

To Bradford & Bingley Shareholders

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## **Bradford & Bingley Action Group – Meeting Report**

Below is a report on the Meeting held at the Ramada Hotel, Bingley on the 9<sup>th</sup> March 2009. Most of this report is taken from notes made by Charles Fussell who is thanked for his efforts in that regard.

The meeting was attended by about 200 people, mainly from the local area. There was good coverage by the local media although national coverage was somewhat limited due to other important financial news that arose over that weekend.

### **INTRODUCTION**

- David Blundell (“DB”), the Chairman of the B & B Shareholders Action Group, introduced the various speakers to the meeting and explained the proposed format.
- DB added that UKSA had invited a Government Minister to attend the meeting and that whilst a reply was eventually received from Lord Myners, he nevertheless declined to attend. The courtesy of a reply was acknowledged.

### **LEON KAYE**

- Leon Kaye (“LK”), the senior partner of Leon Kaye Solicitors, explained that he was proposing to bring an action on behalf of the shareholders who had purchased shares in the rights issue in the summer of 2008 (the “Rights Issue”). LK said he had extensive experience of bringing class actions.
- LK said he had obtained Counsel’s advice on the claim, from Michael Lazarus of 3 Verulam Buildings, which was positive. LK has sent a seven page letter of claim to the former directors and the company, which was drafted by Counsel. Under the General Pre-Action Protocol he must give the proposed defendants 3 months in which to respond before he can start proceedings.

- LK briefly outlined the basis of the claim as being misrepresentations in the prospectus and the supplementary prospectus prepared by B & B for the Rights Issue. In essence, LK alleges that the board failed to address the impact of the credit rating downgrades which occurred during the rights issue process. Had it done so, potential investors, who were mostly “unsophisticated investors”, would have been better informed as to the financial state of the company and would not have invested in the business.
- LK also explained the mechanics of the action and how he had so far attracted some 5,000 supporters. He was requesting an advanced payment of between £15 and £150 per shareholder dependent upon the number of shares held. LK said he believed this payment was fair and confirmed he would not be seeking any further payments from shareholders. He added that he would be seeking to insure the risk of losing the claim and having to pay the other side’s costs by purchasing after the event (“ATE”) insurance.
- LK added that he will also be seeking the assistance of a third party litigation funder to pay for the remaining legal costs of bringing the action.

#### **ROGER LAWSON**

- Roger Lawson (“RL”), UKSA’s Communications Director, explained how UKSA operates (i.e. a not for profit organisation) and what UKSA does for private shareholders in addition to running campaigns. He said that the B & B action group had been set up at the end of last year to represent the former shareholders of B & B’s interests as a whole, and is run by a committee of those shareholders. He explained his role as the Communications Director.
- He also covered some of the other campaigns that UKSA has run including its efforts for the shareholders in Northern Rock, where there were many similar issues, although there were also substantial differences.
- RL explained that on 15th December 2008 the Government passed the Bradford & Bingley Plc Compensation Order which provides for the appointment of an independent valuer who is required to value B & B “immediately” prior to nationalisation. RL also explained that unlike the Northern Rock Compensation Order, the B & B Compensation Order did not require the valuer to assume that B & B was unable to continue as a going concern.

- RL made it clear that the B & B shares were now gone and shareholders would never be getting their shares back, only compensation (if any).
- RL said that whilst a valuer had not yet been appointed in respect of B & B he did not believe that the valuer would await the outcome of the Northern Rock challenge as, amongst other things, the Northern Rock valuer (from BDO Stoy Hayward) had decided to press on with the valuation notwithstanding the court case.
- RL stated that the most important task going forward was to prepare detailed submissions for the valuer to ensure that the maximum possible value could be achieved. RL explained that he had some experience of valuing companies and the process was very complex and would require a detailed examination of a number of factors.
- RL explained that bringing legal action against the FSA (for example, for defective “regulation”) was very difficult owing to its statutory immunity under FSMA 2000, and that other legal actions such as pursuing the former directors was also difficult because of the limitations of the English legal system and company law.
- He explained what had been to date by the B & B Committee, and what was planned for the future. A priority for the short term was clearly to build up our supporters and funding base. He also made some suggestions about what shareholders can do to help. The details of his presentation are present in this document:  
[www.uksa.org.uk/UKSA\\_Bradford&Bingley.pdf](http://www.uksa.org.uk/UKSA_Bradford&Bingley.pdf)

#### **PHILIP DAVIES M.P.**

- Philip Davies (“PD”) explained that he was the MP for Shipley and that many former employees and shareholders are situated within his constituency.
- PD said he believed that B & B was nationalised for political reasons and it appears that it was becoming an ever increasing source of bad news for Gordon Brown so he ordered it to be dispatched.
- PD said that in his view, when it was taken into public ownership, B & B was still a viable business. He added that he had been assured by a number of senior employees of the business that it could undoubtedly have continued as a going concern.

- PD also said that in his view, either the Treasury, the FSA or the Bank of England leaked to the press that the UK authorities were trying to engineer a takeover of B & B in the weeks before nationalisation. This he said caused one of the credit rating agencies to revisit its credit rating of B & B and downgrade it which caused the bank's share price to collapse and caused concerned investors to withdraw their deposits.
- PD raised a warning over the proposed action by LK in respect of the Rights Issue as the case will require LK to argue that B & B was a "busted flush" and that will be potentially damaging for the one million odd shareholders as a whole. PD said it was very important that each group doesn't end up arguing against each other and then lose both cases.
- PD re-iterated the point that in his view B & B was in a better position than many rival banks and should have received the benefit of Government support following the comprehensive bailout package announced on 8th October.
- In PD's view, at the time of nationalisation, B & B was worth between 50p and 80p per share. He explained that this was calculated as follows:
  - £1.5 billion worth of equity;
  - plus £612 million from the sale of the retail business to Santander;
  - less approximately £1.1 billion for anticipated losses on the mortgage book;
  - thus leaving just over £1 billion to be distributed amongst the approximately (post-rights issue) 1.5 billion shares in circulation.
- PD made the general point that B & B was significantly healthier than Northern Rock.
- PD also discussed the issue of the sale process conducted by the Treasury and the price ultimately achieved for the retail business from the transfer to Santander. In particular, PD noted the comments made by Ian Pearson, the Economic Secretary to the Treasury, concerning how the Government assessed the various bids made for B & B in the House of Commons debate on the subject of the B & B Compensation Order.
- In answer to that question, the Minister confirmed that the Treasury contacted a number of banks and building societies and assessed the bids received "on the basis of how far they met our objectives of: -

- Financial stability;
- Protecting depositors; and
- Protecting taxpayers.”
- PD stated that it is conspicuous how the Government’s objectives did not involve value for the shareholders, which in an ordinary sale would be the paramount consideration. PD hinted that the Santander offer may not have been the highest bid for the B & B retail business. In particular, it is rumoured that HBOS may have submitted a higher bid.
- PD also noted that Ian Pearson confirmed to him during the debate that the B & B business plan, which is currently being prepared by UKFI, will be published to the public in due course in the early part of 2009. This will be awaited with keen interest and PD has laid down a request for a copy to be supplied to him immediately it is published.

#### **DAVID BLUNDELL**

- DB outlined the steps that had been taken by the B & B action group to date. This included a number of requests for documents and information under the Freedom of Information Act 2000. The results were as follows: -
  - The Cabinet Office - No files whatsoever;
  - The Bank of England - Too expensive to respond;
  - The Treasury - Too expensive to respond;
  - The FSA - No response.
- DB said that as a result of the lack of response the UKSA had made a formal complaint to Richard Alderman, the head of the Serious Fraud Office (“SFO”) and that UKSA were urging individual shareholders to write to the SFO to ask it to investigate the circumstances leading up to nationalisation and especially the alleged collusion of the then board of directors with the Tripartite Authorities. The SFO have acknowledged UKSA’s letter.
- DB also said that several letters had been written to the Chancellor of the Exchequer asking for a full explanation of the nationalisation process. The only response has been a short letter from Lord Myners, outlined in UKSA’s B & B update No 10.

- DB made reference to a transcript of a conversation between a B & B shareholder and a representative of the FSA on 18th September 2008. DB read out from the transcript which confirms that the shareholder was re-assured by the FSA that B & B “remains authorised and regulated by the FSA” and that there are “no issues as far as the FSA is concerned with its capital – having sufficient capital to be authorised....”
- DB reiterated PD’s comments that the nationalisation of B & B was in his view politically motivated and that the timing – the start of the Conservative party conference – was no coincidence. They wanted to avoid any risk of possible queues outside B & B branches in the next few days.
- DB explained that he had spoken to a great many shareholders during the course of the campaign and there was an overwhelming sense of outrage at the way the B & B shareholders had been treated. DB mentioned that overall there was a “strong sense of outrage and lack of trust” by the shareholders over the process. He added that the process had been described by several former shareholders as “legalised theft” and “criminal deception”.
- DB concluded his presentation by saying that whilst UKSA could not guarantee success they would never give up the fight.

#### QUESTIONS/COMMENTS FROM THE FLOOR

- A number of attendees raised concerns over the potential conflict between Leon Kaye’s proposed claim and the interests of shareholders as a whole.
- Tomás Carruthers (“TC”), in particular, made the following points: -
  - LK’s action represents only 11 % of the total shareholders of B & B and disregards and disadvantages, perhaps beyond repair the remaining 89%;
  - LK’s action will inevitably require his Counsel to argue that B & B was a worthless operation at the date of the rights issue, and therefore logically when it was taken into public ownership on 29th September 2008, which will be very damaging to shareholders as a whole;
  - TC was firmly of the view that B & B was in fact not a “busted flush” but very much a going concern. He said that whilst no-one at the bank was having any fun, they were nevertheless a going concern. In this regard, TC pointed out that he had obtained extensive disclosures from the Treasury and the FSA under the

Freedom of Information Act, which demonstrates clearly that B & B never had its permission under FSMA to act as a deposit taker removed by the FSA;

- Consequently a number of statements made by representatives of the Government in both houses of Parliament and elsewhere were misleading;
- TC concluded by saying that the only way forward was for the shareholders to unite and attack the nationalisation process itself and uncover the wrongdoing so that proper compensation can be achieved for all.
- LK responded to TC's speech by saying that he did not see any conflict between the two groups of shareholders as they are dealing with totally separate issues. After some debate on this issue with contrary views from the floor, RL said the B & B Shareholders committee would consider this issue. **(Postscript: this matter has been considered and we do not believe there is likely to be any practical conflict between the legal action on the rights issue and the representation of the interests of other shareholders to the independent valuer or to anyone else. Those people who subscribed for the rights issue clearly have grounds for complaint and will wish to pursue that matter in any case).**
- An important comment was also raised by an individual representing the Perpetual Subordinated Bondholders of B & B and how the Government has placed itself above the bondholders in the ranking in the event of a shortfall. It was stated in particular how no satisfactory response had yet been received from the Government on the issue.
- Other concerns raised included the timing of the compensation process, where shareholders could obtain information from and whether B & B was ever going to be allowed to trade again.

#### CONCLUDING REMARKS

- DB concluded the meeting by thanking everyone for attending and for contributing to what is a very important and emotive issue. He re-iterated that whilst the UKSA could not guarantee success on behalf of the shareholders he vowed never to give up the fight.

Roger Lawson  
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