LESSONS FROM THE LOWBALL TAPES

Corrupt practice in high places not confined to the 2008 banking crisis

Many of you may have listened to the BBC mini-series, "The Lowball Tapes" on Radio 4 last week[1]. This revealed that during the 2008 global banking crisis, senior figures at the top of Government, Establishment and the Bank of England brought pressure on the banks to manipulate their LIBOR rates. Such actions were later ruled to be a criminal offence and some traders of certain banks were jailed for their involvement in the wrongdoing. However, the series suggested that these individuals were wrongly scapegoated and have been the victims of a serious miscarriage of justice. Meanwhile senior figures, who were responsible for issuing the instructions, escaped sanction altogether.

During the 2008 global banking crisis, when those in authority resorted to exceptional measures or actions to safeguard the banks and the UK financial system, it could be concluded that they acted in the national interest. However, our research confirms that the improper actions of Government, senior civil servants, numerous regulators and various arms of the Police have persisted to the present day. The implications for the Rule of Law and the proper administration of justice could hardly be more serious, since we are living in a society where the banks and their officers are a "protected species" and treated as above the law. Meanwhile, victims of bank wrongdoing are subjected to the same Rule of Law, denied justice and are frequently bankrupted and dispossessed. Corrupt practice was certainly not confined to the 2008 banking crisis.

The Lowball Tapes

The London Inter Bank Offered Rate (LIBOR), which came into use in the 1970's, was an internationally recognised and trusted benchmark for short-term interest rates around the world, until it was phased out at the end of 2021. Based on the submissions of leading banks in London, it was an average of the short-term rates, which they estimated it would cost them to borrow from other banks. It was overseen by the British Bankers Association (BBA) until 2012, when the latter was stripped of this role following the LIBOR scandal. The term "lowballing" described how during the 2008 banking crisis, banks wished to see their LIBORs as low as possible because rates, which were higher than those of competitors, might signal to the market that their bank was in trouble.

The series began with the traders on the trading floor of the banks, who handled LIBOR and interacted with dealers at other banks. It featured Tom Hayes, a trader with UBS and later Citigroup, who was jailed in 2015 for his involvement in the wrongdoing. However, the traders maintained that they were only following instructions and that it was routine practice for banks to issue requests with regard to preferred levels of LIBOR. Of the total of 38 individuals prosecuted in the US and the UK, 24 were from the UK and 11 of these were convicted. They were found guilty of a conspiracy to defraud.

In the case of Barclays, the series described how the bank's principal LIBOR trader, Peter Johnson became so concerned that he was being asked to manipulate LIBOR that he telephoned the New York Federal Reserve to whistleblow - they merely ignored him - and then once he had circulated whistleblowing e-mails within Barclays, which he hoped would cover his involvement in the practice, how the Serious Fraud Office (SFO) later prosecuted him and a colleague, Colin Bermingham but

[1] https://www.bbc.co.uk/sounds/search?q=the+lowball+tapes

ignored evidence, which indicated that the instructions to manipulate LIBOR had come from the very highest level of the bank.

Serious Fraud Office & the cover up of high-level wrongdoing and fraud

As a matter of routine, the Chancellor of the Exchequer receives advance notice of all cases put up for investigation by the SFO, not least because the agency depends on HM Treasury for its funding, the model of which has remained conspicuously inadequate for more than a decade. Like numerous other arms of the state, the SFO appears to have long bowed to the directions of Government and the Establishment regarding the investigation of serious banking misconduct and fraud. Thus, in July 2018, the SFO closed its investigation into Lloyds' manipulation of LIBOR, claiming insufficient evidence. This was despite Lloyds having been fined £218mn four years earlier by the UK and US authorities for manipulating LIBOR at the same time as the bank was being bailed out by the taxpayer. In October 2019, the SFO closed its entire seven-year investigation into LIBOR manipulation, saying that no further charges would be brought. This was conveniently two months before Andrew Bailey was announced as the next Governor of the Bank of England. Earlier in September 2016, the SFO had also declined to investigate the alleged frauds undertaken by the secondary lender UK Acorn Finance, which was closely associated with Lloyds and Barclays, citing as its reason that Avon & Somerset Police had fully investigated the matter and decided not to pursue a criminal prosecution. Like the National Crime Agency (NCA), the SFO looks to have been, and to remain, substantially under official direction not to pursue criminal investigation against the major banks or their senior management and to treat them as a "protected species."

High-level wrongdoing not confined to LIBOR manipulation

The Lowball Tapes cited Sir Paul Tucker then a deputy governor of the Bank of England, Sir Tom Scholar then Second Permanent Secretary at HM Treasury and the late Sir Jeremy Heywood, who was the principal private secretary to Prime Minister Gordon Brown as those at the highest levels of Government and the Establishment, who directed the banks to manipulate their LIBOR rates. However, serious wrongdoing by those in high office was not confined to this single issue. Here is a summary of some other subsequent instances:

1. In November 2009, the Head of Resolution at the Bank of England, Andrew Bailey went ahead with Chancellor Darling with a modified version of the Asset Protection Scheme (APS), which authorised the taxpayer-owned banks to derive profit at the expense of troubled business customers for the benefit of their own balance sheets. They proceeded, despite being advised at length in writing by the Permanent Secretary at HM Treasury, Nicholas Macpherson that the APS was potentially illegal and that as the Treasury's most senior civil servant, he refused to sign it off.

2. In the second half of 2012, Chancellor Osborne telephoned, and later visited, the US Treasury Secretary Timothy Geithner and the chairman of the Federal Reserve, Ben Bernanke to ask the US authorities to "go easy" on HSBC, which had been accused in the US of facilitating the laundering of Mexican drug money. In December 2012, HSBC was given the opportunity of a deferred prosecution agreement (DPA) and after he resigned as Chancellor in 2016, Osborne accepted £51,829 from HSBC for a three-hour speech, during a year in which he received a

total of more than £719,000 from such engagements.

3. In January 2013, following heavy lobbying by the chief executives of Royal Bank of Scotland (RBS) and Lloyds Banking Group, Chancellor Osborne and Rt. Hon Sajid Javid MP, the Economic Secretary at HM Treasury brought heavy pressure to bear on the regulator, the Financial Services Authority (FSA) to drastically limit eligibility for compensation for the mis-selling of Interest Rate Hedging Products (IRHPs), which was then cut by up to 90%, using entirely arbitrary and inappropriate methodology.

4. In April 2013, Chancellor Osborne appointed as chairman of the newly-reformed regulator the Financial Conduct Authority (FCA), John Griffith-Jones, who had previously been the Chairman of KPMG (UK) at the time when it "overlooked" a £40bn hole in the 2007 accounts of Halifax Bank of Scotland (HBoS), which had been taken over by Lloyds under pressure from the Government in January 2009.

5. In September 2013, Chancellor Osborne instructed UK Finance & Investments (UKFI), which was chaired by Robin Budenberg, the current chairman of Lloyds Banking Group, to begin sales of the taxpayer's 43% holding in Lloyds under conditions, which due to the lack of adequate disclosure given to prospective purchasers and therefore the likely violation of UK and EU securities laws, appeared to resemble securities fraud. The sales continued in various tranches until they were completed in 2017.

6. Once the improper APS closed in October 2012, Andrew Bailey directed the comprehensive cover up of banking misconduct and fraud, notably as chief executive of the FCA. In March 2018, he ensured the appointment of Charles Randell as chairman of the regulator and later, Nikhil Rathi to succeed him as its chief executive. Both individuals had been closely involved with him in the handling of the 2008 banking crisis. From March 2020, Mr Bailey was appointed the Governor of the Bank of England, the UK central bank on whose direction the prosperity of every inhabitant of the country depends. It follows that the Governor must be a person of unimpeachable character and should have conducted himself with complete integrity throughout his career.

7. In November 2018, Andrew Bailey, HM Treasury and seven participating banks announced the Business Banking Resolution Scheme (BBRS). Chancellor Hammond charged it with resolving as many historic banking complaints as possible. Instead, the bank-biased scheme is believed to have resolved just a handful of its 626 registered cases in the first year of its operation. The ultimate responsibility for the failure of the deliberately flawed scheme lies with Mr Bailey and HM Treasury.