

To. First-tier Tribunal (Information Rights)

From. DW Blundell. Chairman Bradford & Bingley Action Group (BBAG).
Director BBAction Limited. Registered in England No 7239419

Information Commissioner's Office(ICO) Decision Ref FS59496325
Cabinet Office (CO) v BBAG.

Grounds for Appeal

BBAG considers that the service provided by the ICO has been first class, in stark contrast with the obfuscation, procrastination and at times subterfuge BBAG has been subjected to by the CO over a period of four years. BBAG has summarised below the sequence of events pre and post the nationalisation of B&B, not all of these are directly relevant to this appeal but may be of assistance in providing a full picture of the nationalisation and the UK Government's responsibilities in this matter.

The evidence that BBAG has gathered , despite the CO and the tripartite regulatory authorities' refusals to provide the information requested under the FOIA, makes clear that the nationalisation of B&B was deeply flawed, misguided and made in haste for political reasons, it unnecessarily disadvantaged nearly one million share and bond holders, the vast majority of whom were former B&B savers prior to the demutualisation. BBAG believes they were entitled to a far greater level of protection by the Government whose actions have undermined the integrity of B&B as a going concern, the BBAG press release dated the 15/02/2012 (supporting documents) gives more details. The Government provided £61 billion of covert support to Royal Bank of Scotland (RBS) and Halifax Bank of Scotland (HBOS) only days after the B&B nationalisation. This despite those two banks having far weaker balance sheets than B&B but are major employers in the Scottish Labour Party's geographical power base.

BBAG believes the European Union (EU) and the UK Government may have been guilty of gross misfeasance in adopting International Financial Reporting Standards (IFRS) including IAS 39. In our view and also that of many senior figures in the accounting profession it is a catastrophically defective standard which may contravene the law and was one if not the main catalyst in the UK banking crisis. In this context a House of Lords committee chaired by Lord MacGregor and of which Lord Lawson, the former Chancellor, was a member produced a damning report in March 2011. BBAG Update No 14 (supporting documents) provides more details. It appears now that the Bank of England (BoE) accepts the need for change to these standards as reported in the press (supporting documents).

BBAG believes the appointment of the independent valuer Peter Clokey, a partner of PWC, became an exercise in news management by the Government as the valuation and

appeal process suppressed debate during the politically sensitive period between the nationalisation in September 2008 and the General Election in May 2010. B&B Valuation Note (Supporting Documents) offers an alternative view to Mr Clokey's decision. It is important to emphasise that the Government concealed the fact that B&B had been provided with funding by the BoE prior to the nationalisation. It pretended that the valuation would be fair and independent for many months when it knew it would not be because the terms of the nationalisation effectively dictated the valuation would be nil if funding had been supplied. The Government's stated that the existing loans to B&B under the Special Liquidity Scheme (SLS) were not 'ordinary market assistance'. However during this period more than thirty banks had use of the SLS loan facility, furthermore, a statement by a European Commission publication quoting the UK Government is of interest. "The UK authorities accept that the recapitalisation and guarantee scheme 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 that the Commission concludes that the Liquidity Measures do contain state aid elements, the UK Government submits that they form part of a wider package to remedy a serious disturbance in the economy of the United Kingdom which is compatible with the Common Market." Thus, it would appear that the UK Government has specifically argued to the Commission that the SLS is part of the normal workings of the BoE whilst imposing conditions for the independent valuer which stipulate the converse in respect of the B&B nationalisation. BBAG Update 5 (supporting documents).BBAG appealed to the Upper Tribunal (Tax & Chancery Chamber) in respect of the valuation decision. However, despite BBAG's objection, the judge Sir Stephen Oliver QC allowed HMT to withdraw from the proceedings thus enabling it to avoid scrutiny of its role in this matter and the Tribunal confirmed that its remit was limited to the valuation process as specified by the Compensation Order, due to this and the HMT's withdrawal BBAG also withdrew. The ICO states "BBAG asserted that the decision of Peter Clokey was flawed," we do not recognise this statement and are on record as stating that Peter Clokey was extremely cooperative, made every effort to explain his role and was trustworthy. It is the Government's Compensation Order which is flawed.

BBAG believes the HMT has been at fault in the banking crisis together with the BoE and the FSA, a view reinforced by the 'public blame game' that has now developed between them.. There is also strong evidence to suggest close links between Mr Kingman of HMT and Robert Peston the well known journalist whose negative comments in respect of B&B in the press and media caused a run on the savings book and a false market in its shares and bonds. HMT has stated to the Tier-one Information Rights Tribunal that it has no records of any form of communications between Messrs Peston and Kingman, this statement may be true but as Judge Murray Shanks stated 'their absence would suggest any communications between these two individuals would have been off the record.' Various newspaper reports are enclosed in the supporting documentation suggesting a close relationship between them including statements by Sir Richard Branson. BBAG finds it difficult to believe there was no communication between HMT and Mr Peston in respect of B&B, a view shared by Michael Fallon MP a member of the Treasury Select Committee at the time.

To summarise, the B&B auditors signed off the 2007 Report & Accounts, a dividend was paid followed by the completion of a successful rights issue at 55p a share approved by the FSA less than eight weeks before the nationalisation. Furthermore, extensive audit work by KPMG on the rights issue and the interim results announced on the 29/08/08 supported a solvent, well capitalised bank with net assets of £1.00 a share and a Tier one capital ratio of 9.1%, far stronger than RBOS and HBOS who received sixty one billion pounds of covert support only days after the B&B nationalisation. Standing before a well attended city analysts' meeting on the 29/08/08 the message of the chairman Rod Kent and the chief executive Richard Pym was, "The recent fundraising reinforces our position as one of the best capitalised banks in the UK. We are well capable of riding out the current storm." This message was reinforced in a B&B press release on the 25/09/08, a day before the decision to nationalise by Gordon Brown from an ante room of the White House Oval Office in a telephone conversation with Alistair Darling. Furthermore we have a telephone transcript record and other verbal confirmation that officers of the FSA were reassuring members of the public that B&B was a going concern only days before the nationalisation.

In two recent letters to David Cameron (supporting documents) BBAG asked one question, "I would be grateful if you could write to me within one month stating whether you think the decision to nationalise B&B was correct, and consistent, in relation to the decisions taken at or around the same time in respect of other financial institutions." The only response was a reply from HMT which failed to answer the question. The letter to Alistair Darling dated 10/11/08 (supporting documents) asked the key question "Why was B&B nationalised", BBAG did not receive a reply and despite thousands of similar requests from our supporters during the intervening period of over four years the question remains unanswered., nor have we received an explanation as to why its savings book was sold to Santander at a fire sale price. In statements since then the latter has stated several times that this purchase has had an extremely positive effect on its profitability.

The ICO decision notice criticised the CO for failing to respond in a timely manner and failing to provide relevant public authority names to BBAG. On both the primary and secondary requests it concludes in favour of the CO not disclosing the information requested under section 35 of the Act by a narrow margin. It has given particular weight to the information that is still being formulated and/or developed and is still live, the facts in question being relatively recent and the convention of collective responsibility. It also states that the public interest test between between exclusion and disclosure was finely balanced.

It is over four years since the nationalisation of B&B during which time the policies of successive governments has been debated endlessly in the quality, financial and accounting press. The Coalition has restated its determination to continue on its current course several times and despite all the scandals the major banks including RBS and HBOS appear to be on the mend, their share prices certainly suggest this. The passage of time would suggest the public interest debate favours B&B in disclosing information about its nationalisation as Northern Rock has been sold and, based on the accounting trends, there will be a surplus when B&B is finally wound down which will pass to HMT

not the original shareholders. Despite over twenty years of calls for action standards of corporate governance remain poor and the flawed IFRS and IAS 39 discussed above have not been replaced. In paragraph 47 of its notice the ICO states “there is a compelling public interest in disclosing the information covered in the primary request because it would provide a first hand illustration of a key event in the banking crisis of 2008.” Quite! The decision to nationalise was neither proportionate nor equitable and in BBAG’s view is the best example of what went wrong during the banking crisis, also of concern is the future of enterprise and investment in this country on which our future prosperity will depend. The Government should have acted justly, swiftly and equitably to support our interests in line with other investors in other banks and with our position as UK taxpayers who have recapitalised the banks. If a government confiscates the property of its citizens without reason, explanation or fair compensation, particularly when it may be seen as being at fault to some extent by the failure to adequately regulate these companies, then all concepts of democracy and equity are laid aside and, we submit, the role of fair and honest government is devalued. Full disclosure of the information requested would provide the platform for decisive action to improve standards of corporate governance, regulation and government. Surely this together with the passage of time offers compelling reasons in favour of disclosure.

Signed

David Blundell
Chairman BBAG