Collyer Bristow

LIBOR---THREE VIEWS---WHAT DO YOU THINK?

Any note about the LIBOR fiasco is necessarily going to be out of date almost as soon as it appears; but I don't think that should stop us discussing it. This note highlights a few key themes, some of which I have written about previously and some being more specific to what is currently going on. All comments gratefully received as I suspect there is a lot more to come..

The insider says "this is why we don't really need anything different to what we have now…….
The financial sector needs to succeed to enable the economy as a whole to be successful and grow. It needs to be able to take risks, to allow innovation and to reward those who bring in profits. Light touch regulation is a necessity and anything to the contrary will result in a flood of top talent departing for other financial centres. The FSA has more than enough rules in its handbook and there numerous regulatory authorities in the UK. Directors are well aware of their roles, responsibilities and duties so why don't we leave them to deal with things. And in the end, if shareholders don't agree with what is happening, they can vote the board out—look at what has happened recently. The authority of the Governor of the Bank of England and the head of the FSA ought to be too strong for anyone in the City to fight against. Together this lot should do the trick. But if we do need more of them, the financial services industry will just have to factor that into its costs…this will all soon be forgotten as just another small hiccup in the City's ever upward curve…"

The onlooker says "we are in big trouble, you better believe it……..
The financial sector makes too much money for itself, it puts its own interests first and second... its directors and senior employees are overpaid. They don't have any understanding of and don't care about the real economy—essentially everything outside the City. They have no fear of the mass of rules and regulations which are meant to rein them in and moderate their behaviour. These rules are so complex, even the various regulatory authorities don't really understand them and if they do, there is always another loophole for people to squeeze through. Those with money will always be able to beat the system and if they get fired, they usually end up getting a huge payoff and walking into a job with a similar organisation, here or abroad... And so what if we lose all this so called talent, we should be encouraging kids to look at all the other alternatives; what's wrong with working in the sciences or the arts, rather than seeing the financial sector as some sort of Holy Grail. If money is all we measure things by, we are tumbling down a slippery slope. "

I say…..and having been saying for several years.

We have too many rules and rules which are for whatever reason, over-complex, unenforceable and unenforced. LIBOR hits each one of these issues full on. I understand, if past experience is anything to go by, it may never be possible to resolve fully these types of problems; there are no easy solutions—certainly knee jerk political reactions won't do it—they never do. But here are a few initial thoughts for further discussion and to add to the general melting pot….

The LIBOR fallout

The LIBOR fiasco itself is now far behind us, remember, it took place apparently between 2005 and 2008. However, the fallout is most certainly not. Possibly the first thing for a few people to do (and not just those traders who rigged the system and who have deservedly been fired) is to apologise. Comments from my clients include the key phrases, "they still don't get it "; "what world are they living in" and "they need to get out more". "They" doesn't just refer to the senior bankers and the regulators under whose watch this all happened. It also refers to those politicians, including ministers and ex-ministers who seem to think, if the recent slanging match in the House of Commons is anything to go by, the one who shouts the loudest will score most political points. I think the public now know better.

The rules

I have been wondering as ever, what all these rules, in this case financial rules, are actually for? Are they to stop people from acting or not acting in a certain way, or are they trying to set some sort of overarching "moral" framework to assist people in working out what their behaviour should be. This is a crucial distinction and point for discussion in deciding how to proceed. The purpose of legislation, primary and secondary, should be fundamental to this discussion. Politicians have a natural reaction to pass rules and laws--many people wonder why else they are here--but sometimes proper reflection is best. In what is now clearly a crucial time for the confidence of the UK banking industry, passing the wrong laws or making snap judgements could be a catastrophic mistake. Remember also Barclays is merely the first, there are likely to be, we are told numerous other banks in the firing line. We don't necessarily (although in this specific case we might) need more laws and rules; we do however need the right ones and they should be fit for purpose. We also need the banks, and by that I mean in particular their boards and their senior employees to accept that rules are not there to be broken—it's actually not a game, it's real with real effects and consequences.

In the same way we need to know that the rules which exist are enforceable and enforced. Are we perhaps, with our so called "light touch regulation, "currently the laughing stock of the financial world? *"You mean those guys in London rigged the LIBOR market but according to thousands of pages of rules ,they did nothing wrong, so no criminal charges for them--- hey,*

pass me another glass of champagne—I wonder what other non- existent rules I can break !" Of course if the rules don't exist, they can't be enforced. It seems to be peculiarly British in that the way a key (the key) interest rate is set, as I understand it, is not subject to any form of regulatory control. The relevant organisation which oversees LIBOR is the British Bankers Association, the leading trade association for the UK banking and financial services sector. To date they seem to have kept a very low profile indeed. I see that the SFO are now, as one newspaper put it "*bowing to pressure for crime probe into LIBOR affair*". There are just a couple of initial problems , the SFO needs extra money from the Treasury and technical help from the regulators, so I am not immediately filled with a sense that this will lead to anything like a result.

Some old fashioned words

What about the meaning of being a "professional" within this debate? Many people have commented on the fact of a lack of professionalism of some key players in the finance industry over recent years. I wonder whether, by analogy , the legal profession is less or more " professional " than it was before we, too, had mountains of rules and regulations to comply with, forms to complete and boxes to tick. That is probably for our clients to determine. Another old fashion word in this context is "relationship". I don't think there is anything wrong with being a relationship lawyer or banker; so why do so many people get embarrassed when they use the term? As someone noted the other day, the more box ticking there is, the more that common sense (and I suspect professionalism), goes out of the window. Being a predominantly rule based society won't solve these problems. They go to responsibility, culture and leadership, all very difficult topics to get to grips with, but we must.

We have so many rules already, immediately producing more which attempt to deal with (react to) specific circumstances such as LIBOR, will not necessarily not solve these core issues. They are about human behaviour as much as anything else. Sir David Walker recognised this in his report on the banking collapse of 2008. But ideas such as responsibility, true – not faddish – leadership, morals and ethics are still considered by many "wet" topics; rather like the idea of acting in a "professional" way. After the 2008 banking crisis, discussing these ideas became popular and even trendy! But for how long? It seems to me they started to disappear fairly quickly. They are likely to rise to the surface of the current debate now, as so they should. But this time they should be a fundamental part of the debate. We need to find alternatives to box ticking and process driven regulatory systems, which clearly don't work… because one day the failure really will be serious!

……..to be continued……..

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