

Barclays PLC charged with fraud by UK Serious Fraud Office

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The UK's Serious Fraud Office (SFO) has charged Barclays PLC with conspiracy to commit fraud and the provision of unlawful financial assistance during the financial crisis in 2008.

The prosecution has absolutely nothing to do with the criminal and reckless banking behaviour that precipitated the crash—the bank's lending practices, the selling of worthless mortgage-backed securities, false valuation and rating of debt instruments, abuse of loan foreclosure procedures, misrepresenting its financial position or any other forms of financial skulduggery.

Instead, the prosecution relates to Barclays' rescue.

While the Royal Bank of Scotland and Lloyds Bank sought refuge in the tender arms of the British government—with billions of pounds seized from the public purse to bail them out—Barclays sought to evade nationalisation and the possibility of sanctions or restrictions by the UK government on its activities, and instead raised equity from Qatar. It was thus able to meet the higher capital requirements set by regulators as the financial crisis became more acute.

The fraud charges relate to Barclays' arrangements for loans totalling £12 billion with Qatar Holding LLC and Challenger Universal Ltd in June and October 2008, and an apparent £3.5 billion "loan" from Qatari and Abu Dhabi investors in November 2008.

The SFO charges Barclays with failure to properly disclose the so-called "advisory services agreements" (ASAs) struck in 2008 that involved payments totalling £322 million over five years to the Qatari investors. Barclays said at the time the fees were for advice. The SFO's charges imply that Barclays made corrupt payments to secure Qatar's support for the cash injection.

The second set of charges of unlawful financial assistance relates to the £3.5 billion in "loans." The

SFO is arguing that, contrary to the way Barclays represented the transaction as a loan from Qatar, it had loaned Qatar money, which was then used to buy shares in Barclays as part of the rescue deal. In other words, Barclays was using its own money to buy up its own shares in a circular and illegal operation.

In an unusual move, the SFA brought charges against not only Barclays, but also against its top executives, including John Varley, the chief executive at Barclays between 2004 and 2011. This is the first time that the chief of a global bank has faced criminal charges arising out of the 2008 crash.

Three others face prosecution: Roger Jenkins, the executive chairman of investment banking and investment management in the Middle East and North Africa, who was paid £40 million a year, Thomas Kalaris, chief executive of Barclays' wealth and investment management, and Richard Boath, European head of the financial institutions group.

Barclays and the four executives have been charged with a conspiracy to commit fraud by false representation in relation to the June 2008 capital raising. Barclays, Varley and Jenkins face the same charges in relation to the October 2008 capital raising. Barclays, Varley and Jenkins have also been charged with unlawful financial assistance. If convicted, they face jail terms of up to 10 years. The first hearing is set for July 3.

The four men are the most senior UK banking chiefs charged since the financial crisis. While Jenkins' lawyer said his client would "vigorously defend against these charges," Boath issued a statement saying he "was not a decision-maker and had no control over what the bank did in 2008." Varley and Kalaris have declined to comment. Boath added, "I repeatedly raised concerns about the decisions taken by the bank with

both senior management and senior lawyers and was reassured that those decisions were lawful.”

The SFO also investigated Chris Lucas, the bank’s group finance director, but apparently decided against pressing charges because of his health. It also investigated Bob Diamond, a former CEO, and former senior Barclays’ lawyers--Mark Harding, Judith Shepherd and Matthew Dobson--but again decided not to file charges against them.

The Financial Conduct Authority (FCA) is also reviewing the Qatar deals, having re-opened its inquiry earlier this year after more documents surfaced. The FCA fined Barclays £50 million in 2013 for failing to disclose some of the fees paid to Qatar Holding, but following Barclays’ appeal, it put the case on hold.

The Stock Exchange shrugged it off, with shares in Barclays down only slightly after the announcement. The announcement was not unexpected, with Barclays acknowledging that it had anticipated that charges would be brought.

There should be no illusions that there has been some kind of “cultural transformation” among Britain’s regulators. The SFO has not changed its spots and is not in hot pursuit of the banks. The SFO, which the Conservative Party’s election manifesto pledged to fold into the National Crime Agency--emasculating what was an already puny agency--opened its probe in 2012. It has postponed the charging decision at least twice since missing a promised March deadline.

It is pertinent to consider the fact that Barclays did not immediately protest its innocence. Instead, it issued a statement saying that it was “considering its position in relation to these developments.”

This is because, once again, the authorities have acted with kid gloves to protect Barclays from the full impact of a possible criminal conviction, revealing how both the corporate structure and the regulatory system work to safeguard the financial institutions.

The SFO has charged Barclays PLC, the holding company that owns Barclays Bank, not Barclays Bank, apparently out of concern for the damage a conviction would cause. This could lead Barclays to plead guilty and accept a fine of several hundred million pounds so as to continue its operations without hindrance, particularly in the US, where a criminal conviction would preclude it from operating. Such fines, so much loose change for the banks, have become part of the

costs of the banking business and are simply passed on to customers in innumerable charges.

Pleading guilty presumably means abandoning their former top executives to their fate.

However, the decision is likely to depend upon whether the SFO also charges Barclays Bank, as well as what the US Department of Justice and the US Securities and Exchange Commission decide to do over Barclays’ cash injections from Qatar and Abu Dhabi and its alleged mis-selling of mortgage-backed securities. The SFO told Barclays that it has not made a decision as to whether it will also bring charges against Barclays Bank PLC.

Furthermore, Barclays faces a £750 million civil claim for unpaid fees from PCP Capital Partners’ Amanda Staveley and PCP International Finance Limited, which the bank is defending.

Staveley was the advisor on the purchase of Barclays’ shares on behalf of Abu Dhabi’s Sheikh Mansour bin Zayed Al Nahyan in October 2008. The case, to be heard next January, has already played a crucial role in unravelling Barclays’ version of the share purchase as a loan, making it difficult for the authorities to avoid a prosecution.

The evidence thus far rebuts any notion that Barclays in 2008 was in an any less penurious state than the other banks, which only survived because of the government bailout.

Furthermore, far from saving the British taxpayer the cost of bailing out Barclays, as some commentators have claimed, Barclays, like all the other banks, has benefited enormously from the £1 trillion provided by the taxpayer, including more than £500 billion of quantitative easing that has created the biggest government bond bubble in history.

Barclays, like the other banks, has robbed millions if not billions of people around the world via its criminal fixing of the London Interbank Offered Rate (Libor) and Forex market.



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