

BBAG – Bradford & Bingley Action Group

The Destruction of Bradford & Bingley (B&B) by the European Commission and Gordon Brown's Government in 2008 'An eleven year search for the truth from successive governments'

Detailed below are the events pre and post the destruction of B&B by the European Commission and the UK Government, a flawed decision, made in haste and possibly illegal

1. The B&B audited accounts for 2007 were passed by KPMG as a going concern and a dividend paid in 2008. A successful rights issue was completed in August 2008 at a price of 55p, full details of which were advised to and approved by the Financial Services Authority (FSA/FCA). This was completed nearly seven weeks before the decision by Gordon Brown to nationalise B&B on the 26.09.08, when the net asset value per share was circa £ 1.00. The UK Government in collusion with the European Commission (ED) then sold the savings book to Santander for half its market value, which destroyed B&B as an ongoing business.

2. In August 2008 the interim accounts of B&B were passed by KPMG as a going concern and statements were made by the B&B board emphasizing 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 capitalized 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 destroy B&B as an ongoing business. The balance sheet strength with a Tier One ratio of over 9.1% 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. Their public statements conflict directly with those issued by the HMT, the Bank of England and the FSA/FCA (the Tripartite) when attempting to justify the destruction of B&B. So who is telling the truth? The surplus that has arisen despite the Treasury indulging in a piecemeal 'sell-off' of the B&B mortgage book, together with the Tripartite's total failure to explain why B&B was destroyed as an ongoing business, suggests it is Messrs Kent and Pym's statements which were true. During the B&B valuation by PwC the B&B Action Group (BBAG) was advised by interested parties close to the process that there was a net asset value ignoring goodwill of at least £ 1.00 a share and there would be a substantial capital surplus when the B&B mortgage book was finally wound down.

3. At the time of the destruction of B&B the Government provided over £60 billion of covert support to Halifax Bank of Scotland (HBOS) and Royal Bank of Scotland (RBS). B&B had a far stronger balance sheet than these two banks as confirmed in the Banking Crisis 'post mortem' published by the Local Authority Pension Fund Forum (LAPFF). The losses during 2008-10 as a percentage of capital were B&B 113.7%, RBS 186%, NR 196.8% and HBOS 204.5%. Simultaneously, HMT sold the B&B savings book, retail network and Isle of Man operations to Santander for £ 400m net when the market value was around 1bn, thus destroying B&B as an ongoing business. This fire sale was confirmed by Santander who are on public record regarding the immediate significant profits generated by the acquisition. B&B shareholders, the owners of the company, 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 Central Belt which at the time was the power base of the Scottish Labour Party? The banks were certainly not treated equally as RBS, HBOS are still viable businesses whilst in complete contrast B&B was destroyed. **BBAG's deputy chairman Tim Lowden recently secured a record of a BoE Transactions Committee teleconference dated 28 September 2008 in which the Governor Mervyn King was involved, this conference describes the BoE's decision enabling the Financial Services Compensation Scheme and HMT to provide support totalling £22 billion to the new owner of the retail deposits which proved to be Santander. This raises two questions: why a Spanish Bank, backed by the Bank of Spain and the ECB, was supported by the BoE and HMT to the tune of £22 billion, soon after reduced to £ 18 billion, at the expense of B&B a highly regarded and solvent UK bank based in the North of England***

*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, second permanent secretary 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 being fed information from sources in HMT, how else was he able to state at 9.41 pm on the 28-09-08 "I have learned tonight that the Treasury has taken a decision to nationalise B&B using the legislation it passed when it nationalized Northern Rock (NR). In response to FOIA 2000 requests HMT states it has no record of communications between Messrs Kingman and Peston but admits that in December 2008, information was cleared from the former's laptop, smart phone and other networked resources. **Why was this evidence destroyed and is such action legal? Why were file summaries not digitally recorded and archived, 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 describes a close relationship between Messrs Kingman and Peston during their discussions on the future of NR which would explain why the latter was so well informed during the banking crisis and the months prior to B&B's destruction.***

*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 valuation process within three months of the day of transfer which was the 29-09-2008. **This six month late appointment is surely 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 hearing 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 decision on the grounds that HMT would avoid examination of its role in this matter, but to no avail. Sir Stephen provided no reason for his extraordinary decision to excuse HMT and also confirmed that it would judge the valuation on HMT's terms of reference which ensured the appeal's failure. **During this period a senior member of Peter Clokey's valuation team confirmed to David Blundell, chairman of BBAG, that B&B had been solvent prior to its destruction and there would be a substantial surplus when the mortgage book was wound down. A senior***

executive director of the B&B board also confirmed this to Philip Davies MP for Shipley of which Bingley is part.

6. 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. This and Mr Clokey's valuation became public in 2011, this suggests a cynical exercise in news management by the Government and the Treasury 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. BBAG's view is that the public interest argument demands the full facts being made available.

7. On the 17 July 2013 Sajid Javid, a Treasury Minister stated that the sale of B&Bs' retail deposit book and branch network to Santander was after a 'competitive process' in a debate with Philip Davies MP in Westminster Hall. This competitive auction process as described by the BoE commenced on the 27.09.08 with bids required by the 28.09.08. Santander was the successful and only bidder. The B&B £21 Bn deposit book, retail network of 197 branches, 140 agency outlets, Isle of Man operations were sold for £612m and Santander was immediately able to recoup £200m of capital supporting the branch network, so actually paying closer to £400m. A fair market value would have been around £1.0bn, no wonder Santander were publicly boasting about the profitability of its purchase only a few months later. HMT have refused to provide details of any other bidders, arguing commercial/public interest. However in a reply dated 15.02.2019 it advised BBAG that Alistair Darling, former Chancellor of the Exchequer, published his autobiography in 2012 in which the other bidder HBOS was named which indicates the 'competitive process' description was untrue as at the time HBOS was insolvent with a far weaker balance sheet than B&B.

8. On the 14.09.18 in the Daily Mail, Nick Macpherson, now Lord Macpherson, Permanent Secretary to HMT in 2008, described his approach to Sir Fred Goodwin, CEO of RBS, about taking over B&B, in September 2008.. Sir Fred said he would have liked to but his board would not agree. So ten years after the destruction of B&B we now know that the UK Government was attempting to resolve the banking crisis, which was of its own creation, by an attempted takeover of B&B which was solvent by RBS which was insolvent.

9. A further example of successive governments' total failure in their duty of care to savers and investors: 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 www.bbaction.com. The Government was well aware that many of these bondholders were pensioners in severe financial difficulty due to the nationalization and non-payment of bond interest. BBAG's view is on record that this offer was both opportunistic, derisory and ignored the Government's duty of care to which B&B bond holders were entitled. On the 28 November 2014 a further offer on the same bonds was made for £19900 and £18650 respectively,

which exceeded the market price, the nominal value and all unpaid interest. In BBAG's view this offer was not a sudden conversion to altruism but was forced on the Government as it had become increasingly obvious that there would be a substantial surplus when the B&B mortgage book was wound down and these high interest bonds were compounding at an increasing pace. The offer was fair value and the disparity between the two highlights the Government's determination to strengthen the B&B balance sheet regardless of the financial suffering of the bond holders. BBAG believes the Government's change of heart was motivated by a wish to ensure stage sales of the mortgage book could proceed unhindered. David & Irene Blundell have responded to thousands of telephone calls over eleven years, the many stories of financial and emotional suffering caused by HMT have been heart breaking and have brought Irene to tears.

10. BBAG pursuit of the truth continues, it has conclusive proof that an FSA/FCA call centre was reassuring members of the public until the 18 September 2008, that B&B was both authorized and solvent. This was only six working days before the decision to nationalise B&B. BBAG has made several FOIA requests as to the final date on which FSA call centre(s) were reassuring the public. Initially, the FCA's response to an FOIA request was a refusal to provide this information on the grounds of 'repetitive requests' which was a technicality as any repetition was due to BBAG's forbearance in providing the FCA with every opportunity to tell the truth. In 2016 a B&B shareholder Mr Barrie Daniels made a similar request to the FCA and was advised that it had no records, another B&B shareholder Mr Kevin Knowles was sent a DVD recording by the FCA/FSA confirming that its officials were reassuring the public that B&B was authorized and solvent as above. **Therefore, either the FCA is not telling the truth or it has destroyed records that should have been digitally recorded and archived.**

11. BBAG wrote to Messrs Brown & Darling numerous times between September 2008 and May 2010, then lastly to Mr Brown on the 4 March 2019. Every request, has been either ignored by them or sidelined by successive governments. They have all responded to requests for information with the same stale excuses trying to justify the legal process and blaming UK bank failures on a worldwide crisis. The Treasury Chief Secretary Yvette Cooper, 2008/9, made several public statements defending the Treasury and also blaming the world wide crisis. This was a fiction - it was not a worldwide crisis, many banks in the UK, USA and Europe had strong balance sheets and Canada, South America, Africa, the Middle and Far East were largely unaffected. The main cause of the UK banking crisis was the gross misfeasance of the UK Government and the Tripartite and their total failure to control greedy bankers. **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; '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 totally flawed as access or not to information has no relevance whatsoever to a proven 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 its shame the PO has failed to act.**

12. The main causes of the UK banking crisis was the gross misfeasance of the UK Government, first, the dilution of the regulatory powers of the BoE in 2001, second, ignoring EU directives by the introduction of the International Financial Reporting Standards (IFRS) in

2005, third, the light touch regulatory approach by the tripartite of which Gordon Brown was so inordinately proud, fourth, the total failure of the UK Government to ensure that economic growth was based on sound money. **The adoption of the IFRS and IAS 39 was a catastrophically defective decision which BBAG believes contravenes UK company law and EU directives. 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 of these 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.**

13. The gross misfeasance of the Tripartite continues to this day. Cormac Butler a leading accounting authority with considerable international experience specializing in accounting frame works particularly IFRS 4/9 and Tim Bush, head of Governance & Financial Analysis at Pensions & Investment Research Consultants Ltd, have given evidence to the House of Lords expressing strong concerns at successive governments failure to introduce sound accounting standards in line with EU and UK company law. The International Accounting Standard Board (IASB) worryingly issued three different interpretations of its accounting standards (IAS 39) 1) banks were compelled to reveal all losses, 2) banks were free to delay losses if they wished, 3) banks were compelled to delay losses until there was a default on the loan i.e a missed payment. In Europe only the first interpretation is legal as the other two allow or compel banks to overstate the value of their loans which is contrary to the concept of prudence, a requirement of European company law directives. As a result of incorrect advice given by the UK Financial Reporting Council many banks applied the third interpretation and therefore concealed losses, which BBAG believes is illegal. In 2015 the IASB claimed the replacement of IAS 39 with IFRS 9, which became effective in 2018, would force all banks to recognise losses earlier. However the wording of IFRS is confusing and once again encourages interpretation 2 & 3 above. That is to say, banks can continue to choose to conceal losses until compelled to do so by non repayment of loans. BBAG believes the endorsement of this standard is flawed as it is contrary to EU directives.

14. BBAG believes that in 2008 the BoE realized HBOS was using a fraudulent method to measure its financial strength and had a duty to ascertain its correct financial position before injecting funds into a troubled bank. If HBOS was insolvent the BoE should have injected equity whereas if it had a liquidity problem but was solvent the BoE could have relied on Emergency Lending Assistance (ELA). Despite what BoE knew BBAG believes it chose not to measure the solvency of HBOS correctly and injected funds by way of ELA when it should have recognized a loss at that point – an injection of cash into an insolvent company automatically leads to losses, instead it appears the BoE allowed HBOS to misrepresent its solvency to the market so that Lloyds shareholders unknowingly assumed huge HBOS losses in a disastrous takeover. In contrast B&B had a liquidity problem, as did virtually all banks at the time, but was solvent as confirmed by Rod Kent and Richard Pym, Chairman and CEO, of B&B at the TSC in November 2008. A senior member of Peter Clokey's valuation team also confirmed to me directly there would be a substantial surplus when the mortgage book was wound down. Furthermore, if insolvency has not been proven then the return of BoE money must be treated as a capital distribution and requires shareholder approval and until given, the BoE cash becomes the property of the B&B shareholders To recover any money the BoE put in to B&B, shareholder approval is needed unless it is

insolvent in which case a formal liquidation as opposed to nationalisation is required. This ensures all creditors are treated equally. The reality was the flawed and possibly illegal nationalization of B&B and a fait accompli fire sale of its deposit book, retail network and Isle of Man operations destroying what would have been a viable business.

*15. Andrew Tyrie, former chair of the Treasury Select Committee(TSC), and Lord Mervyn King criticised 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 was regulatory as the FRC has chosen a route contrary to the law to suit defensive elements of the accounting profession. **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.***

16. BBAG has a copy of a European Commission letter dated 1-10-08 to David Milliband, Foreign Secretary, in response to his request dated 30-09-08 for authorization of State aid to B&B/Santander, the EC's letter gave authorization on a non notified State aid basis whilst making clear the UK was in breach of Article 88 (3)EC Treaty and therefore unlawful financial assistance by the Government. The EC letter made clear that Santander was the successful bidder for the B&B savings book and retail network referred to in para 3 and the supposed 'competitive process', the UK Government has referred to on numerous occasions, is untrue. Did the UK Government consider that the Santander's successful bid would assist in mitigating its unlawful financial assistance and EC Treaty breach thus ensuring the EC's agreement to post event non notified State aid? BBAG made a FOIA request to the FCO on the 21-11-17 which replied suggesting BBAG contact HMT. 22-11-17 BBAG letter stating its request related to a letter signed by the Foreign Secretary to the EC and it failed to understand the HMT connection. On the 9-01-18 FCO replied that it had not kept a record of the Milliband letter and when asked why it had not been digitally recorded and archived it just repeated its 'no record' stance.

17. On the 24-11-17, Irene Blundell a B&B shareholder and pensioner made a claim against the Tripartite to the Leeds small claims court in the tort of misfeasance, this was resubmitted to the CCMCC at Salford and then transferred back to Leeds County Court. The sum of £184.25 related to her purchase of 335 shares offered in the rights issue which completed in August 2008, less than seven weeks before Gordon Brown's decision to nationalize B&B. The Government's legal dept (GLD) stated it must receive service of Irene's claim against the BoE and the relevant time limit had not started to run. However the CCMCC confirmed that Irene had served her claim correctly and the GLD's statement was not correct and invalid. Finally the BoE stated it gave notice of service on the 14-01-18, ten days out of time. Irene has not received a letter or email to this effect and has requested that the GLD and BoE's behaviour be placed on record as a further example of the obfuscation which B&B share/bond holders have suffered for eleven years. District Judge Hesford attempted to strike out Irene's claim without explanation, she successfully appealed and secured a hearing on the 8.11.2018. His Honour Judge Gosnell was fair and sympathetic, criticized the lower court for not allowing an oral hearing stating Irene was not treated fairly by the lower court and refused HMT's request for costs. However he refused the application to appeal as being out of time. It appears those who wished to challenge the destruction of B&B should have pursued a judicial review within three

months of the 29.09.2008, BBAG believes the deliberate subterfuge of the Cabinet Office, the Tripartite's determination to suppress the truth and the late appointment of Peter Clokey made the organization of such a review by 930,000 shareholders, who were mainly retail investors, impossible as they had no knowledge of the terms of the valuation process which were published six months out of time. Furthermore the Government failed to advise that it was already supporting B&B and other banks, This and government assurances of a fair and independent valuation were, BBAG believes, a deliberate attempt to deceive the public and avoid a judicial review.

18. Despite successive governments determination to suppress the truth in respect of the destruction of B&B, BBAG's research has uncovered facts which reinforce the charges of gross misfeasance and unlawful financial assistance:

(a) 26-09-2008 Washington DC, Gordon Brown decides to nationalize B&B in a transatlantic telephone call with Alistair Darling, an FOIA request as to whether this was a Cabinet decision was refused so one can assume it was not.

(b) 27-09-08, The FSA advised B&B that its banking licence had been removed and it could not accept deposits in order to protect the public, effectively closing the bank down. This enabled the Treasury to fall back on the FSCS providing £18 bn of support to Santander. A 'competitive auction' of the B&B savings book was advised with final bids to be received by the morning of 28-09-08 whilst the BoE & HMT were organizing £22Bn of support for Santander with the European Commission. At 0800 hrs Monday 29-09-08, B&B was nationalized under section 3 of the Financial Service and Markets Act 2000. However, since the Act only applies to a bank and as a bank is defined as an institution with a banking licence then by 0800 hrs 29-09-08 it was no longer a bank as the FSA had removed its banking licence the previous Saturday in order to protect savers. It transpired that the licence was removed by the FSA/FCA at 0700 hrs 29.09.08 prior to the nationalization and in those circumstances HMT still had no lawful basis to nationalise B&B. Initially the HMT had suggested to Charles Fussell, our legal representative at the time, that rather than remove the licence it was temporarily suspended but then changed its position and suggested the suspension had been extended. We have a copy of the First Supervisory Notice issued by Mr T Herrington, chairman of the Regulatory Decisions Committee which was not issued on a temporary basis and confirming the suspension commenced 0700 hrs 29.09.08. Further FOIA 2000 requests to HMT and FCA followed, the former advised of an extension of the suspension to 0900 hrs but in response to further request the FCA failed to confirm the time this was issued? It would appear the Treasury initially argued that the licence was not removed on Saturday which means that B&B would have been able to accept deposits from the public thus negating the FSA/FCA's reason for the licence removal which was supposedly the protection of the public. Then, either HMT or the FCA realized the nationalization was still illegal, followed by a suspension extension to 0900 hrs the timing of which BBAG had no knowledge despite FOIA requests. This ambiguity was belatedly and partly resolved by HMT confirming the extension was amended by the FSA at 0627 hrs 29.08.08 hrs whilst still denying communicating with the FSA/FCA, the latter states it has no record of this time and more importantly no record of the time the amended notice was issued to B&B. Therefore HMT is providing information which must have been available to the FCA which in turn is denying it has such records, after future requests from BBAG the FCA refused to continue on the grounds of 'vexatious requests'. BBAG submitted a complaint to the Information Commissioner on the 1.03.19, case ref FS50827217, which it acknowledged on the 19.03.19, a further reminder was sent on the 23.04.19 and finally opened an investigation in early July. BBAG believes the actions of

HMT and the FCA were deeply flawed, possibly illegal and have the hallmarks of an ex post fact reconstruction of history. Furthermore, the evidence BBAG has secured indicates that the Right Honourable Sajid Javid's 'competitive process' statement in Westminster Hall was incorrect which together with the Cabinet Office and Tripartite's mix of untrue statements and 'public interest' FOIA refusals, highlights their suppression of the truth.

(c) 28-09-08, A BoE teleconference involving the governor Mervyn King agreed that the successful bidder for the B&B savings book would receive £ 22 Bn from HMT & the FSCS.

(d)30-09-08, David Milliband, writes to the European Commission detailing the above and requesting authorization of State aid pursuant to Article 87(1) b of the EC treaty.

(e) 1-10-08, The EC authorises the provision of State aid whilst confirming the aid already made was in breach of the EC Treaty, it also made clear that the UK Government had already decided that Santander would be the successful bidder, subject to the EC's authorization, at the time of the BoE teleconference. Did the UK Government feel that Santander's success would assist in mitigating the treaty breach and ensure the EC's authorisation of the Transfer Order, in other words a BUNG?

20. To conclude, numerous FOIA requests over eleven years have been met by the industrial scale obfuscation and subterfuge of the political establishment, consequently B&B employees, share and bondholders still do not know why their company was destroyed. A main cause of the UK banking crisis was the misfeasance of 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, nearly one million B&B shareholders, the former owners of the company, are entitled to the truth. When a Government confiscates the property of its people, without explanation or compensation, particularly when it has 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 are devalued.

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