



Appeal number: BB0001/2011 ONWARDS

**IN THE UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)
FINANCIAL SERVICES**

BRADFORD & BINGLEY APPLICANTS

Applicants

- and -

**PETER CLOKEY
(As the Independent Valuer for the
Bradford & Bingley plc Compensation Scheme)**

Respondent

TRIBUNAL: SIR STEPHEN OLIVER QC

INTRODUCTION AND EXPLANATORY NOTES

Please read this document carefully. It affects the pursuit of references to the Upper Tribunal (“**References**”) by persons (“**Applicants**”) who have submitted reference notices (“**Notices**”) challenging the determination of the value of shares and subscription rights in Bradford & Bingley (the “**Valuation**”) by Peter Clokey as independent valuer (the “**Valuer**”).

A directions hearing took place on 15 November 2011. The hearing was attended by the Valuer and one Applicant. The hearing had been fixed for the giving of case management directions leading to a substantive determination, but by the time of the hearing the one Applicant who had previously been understood to intend to participate actively in the proceedings (Mr David Blundell of the Bradford & Bingley Action Group) had withdrawn his Reference. In the course of the hearing two matters were identified which the Tribunal now needs to address and which now call for the formal

Directions in this document. The first (covered in heading A below) is to determine which references are arguably within and which are outside the jurisdiction of the Tribunal. By “jurisdiction” is meant the authority given by Parliament to this Tribunal by the Banking (Special Provisions) Act 2008.

The second (see heading B below) is how the Tribunal is to deal fairly and justly with the References that do fall within its jurisdiction. The withdrawal by Mr Blundell of the Bradford & Bingley Action Group as an active participant leaves the Tribunal, as things appear at present, without anyone who is prepared actively to challenge the reasonableness of the Valuer’s valuation.

A. Issues that the Tribunal considers to be outside the scope of its jurisdiction

(i) The Tribunal has received more than 700 References challenging the Valuation. These raise a wide variety of issues, many of which are, in the Tribunal’s opinion, outside the scope of its jurisdiction. This is because the Tribunal’s jurisdiction is limited to the consideration of challenges to the reasonableness, as mentioned above, of the Valuation. The Tribunal’s jurisdiction does not include, for example, complaints about the circumstances surrounding the rights issue by which Bradford & Bingley raised funds from investors in August 2008 or complaints that the Valuer’s statutory terms of reference were unfair to shareholders.

(ii) The Tribunal has previously directed (by case management directions issued on 31 August 2011) that the only arguably admissible issues (the “**Admissible Issues**”) are as follows:

Complaints Category 1: Complaints about the Valuer’s interpretation and application of the statutory assumptions contained in section 5(4) of the Banking (Special Provisions) Act 2008

Complaints Category 2: Complaints about the Valuer’s determination that if the Transfer Order¹ had not been made Bradford & Bingley would have applied to court for an administration order before the Transfer Time² and an administration order would have been made in respect of Bradford & Bingley either before the Transfer Time or shortly thereafter

Complaints Category 3: Complaints about the Valuer’s determination that no residual surplus would have been available from the administration of Bradford & Bingley for distribution to shareholders

¹ SI 2008/2546

² 8am on 29th September 2008

Complaints Category 4: Complaints about how the Valuer has addressed in the Valuation the sale of the Bradford & Bingley deposit book and branch network to Abbey National plc

Complaints Category 5: Other complaints about the Valuer's valuation approach and methodology

(iii) For convenience, the term “**Non-Admissible Issues**” is used to refer to all issues other than Admissible Issues.

(iv) The Tribunal has concluded that the appropriate course may be to strike out³ all References or parts of References which raise Non-Admissible Issues. However, before deciding to take this step, the Tribunal wishes (and is legally required) to give affected Applicants an opportunity to make representations in relation to the proposed striking out.

(v) Accordingly, if any Applicant has sent in a Notice or Reply⁴ containing Non-Admissible Issues and wishes the Tribunal to consider arguments why his or her Reference should not be struck out in respect of any such issues, he or she must write to the Tribunal identifying the Non-Admissible Issues which he or she contends that the Tribunal should not strike out, and setting out the reasons why he or she contends that he or she should be permitted to pursue those Non-Admissible Issues. The Tribunal will consider the reasons given and decide whether to allow those issues to be pursued. The Tribunal will probably make this decision without a hearing, but if the Tribunal considers that a hearing is necessary it will notify the Valuer and the Applicant concerned.

(vi) Any Applicant writing a letter arguing against the striking out of Non-Admissible Issues should also (as explained below) indicate an intention to participate actively in the proceedings or explain why he or she contends that his or her Reference should not be struck out even though he or she does not intend to participate actively in the proceedings.

³ The Tribunal's power to strike out References containing issues that it considers to be outside its jurisdiction is contained in paragraph 8 of The Tribunal Procedure (Upper Tribunal) Rules 2008 (“**the Rules**”), as amended, which can be downloaded at the following url:

<http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/general/consolidated-ut-rules-2008-si-no-2698.pdf>.

⁴ “**Reply**” denotes a document sent to the Tribunal by way of formal response to the Valuer's Statement of Case

B. Apparent lack of Applicants willing to participate actively in the proceedings

(i) The Tribunal is not currently aware of any Applicant who has sent in a Notice or Reply containing Admissible Issues and intends to participate actively in the proceedings.

(ii) The Tribunal has concluded that the appropriate course may be to strike out all References or parts of References raising Admissible Issues (or Non-Admissible Issues that the Tribunal is persuaded not to strike out) which are not actively pursued by at least one Applicant. This is on the basis (among others) that the Tribunal can only use its resources effectively and deal with References fairly and justly where it receives the active participation of Applicants. However, before deciding to take this step, the Tribunal wishes (and is legally required) to give affected Applicants an opportunity to make representations in relation to the proposed striking out.

(iii) Accordingly, if any Applicant does not intend to participate actively in the proceedings but objects to his or her Reference being struck out on this ground, he or she should write to the Tribunal by 13th January 2012 setting out the reasons why he or she contends that his or her Reference should not be struck out. The Tribunal will consider the reasons given and decide whether to strike out the Reference. The Tribunal will probably make this decision without a hearing, but if the Tribunal considers that a hearing is necessary it will notify the Valuer and the Applicant concerned.

(iv) In addition, the Tribunal considers that it is appropriate for Applicants to be given a further opportunity to indicate whether they wish to participate actively in the proceedings, not least because some Applicants may have considered that it was unnecessary for them to participate actively given the apparent active participation of Mr Blundell. Consequently, these Directions require any Applicant intending to participate actively in the proceedings to write to the Tribunal by 13th January 2012 expressing that intention, and identifying by reference to his or her Notice or Reply and if possible the Valuer's Statement of case, the Admissible Issue(s) in relation to which the Applicant will participate actively. Active participation will mean, in this context, following a directions timetable for the production of any documents and any factual and/or expert evidence relied upon by the Applicants, and making submissions orally and/or in writing at the substantive hearing.

(v) If the Tribunal receives notice that any Admissible Issue is to be actively pursued (and/or if the Tribunal decides in the light of any submissions received that it should not make the strike out orders that it is considering making) then the Tribunal will fix a hearing for the making of directions for the determination of the issues which remain live.

DIRECTIONS

Defined terms

1. In these Directions, the terms “References”, “Applicants”, “Notice”, “Reply”, “Valuation”, “Valuer”, “Admissible Issues”, “Non-Admissible Issues” and “The Rules” have the meanings explained in the explanatory text and footnotes 1 and 4 above.

Strike out of References or parts of References containing Non-Admissible Issues

2. The Tribunal is considering whether to strike out References if and to the extent that they contain Non-Admissible Issues. The Tribunal considers that it may have the jurisdiction (and obligation) to take this step under paragraph 8(2) of the Rules. However, before deciding whether to strike out a Reference or part of a Reference on this ground, the Tribunal wishes and is required by paragraph 8(4) of the Rules to give affected Applicants an opportunity to make representations in relation to the proposed striking out. Applicants who object to their References being struck out in whole or part on this basis are accordingly invited to write to the Tribunal by 13th January 2012 setting out the basis of their objection, and identifying by reference to his or her Notice or Reply the Non-Admissible Issues which the Applicant contends that the Tribunal should not strike out.
3. The Tribunal will consider any objections received, together with any submissions made by the Valuer in relation to such objections. If the Tribunal considers that a hearing is required to decide whether to strike out References on this ground, a hearing will be fixed and notice of the date of the hearing will be provided to the Valuer and to Applicants who have written with objections. Otherwise, a decision will be made without a hearing.

Strike out of References or parts of References containing issues that are not actively pursued

4. The Tribunal is considering whether to strike out References or parts of References containing issues that are not pursued by at least one Applicant who has notified the Tribunal of an intention to participate actively in the proceedings.
5. For the purpose of these Directions, an intention to “**participate actively in the proceedings**” means an intention to comply with directions for the production of any documents and expert or factual evidence relied upon by the Applicant, and to make submissions orally

and/or in writing at the substantive hearing of the Applicant's Reference.

6. It is directed that any Applicant who wishes to participate actively in the proceedings must write to the Tribunal by 13th January 2012 expressing this intention, and identifying by reference to his or her Notice or Reply and if possible the Valuer's Statement of case, the Admissible Issue(s) (and/or the Non-Admissible Issues which the Applicant contends in accordance with paragraph 2 above should not be struck out) in relation to which the Applicant intends to participate actively.
7. The Tribunal considers that it may have (and be appropriate to exercise) jurisdiction under paragraph 8(3) of the Rules to strike out References or parts of References containing issues that are not pursued by at least one Applicant who has notified the Tribunal of an intention to participate actively in the proceedings. However, before deciding whether to strike out a Reference or part of a Reference on this ground, the Tribunal wishes and is required by paragraph 8(4) of the Rules to give affected Applicants an opportunity to make representations in relation to the proposed striking out. Applicants who object to their References being struck out in whole or part on this basis are accordingly invited to write to the Tribunal by 13th January 2012 setting out the basis of their objection(s).
8. The Tribunal will consider any objections received, together with any submissions made by the Valuer in relation to such objections. If the Tribunal considers that a hearing is required to decide whether to strike out References on this ground, a hearing will be fixed and notice of the date of the hearing will be provided to the Valuer and to Applicants who have written with objections. Otherwise, a decision will be made without a hearing.

Further Directions Regarding Continuing References

9. As regards References or parts of References that are not struck out pursuant to the procedure set out above, the Tribunal will fix a hearing for the making of directions for the determination of the issues raised by such References or parts of References.

Signed: SIR STEPHEN OLIVER QC
JUDGE OF THE UPPER TRIBUNAL

Release Date: 24 November 2011 Issued Date:

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