

The RBS Rights Issue Litigation

[Jonathan Nash QC](#), [Matthew Parker](#), [Peter de Verneuil Smith](#) and [Ian Higgins](#), all of 3VB, have been instructed by Graham Huntley and Julian Connerty of [Signature Litigation](#) to appear on behalf of Claimants in this ground-breaking case. [Hannah Glover](#) appeared at an earlier hearing regarding privilege.

It arises out of RBS's £12bn rights issue in April 2008, then the largest rights issue in UK corporate history. As is well known, RBS failed shortly thereafter – in October 2008. The trial will examine whether the disclosures in the Prospectus – particularly in relation to RBS's liquidity and capital position, and the purpose of the rights issue – were untrue, misleading, or incomplete. The Claimants include both retail investors and institutional investors.

This is the first case brought under s.90 of the Financial Services and Markets Act 2000, which imposes liability on issuers and directors for untrue, misleading or incomplete prospectuses, unless they can show that they reasonably believed, having made such enquiries as were reasonable, that the prospectus did not contain untrue or misleading statements, or wrongful omissions. It is likely to set important precedents for future securities litigation in England and Wales.

Witnesses will be cross examined during June and July 2017 (including Fred Goodwin, beginning around 8 June 2017). This trial, which will deal only with liability, is due to finish at the end of October 2017. Depending on its outcome, future trials will deal with quantum and related matters.

There have been more than twenty pre-trial hearings, including eleven CMCs over the last four years. Those have given rise to a series of written judgments relating to this case, including:

- an important decision on legal professional privilege and internal investigations (The RBS Rights Issue Litigation [2017] Lloyd's Rep PC 83; [2016] EWHC 3161 (Ch)), at which Jonathan Nash QC and Hannah Glover appeared;
- an important decision on the disclosability of ATE policies and litigation funders in a group litigation context (The RBS Rights Issue Litigation [2017] EWHC 463 (Ch)), at which Jonathan Nash QC, Peter de Verneuil Smith and Ian Higgins appeared; and
- a decision on (i) permission to call an expert evidence of an equity analyst and (ii) an application to adjourn the trial (The RBS Rights Issue Litigation [2015] EWHC 3433 (Ch)), at which Jonathan Nash QC, Peter de Vernueil Smith and Ian Higgins appeared.

The case is expected to generate widespread interest, both because of the underlying subject matter (i.e. the management and position of RBS shortly before it failed in 2008), and also because it is the first case under s.90 FSMA to reach trial.