

# BBAG – Bradford & Bingley Action Group

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## REPRESENTATION CONCERNING THE ASSESSMENT NOTICE REGARDING COMPENSATION TO BRADFORD & BINGLEY SHAREHOLDERS

Dear Mr Clokey,

Thank you for your letter dated the 4/08/10 in response to mine of the 12/07/10. As chairman of the Bradford & Bingley Action Group (BBAG), which was formed in November 2008 to protect the interests of the B&B share and bondholders, I wish to appeal against your nil valuation of the B&B shares.

On the 12/02/10 our solicitor Charles Fussell wrote to you making the following key points: paragraph 1.10 of his letter states ' The Compensation Amendment Order inserts a new paragraph 8A which provides that the court may, on an application by the valuer, make an order requiring the provision of information that is reasonably required for the purpose of assessing the amount of compensation payable by the Treasury. Paragraph 8C provides that any such information shall not be disclosed by the valuer to any third party without the consent of the person from whom the information was obtained.'

Paragraph 2.1 states: "the sequence of events from the closing of the rights issue on the 15/08/08, which was approved by the Treasury (HMT) and the Financial Service Authority (FSA), to the transfer order on the 29/09/10 was well documented. On the 25/09/08 B&B issued a press release stating that '*it was well capitalised and fit for purpose going forward*' and before the Treasury Select Committee on 18/11/08, Richard Pym, B&B's chief executive confirmed that this release was approved by the FSA and the Bank of England (BoE). Statements made from the 29/09/08 by HMT, the other Tripartite Authorities and repeated in Parliament by the Chancellor, Lord Myners and the Economic Secretary Mr Ian Pearson directly contradict the B&B statements, furthermore the FSA's conclusion about B&B's capital and liquidity resources on the morning of the 27/09/08 flies in the face of public statements made by the management of the bank on the morning of the 25/09/08, two days before and just six weeks after the successful completion of a rights issue approved by the FSA."

In section 3 of the letter concerns were expressed regarding the total failure of the previous government and the tripartite regulatory authorities to respond to thousands of requests from our supporters, pursuant to the Freedom of Information Act 2000, for information and documentation surrounding the nationalisation of B&B. The only response from the Prime Minister downwards was a mixture of disingenuous comment, obfuscation and failure to respond at all.

It was also made clear that your ability to obtain information relevant to the valuation exercise, which would not be made available to BBAG, places us at a significant disadvantage in that the assessment of your valuation and the exercise of rights of appeal becomes particularly difficult.

Your letter of the 4/08/10 makes clear you had regard to the restrictions imposed by the Compensation Order on the extent to which information obtained for the purpose of the assessment of compensation could be disclosed. My understanding of this is that you are unable to provide the information BBAG requires to make a detailed appeal due to conditions laid down by the previous government. Consequently, BBAG wishes to exercise its right to appeal on the following grounds:-

[1] You disclosed in the Assessment Notice that B&B received substantial funding under the Special Liquidity Scheme (SLS) which we were not previously aware of and hence you have invoked a provision of the Compensation Order which we did not think was relevant when first published. The 'in administration' assumption, 'the instant withdrawal of SLS funds' and the suggestion that the board was about to put B&B into administration anyway, are key factors. Were these factors reasonable and what evidence do you have in respect of the latter?

[2] We contest the assumption that the SLS loans were not 'ordinary market assistance' when more than 30 banks had and continue to use that facility, it has in effect become part of the normal operations of the BoE to maintain adequate market liquidity. Although it was originally described as a "temporary measure" even though it had a duration of 3 years, in early 2009 it was replaced by other similar measures to improve liquidity in the money markets – specifically the Quantitative Easing programme which included an Asset Purchase Facility and Secured Commercial Paper Facility which provided similar facilities to the SLS. These measures have continued to underpin the operation of the money markets and therefore have in practice become a normal part of the operations of the Bank of England since 2008.

[3] The company's valuation being based on all Government funding being withdrawn, irrespective of whether it was or would have been if the company had not been nationalised, means, in our view, you have been forced into the conclusion that B&B should be valued on the basis that it is in administration. This almost always means a nil value for ordinary shareholders as applies to almost all administrations. **We specifically therefore challenge the decision that the the company should be valued as in administration.**

[4] It would appear that other simple ways of the company avoiding administration were not fully explored. For example, a government statement guaranteeing savers deposits would have prevented a run on the bank and avoided the nationalisation of B&B. There were indeed a number of options available to ensure B&B did not go into administration if nationalisation had not taken place and in our view one or more of those options should have been put in place to avoid such an administration (which would have seriously damaged the interests of retail depositors).

[5] You suggest in the Assessment Notice that if the company had not been nationalised and no other decisions had been taken by the Government, that the directors were intending to put the company into administration on the morning of Monday the 29<sup>th</sup> September. We would like to see the evidence such as board minutes that substantiate this claim or other documents that might confirm that there were no other options for the company other than administration. **We do not accept that administration was inevitable.** Although the amendment to the Compensation Order mentioned above may give you the right to restrict disclosure of some information, we see no reason why this information which is key to your claims to value the business as "in administration" should not be disclosed.

[6] The subsequent sale of the savings book to Santander destroyed B&B as a viable business, the only bank that was treated in this way. Since then Santander has publicly boasted of the significant profits generated by that purchase and B&B has reported good profits as well, yet no consideration of this issue has been incorporated into your valuation.

In BBAG's view the artificial assumptions described above are in breach of the European Convention on Human Rights. As you are probably aware the shareholders in Northern Rock have challenged the imposition of such artificial assumptions and have taken their case to the European Court on Human Rights [ECHR]. They do not accept that the Government can impose artificial preconditions on an independent valuer such that the outcome of the valuation is predetermined. Why were you not allowed to consider the facts alone? In addition they have challenged the suggestion that the Government should obtain all the equity value of the business by the temporary provision of liquidity, when the company was and still is reliant on ordinary shareholders' equity as present in the company at the time of nationalisation.

For over nineteen months the previous government steadfastly refused to provide any details of the sequence of events pre and post the nationalisation of B&B. Furthermore it would appear the terms of reference given in the Compensation Order ensure that we are denied access to the information we need in order to pursue our legitimate claims whether it be against the government, the present company or the B&B board prior to the 29/09/08.

As a matter of record and regardless of the result of our appeal we will continue to demand an independent inquiry into the previous government and tripartite regulatory authorities' involvement in the sequence of events pre and post nationalisation. BBAG believes that the decision, manner and process of the nationalisation of B&B by the previous government was deeply flawed, misguided and unnecessarily disadvantaged nearly one million private investors.

Yours Sincerely

David Blundell  
BBAG Chairman