

# EdwinCoe LLP

LAW FIRM

2 Stone Buildings,  
Lincoln's Inn,  
London WC2A 3TH

Tel: 020 7691 4000  
Fax: 020 7691 4111  
DX: 191 LDE

www.edwincoe.com

law@edwincoe.com

Attn: Clare Canning  
Mayer Brown International LLP  
DX 556 London/City

31 March 2011

**BY EMAIL AND DX**

Your Ref: 21519/08099109  
Our Ref: DMG/ZB/NOR.76.1

Dear Sirs

**R (on the application of Dennis Grainger & Others -v- The Commissioners of Her Majesty's Treasury – Claim No CO/4351/2008**

Please find enclosed a copy of Mr Hulme's statement of case.

Yours faithfully

  
Edwin Coe LLP

cc: Brown Rudnick  
The Upper Tribunal  
HM Treasury

IN THE UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)

FINANCIAL SERVICES

B E T W E E N:

NORTHERN ROCK APPLICANTS

Applicant

-and-

(1) ANDREW CALDWELL  
(2) H M TREASURY

Respondents

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STATEMENT OF CASE  
OF MR CHRISTIAN HULME

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**Introduction**

1. This is the Statement of Case of Mr Christian Hulme (“Mr Hulme”). It is made in accordance with the directions of the Upper Tribunal as set out in the Case Management Order number 2 of 24 February 2011. It is made as a replacement of, Section E of the Reference Notice filed herein by Mr Hulme.
2. Mr Hulme’s role, as recognised by the Upper Tribunal in the hearing of 24 February 2011, is as coordinator rather than as a representative of other former shareholders of Northern Rock who are members of and represented by the Northern Rock Shareholders Action Group (“NRSAG”). Mr Hulme appears before the Upper Tribunal in his personal capacity but reflects the views of the many like him who lost their shares as a result of the nationalisation of Northern Rock on 22 February 2008.
3. The Upper Tribunal has received a swathe of submissions from former shareholders. Many of those shareholders were prudent savers, investing their money into Northern Rock’s shares at the encouragement of the Government in order to save for their retirement. They have often expressed, as has Mr Hulme, a strong feeling of iniquity at events, some of which are referred

to below. These may not have relevance to the task before the Upper Tribunal, but Mr Hulme does not in any way in making these submissions seek to detract from the very strong feelings of individuals who have in many cases been put to much hardship by the taking of their shares and now a decision that they had no value in any event. They were affronted by what happened in 2007 and 2008, and now equally by a valuation that appears to them contrived to produce a result that the Government should nationalise their assets without giving any value for what was taken.

4. Mr Hulme is the current Chairman of the NRSAG. He was until the nationalisation of Northern Rock a holder of 587 shares. On 22 February 2008 all of Mr Hulme's shares in Northern Rock were compulsorily transferred to the Treasury Solicitor as nominee of the Commissioners of Her Majesty's Treasury. Mr Hulme is one of some of the estimated 150,000 individuals who held shares in Northern Rock prior to the nationalisation. Although individual shareholders were parties to the Judicial Review (see *SRM Global Master Fund & Others v HM Treasury* ([2009] EWHC 227 (Admin) and [2009] EWCA Civ 788)) Mr Hulme was not.
5. Mr Hulme asks the Tribunal to read the Grounds for Referral ("the Grounds") of the Respondent's Revised Assessment Notice submitted by Harbinger Capital Partners ("Harbinger") before reading this Statement of Case. Mr Hulme adopts the legal submissions and expert evidence filed by Harbinger. Mr Hulme agrees for the reasons set out in the Grounds that the decision of the First Respondent in the Assessment Notice and the Revised Assessment Notice is wrong. Mr Hulme seeks the same relief as contained in paragraph 157 of the said Grounds.
6. The purpose of this Statement of Case is to make the following additional points:-
7. Mr Hulme is typical of the 150,000 or so individual shareholders who held shares in Northern Rock at the time of nationalisation in February 2008. Those individual shareholders may be categorised into three main types (often overlapping); (a) those current and former employees of Northern Rock who received shares as a corollary of their employment under one of a number of incentive or saving/pension schemes run by Northern Rock; (b) those receiving share allocations upon the demutualisation of Northern Rock Building Society; and (c) those choosing to invest in shares in Northern Rock on the basis that it constituted a sensible investment.

8. For many, the investment made in Northern Rock upon the encouragement of the Government was the only saving that they had and accordingly the loss of it has had a substantial effect on their savings.
9. Many of the individual shareholders were persuaded to retain their shareholding in Northern Rock by the statements made by the Tripartite Authorities (being the Treasury, the Bank of England (“the Bank”) and the Financial Services Authority (“FSA”)) at the time, particularly the statement made on 14 September 2007, that effectively (a) Northern Rock was solvent, exceeded regulatory capital requirements and had a good quality loan book; and (b) was being provided with liquidity support. Immediately prior to nationalisation the price of shares in Northern Rock on 21 February 2008 was 90p.
10. The plain intent and purpose of the public statements by the authorities in the autumn of 2007 and early 2008 was to reassure the markets, and all those who might rely on them including individuals like Mr Hulme, that Northern Rock was a going concern with a strong asset base. Indeed having a strong asset base was a condition precedent for the receipt of assistance by way of Lender of Last Resort (“LOLR”) from the Bank. Shareholders were assured that Northern Rock would receive tailored support through what were exceptional short term trading conditions. Those statements were intended to convey to investors holding shares that they could retain those shares with some assurance of continuing value.
11. Mr Hulme wishes to draw attention as an individual shareholder to at least part of the source of the problem that Northern Rock faced in the latter part of 2007. This was caused at least in part by the failures of the FSA to provide sufficiently rigorous supervision of Northern Rock and to take adequate steps to address the short selling of Northern Rock shares, which in due course led to a loss of confidence and panic amongst depositors. Mr Hulme does not suggest that failures on the part of the regulators are of consequence in this application. He does say, however, that the whole valuation process and its conclusions should be considered in the light of the Government’s proposal that it will ultimately receive, and indeed will receive, a profit from the forced nationalisation when it realises its shareholding in Northern Rock.
12. In the event the Government rejected the possibility of Northern Rock entering an insolvency procedure (most notably administration) both in September 2007 and February 2008 in favour of nationalisation. Similarly it rejected two private sector proposals for the rescue of Northern Rock. In response to the application for Judicial Review referred to above, the Treasury argued that administration was not appropriate for reasons of public policy. It said that the private sector solutions did not provide “value for money” when compared with the option of

taking Northern Rock into temporary public ownership. The Prime Minister expressly stated in Parliament,

*“It is our intention to get the best deal for taxpayers; they will get their money back, and make a profit.”* (Commons Hansard 23 January 2008, col 1489)

13. Mr Hulme supports the submissions of Harbinger in relation to the wrongful interpretation by the First Respondent of the statutory assumptions (as endorsed by the second Respondent). At Section E 1 (b) of those submissions Harbinger refers to the Judicial Review and the stance taken by the Treasury in relation to the statutory assumptions that are the subject of this application. Mr Hulme reinforces those submissions by reference to the presentation of the Treasury’s case on the Judicial Review. In its submissions to the Divisional Court Lord Grabiner for HM Treasury submitted,

*“Compensation payable on the basis of the valuation assumptions reflects a fair balance between the interests of shareholders and the wider public interest. The valuation assumptions will ensure that there is a reasonable relationship between the amount of any compensation and the value of the shares immediately before the transfer; indeed there will be full compensation for that value.”*

14. Further submissions were made on the part of the Treasury in relation to the assumptions in Section 5(4) of the Act( what Harbinger refers to as “the Withdrawn Assumption”). It was said that the assumptions,

*“... will result in an amount of compensation which is reasonably related to the value of the Claimants’ shares in Northern Rock. Once it is assumed that the public sector financial assistance has been withdrawn and that no further assistance is to be provided, the assumptions in the CSO – that Northern Rock was unable to continue as a going concern as it was in Administration – reflect the reality of the position. Northern Rock, without the public sector financial assistance, would have ceased to be a going concern and would have been subject to an insolvency procedure such as administration because it would not have been able to meet its liabilities as and when they fell due. If all financial assistance provided by the Bank and HMT had been withdrawn, Northern Rock would not have been able to secure from any other source the nearly £27 billion which it had borrowed from the Bank nor the guarantee arrangements which caused the withdrawals of depositors to cease. It would have ceased trading and been placed in Administration ...*

*“Accordingly a compensation scheme which assumes that financial assistance has been withdrawn and that no further financial assistance will be provided is reasonable and proportionate. The valuation assumptions strike a “fair balance between the demands of the general interest of the community and the requirements of protection of the fundamental rights of individuals”. They lead to compensation which is reasonably related to the value of the Claimants’ shares (and indeed, enable the valuer to give full value for the shares) ...”*

15. In his evidence to the judicial review hearing, Mr John Kingman the Second Permanent Secretary at the Treasury presented the main witness evidence on behalf of the Government. At paragraph 127 he set out why an administration in September 2007 was rejected on public policy grounds. It is clear from his evidence that, as set out in paragraph 55 of Harbinger’s grounds of referral, without the LOLR support, Northern Rock would have gone into administration in September 2007. Since there would have been no LOLR, accordingly the administration would not have needed to repay any liabilities arising from LOLR. The creditors would have been dealt with within the statutory requirements of Administration. In fact the Government did proceed with LOLR but decided to nationalise in February 2008. Again, had there been no nationalisation and the LOLR had been withdrawn the effect would have been that Northern Rock would have entered an insolvency process.
16. Mr Hulme submits that whilst those applicants submitted in the Judicial Review that the statutory assumptions were artificial and breached Article 1 of the First Protocol to the European Convention of Human Rights, the First Respondent has imposed further, non-statutory assumptions as to what would happen in the event of withdrawal of LOLR and its unavailability thereafter. That, in Mr Hulme’s submission, cannot be the correct application of the statutory assumptions.
17. Mr Hulme requests that the Decision as set out in the Assessment Notice of 29 March 2010 and the Revised Assessment Notice of 1 October 2010 be set aside.