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Lessons to be learned

16 May 2017 by Dina Medland, Peter Swabey and Leo Martin



Three views on the Barclays whistleblowing controversy



A double fault

Dina Medland writes about business, with a focus on corporate governance

In using his position as CEO of Barclays to try and uncover the identity of a whistleblower, American banker Jes Staley has landed himself a 'severe reprimand', a cut in his bonus, a boardroom that stands by him – and an investigation by the

UK's financial regulators.

This case is going to be seen as a real test of the commitment of the Financial Conduct Authority and the Prudential Regulation Authority to their declared emphasis on ethical behaviour and individual accountability at the very top of a UK plc. An important part of new thinking in regulation has been around the critical importance of whistleblowing.

It is very hard to believe that anyone could get appointed to the position of CEO of a major bank and be completely unaware of that essential piece of regulation. Mr Staley was hired in part to restore integrity.

As Andrew Tyrie, Chair of the House of Commons Treasury Select Committee said: 'The Senior Managers and Certification Regime is supposed to ensure that whistleblowers are protected. This is the first proper test of those rules, and it is for the regulators to test whether Barclays had the right processes in place. The Treasury committee will take a close interest in the regulators' conclusions.'

Whether or not Mr Staley's actions are a 'sackable offence', it is clear the circumstances make it even more critical for there to be a proportionate response – and there is no indication of that happening at time of writing.

The UK's emphasis on corporate governance reform and the re-establishment of that elusive thing 'trust' in the nine years since the financial crisis is still evolving, slowly. As a financial institution – and one whose place in the Libor scandal may still not be entirely clear – Barclays sits centre stage in the public eye.

To respond to such a transgression of ethical standards at CEO level by merely cutting the money to which he is seen as being entitled is surely a double fault –

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Dealing with whistleblowers is a challenge that is vitally important companies get right. Jes Staley has clearly got it wrong. I can accept that he might ask 'who is it?' and be told that it is inappropriate to ask. Had he accepted that response the matter could, and should, have blown over. Unfortunately, he sought to reopen the issue. This raises questions over the sanctions against Mr Staley and the strength of Barclays' culture of encouraging whistleblowing.

In my view, Barclays and its Chairman John McFarlane have got it about right so far, but there remains work to do.

Mr Staley reportedly described the issue as 'an unfair personal attack sent via anonymous letters ... related to personal issues from many years ago', about an employee he had known for a number of years.

There can be a fine line between whistleblowing about an individual and a personal smear, and whistleblowing policies should not afford protection to the malicious. Clearly in this case, Barclays have taken the view that even though Mr Staley believed that this was not a whistleblowing situation, he was wrong to think so and wrong to get involved.

The Barclays board has shown it regards this as a serious misjudgement. They have reported him to the FCA, which may take further action. He received a public reprimand from Mr McFarlane and, although the board has expressed its unanimous confidence in his leadership, it has also made it clear that this transgression is going to hit him in the pocket.

What does this say about the culture at Barclays? I find myself encouraged by the fact that, when originally asked, there was someone at Barclays with sufficient confidence in the culture to say 'no' to the CEO. It is a pity that person did not get the subsequent request. I also find the bank's willingness to go public about it encouraging – it might be tempting for some organisations to hush the matter up. Here, the Barclays board are clearly and publicly performing their fundamental role of holding management to account.

For the future, it means the spotlight will be on Mr Staley and Barclays and both have to be seen to be clean. Neither party can afford a recurrence. Mr Staley should have learned his lesson and Barclays may wish to review its procedures to ensure that, if he has not, it does not matter.



A work in progress

Leo Martin is Managing Director of GoodCorporation

This will be a real test for the FCA and the PRA, whose rules on whistleblowing clearly state that a whistleblower's confidentiality must be protected and that firms need to create a culture that encourages employees to raise concerns about poor behaviour.

It is hard to see how any organisation can be seen as creating an open culture – with employees feeling confident to speak out – when its CEO instructs his internal security team to identify the author of a whistleblowing letter. With all that has been said about reforming behaviour in the banking sector, it seems clear that this is still a work in progress.

Whistleblowing is an essential component of good corporate governance, which needs to be embraced at the top.

An effective board will ensure the right culture is in place, paying particular heed to employee confidence in raising concerns and to monitoring the ways in which they are dealt with. Avoiding any form of repercussion or detriment is essential.

(24 out of the 65 companies assessed) had either wholly inadequate or partially inadequate whistleblowing systems.

The key reasons for judging the systems as inadequate related to two key factors: poor communications about the system and lack of confidence people felt in using the system. This high rate of inadequate procedures shows clearly that this should be a focus for regulators and businesses alike.

Stop press

At the time of going to print, Mr Staley had just apologised to shareholders at the AGM and, in spite of some questions, was re-elected by more than 97% of the vote.

Note: These comments are based on the writers' interpretation of the limited facts in the public domain

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