The FSA swansong [1]

Written by **Tim Ambler** [2] | Monday 23 July 2012

The Financial Services Authority is due to pass into oblivion at the end of the year and not before time. Now according to Patrick Jenkins and Caroline Binham (Financial Times 19th July), goaded by public furore, it is going to step up its investigation into Libor manipulation. Some may think that is better late than never. The FSA is now, finally, about to pursue more companies and ?more individuals will also be studied as a result?. This is the wrong way round.

Conduct is a matter of personal responsibility: penalties for malpractice should fall on culpable individuals. Only then should their employers be considered for further penalties. The public has been outraged by the lack of personal prosecutions in the banking sector. As our report ?Simple Rules for Complex Systems: Streamlining the UK?s Financial Regulation Regime? published last week, puts it: ?There is the confusion over whether individuals should be penalised, or their employing firms. In the Libor case, for example, the Barclays fine really only hurts the shareholders, who are completely innocent; whereas the wrongdoers retain their bonuses and, in many cases, their jobs. Penalties would be much more effective if they were targeted at individuals and not firms, except where the regulators and prosecutors can show that almost all the management were involved.?

Fining the Royal Bank of Scotland, as seems likely, would be especially ridiculous as it would merely transfer funds from one public purse to another.

It was only on the 6th July this year that the Serious Fraud Office decided to investigate whether any crimes had been committed. In other words, they have finally got around to investigating whether they should investigate.

All this is more than a little late.

The FSA failed to intervene and detect the manipulation in 2008 when the British Bankers Association was sufficiently worried to conduct an investigation. That turned out to be a whitewash with Barclays? compliance people not bothering to show up. The point, though, is that the FSA should have conducted the investigation then, not the bankers? trade union.

In 2011, the FSA reassured Bob Diamond, we are told, that they had been looking into Libor since 2009 and there was nothing much to worry about. We now know that the 2008 ?investigation? and the eventual revelations this year were all down to digging by US and Canadian regulators, not the FSA. Note that the Barclays fines by US regulators were twice as high as those imposed by the FSA.

The FSA grumbled about Barclays management style but that is beside the point. Clearly the Libor rigging required more than one bank so the management style of any one of them is neither here nor there. Indeed, a sensible regulator faced by an uncooperative regulatee would immediately suspect that said regulatee was hiding something and redouble its enquiry.

The FSA?s approach to bank regulation has been useless. They have only come to life when prompted by public opinion or North American regulators. Chairman Lord Turner of Makebelieve was appointed to invigorate the FSA following its dismal lack of performance in the run up to the 2007 financial crisis. In all fairness some improvements have been made and that includes personal prosecutions for insider trading, but not in the banking sector.

In the new, post-FSA order, the Bank of England with its subsidiary the Prudential Regulatory Authority, will recover responsibility for policing the banks. Sir Mervyn King will be leaving and Lord Turner has been rumoured to be his successor. Heaven forbid.

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