

Royal Bank of Scotland seeks to avoid High Court action by shareholders

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The £700 million court case brought by the Royal Bank of Scotland (RBS) Shareholders Action Group has been adjourned for a third time.

This is supposedly to give RBS two more weeks to persuade shareholders to accept an improved offer. The most important effect of the suspension is that it prevents the disgraced Fred Goodwin, the former RBS chief executive, having to appear in court on June 8, the day of the general election.

Preceded by other executives taking the stand, this would have opened a can of worms—not just for RBS and other financial institutions rocked by the 2008 global financial crisis, but also the Labour and then Conservative governments in allowing, encouraging and then concealing the criminal practices of Britain's banks.

This would take place under conditions where anger among workers and youth over the austerity measures—imposed to pay for the bailout of the banks and further enrich the financial elite—is gathering pace and taking on political dimensions, that even threaten a shock defeat for Theresa May's Tory government.

Former senior RBS executives have never had to make a public account of the events leading up to the bank's collapse in 2008, when it was rescued by then Labour Prime Minister Gordon Brown.

Shareholders are suing RBS for £520 million over its £12 billion cash call in April 2008, just months before its collapse, claiming they were misled about the lender's financial health. RBS, 71 percent of whose shares are owned by the government following its £45 billion bailout—the largest in British history—is desperate to secure a settlement with its shareholders to prevent “Fred the Shred” Goodman and company having to appear in court.

RBS chairperson Sir Howard Davies said, “The

settlement does not constitute any admission of liability by the bank, but allows us to minimise material litigation expense and management distraction.” Chief executive Ross McEwan said, “It will take the organisation back to 2008. ... One of the reasons I was keen to get it resolved ... was so the bank could move forward again.”

The bank has spent more than £100 million in legal costs over the case, including the cost of defending Goodwin and other defendants. This will climb a further £25 million if the case goes ahead, making it one of the most expensive legal cases in the history of the High Court.

Last December, RBS reached settlements, without admitting liability, with four other claimant groups including large fund managers, representing 87 percent of the original £4 billion damages claim, in a deal valued at around £800 million.

This suit was launched by the RBoS Shareholder Action Group, many of whose 27,000 members were former and current RBS employees, plus a handful of major City institutions and local authority pension funds, who lost money after subscribing to the new RBS shares. Under the deal, they would receive double the amount offered just a few weeks ago, and much more than the settlement struck with four other claimant groups, in a £200 million deal.

While many members of the group are willing to settle at around 92p-per-share, about half of what they paid for the rights issue, others are determined that Goodwin and other senior executives should have to publicly account for the bank's collapse after nearly a decade of state ownership.

If these shareholders accept the offer, that will leave two other groups still pursuing their claim against RBS.

When RBS, Lloyds Bank and HBoS faced

bankruptcy in October 2008, the Labour government took them into public ownership following secret talks over a weekend, with no strings attached and no discussion in parliament, much less any public consultation. It later transpired that the Bank of England had secretly loaned RBS a further £36.6 billion and that the government had agreed to underwrite RBS's debts should it default on its loans. Since then the banks have been provided with other forms of public support, including "quantitative easing," worth in total more than £1 trillion—demonstrating that as far as the financial elite is concerned, governments of whatever political complexion function as their personal piggy bank.

In 2010, the Financial Standards Authority (FSA) claimed that its investigation into RBS had found no evidence of wrongdoing. It was therefore party to the massive theft of working people's earnings. Far from cleaning out the Augean stables, the FSA sought to ensure that it was business as usual for the banks, political leaders and the regulators.

After initially refusing to publish its evidence and findings, it was forced into a humiliating climb-down after the WikiLeaks release of US embassy cables, revealing that RBS's new chairman, Sir Philip Hampton, flatly contradicted the FSA's line.

The report, published at the end of 2011, said that it was not dishonesty, fraud, a breach of regulations or governance that was the cause of the problems at RBS, but "a series of bad decisions." RBS's collapse was due solely to its decision to pay, along with its European partners Fortis and Santander, the astronomic sum of £71 billion to buy the Dutch bank, ABN Amro, at the onset of the subprime mortgage collapse and the credit squeeze.

The FSA blamed international banking regulation for RBS' low capital ratios, and insisted that the ABN Amro takeover that left the bank with too low capital levels would not have taken place under new rules put in place since the banking crisis. The FSA was silent on its own role in sanctioning the takeover, despite the fact that it left RBS woefully undercapitalised.

The WikiLeaks cables and the FSA's report opened the door for British and US shareholders, who for years had profited from generous dividends that far exceeded those of manufacturing corporations, to bring class action suits against RBS for the losses stemming from

the £71 billion takeover and the £12 billion rights issue. In doing so, they sought to take advantage of the fact that RBS is essentially government-owned.

According to the cables, incoming RBS chairman Hampton told visiting US congressmen that the former directors were in breach of their fiduciary responsibilities. He said RBS had made "several enormous" mistakes. First among them was its heavy exposure in the US subprime market and the bank's purchase of ABN Amro, which occurred at the height of the market and without RBS doing proper due diligence prior to the purchase. The board never questioned this purchase, which Hampton labelled a failure of their fiduciary responsibilities.

In the intervening nine years, not one banker, regulator or politician has been held to account, let alone prosecuted, for their role in facilitating an economic catastrophe that is devastating workers' living standards the world over, and reducing entire countries to penury. Likewise, there has been no substantive reform of the banking system.

Instead, numerous other examples have come to light of criminal activity on the part of RBS—and other British banks—including the mis-selling of financial products in the US and Britain, tax evasion, rigging key interest rates Libor and Forex, breaching US sanctions and regulations. In almost every case, it was US, not British, authorities that imposed any penalties.

The fines were in any case so much loose change for the banks, part of the cost of business passed on to customers in innumerable charges, while top executives walk away with massive bonuses.



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