ANALYSIS, BANKING & FINANCE

Prosecuting Barclays bankers is inhumane

The events are too far in the past and the consequences too dire for small shareholders if there is a conviction, Robert Rhodes, QC, argues

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PREMIUM

By the time Barclays bankers are prosecuted it will be more than ten years after the events of the financial crisis that are in question
MARK THOMAS/ALAMY

At the peak of the 2007-08 financial crisis the British government had to support the UK banking system to the extent of £1.1 trillion. That included paying £45 billion for the purchase of shares in RBS and even now the taxpayer is sitting on a loss of more than £22 billion relating to that bank.

One bank that did not have to turn to the taxpayer for support was Barclays. In 2008 it obtained its needed cash support from Qatar and private investors. So Barclays has not cost the taxpayer a penny.

Serious fraud must be prosecuted and punished if the evidence is available, and it is in the public interest to prosecute. But I question the desirability of bringing these proceedings – on both moral and practical grounds.

My moral concern is that as a FTSE 100 company, Barclays' typical shareholders are not oligarchs living in Knightsbridge penthouses but pension funds investing on behalf of existing and future pensioners such as retired firemen, policemen and nurses. If Barclays were convicted, it would probably be fined a huge amount of money, because you cannot imprison a company. That money would otherwise be available to invest in developing Barclays or to pay out in dividends. Hence the main sufferers in a successful prosecution of Barclays would be pensioners and small investors who rely on their dividends from the bank.

The practical concern is that a company can only be convicted of fraud if its "controlling minds" acted fraudulently. If Barclays decides to plead guilty, it is difficult to see how the individual defendants could have a fair trial. That is because the knowledge of the bank's plea of guilty could not be kept secret, if only because of its responsibilities as a quoted public company to keep shareholders and the market informed of price-sensitive information, which its plea to fraud undoubtedly would be.

The trial of the directors cannot start before 2019-20. It is surely inhumane to prosecute people for alleged fraud concerning events that happened more than a decade before. One wonders how they can be expected to remember details of what happened then, even with the assistance of contemporary emails and memoranda.

The SFO investigation was protracted in part because of the difficulties it faced in obtaining Barclays' internal documents, but five years is surely too long for any civilised society to tolerate an investigation into such old matters.

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