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Judgment in BCCI Liquidators' Case against the Bank of England

The liquidators of the Bank of Credit and Commerce International unconditionally discontinued their action against the Bank of England and 22 of its present and former staff on 2 November 2005. In a judgment delivered this morning, the Judge in the case, Mr Justice Tomlinson, sets out the reasons why he completely exonerated all of the individuals involved, and the Bank. The publication of his formal judgment brings to an end the BCCI litigation, believed to be the longest and most expensive trial in the Commercial Court.

In his 86 page judgment Mr Justice Tomlinson, says (paragraph 23):

"I became so concerned about the case that I decided both to consult and to warn the Lord Chief Justice about it. I told the Lord Chief Justice, then Lord Woolf, that the case was a farce." In the same paragraph he says "I told the Lord Chief Justice that the case as it was being pursued before me bore little or no relation to that which the House of Lords had considered fit to proceed to trial. I warned the Lord Chief Justice that the case had the capacity to damage the reputation of our legal system." The judge also refers to the "myriad hopeless inconsistencies and implausibilities in the liquidators' case."

Mervyn King, Governor of the Bank of England, says:

"The Judge's words speak for themselves. It doesn't need any further comment from me."

Appendix – historical facts about the case

- BCCI was closed by the Bank of England in 1991 after major frauds came to light. The Bingham Report was published in October 1992.
- The action against the Bank of England by the Liquidators of BCCI was announced in 1993, and the trial started in the High Court in London on 13 January 2004 before Mr Justice Tomlinson.
- The action brought by the Liquidators accused the Bank of England and 22 present and former staff members of misfeasance in public office. This required the claimants to prove bad faith amounting to dishonesty on the part of the Bank and individual officials. In addition to alleging that they acted

dishonestly in the period prior to the closure of BCCI in 1991, it was also alleged that they had been lying about their involvement in the BCCI story as part of a cover-up since 1991.

- The Bank applied to have the claim struck out. In March 2001 the House of Lords (by a 3/2 majority) found in favour of the Liquidators on the basis that the Liquidators should be allowed their day in Court. (The Commercial Court Judge and the Court of Appeal had previously struck out the claim after lengthy hearings and detailed judgements, but were overturned by the House of Lords.)
- Mr Justice Tomlinson was appointed as the Trial Judge in 2001 and conducted his first Pre-Trial Conference in November 2001. He conducted a whole series of such Pre-Trial Conferences throughout 2002 and 2003.
- The Liquidators had a formidable legal team of QCs, barristers and solicitors led by Gordon Pollock QC, Lord Neill QC and Clare Montgomery QC.
- Gordon Pollock QC addressed the Court for a record 86 days stretching from January through to July 2004. That record was broken by Nick Stadlen QC for the Bank who addressed the Court for 119 days from July 2004 to June 2005.
- The Liquidators called no witnesses. No witness went into the witness box to give evidence in support of the Liquidators' case.
- Brian Quinn was the first witness for the Bank. He gave evidence from 13 June 2005 to 29 July 2005. Almost all that time was spent in cross-examination by Clare Montgomery QC.
- The Bank's second witness was Peter Cooke who gave evidence from 26 September 2005 to 2 November. Almost all that time was spent in cross-examination by Gordon Pollock QC.
- Peter Cooke attended the hearing on 2 November expecting that his cross-examination would continue for several weeks more. Without any warning, the Liquidators announced that they were unilaterally and unconditionally discontinuing the action.
- On 31 January 2006 the Judge ordered the Liquidators to pay the Bank's costs on an indemnity basis.
- When an action is discontinued by the Claimants, it normally brings the case to an end without the Judge delivering any judgment. This case however is in a league of its own. It has taken up an enormous amount of Court time over the years since 1993. Mr Justice Tomlinson has been closely involved with the case since 2001. He said on 2 November that he was in no doubt that the very

serious allegations of impropriety and dishonesty against the Bank and 22 of its officials were wholly without foundation. Today's judgment sets out his reasons.