



**CASES NR/001/2010 ONWARDS**

**IN THE UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)**

**FINANCIAL SERVICES**

**BETWEEN**

**HARBINGER CAPITAL PARTNERS  
and other NORTHERN ROCK APPLICANTS**

**Appellants**

**-and-**

**(1) ANDREW CALDWELL**

**(2) HM TREASURY**

**Respondents**

**Tribunal: The Hon Mr Justice Warren**

**Judge Andrew Bartlett QC**

**Date: 28 October 2011**

## DECISION

On the application dated 20 October 2011 (“**the Application**”) of Harbinger Capital Partners (“**Harbinger**”) for permission to appeal from the decision of the Upper Tribunal released on 6 October 2011 and on the applications of various other individual applicants for permission to appeal:

Pursuant to section 13(11) of the Tribunals, Courts and Enforcement Act 2007, the Court of Appeal in England and Wales is specified as the relevant appellate court.

Permission to appeal **IS GRANTED** to Harbinger and to all other applicants before the Tribunal to appeal in relation to the first ground of appeal in the Application (namely the correct interpretation of the Withdrawal Assumption) but permission to appeal **IS REFUSED** to Harbinger and to all other applicants for permission in relation to the second ground of appeal in the Application (namely the application of the *Wednesbury* test of reasonableness to the exercise of jurisdiction under section 133(5) of the Financial Service and Markets Act 2000) or any other ground.

**IT IS DIRECTED** that Harbinger and any other party wishing to appeal is to file the Appellant’s notice required by Part 52.4 of the Civil Procedure Rules within 21 days of the date of the release of this decision

## REASONS

1. There is a real prospect of success of an appeal in relation to the first ground of appeal.
2. As to the second ground of appeal, it is not appropriate to grant permission. It is apparent from [170] of the Decision that, if the Repayment Interpretation is correct, the Valuer’s actual decision was correct whatever the answer to the issues other than the Interpretation Issue. Nothing which we said about those other issues other was strictly a matter of decision.
3. Accordingly, if the first ground of appeal does not succeed, there is no need to resolve the Section 133(5) Issue. In contrast, if the first ground of appeal succeeds, the matter will be remitted to the Valuer for him to consider, in the light of the correct interpretation of the Withdrawal Assumption, what methodologies to adopt: see [232] of the Decision. The Valuer has not thus far decided what he would actually do if the matter were remitted nor decided what methodologies he would adopt. The Tribunal was ultimately persuaded that it would have been premature for the Tribunal, and it would therefore be premature for the Court of Appeal, to make decisions about the correct methodologies. We do not think it would be right for the Tribunal to force the Court of Appeal to deal with the point by granting permission on this ground of appeal. It should be for that court to decide whether or not to do so.
4. A number of other shareholders have sent letters to the Tribunal saying that the Decision was wrong without, in most cases, articulating clearly why that is so, while expressing a wish to appeal. In practice, we think it highly unlikely that such applicants will take any active part in an appeal, any more than they

participated in the hearing before the Tribunal. The appropriate course, in our view, is to give permission to appeal, restricted to the same grounds for which we are granting permission to Harbinger, to all applicants before the Tribunal.

5. In relation to the grounds on which we have refused permission to appeal, the parties are notified, pursuant to Rule 45(4)(b) and (5) of the Upper Tribunal Rules of the right to make an application to the Court of Appeal for permission to appeal. Such application is to be made within 21 days of the date of the release of this decision and must be made in accordance with the provisions of Part 52 of the Civil Procedure Rules.

Signed

A handwritten signature in black ink, appearing to read "Warren", is written above a horizontal line that serves as a signature line. The signature is written in a cursive, slightly slanted style.

Mr Justice Warren, Chamber President

**RELEASE DATE: 28 October 2011**