised borrowing rates had actually been charged in practice. In the absence of any evidence to prove this either way, I see no reason to disbelieve the findings of the bank's review on this point.

Overall, my conclusions are that the bank did not charge interest that was excessive or unfair, so I'm not going to direct RBS to refund it.

Did the bank use bullying behaviour?

I realise that the imposition of repeated overdraft reductions was distressing for Mr R and may have felt heavy-handed, as may the requests for security. But I have found that these were actions that RBS were entitled to take to protect their position. In terms of communication, I can only assess this on the basis of the evidence available, which doesn't include records of meetings or telephone calls. But I haven't seen any evidence of bullying or inappropriate language or conduct. The written communications I have seen were in my view professional and mostly cordial.

I know Mr R would like me to see things through a lens of GRG's poor conduct elsewhere. I've explained why that wouldn't be fair. I also think it's worth reiterating at this point that the RMs with whom Mr R was dealing were not themselves part of GRG.

I realise that Mr R would like me to take into account the impact on his mental health of the bank's actions, but I am unable to do so. This is because O is the only complainant eligible to refer its complaint to our service and as a limited company, O cannot itself be distressed. I'm afraid I do not have the power to consider any distress experienced by O's directors.

My final decision

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

My final decision is therefore that I require The Royal Bank of Scotland Plc to pay O £6,125, plus simple interest on that amount at 8% a year from the date paid until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask O to accept or reject my decision before 29 March 2024.

Louise Bardell
Ombudsman