

To Northern Rock Shareholders

29 July 2009

UK Shareholders Association
Chislehurst Business Centre
1 Bromley Lane
Chislehurst
BR7 6LH
Phone: 020-8468-1027
Email: ukxa2@btconnect.com
Web: www.uksa.org.uk

Northern Rock Shareholders Action Group – Update No. 60

Appeal Decision

On the 28th July, the Appeal Court announced their decision on the appeal on the Judicial Review of the Northern Rock case. The appeal was dismissed. This is obviously somewhat disappointing but not totally unexpected. We will need to consider whether to support an appeal to the House of Lords (the Supreme Court as it will soon become), or to the European Court of Human Rights. If supporters have any views on that, please let us know. It will involve some more expense of course to do so, but Jon Wood of SRM has already made public statements indicating he is willing to pursue the matter all the way.

The full judgment of the court can be read on this internet web page:
www.bailii.org/ew/cases/EWCA/Civ/2009/788.html . Here are some brief comments:

1. It is a fair summary of the key arguments, but the conclusions drawn seem to be unbalanced in many ways.
2. The court correctly points out that the European Courts have generally not upheld any attempts to impose “no compensation” on the confiscation of property – and this is the undisputed result of the Government’s Act and Compensation Order. But Paragraph 59 when discussing the “margin of appreciation”, i.e. the amount of discretion to vary from a “fair value”, emphasises that the Court respects the “legislature’s judgment as to what is in the public interest unless that judgment be manifestly without reasonable foundation”. In essence they are unwilling to overturn the will of Parliament who clearly decided that it was unfair to compensate shareholders irrespective of what value a truly independent valuer might attach to the company at the date of nationalisation. This was a hurdle that was always going to be difficult to overcome in the lower UK courts.
3. Paragraph 63 eloquently comments on the “seductive force” of Lord Pannick’s argument that the substantial original assets within Northern Rock (which were effectively contributed by the shareholders) played their part in the company’s ongoing commercial activity as surely as did the Government’s financial support. But they do not seem to rebut that point.
4. They also cover the “salvage” analogy, although they claim that this case is different in that the purpose of the Government funding was not to benefit the company but to prevent damage to the banking system as a whole. This seems a poor argument to me and an artificial distinction.

Salvage law is based on the moral principle that it is in the general interest of society to encourage salvage operators to act promptly by giving them some self-interest to do so. The owners of the salvaged property benefit as a result. What is different to the situation in LOLR funding where the motivation is again the general interest of society but the recipient happens to benefit?

5. If the above judgment is upheld then it implies that nobody in future will ever want to take up LOLR funding from the Government because it will immediately mean that the funding is effectively worthless and has to be disregarded when valuing the company that has received it. It would indeed be a "poison pill" that nobody would want to swallow. This would be a most peculiar and unintended consequence of this view of the matter.

6. Paragraph 77 of the judgment makes it clear that they accept the Government's argument that the shareholders should be put back in the position they would have been in if no Government funding had been provided. This suggests they are valuing the business as it was when LOLR funding was first provided which was some months before nationalisation. In other words they are implicitly back-dating the valuation date.

In reality the Government's funding had taken place way before the nationalisation, and was a decision that the judges are now implicitly unwinding. It's a rewrite of history to enable them to form the conclusion they wished to reach.

7. The comments on the Goldman Sachs report (para. 69) suggest the judges accept the Government's arguments that this solely suggested losses from the various scenarios covered, and hence the decision was based on the least worst outcome. But the evidence submitted on that report suggests that it cannot be used in that way and those losses could just as easily be rebased so that it was about maximizing the gain. The report surely only attempted to compare the various options on an "outcome" basis and not predict specific gains or losses.

8. On the Procedural Issues, paragraph 83 states that the assumptions [to be applied by the independent valuer] "are not assumptions of facts which might or might not be true, and whose truth or otherwise ought to be examined. They constitute the policy according to which the valuation will proceed". This seems to be redefining the common use of English words to fit the required view they wish to take. An assumption is either true in fact, or it is not.

One could of course pick further holes in this judgment but brevity requires that this be left to future court hearings.

Financial Report

A report on the financial position of this campaign has been posted on our web site in this document: www.uksa.org.uk/Finance_Report_Jul2009.pdf (click on it to access of course – this is a pdf document and if you are unable to read it please contact us and we'll post one). Our fund raising has been more productive of late but we only have a minor surplus over expenses incurred at this point in time.

Direct Action

Your committee recognises that the public profile of this campaign has not been as strong as it should be of late. One of our committee members, Jason Fellner, wishes to organise some "direct action" events to obtain more publicity for the campaign. If you would like to assist him then please telephone him on 02380-227667.

Public Accounts Committee Report

The House of Commons Public Accounts Committee recently produced a report on the Nationalisation of Northern Rock. They highlight the fact that the Treasury was ill prepared for the crisis even though they were aware of the risks incurred by the Northern Rock business model. It also criticised the fact that they let the company continue to write 125% mortgages and develop business plans based on over optimistic projections of house prices. It is certainly the case that the company wasted a lot of time in "strategic reviews" in the months before nationalisation before adopting a new business plan.

The report also reveals that legal and accounting advisors have so far collected £26.8 million in fees, over which over a third has been paid to Slaughter & May, the Government's legal advisors in the judicial review action. Other lawyers have also been the main beneficiaries.

Roger Lawson
Chairman, Northern Rock Shareholders Action Group
Email: uksa@uksa.org.uk
Web: www.uksa.org.uk
Direct telephone: 020-8467-2686

Note that all previous "Update" notes on Northern Rock that we have issued are present on the following web site page: www.uksa.org.uk/NorthernRock.htm