

The Moral Ugliness of the Establishment in the Expropriation of Bradford & Bingley (B&B)

Detailed below are the sequence of events pre and post the nationalisation of B&B and its destruction as an ongoing business in 2008 by the UK Government.

1. The B&B audited accounts for 2007 were passed as a going concern and a dividend paid in 2008. A successful rights issue was completed in August at a price of 55p, less than eight weeks before the decision by Gordon Brown to nationalise B&B on the 26 September 2008 when the net asset value per share was circa £ 1.00.

2. In August 2008 after the completion of the rights issue the interim accounts of B&B were passed by KPMG as a going concern and statements were made by the B&B board emphasising B&B's balance sheet strength on the 29th August and the 25th September, to quote 'the recent fundraising reinforces our position as one of the best capitalised banks in the UK and we are well able to ride out the current storm', this was only a day before Gordon Brown's decision to expropriate B&B. The balance sheet strength with a Tier One ratio of over 9.0 % was again confirmed by Messrs Kent and Pym, chairman and chief executive of B&B, on the 18th November at a Treasury Select Committee hearing, this conflicts directly with the various statements issued by the UK Government and the tripartite regulatory authorities when attempting to justify the expropriation of B&B. So who is telling the truth? The substantial surplus when the B&B mortgage book is finally wound down together with the Tripartite and the Cabinet Office's total failure to explain how and why B&B has been destroyed as an ongoing business suggests it is Messrs Kent and Pym's statements which are far

nearer to the truth. Furthermore during the B&B valuation by PwC the B&B Action Group (BBAG) was advised by interested parties close to the process that there would be a significant surplus when the B&B mortgage book was finally wound down.

3. Within days of the expropriation of B&B on the 29th September 2008 the Government provided over £60 billion of covert support to HBOS and RBS. B&B had a stronger balance sheet than these two banks and Northern Rock as confirmed in the Banking Crisis 'post mortem' published by the Local Authority Pension Fund Forum (LAPFF). Simultaneously, it sold the B&B savings book, retail network and Isle of Man operations to Santander for £ 612 million thus ensuring that B&B was destroyed as an ongoing business. This was a fire sale price as confirmed by Santander who are on public record regarding the significant profits generated by this acquisition. B&B share and bondholders are entitled to know who authorised this sale and why? Was the expropriation and destruction of B&B by the Government as compared with its support of RBS and HBOS due to the latter being major employers in the Scottish lowlands which at the time was the power base of the Scottish Labour Party? The banks were certainly not treated equally as RBS, HBOS and Dunfermline Building Society were saved whilst in complete contrast B&B was fully nationalized despite it having a stronger balance sheet than RBS and HBOS.

4. In July 2008 and the months thereafter Moody's and Fitch Lovell issued credit downgrades on B&B, BBAG have no knowledge of what these were based on and whether there was any communication with the B&B board. There is strong evidence of a close relationship between John Kingman, number two at HMT in 2008, and his former colleague at the Financial Times Robert Peston of the BBC and Daily Telegraph whose reporting created a run on the B&B shares and deposits. Mr Peston was certainly being fed information

from sources in HMT as how else was he able to state at 9.41 pm on the 28 September 2008 "I have learned tonight that the Treasury has taken a decision to nationalise B&B using the special legislation it put through when it took Northern Rock into public ownership". In response to Freedom of Information (FOIA) requests HMT states it has no record of communications between Messrs Kingman and Peston but admits that when the former left HMT information was cleared from his laptop, smart phone and other networked resources. Why was this evidence, which would have been relevant to B&B's expropriation, destroyed in this way? Why were file summaries not digitally recorded and how many 'off the record' communications were and still are being made within Whitehall and Westminster in order to neutralise FOIA requests? Sir Richard Branson is on record in describing a close relationship between Messrs Kingman and Peston during their discussions on the future of Northern Rock which would explain why the latter was so well informed during the banking crisis.

5. On the 24th June 2009 the Government appointed Peter Clokey of Pricewaterhouse Coopers (PWC) to determine the level of compensation payable to B&B shareholders. The Banking Special Provisions Act (2008), section 5, requires the Treasury to establish a scheme within three months of the day of transfer which was the 29-09-2008. Is this late appointment a breach of the Act? The Government's terms of reference demanded an 'in administration' approach and no access to further funding which ensured a nil valuation, Mr Clokey is on record as stating that if his terms of reference had differed his valuation may have been other than nil. Initially BBAG intended to appeal the nil valuation at the Upper Tribunal (Tax & Chancery Chamber) Financial Services conference on the 15th November 2011. However, Sir Stephen Oliver QC, the president, agreed to HMT's request to be excused attendance at the Tribunal, BBAG appealed against this extraordinary decision on the grounds that HMT

would avoid examination of its role in this matter, but to no avail. The Tribunal also confirmed that the conference would judge the valuation on the basis of HMT's terms of reference, due to this BBAG asked to be excused attendance as it considered the Tribunal's decision would be a forgone conclusion and so it proved.

6. The Government's position in respect of the B&B valuation was that the Bank of England (BoE) support through the Special Liquidity Scheme (SLS) was not ordinary market assistance despite over thirty banks having the use of that facility. BBAG contests this assumption and draws attention to the European Commission's (EC) statement giving clearance to state aid by the UK Government in the early part of the financial crisis in banking markets which included the following:

"The UK Authorities accept that the recapitalisation and guarantee schemes contain state aid elements. In their view the extension of the SLS is part of the essential role of the BoE and therefore not state aid. In the event the Commission concludes the liquidity measures do contain aid elements the UK Government submits it forms part of a wider package to remedy a serious disturbance in the economy of the UK which is compatible with the Common Market"

Therefore the UK Government has argued to the EC that the SLS is part of the normal workings of the BoE but specified the converse in respect of the B&B valuation. This is a further example of the inequitable and inconsistent treatment to which B&B has been subjected by the Government when compared with other banks.

7. In October 2008 Mr J Bloch, a B&B shareholder, made a FOIA request to the Cabinet Office (CO) in respect of the rights issue prior to the nationalization, the reply denied possession of files etc., BBAG had difficulty in believing this statement and it was only after David Blundell, chairman of

BBAG, read Gordon Brown's book 'Beyond the Crash' in which he described his decision to nationalise B&B from an ante room of the White House, Washington DC in a transatlantic telephone call with Mr Darling that in 2011 the CO finally admitted it did have records/files the possession of which it had previously denied. Mr Clokey's valuation and the CO's confirmation of possessing files in respect of the FOIA request became public in 2011, this suggests a cynical exercise in news management by the Government during the politically sensitive period between the banking crisis in 2008 and the General Election in May 2010. In March 2011 BBAG made a further FOIA request to the CO which was refused on the grounds of public interest, it then appealed to the Information Commissioner's Office (ICO) which stated its decision to uphold the refusal of the CO was finely balanced. BBAG then appealed to the Information Tribunal who upheld the ICO's decision in April 2013.

8. With regard to the Brown/Darling telephone conversation the Treasury Solicitor's (TS) department advised BBAG that this communication would have been carried/organised by the Foreign & Commonwealth Office (FCO). In response to an FOIA request the FCO denied responsibility until the TS's advice was quoted, despite three further reminders the FCO has failed to reply. BBAG has not pursued this further as Mr Brown's book and the CO belatedly admitting it did have files provides sufficient evidence of the CO's past subterfuge.

9. On the 25 July 2011 BBAG wrote to Lord Turner, chairman of the FSA, asking him to confirm whether he had refused the Chairman of the Treasury Select Committee (TSC) Andrew Tyrie's request to include B&B in the FSA's banking inquiry using the words 'We have nothing to learn from the nationalisation of B&B'. This is an extraordinary statement by Lord Turner as we have everything to learn from such an inquiry, particularly the level of the FSA's incompetence pre and post the banking crisis. Harry Wilson of the Daily

Telegraph also reported that Lord Turner had promised an inquiry on the collapse of RBS and HBOS but refused to investigate the collapse of smaller lenders. Lord Turner failed to reply to BBAG's request.

10. On the 20th February 2012 BBAG wrote to Lord Myners, the former business minister in the Gordon Brown government asking him to confirm whether press reports, that he was a director of a hedge fund that profited from the collapse of B&B by short selling shares in the bank, were correct. Lord Myners failed to reply to this request.

11. On the 17 July 2013 Sajid Javid, a Treasury Minister, described the sale of B&Bs' retail deposit book and branch network to Santander was after a competitive process. An FOIA request asking for details of this was refused on the grounds of public interest, a good example of the obfuscation to which BBAG has been subjected. A further example is the CO's refusal to state whether the B&B nationalisation was agreed by the Cabinet, again on the grounds of public interest. All the evidence suggests that the Establishment, Westminster and Whitehall et al, are determined to suppress the truth in respect of the expropriation of B&B despite past public inquiries into Northern Rock, RBS and HBOS. A further example of the inequitable and inconsistent treatment that B&B shareholders have suffered.

12. On the 9 November 2010 the Government made an offer of £3800 and £3600 for every £10000 of principal to the holders of the 13.0% and 11.625% Perpetual Subordinated Bonds (PSB), Update 9 on BBAG's website. The Government was well aware that many of these bondholders were pensioners and in severe financial difficulties due to the expropriation and non payment of bond interest. In BBAG's view this offer was opportunistic, derisory and ignored the duty of care to which B&B share/bondholders were entitled. On the 28 November 2014 a further offer on the same bonds was made for £19,900 and £18650 respectively which

exceeded the market price and the nominal value plus all unpaid interest. This was fair value and the disparity between this offer and the previous one suggests the Government was determined, initially, to strengthen the B&B balance sheet regardless of the financial suffering to bondholders. The BBAG chairman and his wife Irene Blundell have responded to thousands of telephone calls, emails etc for nearly ten years, many of the stories of financial suffering due to the failures of the Government and the Tripartite have brought Irene to tears.

13. BBAG has conclusive proof that an FSA call centre was reassuring members of the public until the 18 September 2008 that B&B was both authorised and solvent, this was only six working days before Gordon Brown's decision to nationalise B&B. BBAG has made several FOIA requests to the FSA, now the FCA, as to the final date on which FSA call centre(s) were reassuring the public. The FCA has refused to provide this information on the grounds of 'repetitive requests' which is a technicality as any repetition was due to BBAG's forbearance in providing the FCA with every opportunity to tell the truth which it has failed to do. The conclusive proof is a DVD recording sent to a BBAG supporter by the FSA which has also emulated the HMT habit of destroying records.

14. BBAG wrote to Messrs Brown & Darling at least a dozen times between September 2008 and May 2010. Every communication then and since has been either ignored or sidelined by successive governments including the Coalition and the current Government. They have all responded to thousands of requests for information with the same standard letter offering the same stale excuses by trying to justify the legal process and blaming bank failures in the UK on a worldwide crisis. This is untrue as it was not a worldwide crisis, many banks in the USA and Europe had

strong balance sheets and Canada, South America, Africa, the Middle and Far East were largely unaffected.

16. BBAG first approached the Parliamentary Ombudsman's Office (PO) in 2014 and ultimately made a complaint against the CO on the grounds of maladministration in respect of its original untrue statement issued in 2008. The PO has refused to pursue it, to quote; 'Having said that it is our view that regardless of the events that took place between 2008 and 2010 you would have had the same result namely no access to the information requested as upheld by the ICO'. In BBAG's view this decision is flawed as in access or not to information has no relevance whatsoever to a charge of maladministration. BBAG has provided the PO with prima facie evidence that the CO issued a false statement which has proved to be advantageous to successive governments in concealing the truth to which nearly one million retail investors are entitled. It would appear that the ICO and the PO have joined the Establishment rather than protect the general public against the latter's incompetence and malpractice. Based on the performance of the PO and ICO thus far in respect of the nationalization of B&B, one has to question the purpose of their continuing existence at tax payers expense.

17. The main reasons for the UK banking crisis were the dilution of the regulatory powers of the BoE in 2001 and the introduction of the International Financial Reporting Standards (IFRS) in 2005 by the UK Government together with the light touch regulatory approach by the tripartite of which Gordon Brown was so inordinately proud. The adoption of the IFRS and IAS 39 was a catastrophically defective decision which may contravene UK company law. Three of the UK's largest pension funds have sought the opinion of Leading Counsel George Bompas QC in respect of IFRS, the opinion suggests the Financial Reporting Council (FRC) was wrong on the law and hence its setting and

approving catastrophically defective accounting standards, it considers that company directors must override IFRS in order to comply with company law and may need to ignore the legal advice given by the FRC on this issue. It also states that the defective accounting outcomes of IFRS should be overridden by invoking the true and fair view requirement of the law.

18. The TSC chaired by Andrew Tyrie and Lord Mervyn King is on record in criticising the spectacular failures of the industry watchdogs both before and after the banking crisis. The introduction of IFRS enabled greedy bankers to indulge in false accounting including the accounts supporting rights issues. It would appear that the core problem is regulatory as the FRC has chosen a route contrary to the law to suit defensive elements of the accounting profession. Furthermore, the fact that the FRC answers ministerial correspondence for the Business, Innovation & Skills department (BIS) has been a hindrance to it being properly accountable to either ministers or Parliament as it is able to intercept complaints and thus protect itself. BBAG believes that changes to accounting standards are essential and agrees with the TSC that a new enforcement body, previously rejected by HMT, should be established as a matter of urgency in order to prevent further crises such as the Cooperative Bank and Britannia Building Society both audited by KPMG.

Conclusion

In BBAG's view there is evidence, both direct and circumstantial, that the main cause of the UK banking crisis was the gross misfeasance of the Government and the Tripartite whose failures to ensure that growth was supported by sound money and to control the excesses of the economic bubble prior to 2008 are a matter of record. It believes nearly one million B&B share/bond holders and the residents of Bingley a once thriving and prosperous town are entitled to know the truth as to how and why their company

was destroyed as an ongoing business, preferably through a public inquiry or by requiring Gordon Brown and Alistair Darling to appear before either the Treasury Select or Public Accounts Committee. In view of the substantial surplus that has been generated on the mortgage book it also believes B&B should be re-established as a viable ongoing business, the only complication being the UK Government will require the EC's permission to do so. In BBAG's view the total failure of Whitehall and Westminster to explain why B&B was destroyed as an ongoing business is a perfect example of 'the Establishment' at its worst. When a Government confiscates the property of its citizens, without reason, explanation or compensation, particularly when it may be seen to have failed in its duty of care to savers and investors by not adequately regulating the companies involved in the banking crisis, then all concepts of the role of fair and honest government is devalued.

David Blundell

Chairman BBAG

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