

RESPONSE TO THE
PARLIAMENTARY
COMMISSION OF BANKING
STANDARDS

Response to the Parliamentary Commission on Banking Standards

Professional standards and culture of the UK banking sector

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The views and opinions expressed in this paper are entirely those of the author and reflect no other agency, department or company.

Summary

- This paper makes the assertion that the British Banking Industry has become identical with an Organised Criminal Enterprise.
- It examines the nature of the criminogenic personality and determines the kind of person who is more likely to break the criminal law and why.
- It asserts that this state of affairs has been allowed to develop because of the failure of the regulatory process to develop the necessary skills and knowledge of the conduct of criminals to enable them to deal professionally with the misdeeds of the banking sector and the reluctance of the regulators to use their statutory powers effectively.
- It defines why there needs to be a far greater degree of criminal prosecution brought against financial practitioners and explains why such processes are among the only penalties that such practitioners truly fear.

Definitions of Organised Crime

"...Organised crime is a structure that includes two or more people whose purpose is to commit one or more serious crimes or offences for financial gain or material benefit..." (Australia)

"...It is serious crime planned and carried out by a group of at least three people to benefit one or more members of the group..." (Canada)

"...Organised crime constitutes any enterprise, or group of persons, engaged in continuing illegal activities which has as its primary purpose the generation of profits, irrespective of national boundaries..." (UK)

1. The British banking sector has become an organised criminal enterprise which has been allowed to develop because of the criminogenic environment in which it functions, which has resulted from the absence of any meaningful regulation which those who control and manage the banks would fear.
2. In this organised criminal category I include the various mis-selling cases, including pensions, PPI insurance and interest rate swap derivatives; the criminal manipulation by Barclays and other banks of the LIBOR interest rate structures; the institutionalised level of money laundering as identified in the HSBC case; the serial abuse of the US sanctions provisions as indicated in the Standard Chartered Bank case; as well as many other examples of criminal actions such as theft of client funds, teeming and lading, abuse of client instructions, insider dealing, front running, churning, and market manipulation which have become the subject of international regulatory interventions.
3. If the recent financial devastation in UK financial markets has taught us anything, one qualifier stands out above all the rest of the explanations. The effective 'regulation' of the market in financial services in the United Kingdom, particularly in the areas of preventing and forestalling commercial activity which has the capability to undermine the well-being of the financial market, in which I include not only financial criminality and money laundering, but also the pro-

active identification and prevention of financial damage has, to all intents and purposes, totally failed.

4. It has failed despite the huge bureaucratic organisation which has been created for its control, because those who are employed to provide the regulatory oversight of the market, the Lead Regulator, the Financial Services Authority, and the subordinate compliance officers within the individual regulated member firms, do not and have never understood the true nature of the criminogenic personality of so many of those who profess the trade of financial practitioner, nor do they exhibit any great inclination to wish to deal with the egregious activities of these individuals in a 'policing' manner.

The Anomie of Affluence and the Legitimation of Deviancy - Towards a theory of Criminogenesis.

5. Much of the trading activity which takes place within the banking environment, particularly in the area of proprietary trading is literally no different from gambling on horse races or games of chance and its practitioners tend, generally, to possess the same commercial mentality as the gambler.
6. At the same time, both floor and desk market professionals tend to be heavily influenced by a trading culture which preaches the virtues of adopting a grossed-out, high profiled, aggressive, risk-taking personality, which needs to be constantly attested to.
7. Psychologically, many of these men and women can be defined as being 'regulatorily resistant'. There is a primarily deviant, norm-evasive, criminogenic culture, not much given to the willing acceptance of regulatory control. Such an uncompromising statement should not be immediately interpreted to mean that these practitioners are committing wholesale overt criminal acts. It simply means that their risk-taking culture, itself the antithesis of the traditional perception of the

risk-reduction function of these markets; coupled with the highly competitive environment within which they work, whose new traditions give all the impression of flouting traditional, 'old market' norms; predispose them to break the rules more readily than practitioners in other commercial sectors. These are the traders to whom the compliance officer is generally seen as 'the business prevention officer' and the traders tend to view each new regulatory notice as an irritating inconvenience standing in the way of increasingly innovative trading. Each new regulatory requirement is looked upon as a challenge to the ingenuity of the traders, and competitions are held by dealers to see who can get round the controls undiscovered, and in the most profitable manner. In his article, 'Mavericks at the Casino: Legal and Ethical Indeterminacy in the Financial Markets', Christopher Stanley identified the development of this new phenomenon of regulatory resistance within the previously ordered environment of the City of London.

8. *'The New City reflected the ideological aspirations of a system of political administrations which disrupted the post-war consensus of relations between polity and economy. It also reflected the Casino or Disorganisation of Capitalism: 'an international financial system in which gamblers in the casino have got out of hand'. The New City was international, technological and subscribed to the Enterprise Culture ethos which placed individual success and self-reliance as the primary indicators of excellence. The structural changes which the Government introduced, in terms of trading practice and regulation, operated with the new financial products and markets to ensure that the particular elite of the Old City, which was perceived as a dangerously destabilising hegemonic counterforce as a result of the tension between Establishment and Disestablishment, was dislodged in the face of externally imposed change. Thus settled norms of conduct were open to disruption'.*
9. Pursuing the 'Legitimation of Deviancy' theory, Stanley drew upon the concepts of the 'Anomie of Affluence' to attempt 'explanations in this formulation of individual conduct within this particular field of moral and

economic deregulation.' He posited a vision of a market in which money no longer possessed any intrinsic value as a benchmark of the underlying value of the commodity traded, but became a 'free-floating signifier detached from the real processes to which it once referred...there is therefore a transition in its nature as a commodity to which moral or ethical values can be attached. In addition the artificiality of electronic money enabled the further disappearance of the victim and the possibility of justification through reference to prevailing economic rationality, ie 'Greed is Good'.

10. This specific problem of 'regulatory resistance' has been endemic in the regulatory model of the UK's financial sector since the passing of the Financial Services Act 1986. In this presentation, one of my areas of focus is to attempt to expand and develop the concept of the 'criminogenic' nature of the state of regulatory resistance, or 'legitimised deviancy' which so many financial practitioners espouse. By 'criminogenic' I mean conduct or behavior which has the potential to become criminal, or at least, so vitally damaging at some stage in the process, that any attempts to deal with the problem will almost inevitably lead to further potential criminal behaviour.

11. By examining the behavior and conduct of persons within the financial sector, we can establish traits which indicate a potential to be more or less willing to engage in conduct or behavior which may result in the commission of criminogenic activity. Alternatively, where, through ignorance of the underlying criminogenic potential of new products or sales practices, those employed to 'apply compliance procedures' in the market ignore the likelihood of the new risks being generated. In so doing, they allow the damaging conduct to continue, and in examining this conduct, we can begin to determine where they are exposing the market to far greater systemic risk than it either needs or can cope with.

12. A derivatives trader who habitually spends his evenings spending vast amounts of his firm's money entertaining clients in lap-dancing clubs, the kind of man who is willing to pay the bill for confirmed criminal

offences, ie hiring prostitutes (supplying prostitution) and supplying recreational narcotics, is not the kind of man who is going to spend too long worrying about the finer niceties of the Insider Dealing rules or money laundering regulations.

13. *'As long as we got results, as long as we got our commission and good feedback from the clients, they (the employing bank) didn't really give a shit...I think the banks know the situation, and so they don't do the random drug tests, because they know half their staff would be on it, and they know that in a high-pressure job, they have to allow their traders to have these excesses. They don't care about the health of their workforce as long as they're making money...'* (Seth Freedman)

14. *'...prompted by the beckoning finger from the clearly coked-up Asian chick nearest the open door, I nervously walked towards the car. I clumsily shuffled into my seat and saw in the gloom my three colleagues all sitting with their respective new lady-friends. They were all snorting yet more lines of cocaine that our ever-so-thoughtful hosts had prepared for us on little mirrors...'* (Geraint Anderson)

15. The basis of the underlying theory is a concept which is well-known to any experienced street detective who is trained to deal with crime and to recognize the signs of the criminogenic personality, and briefly put, states that those who act or behave in an anomic fashion in their ordinary, every-day existence, who bend or break minor rules or simple laws for their own self-gratification, or who refuse to conform to ordinary norms of human conduct at times when their surrounding conditions would require such behavior, will have a greater propensity to act in a similar, anomic way in many other circumstances, and where a situation arises which gives them a series of choices, they will inevitably take the line of least resistance.

16. James Q Wilson has alluded to this kind of 'behavioural arbitrage' when defining his "broken windows" theory of criminal conduct. Those who are prepared to commit minor acts of criminal activity as a matter of

course, have little difficulty in committing more serious acts of criminality when occasion demands. The pro-active policing policy therefore is not to ignore but to focus attention on the immediate minor offences, because in many cases, they will lead on to evidence of more and greater criminality.

Identifying the reluctant regulator.

17. It has started to become clear that those persons who are employed in the compliance function in the industry itself do not wish to be perceived to be effective in 'policing' terms or are not encouraged by their employers to become so.
18. The problems which have always caused financial regulators the greatest degree of difficulty are those which stemmed from behaviour which was manifestly 'criminal', whether obvious or submerged. The first kind of criminal activity can be determined by those acts involving insider dealing, money laundering, the theft of client's funds or the obtaining of money from investors by deception. The second group includes behavior which becomes criminal as a result of its commission (the trader who executes false trades or makes up positions in order to cover up his own ineptitude, or to give the impression he has achieved certain targets.) In so doing he commits offences of Fraud, and stands to be prosecuted in exactly the same way as a person who makes a false claim for State Benefit.
19. Unhappily, those given the greatest degree of responsibility for ensuring compliance with the rules and regulations, and who have the role of investigating and identifying any criminogenic behaviour, have, in the vast majority of cases, no previous experience of investigating criminal offences and appear to possess no obvious skills or ability to perform an effective policing function, and more importantly, no desire so to do, nor are they apparently willing to adopt 'policing' techniques or methods.

20. This unwillingness to be observed to be performing a policing function has begun to impact very heavily on the effectiveness of the regulatory role, to the extent that it has begun to become counter-productive. A detailed re-evaluation of attitudes and responses has defined an alternative interpretation which could be placed upon the reasons which apparently lie behind the bland, constantly-rehearsed assertions that other, non-policing techniques could be adopted more usefully to regulate the financial sector. A hidden agenda begins to be glimpsed, one which positively discriminates against the adoption of any methods or skills which, while they might have proved to be effective against the activities of working-class criminals in the past, are positively discouraged when it came to dealing with the crimes of the powerful.

21. As a result, business conduct which, by any definition, and in any other social sector, would be deemed to be manifestly criminal, has been allowed to proliferate. Perhaps the most egregious example of such conduct occurred in the observance of the criminal activities of private pension salesmen, during a time when Government permitted the practice of allowing private pension companies to solicit pension transfers and contributions from the holders of occupational company pension schemes. The activities of the salesmen were nothing short of downright fraud but their egregious conduct was allowed to be dealt with within the financial sector in other, non-criminal ways, because it had become defined in other terms; i.e. the offences of 'obtaining property by deception' or 'false accounting' had been re-determined as 'mis-selling'.

22. What distinguishes this conduct from other forms of high-pressure selling, the criminality inherent in the activity being undertaken, was the deliberately false and deceptive way in which the contracts were solicited, and the methods which turned the 'Great Pensions Swindle' into one of the biggest frauds in British history. Vital information about the performance of their existing pension arrangements, which clients were entitled to be given, was deliberately withheld from them. Important information about the way in which the costs of the new

private pension would be calculated and the amount of contribution needed, was carefully avoided. Client financial fact-finds, the information on which the salesman was supposed to determine the most suitable financial needs of the client, and which were required by financial services regulation, were either completed in the scantest detail, or were never completed at all.

23. Looked at on the simplest basis, the existing clients had to be deceived in order to have agreed to sign their capital transfer forms over to the insurance companies. They could not have been truthfully told the facts of the contract they were entering into, when they signed the agreements to transfer their accumulated savings to the relevant product providers; nor could they have clearly understood the facts they were told. Any contract based upon any of these misunderstandings or misconceptions would be void, and the product providers, or their agents, would have been guilty of acts of criminal deception, false accounting or procuring the execution of a valuable security by deception under the 1968 Theft Act, and therefore, in law, the property in the money transfer could not pass lawfully to the insurance company or product provider.

24. Despite this institutionalised level of fraudulent practice, not one salesman or product provider was ever interviewed as a suspect for a criminal offence. Approximately 65,000 former mineworkers alone transferred in the region of £736 million out of the Mineworkers Pension Scheme (one of the best and most generous in the country), on the advice of salesmen who told them they could get a better deal outside their own scheme, advice which was wholly untrue, and criminally deceptive. Nearly 27,000 teachers left the Teacher's Superannuation Scheme into which local education authorities paid a contribution of 8.05% of salary and which possessed index-linked benefits.

Effective regulation of financial markets

25. Ever since my early study visits to the USA in the early 1980s to study financial regulation with the SEC, the NASD, the CFTC and the major Exchanges, I have long reiterated my belief in the importance of the financial regulatory function in reining back the dishonest excesses of the financial sector.

26. Now, with the news about Standard Chartered Bank and their wholesale disregard of US laws on sanctions, my belief is reinforced even more strongly. This episode is just yet another example of what has become an endemic culture of legal anomie (norm evasion) within the banking system, where the Executives of the major banks have decided that they are 'too big to jail', and international laws do not apply to them when they become inconvenient.

27. Without any doubt, the scandal that has become the 'banking collapse' in the UK, (not my words, they are Vince Cable's on the 'Today Programme' on 26th July 2012), was caused by an excess of greed on the part of the banks, influenced both by a new environment of derivative abuse in the field of debt securitisation, but coupled with a culture of criminality which has been allowed to become endemic in the financial sector; an admixture of regulatory failure, influenced by political incompetence and the policy of a 'light touch approach' towards regulation of banks; and the total failure of the regulators to understand and respond to the criminogenic culture inherent within the new product models adopted by the practitioners whom they were supposed to oversee.

28. Lest anyone be tempted to observe that the financial problem started in the US, let me say that it was only allowed to become as bad as it did because the Americans, first under Reagan and later the younger George Bush had demolished a superb regulatory edifice that had been in place since 1934, and had made a significant contribution to America's post war financial hegemony!

29. Those US pioneers had taught us that without effective and professional regulators, armed with personal courage, good legal knowledge and sincere moral integrity, the financial sector it purports to regulate will run wild. The very reason that the SEC was created in the first place was to restore the integrity of the markets destroyed in the aftermath of the Wall Street Crash, a financial scandal caused by an epidemic of criminal operators who had undermined the credibility of the exchanges.

30. The financial sector existed then, as it does today, to make money, lots of it, and it doesn't really care how it does it. Those who populate the financial markets are fairly crude creatures, motivated by greed and selfishness. You don't need to be very bright or intellectual to make money in the financial sector, but you do have to be willing to sacrifice any principles of honesty or integrity you may once have been born with. As Balzac once said, 'behind every great fortune there is a great crime'!

31. So, why and how has this state of affairs been allowed to develop?

32. The British have always adopted a schizophrenic attitude towards the way they view criminal activity. There is the crime of the streets, burglary, theft, mugging, joy-riding, rioting, committed by identifiable criminal types, and dealt with by the police. Then there is the kind of wrong-doing that takes place within the financial sector, but when it happens, it gets called something else (mis-selling), and is dealt with by regulatory agencies.

33. For some reason there is a complete distinction between the two courses of conduct. They are, and have always been dealt with differently; penalised differently; administered differently, and for some strange reason which I only finally understood after I had studied the work of Edwin Sutherland, considered differently by politicians, regulators and in many cases, even by the general public.

34. I once conducted an academic research project where I asked a group of financial services compliance officers to place in order of seriousness a series of criminal offences. In the general list I included six typical identifiable criminal offences such as theft, fraud, joy riding, robbery, while for the other six I used recognisable terms such as 'insider trading', 'churning', 'misselling a financial product for the purposes of generating more commission', 'misselling a financial product which meant that the client was no better off, but which generated more profit for the company', 'front running', etc.
35. Without exception, in excess of 60 respondents put the identifiable ordinary crimes first in the list, while putting the financial issues last. It was as if activities which could be described in conventional criminal terms assumed a far greater degree of social opprobrium than did financial crimes, even though in pure legal definitions, all the offences alleged were equally criminal and all should be investigated and punished equally seriously.
36. It was a classic illustration of what Professor Michael Levi of Cardiff University once referred to as the huge social gulf that existed between the crimes of the streets as opposed to the crimes in the suites!
37. There is absolutely no reason why someone who steals a car or robs a post office should be considered to be any different from a person who trades in securities using inside information, who allows his institution to be used for the purposes of laundering of criminal money, or who helps himself to funds deposited with him for the purposes of investment.
38. One of the greatest tragedies of the British regime of financial regulation, and one of its biggest failings, is that none of those who hold down senior roles within the upper reaches of the regulatory agencies, have ever once undertaken even the simplest form of criminal investigation. They have never even arrested so much as a shoplifter, and they do not know how criminals will behave when they are being investigated; they do not know what evidence is needed to bring these persons before a

court and to obtain a safe and proper conviction; they do not know how to go about acquiring even the most basic evidence which can be used to convict a criminal; and perhaps most importantly of all, they do not understand how to conduct themselves when they are being required to investigate a pattern of behaviour which might prove to possess important criminal consequences. Put more simply, they simply do not understand the signs of crime, and they are therefore ill-equipped to deal with them even when they are staring them in the face!

39. Yet these are the very people we put in charge of our regulatory agencies, and we give them very complex investigatory powers. Members of the 'Great and Good', people who have held down no doubt important roles in academe or the law, (even the Serious Fraud Office has been seriously criticised for its administrative failings), banking or other areas of financial business, former civil servants or senior partners in leading firms of accountants (if ever there was a serious conflict of interests it is in appointments such as these), or people who are seconded from other regulatory environments, but who have no experience at all in dealing with criminals.

40. While they all possess undoubted skills and experience, the one thing they all have in common is a complete lack of any understanding of the function of the criminal temperament.

41. And the people they recruit are cast in the same mould. They use the age-old civil service tests of suitability, are they the 'safe pair of hands', or 'is he one of us', requirements which succeed only in maintaining a regime of ineptitude. I simply cannot recall how many former senior, experienced police detectives, men and women who have real skill and experience in dealing with major criminals, have ever been recruited to become senior figures in the regulatory agencies.

42. There may be some who have found a niche in the business sector, albeit not too many, and at not too elevated a rank, but I cannot think of

a single former detective currently holding down an important role in any financial regulatory agency.

43. It is as if the skills required to catch common working class thieves are considered to be unsuitable to catch criminals from a more elevated social sector of society.

44. I have observed this phenomenon for so many years, and I have come to the single and unpalatable conclusion that it has to be driven by the class element. Putting it more simply, it is as if society is happy to leave detectives to deal with the criminal classes, but they don't want 'Mr Plod' stumbling around among the more delicate sensibilities to be found in the financial sector.

45. How else can you explain the fact that when I was a detective, I could charge a man with an offence which could result in his being incarcerated for life, without the need for any approval from anyone in Government, whereas if I wanted to charge a businessman with an offence subject to the Companies Act with a maximum period of imprisonment of 2 years, I was required to seek the authority of the Secretary of State for Trade and Industry first?

46. The civil service and the civil administrative function simply refuse to acknowledge the skills and the knowledge of police. It has been ever thus. During my career, even when I could demonstrate that my squad was dealing with named US mafia organised criminals who were setting up share dealing operations in London, DTI officials refused to do anything about it, and just laughed at us, accusing us of 'seeing the mafia behind every bush'!

Regulation by prosecution

47. The recent report issued by the Treasury Select Committee entitled '... Fixing LIBOR: some preliminary findings...' contains very little that

those of us who have long been concerned about the criminal state of the British banking sector did not already know.

48. One of the key findings of the report deals with the relationship between the various regulatory agencies of the State, and the way in which they dealt with the emergence of incriminating details about the LIBOR affair.

49. What this report demonstrates so clearly is the lack of willingness for the FSA to adopt its powers to prosecute financial crime, and the very narrow interpretation they placed upon their function. This reflects earlier findings concerning the attitude of the regulator towards its prosecutorial role uncovered in its earlier days.

51. *'...The Committee is concerned that the FSA was two years behind the US regulatory authorities in initiating its formal LIBOR investigations and that this delay has contributed to the perceived weakness of London in regulating financial markets...'*

52. This failure to respond effectively to the early information about Barclays is reflected upon critically by the Committee, as it identifies the likelihood that this evidence may have led to evidence of other wrongdoing elsewhere in the wider market.

53. *'...Barclays may well not be alone. Nor is it likely to be a London-based phenomenon. The FSA is continuing to investigate the conduct of seven other banks in relation to LIBOR— some of them non-UK based banks. The FSA's regulatory counterparts in several other countries are also conducting their own investigations. Barclays is just one of many international banks under investigation for possible market manipulation. It is important that Barclays' serious shortcomings should not be seen in isolation from the possible actions of other banks and we await the results of ongoing investigations...'*

54. This is a classic scenario which identifies the sheer 'shamateurism' of most British regulatory actions. It is manifested by the failure to be able to read the signs of crime and appreciate the fuller ramifications of their implications. Thus it is that the regulators tend to focus on simply that evidence which is immediately in front of them, and without seeking to extrapolate from the initial facts what else might be happening in the wider market context.
55. The Committee do not lay the blame entirely on the shoulders of the FSA, they also contribute serious criticism on the actions of Barclays and their Compliance function.
56. *'...It is important to state that Barclays' internal compliance department was told three times about concerns over LIBOR fixing during the period under consideration and it appears that these warnings were not passed to senior management within the bank. Statements that everything possible was done after the information came to light must be considered against a background of serious failures of the compliance function within the bank. In other words, the senior management should have known earlier and acted earlier...'*
57. This is a damning indictment of the compliance function within Barclays, but it comes as no surprise to anyone who has any experience of this particular criminal enterprise. Compliance Officers were not encouraged to develop pro-active lines of disclosure, nor were they encouraged to think out of the box. They were largely an army of box tickers, but it is even more concerning to note that there did not appear to be any form of channel of communication to escalate these concerns.
58. Every compliance and money laundering 'best practice' manual will talk glibly of the need for a direct channel of communication between the head of compliance and the Chief Executive. They talk of the need for unfettered communication in a discreet and secure manner. How was it therefore that the news of these criminal manipulations were not brought to Bob Diamond's attention at the earliest possible opportunity.

What was standing in the way of the desired state of direct communication?

59. Clearly, there was a culture inside Barclays of 'No bad news please', or 'No surprises'. The compliance department clearly knew what every compliance officer who stays in post for more than a few months knows, they knew what questions to ask and what questions not to ask, and when to go deaf, dumb and blind!
60. A major part of the report deals with the FSA's failings to take strong executive action when financial criminality is discovered. It is as if the FSA has taken a deliberately blinkered view of their powers and has refused to look beyond and outside their most immediate remit. This is very disappointing because it has been hoped that the FSA would begin to take a more robust approach towards its powers to prosecute financial crime, after the introduction of the FSMA in 2000.
61. Financial practitioners do not fear regulatory fines, mostly because they are not individually called upon to pay them. The burden always falls on the shoulders of the shareholders, many of whom, if the Standard Chartered Bank case is anything to go by, will not even blame the Executives of the bank for landing them in this mess in the first place. Regulatory findings will always find fellow practitioners who are willing to sympathise with them. Public scandal can be difficult to handle, but rarely does an executive get forced from office. He may quietly resign at a later stage, but he does so with a well-padded pension fund and other benefits to cushion his existence.
62. This whole issue of the suitability of punishment for serious wrong-doing has been a critical element of the longer-term failures of the FSA to bring a robust approach to the regulation of the UK financial market. Ultimately, it is prosecution for crime which the financial practitioner truly fears, but if the market knows that the regulator is deliberately avoiding adopting its prosecutorial role, then this will lead to a realisation that the regulator has no real teeth!

63. It has always been one of the greatest ironies of the whole regulatory conundrum that criminalisation for simple offences of ordinary 'crime' is one of the greatest fears of the Executives of the financial sector.

64. Ironically, it is not necessarily the sentence which is passed which is of the most importance, the true fear of the financial practitioner is of the verdict of 'guilty' being publicly pronounced in open court. Such a verdict immediately takes away the sense of being a 'protected species' which too many banksters have believed they possessed for too long.

65. A criminal conviction places them on a par with other ordinary criminals, people who under any other circumstances they would go out of their way to avoid like the plague. The fact of conviction now puts them in the same 'criminal class' category and it spells social and commercial death for any city practitioner who has been so convicted. It is the ultimate exclusionary weapon of social and reputational mass destruction.

66. So powerful is the impact of criminalisation that even those who had once called the convicted man a friend find it very difficult to continue to see him, even in a private social context. As for any further dealings with him on a commercial context, such a thought would never enter their heads. He is now entirely beyond the pale, and he can never be received again inside the magic circle.

67. This may be what makes it so difficult for regulators to bring such a powerful weapon to bear on those whom they perceive may come from the same class and socio-economic background as themselves! They won't admit this of course, and they tend instead to use the excuse that financial crime cases are too difficult to get convicted, that juries do not understand them, although that has never been my experience.

68. This was one of the major problems about the predecessor of the FSA, the Securities and Investments Board, who absolutely refused to contemplate prosecuting any financial practitioner for crime.

69. In 1999, I was invited to conduct a review of financial services regulation for the UK Treasury. Among other people I interviewed was a senior staffer from the SIB who would be moving into the new FSA. I asked him about the powers to prosecute possessed by the new regulatory agency.

70. "... the official concerned was more forthcoming. He agreed that the FSA would become responsible for a far greater degree of responsibility for prosecution in a number of areas, including money laundering issues, but felt that this predicated the need for a further regulatory interface. He said;

71. "... There is an anxiety about the new criminal functions which we are being tasked to accept... various elements such as insider dealing, market manipulation, etc, all tend to colour our internal philosophy towards the question of conducting prosecutions... you really should understand, because of the difficulties associated with obtaining convictions in the criminal courts, there is no unswerving acceptance of the need for wholesale prosecution powers..."

72. This answer was given in such an open way, in contrast to so many other answers which he gave, that he was invited to state why he was so sure that this was the case. His answer was studiously revealing, and must be considered to contain a huge degree of truth. He said;

73. "... Because, frankly, Howard Davies has no intention of ending up with the sort of reputation which so bedevilled the SFO in its early days. He refuses to be tarred with the same brush as Barbara Mills or George Staple..."

74. The Treasury Select Committee has clearly identified that this mentality still exists within the regulatory environment. They state:

75. '...The FSA apparently believes that its fees are not raised for the purpose of prosecuting offences other than those set out in FSMA. The Committee is concerned by this. The FSA has responsibility for regulating the key participants in financial markets. The FSA's decision whether to initiate a criminal prosecution should not be influenced by the fact that its income is derived from firms which it regulates. The FSA has an obligation under section 2(1)(b) of FSMA to discharge its functions in the way in which it considers most appropriate for the purpose of meeting its regulatory objectives.

76. Under section 2(2)(d) the reduction of financial crime is one of these objectives. Financial crime is defined in section 6(3) as including not only misconduct in relation to a financial market but also any criminal offence of fraud or dishonesty. The FSA took a narrow view of its power to initiate criminal proceedings for fraudulent conduct in this case. The Committee recommends that the Government, following the Wheatley review, should consider clarifying the scope of the FSA's, and its successors', power to initiate criminal proceedings where there is serious fraudulent conduct in the context of the financial markets.

77. That this state of affairs still exists after all these years is a matter of deep concern and the Committee rightly urges direct reforms of this state of affairs.

78. '...The Committee urges the Wheatley review to consider the case for amending the present law by widening the meaning of market abuse to include the manipulation, or attempted manipulation, of the LIBOR rate and other survey rates. They should also consider the case for widening the definition of the criminal offence in section 397 of FSMA to include a course of conduct which involves the intention or reckless manipulation of LIBOR and other survey rates...'

79. Again, the Committee saw fit to criticise the length of time taken by the SFO to open an investigation and demands that a new relationship be forged between the two agencies. There is no reason why that FSA and the SFO could not and should not operate in tandem when conducting investigations, so that if, as it seems, the FSA is unhappy to mount prosecutions, then the SFO can adopt this mantle.

80. *'...The Serious Fraud Office (SFO) is now conducting a criminal investigation into LIBOR. The Committee was surprised that neither the FSA nor the SFO saw fit to initiate a criminal investigation until after the FSA had imposed a financial penalty on Barclays.*

81. *The evidence in this case suggests that a formal and comprehensive framework needs to be put in place by the two authorities to ensure effective relations in the investigation of serious fraud in financial markets. The lead authority must be clearly identified for the purposes of an investigation, and formal minutes of meetings between the authorities must be maintained. We recommend that the Wheatley review examine whether there is a legislative gap between the responsibility of the FSA and the SFO to initiate a criminal investigation in a case of serious fraud committed in relation to the financial markets...'*

82. Quite rightly, the Committee's report makes reference to the issue of public anger against that banks in the UK. They are right so to do. The British public is sick and tired of watching their financial affairs being raped and pillaged by the criminal banking sector. They have lost any sense of trust in the banking sector, trust which is vital for the effective running of the market. A report today by Currencies.co.uk discloses that 62% of British citizens have lost trust in the banks. The Committee knows that this state of affairs is very dangerous for uk plc, and they call for some focused thinking on behalf of the banking sector.

83. *'...The findings have focussed pre-existing public anger with banks. Barclays is one of many institutions that have contributed to the state*

of banking's reputation. LIBOR has followed the vast public bailouts of banks during the financial crisis, the liquidity support and guarantees given to all banks and the apparent lack of penalties for those who contributed to that crisis, most of whom retained very high levels of remuneration even after 2008. More recently there has been the scandal of payment protection insurance (PPI) mis-selling, criticism of banks' perceived reluctance to lend, complaints about the sale of unsuitable and complex interest rate swap products to businesses (which are under investigation by the FSA), and serious IT failures at RBS Group. The economy needs well functioning banks. They will have a crucial role in any economic recovery through their lending to businesses and households. An end to crude 'banker bashing' would be highly desirable, but bankers must recognise that they have brought much of this upon themselves through actions which have seriously damaged public confidence. While banks continue to provide evidence that wrongdoing persists the popular mood is likely to remain hostile...'

84. For myself, I believe that the issue has gone too far, and the genie is out of the bottle. The only way these organised criminal enterprises can be dismantled is for a root and branch reform of the banking sector, breaking up the big conglomerates, jailing a lot of 'too big to jail' bankers, and reintroducing an environment where banks become the servants of the community and the economy, and not high-rollers in the most unregulated casino on the planet.

85. So, this Commission is an excellent opportunity for Government to take a close look at the way in which the financial sector is policed, because unless something drastic is done to change the way in which the financial sector is regulated, then we shall continue to suffer from the kind of scandals that have made London a cess-pit, the venue of first resort for every con-man, scam-artist and bankster in the world, rapidly ensuring our descent into the ranks of the global pariah states.

Rowan Bosworth-Davies
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