

Vindicated but still victimised, businesses attack ‘flawed’ report

RBS has set aside £400m for companies it mistreated but is still being accused of failing them

[James Hurley](#)

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Steve Wilkinson, a creditor of an independent girls’ school in Sheffield that closed in 2010, is angry about perceived shortcomings in the report and valuation

Not everyone spent last Tuesday glued to the presidential election in the United States. For thousands of companies who were mistreated by Royal Bank of Scotland’s restructuring division, the day will be remembered as one that brought vindication.

Proving that years of complaints from businesses about RBS’s Global Restructuring Group (GRG) were well founded, the bank promised to pay out hundreds of millions of pounds after a Financial Conduct Authority investigation found that it had systematically mistreated thousands of small and medium-sized companies.

However, for victims of the scandal, relief was tinged with anger and frustration over perceived weaknesses in a complaints and compensation scheme agreed between the FCA and the bank.

A number of business owners and their representatives have also written to the FCA to question several findings which appeared to clear the bank of some of the more serious accusations against it. Among them is Steve Wilkinson, a creditor of Brantwood School, a Sheffield-based independent girls’ school that went bust in 2010 after a brief encounter with GRG.

After reading Tuesday's notice from the regulator, Mr Wilkinson was moved to write to Andrew Bailey, the FCA's chief executive, to say that at least one of the findings "is simply not true".

The case relates to West Register, RBS's property division, which bought customers' assets as well as equity stakes in their companies while they were in GRG.

The FCA said that Promontory, the financial consultancy which conducted the investigation, found "no evidence that an intention for West Register to purchase assets had been formed prior to the transfer of the customer to GRG".

Yet Mr Wilkinson met Promontory in September 2014 to present evidence which he claims showed West Register doing exactly that with Brantwood.

It is accepted that the school was experiencing serious financial difficulty. In December 2009 a property valuation performed to industry "red book" standards by Sanderson Weatherall was instructed by RBS. It valued the school at £1.05 million, which Brantwood's governors hoped would allow the bank to extend lending facilities that would mean an orderly closure at the end of the school year. The property could then be sold to repay the bank in full.

Instead, only one month later, West Register commissioned another valuation, this time conducted by Knight Frank, which said that the school would fetch only half as much, between £500,000 and £600,000.

Unlike the "red book" valuation, this one was not conducted to the same professional standards. Indeed, it came with the caveat that it was "informal advice" and was "not intended as a formal valuation and should not be relied upon as such".

Ignoring the warnings from Knight Frank, West Register relied on this document to make an offer to buy the school's property for £600,000.

Mr Wilkinson calls this a "Don Corleone offer" in that it forced an invidious decision on the governors: sell the school to West Register at what they regarded as an undervalue or close the school immediately since financial support would be pulled.

The governors took the latter option. The disorderly closure of the school in early 2010 caused significant disruption to students and parents and distress to governors and staff, including Lynn Marriott, the former head teacher, who has said that she struggled to find work in the wake of the closure.

With the transfer to GRG apparently taking place the day after West Register commissioned the marketing opinion which informed its purchase offer in January 2010, the case appears to contradict Promontory's conclusions.

Mr Wilkinson says: "I am absolutely livid. I went through this with Promontory in detail so why isn't it reflected in their findings? I cannot believe what is going on."

RBS says that the school had in fact been in a part of GRG since June 2009, but the school became aware of this only when their local RBS relationship manager was swapped for a GRG one, days after West Register became involved.

It notes that the school was eventually sold for £775,000. While sympathetic to the disruption caused to parents, students and staff by the sudden closure, it adds that it had provided consistent financial support but “to lend more than 100 per cent of the value of the building would have exposed the bank to a loss that was not in the interests of the bank, the school or the taxpayer”.

It subsequently reopened as a school for those with special needs, and is run by a charity.

RBS noted that Promontory found “there were no cases identified where the purchase of a property by West Register (as opposed to another person) alone gave rise to a financial loss to the customer”.

Those affected by the Brantwood case will have little hope of any compensation under the new scheme. Where a company has been through an insolvency or changed hands after being in GRG, the ability to access the complaints scheme or any fee redress will be extremely limited.

The FCA was at pains to say it has learned from another redress scheme for small and medium-sized companies, over interest rate swap mis-selling, which was dogged by accusations of unfairness and a lack of independence. Sir William Blackburne, a retired high court judge, has been appointed as an independent arbiter of a new GRG complaints process.

However, there is significant anger that he will not be allowed to look at so called “consequential losses” caused by GRG. RBS will have the first and final say on whether any payouts are due.

Andrew Mackenzie is a former RBS banker and is now a director of Veritas Treasury, a financial advisory company for small businesses. He described the compensation scheme as being “better than nothing — but not much”.

“Consequential losses are likely to be the most important, and contentious, part of any claim, and yet that is the area where there is no independent oversight.

“It is not fit for purpose. You have to ask how much the underlying victims of this are going to see of the money. It feels like quite a successful exercise in damage limitation,” he said.

The full report that last week’s regulatory findings were based upon is unlikely ever to be released, prompting accusations of a whitewash. There are also complaints that the compensation scheme was agreed behind closed doors between RBS and the FCA, with no input from those who suffered in the scandal.

Mr Mackenzie said: “Why have the affected businesses had no say in the creation of this scheme?”

RBS estimated that £200 million will be automatically returned in “complex fees”, leaving £100 million for compensation and another £100 million to pay to run the process.

Mike Cherry, national chairman of the Federation of Small Businesses said: “Some of those FSB members affected by GRG’s practices tell us they’ve made claims, at the minimum, of hundreds of thousands of pounds and have now all been waiting years for redress.

“Given the value of the claims we’re aware of, FSB is very concerned that the compensation fund is insufficient and does not go far enough in recompensing those firms that have been seriously mistreated.”

RBS: Q&A

How will the £400 million that RBS has set aside for the scheme break down? About £200 million is expected to go on poorly explained or inappropriate or poorly explained “complex fees” charged to small companies in GRG between 2008 and 2013. These will be returned automatically, the bank says, with no need for customers to make a claim. A further £100 million is expected to pay for compensation, overseen by a new complaints process, for direct and consequential losses related to GRG’s actions. The scheme is expected to cost about £100 million to run.

Will that be the final cost of GRG for the bank?

Almost certainly not. There are many legal actions under way. And it’s worth remembering that RBS initially set aside only a small amount to pay for compensation for its mis-selling interest rate swaps to small companies. So far, the cost to the bank has been more than more than £1.5 billion.

What if my company is now insolvent?

Complex fees will be repaid to the administrators. The agreement of an administrator or liquidator will be required before the bank will discuss a complaint. The £400 million figure does not include money that might be returned to the bank itself (since RBS is often the leading creditor). Sir William Blackburne, a retired high court judge, will oversee the complaints process.

How will he manage, given the GRG scandal involves thousands of companies?

Sir William is expected to appoint a team, the size of which will depend on the volume of complaints. The bank will assess a customer’s complaint in the first instance and then advise the customer whether the complaint has been upheld and whether any compensation is due. This decision can be appealed to the former judge’s team within 28 days.

Will I be able to contact the judge’s team directly? No

Will I be able to see all of what the former judge sees of my case?

Probably not. However, RBS says that it will explain its reasoning and which bits of evidence were relied upon. Customers will be able to share information with the independent third party, via RBS

Why is there an eligibility cap that restricts redress to those with debt facilities of less than £20 million?

This chimes with the original scope of the Financial Conduct Authority review. It may leave those above the threshold wondering why they should have to put up with poorly explained fees or mistreatment

When will the scheme begin?

Businesses will receive letters about the automatic fees refund in the next couple of weeks. A complaints helpline is already up and running.

Will current or former GRG staff be involved in the process?

Yes. RBS says they will not have decision-making responsibility, however. Some companies might qualify for direct costs and consequential losses as a result of GRG's activities.

How will these losses be defined?

Sir William Blackburne is reviewing this. The definitions will be published on RBS's website.

What a seller of interest rates swaps for RBS has said

MPs including Andrew Tyrie, chairman of the Treasury committee, have expressed concern over how RBS ran a previous small business redress scheme, for the victims of interest rate swap mis-selling, with a perceived lack of independence in the process one of the primary concerns.

Kevan Munro, now director of commercial risk solutions at RBS, sold interest rate swaps and was subsequently involved in the bank's compensation process. *The Times* has heard a recording of a speech given by Mr Munro to legal students at the University of Edinburgh in October 2013 which sheds light on RBS's compensation scheme.

On his role in "mini trials or decision groups" that influence compensation verdicts:

"I'm sitting having to review people that I know and have worked with for the last 20 years, that I go drinking with, that I go golfing with, and say if they have done a good or bad job."

On it being "difficult to trust customers": "What [the redress scheme] has taught me from a legal perspective is never write an email [to a customer], always phone. Never phone on a taped line."

On RBS record keeping: "One of the things you're meant to get is the loan document. So I've done, I do them every week and out of the last 20 let's say, 10 of them we have no loan document. So we've lent money, we've lent millions of pounds to customers and we have not got a bit of paper to get that back. Doesn't leave you in a great position. Interestingly some customers have very kindly given us copies of our loan documents so we do have one, we just can't find it."

On being a salesman: "I'm a sales person, I do a sales pitch. I will pitch what I want you to know. So I'm coming at it from my angle, not necessarily the correct angle, but my angle."

Mr Munro will not be involved in the GRG complaints process.

RBS judge was misled by bank

Officials provided incorrect information in earlier dispute; Global Restructuring Group victims query lack of disclosure

[James Hurley](#), Enterprise editor November 14 2016, 12:01am, The Times

The Court of Appeal found that RBS had provided "information that was wrong" in an earlier case that may influence oversight of the bank's wide-ranging compensation scheme

The former high court judge who will oversee RBS's compensation scheme for thousands of companies mistreated by its restructuring unit was misled by the bank in a court case over a business dispute.

RBS was criticised by the Court of Appeal in 2011 for providing "false" information to Sir William Blackburne. Sir William was appointed last week to provide independent oversight of an RBS compensation scheme for small and medium-sized companies who suffered at the hands of the bank's Global Restructuring Group (GRG).

Over the weekend, a group which is threatening to sue the bank over the activities of GRG questioned why the court case was not disclosed when the new complaints scheme was revealed on Tuesday. A spokesman for the RBS/GRG Business Action Group said: "Sir William may well be the right man for the job, but this issue should have been disclosed when the redress scheme was announced."

The legal dispute saw a businessman, Mohammed Sarwar, challenge his indebtedness to RBS, including default interest charged at 25 per cent. RBS claimed it had never charged this and Sir William found in the bank's favour in July 2000.

However, in fresh litigation a decade later, the Court of Appeal found that RBS had provided "information that was wrong that misled Blackburne and the customer", as it had in fact charged the disputed interest rate. The court provided leave to appeal and it is understood that the case was subsequently settled.

In its ruling in June 2011 the court criticised RBS for not correcting the false information until November 2009, with the customer forced to litigate again to set the record straight.

The judge, Sir Robin Knowles, QC, said there was "no basis for any conclusion that the bank intended to provide incorrect information".

However, he said that "many might ask why the bank's response to realising it had provided incorrect information would not be to seek to put that right". He suggested the bank had appeared to seek "to take advantage of its own error".

There was no criticism implied of Sir William, 72, for "understandably" taking RBS at its word.

It is also understood that HMRC is considering legal action against RBS over tax losses that may have been caused by GRG. The taxman is believed to be in talks about joining a case planned by the action group. There have been allegations that tax payments were delayed or prevented at GRG bankers' behest.

Despite these claims, in last week's summary of a Financial Conduct Authority investigation into GRG, it was found "there was not a widespread practice of RBS acting as a shadow director". A shadow director is where company directors act under instruction of a third party, who may tell them, for instance, which creditors to pay first.

RBS said last week it would repay "complex fees" charged to small companies by GRG and consider compensation payouts through a complaints scheme overseen by Sir William.

Andrew Tyrie, chairman of the Treasury committee, said he would write to Ross McEwan, RBS chief executive, about the damages scheme amid fears that underlying victims may see little of the £400 million the bank set aside to deal with the scandal.

RBS declined to comment.