

BBAG – Bradford & Bingley Action Group

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PO Box 62
Chislehurst
BR7 5YB

Phone: 0113-281-3941
Web: www.bbactiongroup.org
Email: dwwb@btinternet.com

UPPER TRIBUNAL NOTE (on Form FTC3)

To: Upper Tribunal [Tax and Chancery Chamber]

From: DW Blundell, Chairman
Bradford & Bingley Action Group [BBAG]

Dear Sirs,

This referral to you of Mr Peter Clokey's [PC] revised assessment dated the 14/03/11 is on behalf of nearly one million Bradford & Bingley [B&B] share/bond holders. It is based on the following points which offer an account of BBAG's campaign highlighting what many of our supporters believe was the illegitimate confiscation of the company they owned. It is accepted that many of the issues we have raised do not fall within PC's terms of reference; however his courtesy and cooperation within the limits of his remit, together with that of his colleague Mr James Worsnip, have been appreciated.

[1] Appendix 1 attached is BBAG's appeal against PC's assessment dated the 8/08/10 which refers to a letter dated the 12/02/10 from our solicitor Charles Fussell, also attached under Appendix 2. In Section 3 of that letter concerns were expressed regarding the total failure of the previous government and the tripartite regulatory authorities to respond to thousands of requests for details of the nationalisation from our supporters, pursuant to the Freedom of Information Act 2000 [FOI]. The only responses have been a mixture of disingenuous comment, obfuscation, deliberate deception and failure to respond at all. We understand that restrictions have also been imposed in the Compensation Order on the extent to which information obtained for the purpose of the assessment could be disclosed. This places BBAG at a significant disadvantage in that any assessment of the valuation becomes particularly difficult and prevents it from properly exercising its rights of appeal.

[2] Appendix 3 attached is the BBAG update No 10 and my letter to David Cameron dated the 8/03/11. Paragraph 2 of these two communications highlight the failure by the previous government to provide details of the sequence of events pre and post the nationalisation of B&B. The Cabinet Office was asked for full details of the nationalisation of B&B, the response was 'WE HAVE NO FILES WHATSOEVER'. In our view this statement conflicts directly with page 47 of Gordon Brown's book 'Beyond the Crash' in which he admits making the decision to nationalise B&B in a telephone call from the White House, Washington, USA on the 26/09/08.

[3] We continue to contest the view that the Special Liquidity Scheme [SLS] loans were not 'ordinary market assistance', this is supported by the Association of British Insurers [ABI] in its letter to PC dated the 27/08/10 stating the assumption that assistance to B&B would have been withdrawn was unsafe. Appendix 4, BBAG Update No5, dated the 13/08/10 quotes statements in a European Commission [EC] publication relating to it giving clearance to State aid by the UK Government, as follows:-

"The UK authorities accept that the recapitalisation scheme and guarantee scheme contain State aid elements. In their view the extension of the SLS is part of the essential role of the Bank of England [BoE] and therefore not a State aid. In the event that the Commission concludes that the Liquidity Measures do contain aid elements, the UK government submits 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"

It is apparent from this that the previous government has specifically argued to the EC that the SLS is part of the normal working of the BoE in order to justify the £61 billion support operation of the Royal Bank of Scotland and Halifax, Bank of Scotland some eight days after the nationalisation of B&B. Furthermore Lord Myners statement in the House of Lords speaking on behalf of the Government reinforces that view, to quote: "By contrast, no such guarantee arrangements had been provided to B&B and the BoE had provided no loan facilities to it that were not open to all qualifying institutions. As a result it is right to impose no further assumptions beyond the mandatory assumptions under the Banking [Special Provisions] Act 2008." Surely this suggests that the Government considered the SLS loans were ordinary market assistance whilst PC has considered them to be otherwise.

[4] Sections 6.6 to 6.12 of our solicitor's initial submission to PC highlight the activities of Robert Peston [RP] of the BBC. It is apparent from RP's comments and blog postings that he was in possession of privileged information concerning the Treasury's proposals for B&B. This is the view of several members of Parliament including Michael Fallon MP and suggests considerable manipulation of the media in the weeks prior to the company's nationalisation, thus creating a false market in its shares and bonds.

[5] The claims made by the previous government in justifying the nationalisation of B&B conflict with contemporaneous statements by the bank's senior management. Six weeks before the nationalisation of B&B a rights issue authorised by the Financial Services Authority [FSA] was successfully completed. We have telephone transcripts some seven working days before nationalisation of FSA officers reassuring the public that B&B was authorised and solvent. On the 25/09/08 the bank issued a press release agreed with the FSA and the BoE stating that it was well capitalised and fit for purpose. On the 18/11/08 Rod Kent, former chairman of B&B, stated in response to the Treasury Select Committee chairman John McFall MP's accusation that B&B was bust; "That is not correct. At the time we were transferred into public ownership we were both solvent and well above our regulatory minimum on capital, we were still well capitalised". Furthermore extensive audit work had been completed by KPMG just weeks prior to nationalisation in relation to the rights issue and the interim results announced on the 29/08/08 giving detailed information on funding draw downs, arrears, net interest margins etc which supported a solvent, well capitalised bank structure. The principal point of this is that the accounts were signed off as a 'going concern' without qualification and the proforma figures stated net assets of over £1.00 per share and a tier 1 capital ratio of over 9.0%, one of the highest in Europe. It is apparent to BBAG that either the directors and auditors, with the FSA's agreement from a regulatory body perspective, are telling the truth or they were complicit in a deliberate deception. Alternatively the Government acted illegally and abused their powers in nationalising a fully funded and working bank.

[6] BBAG accepts that PC's terms of reference offered him little alternative other than 'an administration' valuation. However points made in the ABI's letter dated the 27/08/10 are relevant: "one of the key issues is the failure to take into consideration the uplift to funds from the standard mark to market approach. The methodology adopted applies a haircut to the company assets but fails to consider an uplift to shareholder equity by applying a similar haircut to the company's liabilities, thus reflecting mark to market rather than carrying value." In sections 7,8 &10 of paragraph 8 of the revised Assessment Notice discusses the issue of other valuation methods. Our understanding is that he has chosen to value the business as a private unlisted company for which no market value was available, i.e. a trade value determined by looking at all the facts and what a willing buyer might pay. This is an exceptional way to approach such a valuation when there was a market price of 20p on the preceding Friday before nationalisation, he goes on to say that the share price on the 26/09/08 does not assist him in determining the value of the shares. Surely this is erroneous because Administration could and did not take place before the valuation date/time and neither were the shares suspended. The facts are being ignored as there was still, in effect, an open market price applicable. In BBAG's view it is wrong to ignore the market value entirely as there are precedents that suggest that a market value over a reasonable period of time is more appropriate. It is inappropriate to value a business solely on a single point in time as the seller will not be willing to sell if the price is distorted by short term economic and market circumstances. Therefore the willing buyer/seller approach requires a more measured basis over a longer term horizon.

Regardless of the result of this referral we will continue to demand an independent inquiry into the previous government and the tripartite regulatory authorities' involvement in this matter, your support in achieving this objective would be appreciated. BBAG believes the decision , manner and process of the nationalisation of B&B was deeply flawed, misguided and unnecessarily disadvantaged nearly one million private investors.

Yours Faithfully

David Blundell
Chairman BBAG