



[2011] UKUT 408 (TCC)

CASES NR/001/2010 ONWARDS

NATIONALISATION OF SHARES IN NORTHERN ROCK PLC – Compensation Scheme – meaning and effect of statutory valuation assumptions – assumption that financial assistance withdrawn - interpretation in compliance with human rights – whether decision as to amount of compensation was a reasonable decision - jurisdiction of Upper Tribunal

IN THE UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)

FINANCIAL SERVICES

BETWEEN

NORTHERN ROCK APPLICANTS

Applicants

-and-

(1) ANDREW CALDWELL

(2) HM TREASURY

Respondents

Tribunal: **The Hon Mr Justice Warren, Chamber President
Judge Andrew Bartlett QC
Sandi O’Neill**

Sitting in public in London on 31 May, 1, 2, 3 and 6 June 2011

Summary of the Tribunal’s decision

Northern Rock plc was seriously affected by the banking crisis which gathered pace in the latter part of 2007. From September 2007 onwards Northern Rock received very substantial financial assistance from the Government and the Bank of England. On 22 February 2008 all Northern Rock shares were taken into public ownership. By that date some £25.3 billion was owed by Northern Rock to the Bank of England, representing nearly a quarter of Northern Rock’s total liabilities. The legislation

passed by Parliament made arrangements for an independent valuer to assess the value of the shares immediately before the nationalisation date, so that compensation could be paid by the Government to the former shareholders, depending upon the value.

One of the objectives of the legislation was to strike a fair balance between taxpayers and the former shareholders by ensuring that the amount to be paid to shareholders would not reflect added value resulting from the public financial assistance which had been provided from September to February. In pursuance of this objective the legislation contained some assumptions which the valuer was required to make.

The independent valuer concluded that after stripping out the value of the assistance from taxpayers, Northern Rock's shares had a nil value on 22 February 2008, so that no compensation was due. Many shareholders were unhappy with that conclusion, and appealed to the Upper Tribunal, arguing that the independent valuer had misinterpreted and misapplied the statutory assumptions, that his decision was wrong, and that he should have assessed a substantial value for the shares.

The central point of dispute was the meaning and application of the valuation assumption in the Banking (Special Provisions) Act 2008 section 5(4)(a) that all financial assistance provided by the Bank or the Treasury "has been withdrawn". The valuer took this to require an assumption that the assistance had been terminated and repaid, following realisations of assets made just before the nationalisation date. The competing interpretations were (in brief) that it required either (a) that repayment of the loans had been demanded but not made, or (b) that the indebtedness had been discharged by deduction of assets at book value from the balance sheet. The applicants contended that on applying either of these alternative interpretations the shares had substantial value on the nationalisation date.

The Tribunal considered these arguments and the many other arguments that were raised, and examined the meaning and purpose of the statutory provisions and their application to the facts. The Tribunal concluded that the independent valuer was correct in his interpretation of the statutory provisions, that his application of them to the facts was reasonable and professional, and that the nil valuation should stand.

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