Dear Mr Clokey,

Bradford and Bingley plc

I am writing to you to request that you reconsider your determination contained in your Assessment Notice dated 5 July 2010 pursuant to para.11 of the Bradford & Bingley plc Compensation Scheme Order 2008. As you know from our previous correspondence, I am the Chairman of the Bradford & Bingley Shareholder Action Group ("BBSAG") as well as a shareholder.

Procedure for Reconsideration of any decisions relating the assessment of compensation

1. By para.9 of the Bradford & Bingley plc Compensation Scheme Order 2008, you were given the power to make such rules as to the procedure of any assessment (including the procedure for the reconsideration of any decisions relating to the assessment of compensation) as you consider appropriate.

2. Before setting out the reasons for my request for reconsideration, I would like to express my disappointment, which is shared by other committee members of the BBSAG that you have chosen to adopt a procedure which is plainly unfair and prejudicial to shareholders. In contrast to the time it has taken you to complete your Assessment Notice (in excess of one year) together with the fact that you have the resources of PricewaterhouseCoopers LLP at your disposal and have received a fee of nearly £5 million for your services, you have decided that the shareholders who have been dispossessed of their assets with (assuming your Assessment Notice stands in its current form) no compensation, should have less than 8 weeks to consider your Assessment Notice and make a request for reconsideration giving not only reasons but also evidence. Unlike yourself they do not have the benefit of public funding for that process, and the period you have chosen to give them coincides with the holiday season.

3. In addition to the time constraint you imposed, you have declined to provide information sought even where you considered the documents containing the same to be of such significance to your Assessment Notice that you expressly refer to and (in effect) quote from those documents in the Assessment (see my letters of 1 and 5 and 8 August 2010). I note from your responses to my correspondence that you do not state that you have sought from the institutions concerned the reasons for their refusing to consent to disclose the documents I sought.

4. I refer you to "*Article 8C of The Bradford & Bingley Compensation Scheme Order 2009"* It is plain from the language of that provision (being in fact paragraph 8C of the 2008 Order) that where you are asked to supply specified information as you were by myself, the onus is upon you to seek consent from the party from whom you obtained it, and if different the person to whom it relates. That is obviously the case as only you know who those persons are. Furthermore it would be consistent with the scheme of your appointment, which provides

for shareholders to require a reconsideration if they are provided with at least your co-operation, in seeking to make that process effective. It is a complete mystery why you should set up a procedure requiring shareholders to submit grounds and evidence for you to reconsider and at the same time state as you did in your letter to me of 6 August 2010 that you do not believe that giving access to key documents on which such submission would necessary be founded, is necessary for the purposes of exercising the functions of your office in accordance with paragraph 8D.

5. The clear impression that emerges from your actions as far as shareholders are concerned is that the reconsideration process that you have determined pays no more than lip-service to the terms of your appointment as evidenced by both the time scale - where you denied us sufficient time to make full submissions based on evidence and also the absence of your co-operation in obtaining consent to disclose material which could make that process a proper one.

6. The sense of injustice at the present position with regard to the failure to allow shareholders a properly informed opportunity to participate in the reconsideration process is not only held widely but at a high level. If you are not already aware of John Thurso MP's letter dated 8 July 2010 to the Financial Secretary to the Treasury then I attach to this document as **Appendix (1)**. Mr Thurso MP is a senior member of the Treasury Select Committee, and, whilst his entire letter merits your careful attention , I would specifically point out that he commented:

   "So far they [Bradford and Bingley shareholders] have been unable to receive the data meaning that Mr Clokey finds himself in the unique position of possessing data on which to make the judgment which he will not make available to anyone else.This surely must be an injustice".

7. You still have the opportunity to correct that position if you see fit, by extending the period and using your best efforts to obtain the necessary consents. That is my first request.

Grounds for Reconsideration

(1) Special Liquidity Scheme ("SLS")

8. In his letter referred to above, as well as highlighting the obvious injustice in relation to the retention of data by yourself, Mr Thurso MP has characterised your judgment that the SLS was not "ordinary market assistance" as "a highly questionable judgment". You will no doubt wish to reconsider your 'interpretation' in that light.

9. It is central to your Assessment Notice that the SLS was not *ordinary* market assistance. You say at para.2 5 that you have interpreted the component parts of the definition of the term "ordinary market assistance" which is contained in section 5(5)(b) of the Banking (Special Provisions) Act 2008 to be references to the Bank of England's ("the Bank") Sterling Monetary Framework. You conclude that

   "*The SLS was not part of those elements of the Sterling Monetary Framework and, indeed, when it launched the SLS in April 2008 the Bank of England announced that*

the SLS 'will be ring-fenced and independent of the Bank of England's regular money market operations' ".

10. My first concern is to identify where in your statutory terms of reference you were tasked with placing your own interpretation on the meaning of the term "ordinary market assistance" as opposed to undertaking the role of Valuer. That term is defined in the 2008 Act as 'assistance provided as part of the Bank's standing facilities in the sterling money markets or as part of the Bank's open market operations in those markets." Please explain how you can arrive at a conclusion that the SLS was not part of the Bank's standing facilities in the sterling money markets. Parliament could have, but did not, refer to the Sterling Monetary Framework document as being the definition of ordinary market assistance. Accordingly unless it is clear for some other (and as yet unexplained) reason that the SLS was not, intended by Parliament to constitute "ordinary market assistance" for the purposes of the 2008 Act, you had no proper basis to determine that to be the case.

11. I would also ask you to reconsider your interpretation given the views of John Thurso MP set out above. The source of your error may be the apparent confusion in giving the same meaning to the words 'ordinary' and 'regular'. In the News Release dated 21 April 2008 **(Appendix 2),** the ring-fencing and independence of the SLS was stated to be from "the Bank of England's *regular* money market operations" which is not the phrase used by Parliament in relation to the statutory assumptions upon which you were required to proceed. Had Parliament meant 'regular' as opposed to 'ordinary' it would have used that word. You appear, wrongly, to treat the two adjectives as being synonymous; they are not.

12. There is no doubt that the SLS was temporary, but when introduced it was announced that the swaps terms under it (the SLS) could be extended for up to 3 years. Moreover there is nothing to suggest that it was introduced as anything other than part of the ordinary market assistance provided by the Bank to all banks. The Bank's policies in this regard are not unchangeably set in stone; rather, they can and do change as economic circumstances also change. As Keynes memorably said, "When the facts change, I change my mind." The reason for the ring fencing was made clear by the News Release of 21 April 2008, namely *"so it will not interfere with the Bank's ability to implement monetary policy"*. It was not ring-fenced as you imply, so as to distinguish it from ordinary market assistance, which in fact is precisely what it was, albeit of a temporary (though relatively long-term) nature. Your quotation from this part of the News Release at para. 2.5 of the Assessment Notice is incomplete and, as a result, your conclusion as to the nature of the SLS is incorrect.

13. In its publication *"The Development of the Bank of England's Market Operations – A consultative paper by the Bank of England 2008"* the Bank stated at para. 3

    "In addition, in common with other central banks and sometimes in conjunction with them, the Bank has deployed other measures to provided financing to, and so underpin confidence in, the commercial banking system. The Bank's regular three-month repo operations have been enlarged and extended to include lending against a wide range of collateral including in particular residential mortgage-backed securities. In addition, in April 2008, the Bank introduced the Special Liquidity Scheme (SLS), enabling banks to swap some mortgage-backed and other securities for UK Treasury bills. The SLS window is due to close on 30 January 2009, but the swaps may be outstanding for up to three years. And, on the back of a

swap with the Federal Reserve Bank of New York, the Bank has conducted US dollar repo operations since September 2008".

14. In para. 4 of that paper the Bank continued *"In the light of experience over the past year, the Bank has concluded that it should make some refinements and additions to its published framework of permanent facilities…."* Accordingly the published framework of permanent facilities that the Bank of England refers to in that paper (and which you have used to restrict your interpretation) is plainly not the same as the *'standing facilities in the sterling money markets'* because the former is only concerned with permanent facilities, as opposed to standing facilities which may be available for a defined period. At the relevant time the SLS was a standing facility open to all banks, including Bradford & Bingley, until 30 January 2009.

15. In this context you appear also to have ignored the representation we made in our prior submission (paragraph 9.4 on page 13 of the letter from our former solicitors, Charles Fussell, of the 12th February 2010,) where we quoted from the statement made to the House of Lords by Lord Myners, the then Financial Services Secretary, that Bradford and Bingley's use of the SLS was no different to that of "all other qualifying institutions". To take your reasoning to its logical conclusion, one would surmise that all 32 banks and building societies that had drawn upon the SLS were each in a parlous financial state by relying on a facility that (on your interpretation) was not 'ordinary market assistance", and hence could all have been deemed to be one step away from administration or other insolvency process, as almost all financial institutions borrow 'short' and lend 'long'. This presupposition is illogical.

16. We would also point you to your own public statements on your website, at FAQ 14, with regard to the different treatment of Bradford & Bingley on the one hand and RBS and HBOS on the other:

    "For both RBS and HBOS, short term liquidity measures allowed them to bridge through to the Government recapitalisation scheme and the merger with LloydsTSB respectively. In Bradford & Bingley's case, no such longer term measure was available, except to enact the Transfer order."

    Your comments here do not fit the facts that you actually detail in your Assessment Notice. Bradford and Bingley had at most only a short term liquidity issue, and was in exactly the same situation as RBS and Lloyds.

17. If the bank had 'longer term' issues as you appear to suggest, then these would have depleted the shareholders' equity in the subsequent published accounts – an issue that has not occurred – see **Appendix (5)** showing the bank's balance sheet as at 30 June 2010. Ironically, the difference with Bradford & Bingley was that the sums required were much smaller than RBS and Lloyds/HBOS.

18. Indeed this point has been fully borne out by subsequent events, in that following the nationalisation of Bradford & Bingley and its short term liquidity requirements being addressed, it has gone onto to post substantial operating profits. You will be aware that it recently reported pre-tax profits of £896 million for the six months' ending 30 June 2010.

These financial results do, of course, post-date the Assessment hence you will need fully to address them as part of the reconsideration process.

19. On the basis that the SLS would have been provided in future to Bradford & Bingley, for the purposes of your Assessment Notice you refer at para 3.11 to the fact that Bradford & Bingley was in a financial position as a result of its rights issue *"that compared favourably with other UK banks"*.

20. I also refer you to the excerpt from the Treasury Committee Banking Crisis Hearing of 18 November 2008 **(Appendix 3)** and most pertinently, Bradford & Bingley's Chairman Mr Rod Kent's answer to Question 269 by the Chairman (emphasis added)

    "Chairman – So you were bust?

    *Mr Kent – That is not correct**. At the time when we transferred into public ownership we were both solvent and well above our regulatory minimum on capital,** we were still well capitalised."*

21. At para 3.16 of your Assessment Notice you state that over the weekend of the 27/28 September 2008 Bradford & Bingley's Group Finance Director *"informed the board that it should have no concerns with regard to the regulatory capital of B&B".* There is nothing in the Assessment which shows that this information was incorrect, nor do you suggest that it was.

22. Accordingly, it is clear that Bradford & Bingley was (a) solvent and (b) above its minimum regulatory capital (the 2 principal criteria applied to the provision of this liquidity support facility to Northern Rock as detailed on the Tripartite Statement of 14 September 2007 **(Appendix 4).** Accordingly, your view expressed in para. 3.20 that *"it would not have been possible for Bradford & Bingley to arrange funding if further access to SLS was not made available and accordingly could not continue as a going concern"* is entirely reliant on your interpretation of the nature of the SLS which I have set out above. Similarly the availability of the SLS was precisely the sort of support from the HMT that you conclude in para. 3.24 of your Assessment Notice would have made possible a private sector solution and in excluding it, and assuming that the only course as a result was Administration, you have led yourself into error.

23. If you are not prepared to change your mind about the SLS, I request that you consider whether in fact it was necessary for Bradford & Bingley to actually draw on it. Richard Pym stated at the Treasury Committee Banking Crisis Hearing -

    "The position on the Wednesday was we had an outflow of funds from the branches and from online of only £12 million. Previously that week it had been a lot higher because of media speculation, so by the Wednesday things had normalised, we were holding our own in UK deposits, but on that Thursday … we lost £26 million. On the Friday, following further media reporting, we lost around £90 million and by lunchtime on the Saturday we had an outflow of around £200 million from branches and online, and it was that which forced the FSA to act.

24. The statement above by Mr Pym implies that in fact only £328m of short term liquidity was required and not the £700m that they originally anticipated as a consequence of the Panorama programme. If this is the case, did you consider whether the SLS facility was even

required for the much smaller sum and the availability of funding from 3rd party institutions or even a further drawdown from the Barclays Secured Facility

(2) Value of the deposit business and branch network

25. At para. 3.19 of your Assessment Notice you refer to the fact that the deposit business and branch network was sold to Abbey National on 28 September 2008,yet you have failed to give any value to shareholders in respect of those assets. You state at para 5.40 that the impact of closing the branches of Bradford & Bingley would be a cost of at least £30 million based on statutory staff redundancy levels and an estimate of lease termination costs. You have made that assessment notwithstanding that you know as a matter of fact that the branch network was in fact sold and realised proceeds of £612 million which you identify in para. 5.38. This money was actually payable to Bradford & Bingley at the relevant time for the purposes of your Assessment Notice and yet you have failed to include it in your calculations. In addition your reason for doing so is plainly wrong because as you also point out, the monies provided by HMT/FSCS were in fact provided to Abbey, not to Bradford and Bingley. Please can you identify where the statutory assumptions required you to assume that funding from HMT would not be available to a *purchaser* of Bradford & Bingley's deposit business and branch network. The language of s.5(4)(b) of the 2008 Act is limited to the 'deposit taker in question' namely Bradford & Bingley in this case. Please also identify where in the statutory assumptions you were required to exclude monies actually owing to Bradford & Bingley at the relevant time for your valuation.

(3) Lender of last resort (LOLR)

26. In so far as we can interpret the events of the weeks from 16 September 2008 to 26 September 2008 from the material which we presently have, the Bank had not actually requested the SLS funds to be returned but only that the covered bonds required restructuring in order to remain eligible for presentation within the SLS scheme. Once restructured, they would have been re-eligible for collateral presentation within the SLS scheme. The alternative, namely of depriving Bradford & Bingley of that opportunity and permitting it to fail is not realistic. You refer, at para. 3.12, to the Bank having notified the Board on 26 September 2008 that if the bonds did become ineligible it would require the repayment of the relevant part of the SLS funding, but you do not say over what period and on what terms any such repayment might have been required.

27. The SLS scheme was not a replacement for the LOLR facility (which is a facility provided by all central banks) and therefore the LOLR was a facility that was within the definition of 'ordinary market assistance' .This being the case, rather than assuming Administration (which unlike the case of Northern Rock, was not a statutory assumption in this case), the proper approach for you to take would have been to determine the appropriate interest cost to be applied to the Bradford &Bingley's draw-down under the LOLR facility whilst it restructured its bonds (a period most likely to be no longer than the 4 weeks referred to in para. 3.16of your Assessment Notice) in order to make them re-eligible for the SLS scheme.

28. To conclude this point, I submit that the LOLR facility should be addressed in your determinations and that this would clearly negate the requirement for you to assume that Administration was the only option on the morning of the 27 September 2008. Bradford and Bingley would therefore be valued on a 'going concern' basis and all the issues flowing from

the submissions in the letter from Charles Fussell of the 12th February 2010, come back into play.

(4) **Downgrading of the Covered Bonds**

29. You state in paras. 3.12 and 3.13 of your Assessment Notice that if the covered bonds became ineligible, that would trigger repayment of £2.3bn of SLS funding. In Section 3.13 you state that *"Fitch downgraded Bradford &Bingley's rating on 23 September 2008"* but you make no distinction between the rating of the bank and that of its covered bonds. Importantly, in para. 3.16 you describe meetings over the weekend 27/28 September 2008 and you refer to a "*potential* downgrade". Please confirm what the position was in relation to the rating of the covered bonds and reconsider your Assessment on the basis that if a much smaller sum was required by Bradford & Bingley (£328m as opposed to £700m, as set out in para. 26 above), that it (Bradford and Bingley) would have had much a greater likelihood of success in raising this sum contrary, to your reasoning in para. 3.20.

30. As the covered bonds do not appear actually to have been downgraded at the point of reference for the Compensation Order, from what I can see from your Assessment, then the SLS repayment of £2.3bn would not have been triggered on the morning of the 29 September 2008. Correspondingly, your assessed equity reduction of £0.8bn is also invalid. A proper approach would have been to establish what would have been the cost have been of raising the additional £328m, instead of assuming that the £2.3bn SLS funding related to the covered bonds would be due for repayment immediately.

(5) No value placed upon the prior bids for Bradford &Bingley

31. At para 4.6 of your Assessment Notice under your heading 'Other Bases of Value', you state that you " have confirmed that there were no offers at the time for all or part of the equity of Bradford & Bingley that could also have been indicators of market value". Firstly that suggests that there were offers. Secondly I refer you to the attached letter from HM Treasury of 25 June 2009 **(Appendix 6)** and whilst noting the issue of confidentiality, this does open up the scenario of another bidding party being prepared to purchase Bradford & Bingley and the avoidance of the nationalisation, and the consequences you have assumed would have followed.

32. In Charles Fussell's submission of 12 February 2010, the shareholders referred to the approach by Resolution (para 10.3). It seems that you have not paid any attention to the possibility of Resolution being interested in re-engaging with Bradford and Bingley, particularly considering its (Resolution's) statements at the time that it would "*inject further capital into B&B to facilitate follow on transactions or the re-capitalisation of B&B as necessary*".

33. In para. 4.7 of your Assessment Notice you state that you have *"determined that , if I were to adopt fair value and reference the value of Bradford &Bingley to HMT, this would be inconsistent with the Statutory Assumptions".* Plainly this needs to be reconsidered in the light of what is set out in this letter. In any event, we do not agree with the underlying

premise. Your duty, as you recognise in the first sentence of para. 4.1 of the Assessment, is to determine the value of all the shares in Bradford and Bingley at the material time. For the reasons explained above, you are wrong not to have determined the market value of those shares, which would include, if appropriate, taking into account the special position of HMT having regard to (i) the SLS and (ii) the Bank's status as LOLR.

34. In addition, if another institution (Resolution Group) was prepared to pay the equivalent of 72p per share just weeks prior to B&B's nationalisation and make a public statement of providing further financial support, and bearing in mind the relatively low level of additional funding requirement it seems Bradford & Bingley actually required (see para 26 above) and the point that the £2.3bn of Band of England SLS was not actually being required to be repaid at the relevant time for your Assessment Notice (the morning of the 29 September 2008) then you should reconsider your Assessment Notice.

Conclusion

35. I look forward to confirmation that you will assist shareholders by actively seeking the consent from the relevant persons to disclosure of information to allow us to make full and proper requests for you to reconsider your Assessment Notice, together with an adequate extension of time for that process. It is, after all, your request that shareholders provide evidence to support the application for reconsideration, and unless you co-operate in giving access to that evidence it is an empty request. It would be most regrettable if the first opportunity shareholders have to consider the evidence is before the Upper Tribunal.

36. If you are not prepared to take that course, then doing the best I can at this stage, I have set out reasons why you should reconsider your Assessment Notice and invite you to do so, concluding that the value of Bradford and Bingley's ordinary shares was at least £1 per share: see again sections 14 and 15 of Charles Fussell's letter.

Yours sincerely

R Jennings

Chairman UKSA BBSAG