CLYDESDALE'S THORBURN TAKES A FLIER

Obfuscation dear Treasury Committee? That will do nicely!!

Rather like a reluctance to open the credit card statement after a holiday abroad, we kept ourselves away from listening to Mr Thorburn and the elaborately titled (Executive Director, Customer Trust and Confidence) Ms Crosbie's evidence session to the Treasury Committee until it was gnawing away and we could wait no more.

A large part has left us wishing that we still hadn't opened up that link, and left it well alone as it has taken a full three days to fully calm down.

The evidence started well enough, but it descended into utter chaos. At the end it was hard to determine whether Ms Crosbie herself believed her own responses as they spilt like a series of toxic nonsense's over the desk in front of her. We wonder whether in the lift on the way out Mr Thorburn turned to Ms Crosbie to utter the reassurance 'I think we got away with it'.

They might have done to be fair, because despite the questions from members of the Treasury Committee it was not entirely clear that whether they bought it or not. Were they really satisfied that the bank had only received 550 complaints, and that they were being considered appropriately?

Thanks heavens Mr Thorburn and Ms Crosbie weren't applying to the Dragon's Den, or even running for the top position on the Apprentice, as they would have been torn to shreds. Mr Thorburn, Chief Executive of Clydesdale and Yorkshire Banks appeared not to have a grasp of numbers, worrisome for a person in his position, as he was either happy to deal with rounding off numbers to the nearest thousand in most cases, or simply didn't know them at all (for example, the size of these TBL assets on the balance sheet). It would be risible had the underlying topic not been so serious.

What we do now know is that 2127 of the TBLs sold were of the structured variety, those that do share the characteristics of structured collars. A further 8372 TBLs were fixed rate and are not part of any review, at least currently. There was some discussion regarding 'embeddedness' which was both awkward and unsatisfyingly answered. Whatever the real definition of embeddedness (actually from an hedge accounting point of view an embedded derivative is one where, if it were disembedded it would continue to function on its own as a derivative), Mr Thorburn was forced to admit that even the fixed rate TBLs acted like interest rate swaps. Or at least we think that is what he was admitting to.

Mr Thorburn was further good enough to admit that the 'Terms and Conditions' that came as part of the TBLs would not have passed a plain English test. Good enough, but he didn't further venture that in many cases the Bank didn't even bother to send these Terms and Conditions let alone enquire as to whether they had been read and understood. No, he then made himself busy blaming the economy for the banks travails, pointing out that had interest rates not fallen dramatically, there would not have been any problem with break costs at all. Damn the wretched economy and the record recession; damn the Euro zone for its structural problems and imbalances, damn Japan for having entered a recession in the early 1990's, damn China for not growing fast enough, damn the MPC for cutting rates which ultimately spoilt Clydesdale's profitable party. Did we mention the English football team? Well damn them and their part in TBLs too.

More worrying still was the insistence that the Bank had a 'sales process'. Not only that (and we capitalise it because it deserves the grandeur) the Sales Process was 'long' and had a 'number of interventions'. The Sales Process was exactly that, a Process, a clearly constructed series of meetings, conversations, checks and communications all of which together ensured that the potential of a break cost was carefully articulated, and certainly understood. This included the infamous 'double-flier' that was sent to everyone, a triumph of modern day enunciation, which unlike the Terms and Conditions presumably, was written in plain English.

The double-sided flier purportedly gave an example of the potential quantum of break costs, in a scenario where the borrower was looking to break a fixed rate TBL of amount £1mn and where interest rates had fallen from 5.25% to 4.25% (Mr Thorburn promised to write to the Committee with further details as to whether these double-sided fliers were ever updated as events changed). In our experience, having looked at many dozens of TBLs cases, the double-sided flier simply did not exist or was not sent, apart from in a handful of cases where the answer given for the break cost outcome was simply incorrect.

There remains the vexed question of whether break costs, and their potential application were explained adequately or not. Ms Crosbie promised (we believe) that where there was evidence that they were not (and the incidence of this could end up being 60% of all cases according to Crosbie) customers would be 'redressed'. The word 'redress' can be either noun or verb, but to be 'redressed' is surely a word of fiction; apt enough in the circumstances.

Unfortunately the Committee did not ask any questions about the nature of the bank's costs, and whether it actually incurred any costs as a result of a prepayment. Such a question would have been Bannatynesque, and we doubt that that particular dragon would have provided funding to the Thorburn/Crosbie double-act had they turned up looking for support for their novel 'TBL' idea. No, the canny Scot (born, uncannily on Clydebank) would have insisted on a series of more penetrating questions, the result of which would have been the dispatch of the duo into the lift with their tales rather more between their legs.

The difficult questions have yet to be asked and only by asking the right questions are we likely to get the right answers. It hard to define 'proper consideration' of break costs; much more prescient would be line up a series of questions that really would test the Bank. 'Did you design TBLs to get around the regulations?' could be replaced with 'given your hedge accounting methodology, did you make any actual loss at all?' and 'were these TBLs a good source of profits?' replaced with 'did you bring the element of up-front profit made into the calculation of overall costs incurred?' The Bank will be content to go into the ring with a customer who claims a mis-sale due to lack of proper explanation of break costs; it will take its chance knowing that a mis-sale' has little legal application. It is less likely to want to go the distance with the fighter that turns up not in shorts with a Lonsdale belt, but armed with the right questions.

In the meantime, we wonder if Mr Thorburn will actually write back to the Treasury Committee with responses to the questions that he didn’t know off the top of his head, or whether, just in the way the Bank has treated its own customers, he will just leave them hanging.