

PROFESSOR PREM SIKKA

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

-and-

THE COMMISSIONERS OF HER MAJESTY'S TREASURY

Additional Party

STATEMENT BY PROFESSOR PREM SIKKA

INTRODUCTION

1. My name is Prem Sikka and I am Professor of Accounting at Essex Business School at the University of Essex. I am filing this statement on my own behalf as in the absence of any legal advisers I am representing myself. Due to inadequate knowledge of legal matters I am unable to offer novel interpretations of legislation and past cases, and instead rely on commonsensical understandings to advance my case. These are mainly based on the view that public interest is served by the release of the withheld information.
2. In this statement I advance arguments to call for the publication of the missing parts of the "Sandstorm Report" (prepared in 1991), which arguably played a key role in the closure of the Bank of Credit and Commerce International (BCCI). Its contents are helpful in understanding

banking frauds, money laundering, regulatory failures and for calling governments, ministers and regulators to account. These themes are highly relevant today as they were twenty years ago.

3. Given the nature of the disputed information it is appropriate to contextualise it, especially as the events occurred some time ago and many aspects have remained shrouded in secrecy. Therefore, this statement provides some background information about the closure of BCCI and the Sandstorm Report. In addition, this statement draws attention to the comparative lack of official public information about the closure of BCCI, which makes the publication of any official document very significant. The statement also refers to the context and contents of a report prepared by Lord Justice Bingham (hereafter the Bingham Report). After providing the background, this statement argues that it is in the public interest for HM Treasury to release the missing information.
4. In making my arguments and to keep this statement to a manageable length I am relying upon publicly available information. I make reference to documents that have been previously exchanged by the parties.
5. A number of witness statements are included in Appendix A. Some of their contents are included in the statement below. Since I am bearing my own costs the number of witness statements is not extensive, but they do show a spectrum of wider social interest and all argue that the public interest is served by the release of the withheld information.
6. Appendix B includes correspondence between Austin Mitchell MP and former Prime Minister Tony Blair. It relates to the Sandstorm Report and is relevant to this case. Some contents have been incorporated in the statement below.
7. I also rely upon some additional documents which are not attached to this statement, but can be provided to the parties and/or the Tribunal upon request.

8. This statement is organised as follows:

Part 1 (paragraphs 9-15) explains the information that I am seeking.

Part 2 (paragraphs 16-27) provides a brief background to the Bank of Credit and Commerce International (BCCI). This would be helpful in understanding the social, economic, political and global significance of some of the bank frauds and regulatory failures.

Part 3 (paragraphs 28-55) provides some details of the Sandstorm Report, the document which is at the heart of the disputed information.

Part 4 (paragraphs 56-61) argues that unlike other banking frauds BCCI frauds and regulatory failures have continued to be shrouded in secrecy. Therefore, the public availability of any related document is capable of making a significant difference to public knowledge.

Part 5 (paragraphs 62-77) refers to some aspects of the Bingham Report as it also has a bearing on the arguments advanced in this statement.

Part 6 (paragraph 78 onwards) advances arguments for the release of the withheld information.

PART I: THE DISPUTED INFORMATION

9 I am seeking release of the missing parts (pages, appendices, paragraphs, lines, words) of a document known by the codename of the “Sandstorm Report”. It played a key role in the closure of Bank of Credit and Commerce International (BCCI) on 5th July 1991 and arguably contains some details of wrongdoing and wrongdoers.

10 The Sandstorm Report was prepared by Price Waterhouse (now part of PricewaterhouseCoopers), BCCI’s auditors, for the Bank of England. At the time, the Bank of England was the regulator of banks. The ultimate responsibility for regulation of banks lay with the UK government, more specifically with HM Treasury.

11 As the Sandstorm Report is a secret document, its exact length is not known. I have been unable to find any public statement by any government official stating the length of the document. I have corresponded about this with the Treasury (my email dated 7 July 2010) and sought clarification. Mr. Stephen Cromie, replying (email dated 7 July 2010) for the Treasury, stated,

“I can confirm that the version of the report held by the Treasury consists of a 2-page draft covering letter, a 44-page draft report (on numbered pages) plus a single contents page, and a 1-page Appendix 1 - 48 pages in all. The version we hold does not have any further appendices”.

However, this does not tally with the information released by the US Senate Committee which suggests that the Sandstorm Report consists of 8 sections, ending on page 44. According to its records the report is accompanied by three appendices.

APPENDIX I - HISTORY OF xxxxxxxxxx EXPOSURE
[APPENDIX II] - HISTORY OF SANDSTORMS' RESULTS
APPENDIX III- STATEMENT BY xxxxxxxxxx OF FICTITIOUS PROFITS
AND LOSSES.

I have inserted xxxxxxx in the above to signify that something has been blanked-off. Appendix 1 is available in the Congress Library. The length of Appendices II and III is not evident from the US Congress documents, but they are mentioned on the contents page.

In response (email dated 7 July 2010) Mr Cromie replied that “They are indeed, but not attached.

In its statement of 28 July 2010, filed with the Tribunal¹, the Treasury claimed that “the version of the draft Report which it holds does not include Appendix II or III, despite the reference to those appendices in the table of

¹This is part of the bundle of papers lodged with the Tribunal, pages 52-56.

contents pages. Therefore those appendices do not constitute information withheld by the Treasury”.

Whether the government has tried to correct the records of the US Senate Committee is not known.

I would argue that Appendix II and III should be considered parts of the Sandstorm Report as according to the US Senate Report they are related to the main document. This report was my sole source of information. As I have never seen these appendices I am content for the Tribunal to make its own assessment.

12 The Treasury’s assertion is that “disclosure of the information would prejudice the UK’s relations with another State or States”. This position is also supported by the Information Commissioner.

13 As the information is more than 20 years old I do not find this assertion persuasive and in the later sections will argue that the continuing suppression of information is contrary to the public interest. This position is also supported by a number of witness statements.

14 The Treasury also asserts that the release of the disputed information would not make any additional significant contribution of the information that is already in the public domain.

15 I disagree with this assertion.

PART II: SOME BACKGROUND TO THE BANK OF CREDIT AND COMMERCE INTERNATIONAL (BCCI)

16 BCCI began operations² in pre-independence India and later Pakistan. In 1972, with backing from the Royal House of Abu Dhabi and other Middle Eastern investors BCCI was launched as on the world stage as an international bank with offices in London, Luxembourg, Lebanon, Dubai, Sharjah and Abu Dhabi. BCCI had complex corporate structure and by the early 1980s it was operating from 73 countries. Despite some disquiet about BCCI's operations, the Bank of England licensed BCCI and allowed it to run its affairs from London in keeping with the then government policy of encouraging foreign investment in the City. The Bank of England was the main regulator of BCCI.

17 For many years, BCCI engaged in fraudulent activities. In the space available here it is only possible to provide a few illustrations.

18 . By the late 1970s, BCCI's biggest borrower, the Gulf shipping group was facing financial difficulties and continued to be propped up by BCCI. BCCI falsified its books to conceal loans to Gulf through 750 false accounts. It created fictitious transactions to mask other non-performing loans.

19 By the early 1980s, there was some unease at the Bank of England about BCCI's operations. In 1982, an internal Bank of England memo³ described BCCI as "on its way to becoming the financial equivalent of the Titanic." Peter Cooke, a high-ranking Bank of England official, described Mr Abedi [BCCI founder] as "the living personification of Uriah Heep."

²Further information about the background and operations of BCCI is available in reports published by the US Senate (United States Senate Committee on Foreign Relations, *The BCCI Affair: A Report to the Committee on Foreign Relations* by Senator John Kerry and Senator Hank Brown, December 1992. Washington: USGPO), and the UK Treasury (Bingham, The Right Honourable Lord Justice, *Inquiry into the Supervision of The Bank of Credit and Commerce International*, London: HMSO, 1992).

³ This is from a document obtained by BCCI's liquidators for litigation against the Bank of England. The quote was reported in The Independent, 13 January 2004; <http://www.independent.co.uk/news/business/news/bank-of-england-in-the-dock-over-bcci-collapse-572886.html>

20 In 1988, a US federal grand jury in Tampa, Florida indicted BCCI and 10 of its officials on charges of laundering drug money.

21 Amidst mounting evidence of fraud BCCI was closed down by the Bank of England on 5th July 1991 and soon afterwards placed into liquidation. Subsequently, it became known that BCCI was the site of the biggest banking fraud of the twentieth-century. At the time of its closure BCCI had some 1.4 million depositors across the world; the majority of whom were either residents of South Asia or Asian immigrants. The creditors' collective losses probably exceeded US\$10 billion. 14,000 people worldwide lost their jobs⁴.

22 Since then many UK depositors have recovered substantial parts of the savings. At the same time many, including 28 UK local councils, have lost large sums. "I lost millions. I was a property developer, all my money was tied up in property and BCCI was the only bank that I was using day to day," said one man from Southall, one of London's biggest Asian communities⁵. Depositors in other countries suffered too. For example, some 50,000 depositors in Bangladesh lost all or most of their money. Thus BCCI closure had a global dimension.

23 According to New York District Attorney Robert Morgenthau⁶, who mounted a number of criminal prosecutions, BCCI operated corruptly for 19 years prior to its closure. It systematically falsified its records, laundered the money of drug traffickers and other criminals. It paid kickbacks and bribes to public officials. BCCI had links with senior government officials in many countries. It handled money transfers for dictators, such as Saddam Hussein, Manuel Noriega, Hussain Mohammad Ershad and Samuel Doe. It provided accounts for the Medellin Cartel and Abu Nidal. It had also been

⁴ Hansard, House of Commons Debates, 22 October 1992, cols 574-89.

⁵ As per BBC News; <http://news.bbc.co.uk/1/hi/business/3392703.stm>.

⁶ As per US Senate Foreign Relations Subcommittee on Narcotics, Terrorism and International Operations, The BCCI Affair: Hearings Part 1 – August 1, 2 and 8 1991, Washington DC: US Senate Committee on Foreign Affairs.

used by the US Central Intelligence Agency (CIA) to fund operations in Afghanistan

24 In February 1988 the United States Senate Committee on Foreign Relations' investigation of BCCI began its two-year investigation of the relationship between drug trafficking to U.S. foreign policy and law enforcement. During a hearing on General Noriega's⁷ drug trafficking and money laundering, BCCI was identified as facilitating Noriega's criminal activity. In March, 1988, the Foreign Relations Committee issued subpoenas to BCCI and those at the bank involved in handling Noriega's assets, and the accounts of others in Panama and Colombia. The Committee examined a complex web of BCCI structures, transactions, trails and political links. Its report was published in December 1992. Amongst its conclusions it stated that

“BCCI constituted international financial crime on a massive and global scale ... It systematically bribed world leaders and political figures throughout the world ... It developed a strategy to infiltrate the US banking system which it successfully implemented, despite regulatory barriers that were designed to keep it out ... BCCI's accountants failed to protect BCCI's innocent depositors and creditors from the consequences of poor practices at the Bank which the auditors were aware for years”..

25 The US Senate Committee was highly critical of the Bank of England, then the statutory regulator of UK banks, and stated⁸ that

“In 1988 and 1989, the Bank of England learned of BCCI's involvement in the financing of terrorism and in drug money laundering, and undertook additional, but limited supervision of BCCI in response to receiving this information ...

In the spring of 1990, Price Waterhouse advised the Bank of England that there were substantial loan losses at BCCI, numerous poor banking practices, and evidence of fraud, which together had created a massive hole in BCCI's books. The Bank of England's response to the

⁷ General Manuel Antonio Noriega Moreno was President of Panama from 1983 to 1989.

⁸ Chapter 1 of the United States Senate Committee on Foreign Relations, *The BCCI Affair: A Report to the Committee on Foreign Relations* by Senator John Kerry and Senator Hank Brown, December 1992. Washington: USGPO

information was not to close BCCI down, but to find ways to prop up BCCI and prevent its collapse. This meant, among other things, keeping secret the very serious nature of BCCI's problems from its creditors and 1 million depositors.

In April, 1990, the Bank of England reached an agreement with BCCI, Abu Dhabi, and Price Waterhouse to keep BCCI from collapsing. Under the agreement, Abu Dhabi agreed to guarantee BCCI's losses and Price Waterhouse agreed to certify BCCI's books. As a consequence, innocent depositors and creditors who did business with BCCI following that date were deceived into believing that BCCI's financial problems were not as serious as each of these parties already knew them to be.

From April, 1990, the Bank of England relied on British bank secrecy and confidentiality laws to reduce the risk of BCCI's collapse if word of its improprieties leaked out. As a consequence, innocent depositors and creditors who did business with BCCI following that date were denied vital information, in the possession of the regulators, auditors, officers, and shareholders of BCCI, that could have protected them against their losses.

In order to prevent risk to its restructuring plan for BCCI and a possible run on BCCI, the Bank of England withheld important information from the Federal Reserve in the spring of 1990 about the size and scope of BCCI's lending on CCAH/First American shares, despite the Federal Reserve's requests for such information. This action by the Bank of England delayed the opening of a full investigation by the Federal Reserve for approximately eight months.

Despite its knowledge of some of BCCI's past frauds, and its own understanding that consolidation into a single entity is essential for regulating a bank, in late 1990 and early 1991 the Bank of England tentatively agreed with BCCI and its Abu Dhabi owners to permit BCCI to restructure as three "separate" institutions, based in London, Abu Dhabi and Hong Kong. This tentative decision demonstrated extraordinarily poor judgment on the part of the Bank of England. This decision was reversed abruptly when the Bank of England suddenly decided to close BCCI instead in late June, 1991.

The decision by the Bank of England in April 1990 to permit BCCI to move its headquarters, officers, and records out of British jurisdiction to Abu Dhabi has had profound negative consequences for investigations of BCCI around the world. As a result of this decision, essential records and witnesses regarding what took place were removed from the control of the British government, and placed under the control of the government of Abu Dhabi, which has to date withheld them from criminal investigators in the U.S. and U.K. This decision constituted a costly, and likely irretrievable, error on the part of the Bank of England"

26 On page 276 of its report the US Senate Committee stated that Bank of England was engaged in a “cover-up”

“By agreement, Price Waterhouse, Abu Dhabi, BCCI, and the Bank of England had in effect agreed upon a plan in which they would each keep the true state of affairs at BCCI secret in return for cooperation with one another in trying to restructure the bank to avoid a catastrophic multi-billion dollar collapse. Thus to some extent, from April 1990 forward, BCCI's British auditors, Abu Dhabi owners, and British regulators, had now become BCCI's partners, not in crime, but in cover-up. The goal was not to ignore BCCI's wrongdoing, but to prevent disclosure of the wrongdoing from closing the bank. Rather than permitting ordinary depositors to find out for themselves the true state of BCCI's finances, the Bank of England, Price Waterhouse, Abu Dhabi and BCCI had together colluded to deprive the public of the information necessary for them to reach any reasonable judgment on the matter, because the alternative would have been BCCI's collapse”.

27 According to the US Senator John Kerry, chairman of the US Senate Foreign Relations Subcommittee on Narcotics, Terrorism and International Operations, the BCCI frauds raise fundamental questions of public interest, faith in democracy, governments and public accountability. Senator Kerry explained⁹ that BCCI frauds are:

“... not just another story of, of big-time, big-money con artists. It is a story of international lawlessness, of extraordinary greed which is becoming too much the centerpiece of recent history. It is a story of the big guys getting away with things that little guys could never hope to escape responsibility for, and the little guy winding up being screwed in the process. It is a story of the abuse of power and the abuse of system. It is a big white collar crime that facilitates and encourages the two-bit street crime that kills. BCCI is the most prominent and dramatic symbol of a way of doing business that challenges and diminishes faith in Government, our government, and governments around the world. Average people do not believe, I think, that government is on their side these days. They do not believe that we can or that we want to protect them as we are supposed to do, and certainly that we do not protect them from banks that become the private playthings of the very rich and sometimes the crooked. They do not believe that large and powerful corporations, or powerful people play by the same rules or are required to play by the same rules as everybody else. And they are convinced

⁹ US Senate Foreign Relations Subcommittee on Narcotics, Terrorism and International Operations, The BCCI Affair: Hearings Part 1 – August 1, 2 and 8 1991, Washington DC: US Senate Committee on Foreign Affairs.

that if you can afford to hire the best lawyers and the best accountants, you can get away with almost anything in the world” (p. 2).

PART III: THE SANDSTORM REPORT

- 28 The publicly available information suggests that in March 1991, the Bank of England asked BCCI auditors Price Waterhouse to prepare a report under Section 41 of the Banking Act 1987. This report was codenamed “Sandstorm Report” and a draft was submitted to the Bank of England on 24 June 1991. The cost of the report was borne by the UK taxpayer.
- 29 The government defence for secrecy has been rationalised by statements that the contents of the Sandstorm Report were covered by “confidentiality” provisions in Part V of the Banking Act 1987. However, that did not prevent the UK government and various agencies from circulating it to selected parties (see below).
- 30 Some clues about the contents of the Sandstorm report were provided by the US Senate Committee report published in December 1992¹⁰. It noted (page 52) that

“An insider's account of BCCI's fraud created by BCCI's own auditors, Price Waterhouse, and provided to the Bank of England dated June 22, 1991, the "Sandstorm Report," was the final evidence that lead to the shutdown of BCCI globally on July 5, 1991. That draft report, based on a review of banking records from several countries and interviews carried out through the spring of 1991, found evidence of "widespread fraud and manipulation," at BCCI, reflecting "the general scale and complexity of the deceptions which have undoubtedly taken place over many years. This information was developed when Price Waterhouse investigated some \$600 million of BCCI deposits not recorded in BCCI's books. Other major losses related to BCCI accounts in related entities, including ICIC in the Grand Caymans, sometimes know as BCCI's "bank-within-a-bank," the Bank de Commerce et Placements, a BCCI subsidiary in Switzerland, the Kuwaiti Investment Finance Company (KIFCO), a secret BCCI subsidiary ostensibly owned by a BCCI nominee.”

¹⁰ United States Senate Committee on Foreign Relations, *The BCCI Affair: A Report to the Committee on Foreign Relations* by Senator John Kerry and Senator Hank Brown, December 1992. Washington: USGPO

“Among the specific types of BCCI fraud described by Price Waterhouse in Sandstorm were account manipulation of non-performing loans, fictitious profits and concealed losses, fictitious loans set up in connection with repurchases of shares, misappropriation of deposits, fictitious transactions and charges, unrecorded deposit liabilities, nominee arrangements to create false capitalization, unorthodox and apparently illegal repurchasing arrangements for shareholders, the "parking" of loans to avoid recognition of losses, shoddy lending, bad investments, off-book transactions, false confirmations of transactions, misrepresentations with respect to beneficial ownership of shares, fictitious customer loans, falsified audit confirmations, and the drafting of fraudulent agreements (page 53).

31 Contrary to the long official silence in the UK, the Sandstorm Report had been supplied by the Bank of England, presumably with the agreement of the Treasury, to the US authorities. How many other parties had access to the full or censored version of the report is not known.

32 The US Senate Committee report noted (page 53) that

“The Sandstorm report has been provided to the Subcommittee solely in a heavily censored form by the Federal Reserve at the insistence of the Bank of England, which forbid the Federal Reserve from providing a clean copy of the report to the Congress on the ostensible ground that to do so would violate British bank secrecy and confidentiality laws”.

33 The US Senate Committee subsequently obtained an uncensored copy of the Sandstorm Report. Its report (page 53) stated that that

“Later, shortly before the conclusion of the preparation of this report in late August 1992, the Subcommittee obtained an uncensored version of the report from a former BCCI official, which revealed criminality on an even wider scale than that set forth in the censored version”

34 At the above juncture there is no official record of the UK government acknowledging the release of the full or censored version of the Sandstorm Report to the US, or any other international authorities. There was no attempt to make the same available to UK citizens.

35 The US Senate report confirms that some BCCI officials had uncensored copies of the Sandstorm Report and these officials passed the uncensored copies to other parties. The UK Treasury has stated (paragraph 5 of the

Treasury's submission to the Tribunal on 28 July 2010¹¹) that "As far as the Treasury is aware, the BCCI official who supplied the Report to the Senate Committee did not obtain it from the Treasury". However, The UK government has never published a list showing the number of copies in existence or circulated to officials. Since the Sandstorm report has been considered to be a secret document, the steps taken to retrieve the unauthorised leaks, if that is what they were, are not known.

36 Mr. Jack Blum, a Washington DC lawyer and a former investigator for the US Senate Committee that investigated BCCI frauds, is widely credited with discovering the BCCI frauds. Mr Blum has provided a witness statement (see Appendix A1) and states that US officials "obtained a bootleg copy of it [Sandstorm Report], and used the copy to convince the Federal Reserve Bank that action was essential". Therefore, it is clear that US Federal Reserve, the US Department of Justice and others had access to the uncensored version of the report.

37 In addition, at least one UK newspaper appears to have seen the report. On 21 July 1991, Sunday Times (pages 1 and 20) referred to "secret BCCI documents". The newspaper further explained that it is "A joint BCCI-Price Waterhouse report on the bank's terrorist links, prepared by a small, secret group of experts set up by the Bank of England, was completed shortly before BCCI was shut down on July 5. A copy was sent to Sheikh Zayed¹², the ruler of Abu Dhabi and owner of BCCI".

38 The above newspaper report is believed to refer to the Sandstorm Report. Some of its contents have been aired in the press and highlight fraud, money laundering and terrorist funding. These themes are perhaps even more relevant today..

39 The Sunday Times story (21 July 1991) mentioned that the secret report explained that

¹¹ Page 53 of the bundle of papers filed with the Tribunal.

¹² Sheikh Zayed bin Sultan Al Nahyan died on 2 November 2004.

“Abu Nidal, the world’s most dangerous terrorist used London Branches of the Bank of Credit and Commerce International (BCCI) to help fund a decade-long terrorist campaign against western targets ... BCCI accounts had almost certainly been used by Islamic Jihad, part of the Hezbollah Group ...40 accounts at BCCI’s central London branches, including Hyde Park and Sloan Square Street, were secretly controlled by Nidal and 10 other terrorist and arms dealers. ... The account-holders included Ben Banerjee, an Indian-born arms dealer named in the arms-for-hostages scandal that rocked the Reagan administration, and Samir Najmeddin, an Iraqi businessman who supplied arms to Saddam Hussein and to Argentina during the Falklands war ...

40 The Sandstorm Report has been shrouded in secrecy even though parts of it have been freely available in the US (see above). On 26 October 1998 Austin Mitchell MP urged (Appendix B 1A) the Prime Minister to make the same information publicly available in the UK. Some seven years after the preparation of the Sandstorm Report Prime Minister Tony Blair maintained that the Sandstorm Report is confidential. In his reply dated 10th December 1998 (Appendix B 1B), before the implementation of the UK Freedom of Information law, to Austin Mitchell MP, the Prime Minister said:

“Thank you for your letter of 26 October in which you requested that the Government publish the Price Waterhouse report on BCCI known, as "Sandstorm".

As Alistair Darling explained in his letter of 22 July, the report was commissioned by the Bank of England, under section 41 of the Banking Act 1987. It is therefore covered by the confidentiality provisions in Part V of that Act. The work was undertaken, and the contributions obtained, on the clear understanding that the report would not be made public. The result of any litigation concerning BCCI does not alter this understanding.

The position concerning the disclosure of information in such circumstances is set out in the Code of Practice on Access to Government Information (Point 14 of the exemptions to the principle of disclosure) which governs current practice. This position is retained under the proposals in the Freedom of information White Paper 'Your Right To Know', as the last of the six proposed specified interests governing disclosure.

You suggested that release of the Sandstorm report would be tangible proof of our commitment to freedom of information. As we said in the White Paper, it is important to protect information supplied in confidence, where there was an explicit undertaking of confidentiality, or

at least a reasonable expectation that the law of confidentiality applied. This was clearly the case with the Sandstorm report, given its origins under Section 41 of the Banking Act”.

41 In a letter dated 22nd April 1999 (Appendix B 2A) Mr. Mitchell pursued the matter further and on 10th June 1999 (Appendix B 2B), the Prime Minister replied (Appendix B 2B) that

Treasury officials have contacted the Bank of England and I understand that, while it is correct to say that certain US authorities were provided with copies (with some information deleted in certain cases) and the copies were not marked “confidential”, they were provided under conditions of confidentiality” .

42 On 22 June 1999, Austin Mitchell (Appendix B 3A) argued that “Parliament should have a right to see and debate the Report“. Prime Minister replied on 2nd August 1999 (Appendix B 3B) and stated that

“Treasury officials have contacted the Bank of England and I understand that copies of the draft report (in unredacted and redacted form) were made available to the US authorities on the basis that confidentiality would be protected. It was, however, recognised that if information was required by Congress (e.g. the House Banking Committee) it would have to be provided. However, even then the Committee could protect the confidential information or parts of it ... Thus the confidentiality of the information could be protected would appear to be consistent with the US Freedom of Information Act”.

Failure to see even the censored version of the Sandstorm Report is likely to have constrained parliament’s ability to hold ministers to account. It should be noted that at the censored version of the Sandstorm Report has been publicly available in the US. Whether the UK government entered into any Memorandum of Understandings with the US authorities over the release of the Sandstorm Report is not known.

43 UK parliament and public was never been told that the Sandstorm Report, in unredacted and/or redacted form, had been released to another country, or that the report released to another country was not marked “confidential”. More crucially after the BCCI scandal UK parliament debated amendments to the Banking Act, but without any sight of the Sandstorm

Report. MPs were not told that parts of the report may be available in another jurisdiction.

44 There is good evidence to suggest that the Sandstorm Report has been seen in both the censored and uncensored versions by the US Senate Committee, Federal Reserve and US law enforcement agencies. A full copy of the report is likely to have been provided to the ruler of Abu Dhabi, the major shareholder in BCCI. How many other states have seen the censored and/or uncensored version of the report is not known.

45 The steps taken by the Bank of England to recover the leaked report(s) are not known.

46 The steps taken by the Bank of England and/or the UK Treasury to limit or manage the impact of the disclosures on relationships with one or more other states are not known.

47 As part of scholarly research¹³ into the closure of BCCI and its implications for understanding trajectories of globalisation and regulation my co-author Professor Patricia Arnold (University of Wisconsin-Madison) scrutinised information held at the US Congress library and found a censored version of the Sandstorm Report. It is evidently the version mentioned in the US Senate Report.

48 Whether the US Congress Library archives hold the full uncensored version of the report is not known.

49 The version found by Professor Arnold was photocopied. Subsequently, I scanned it and placed it on the website of the Association for Accountancy and Business Affairs (AABA). AABA is a not-for-profit organisation and I am its director. This is perhaps the first-time that any part of the Sandstorm

¹³ Patricia Arnold and Prem Sikka, "Globalization and the State-Profession Relationship: The case of the Bank of Credit and Commerce International", *Accounting, Organizations and Society*, Vol. 26, No. 6, 2001, pp. 475-499

Report became accessible to UK legislators and citizens. The release of the information prompted a question in the House of Commons.

Mr. Mitchell: To ask the Chancellor of the Exchequer if he will (a) make a statement on the publication on the website of the Association of Accountancy and Business Affairs of the Sandstorm report by Price Waterhouse on BCCI and (b) place a copy of the report in the Library.

Ms Hewitt: No¹⁴

50 Seemingly, the information freely available in other countries and provided with the approval of the UK government was not to be made available to the UK parliament or citizens.

51 . In late 2005 and early 2006, reports began to emerge of housing foreclosures in the US and that some banks were experiencing financial difficulties. Some minor banks had been closed in 2005. This had considerable echoes of the mid-1970s banking crisis in the UK and suggested that a further study of banking regulation would be a worthy topic of research.

52 The BCCI episode highlighted the involvement of banks in frauds, money laundering and tax avoidance/evasion and regulatory failures. These themes have continued to recur and have been highlighted in a number of investigations¹⁵. Organisations and financial intermediaries operating from

¹⁴ Hansard, House of Commons Debates, 14 June 1999, col. 28

¹⁵ For example, US Senate Permanent Subcommittee on Investigations, Role of U.S. Correspondent Banking in International Money Laundering, USGPO: Washington DC, 2001; US Senate Joint Committee on Taxation, Report of the Investigation of Enron Corporation and Related Entities regarding Federal Tax and Compensation Issues, and Policy Recommendations, USGPO: Washington DC, 2003; US Senate Permanent Subcommittee on Investigations, The Tax Shelter Industry: The Role of Accountants, Lawyers and Financial Professionals, US Government Printing Office: Washington DC, 2004; US Senate Permanent Subcommittee on Investigations, Money Laundering and Foreign Corruption: Enforcement and Effectiveness of The Patriot Act - Case Study involving Riggs Bank, USGPO: Washington DC, 2004. US Senate Permanent Subcommittee on Investigations, Money Laundering and Foreign Corruption: Enforcement and Effectiveness of The Patriot Act - Supplemental Staff Report on U.S. Accounts used By Augusto Pinochet, USGPO: Washington DC, 2005; US Senate Permanent

the UK have been implicated. If anything after 9/11, these matters have become even more significant and are worthy of a study. I have researched money laundering and have published papers on it¹⁶.

53 It was in the above context that I submitted two requests for information relating to banking frauds. One of these related to the Sandstorm Report.

54 My request was made on 6 March 2006. I requested a full copy of the Sandstorm Report as the length of the document was not known. After a long delay¹⁷ the Treasury noted that some of the report is on the internet. It compared the internet version to its documents and noted that some of the information had not been scanned properly. The Treasury provided corrections and also provided some additional information which was not on the internet but formed part of the information held in the US Congress Library i.e. it was part of the uncensored version of the Sandstorm Report held in the US Congress Library. However, it withheld some information. It is this withheld information which is the disputed information. The Treasury has asserted that the release of the withheld information would not add greatly to the public's knowledge of events surrounding the demise of BCCI beyond that already in the public domain.

55 I do not agree with the Treasury's assertion.

PART IV: SECRECY AND LACK OF PUBLIC KNOWLEDGE

Subcommittee on Investigations, (2005b), *The Role of Professional Firms in the US Tax Shelter Industry*, USGPO: Washington DC, 2005.

¹⁶ For example, see Austin Mitchell, Prem Sikka and Hugh Willmott, *Sweeping it under the carpet: the role of accountancy firms in moneylaundering, Accounting, Organizations and Society*, Vol. 23, No. 5/6, 1998, pp. 589-607; Austin Mitchell, Prem Sikka and Hugh Willmott, *The Accountants Laundromat*, Basildon, Association for Accountancy & Business Affairs, 1998.

¹⁷ This is discussed in the Information Commissioners' Decision Notice of 14 December 2009 and is available at http://www.ico.gov.uk/~media/documents/decisionnotices/2009/FS_50202116.ashx

56 BCCI closure has been the subject of a number of reports by various UK parliamentary committees¹⁸. However, unlike the US Senate hearings none are thought to have had access to the full or censored version(s) of the Sandstorm Report for their deliberations.

57 Indeed, the BCCI affair has remained shrouded in secrecy. A notable feature of the BCCI frauds and closure, unlike the previous banking frauds, is the comparative absence of detailed public record of any official investigations. For example, the UK experienced banking frauds and failures and in the mid-1970s. As part of the contribution to the public debate and public presentation of what may be called 'facts' the government, or the Department of Trade and Industry (DTI) on behalf of the government, appointed independent inspectors. For example, Inspectors were appointed to investigate frauds and failures at London and County Securities¹⁹, London Capital Group²⁰ and at Ramor Investments²¹ (formerly Bryanston Finance Limited), just to mention a few. There were also a number of prosecutions, but that did not preclude the appointment of inspectors to gather facts for the public. The information provided some details of the frauds and added to public knowledge and analysis about banking frauds, failures and regulation. It also paved the way for the Banking Act 1979.

¹⁸ For example, United Kingdom Treasury and Civil Service Select Committee (1991), *Banking Supervision and BCCI: The Role of Local Authorities and Money Brokers*, London: HMSO; United Kingdom Treasury and Civil Service Select Committee (1992), *Banking Supervision and BCCI: The Response of Bank of England to Second and Fourth Reports from the Committee in Session 1991-92*, London: HMSO; United Kingdom Treasury and Civil Service Select Committee (1992), *Codes of Practice and Related Matters*, London: HMSO; United Kingdom Treasury and Civil Service Select Committee (1992), *Banking Supervision and BCCI: International and National Regulation*, London: HMSO; United Kingdom Treasury and Civil Service Select Committee (1992), *Banking Supervision and BCCI: International and National Regulation*, London: HMSO.

¹⁹ Department of Trade and Industry, London and County Securities Group Limited, London: HMSO, 1976.

²⁰ Department of Trade and Industry, London Capital Group, London: HMSO, 1977.

²¹ Department of Trade and Industry, Ramor Investments (formerly Bryanston Finance), London: HMSO, 1983.

58 On 8th June 1992 (soon after the BCCI closure) government appointed DTI inspectors to investigate frauds by the late Robert Maxwell who died in November 1991. There were criminal proceedings and investigations by the Serious Fraud Office, but that did not preclude the appointment of independent inspectors. Subsequently, the inspectors' report was published²².

59 In 1995, due to frauds Barings Plc, a bank, collapsed. Subsequently, an inquiry was carried out by the Board of Banking Supervision (Its members included the Governor and Deputy Governor of the Bank of England, Executive Director responsible for Regulation Supervision and Surveillance and six independent members) and a report²³ was published on 18 July 1995. Unlike the Bingham Report (see below) the report included list of the interviewees.

60 In sharp contrast, no independent inspectors were appointed to investigate frauds at BCCI even though it was the biggest banking fraud of the twentieth-century. Therefore, the availability of any official record and report is of considerable significance as it can provide insights into the failures, frauds and attitudes towards such matters.

61 A large volume of information in the public domain has originated from the US Senate Committee on Foreign Relations. Under the chairmanship of Senators John Kerry and Hank Brown, the Committee conducted hearings, cross-examined examined witnesses and obtained government documents. Some information was collected from the files of intelligence agencies and this was placed on the public record as the information was not considered

²² Department of Trade and Industry, *Mirror Group Newspapers plc* (two volumes), London: The Stationery Office, 2001.

²³ Board of Banking Supervision, *Report of the Board of Banking Supervision inquiry into the circumstances of the collapse of Barings*, London: HMSO, 1995.

to be related to any concerns about national security. For example, on page 293 of its main report the Senate Committee Report²⁴ stated that

“In an effort to sort through these anomalies, the Subcommittee in the spring of 1992 reviewed the material provided by the CIA ... the CIA provided a complete record to the Subcommittee of all the raw information upon which the 1985 memo was based. The Subcommittee requested the declassification of material from the 1985 material concerning First American and the bribery of officials. The declassification was completed on April 9, 1991, and consisted of the following account, which excerpts the substance, and on critical factual issues, the actual language, of the original 1985 material ...”

The declassification of some CIA material is discussed in the main report of the Senate Committee and also in the background papers that recorded oral and written testimonies.

PART V: THE BINGHAM REPORT

62 In previous exchanges HM Treasury has responded to my claims of secrecy and I would like to reply to those. In its statement of 28 July 2010, exchanged by the parties, HM Treasury said (paragraph 10²⁵) that

“Lord Justice Bingham’s inquiry was established expressly “to enquire into the supervision of BCCI under the Banking Acts; to consider whether the action taken by all the UK authorities was appropriate and timely; and to make recommendations”. The inquiry took over a year, Lord Justice Bingham interviewed at least 75 witnesses, he stated that he had received full co-operation from the Bank of England, the Treasury and BCCI’s auditors, and his 218-page report was published in full (minus appendices). His findings provided a public analysis of the Bank of England’s supervision of BCCI, and his recommendations as to how banking supervision could be improved subsequently influenced the reform of banking supervision brought about by the Financial Services and Markets Act 2000”.

63 The above statement is a reminder of the continuing secrecy relating to the closure of BCCI. It would be helpful to examine the background and context

²⁴ United States Senate Committee on Foreign Relations, *The BCCI Affair: A Report to the Committee on Foreign Relations* by Senator John Kerry and Senator Hank Brown, December 1992. Washington: USGPO

²⁵Page 54 of the bundle of papers filed with the Tribunal.

of the above statement. On 19 July 1991, the government appointed Lord Justice Bingham to conduct an inquiry “into the supervision of BCCI under the Banking Acts; to consider whether the action taken by all the UK authorities was appropriate and timely; and to make recommendations”²⁶.

64 The Bingham report was the outcome of an inquiry into the supervision of BCCI, not into the fraudulent activities of the bank itself.

65 In a related parliamentary debate, the Prime Minister informed the House of Commons that Lord Justice Bingham

“will have access to all relevant papers, officials and Ministers. Nothing and no one will be held back. I assure the House that any relevant matter of any sort will be made available to Lord Justice Bingham. The conclusion of the inquiry will be made public ... I shall publish the results of the inquiry as soon as Lord Justice Bingham presents them to me²⁷”.

66 There does not appear to be any hint here that any part of the Bingham report would not be published.

67 It should be noted that the preface of the Bingham report is dated July 1992 though it was formally published on 22 October 1992. As noted above, the US Senate Committee obtained and examined an uncensored copy of the Sandstorm report in “late August 1992”. Whether the contents of the US Senate report or its reading of the Sandstorm Report had any bearing on Lord Justice Bingham’s report is not known.

68 Upon publication of the report, the Chancellor of the Exchequer informed the House of Commons that “Lord Justice Bingham's report does not attempt to describe the full story of BCCI's activities, nor does it seek to

²⁶ Page iii of Bingham, The Right Honourable Lord Justice, *Inquiry into the Supervision of The Bank of Credit and Commerce International*, London: HMSO, 1992

²⁷ Hansard, House of Commons Debates, 22 July 1991, col. 755, 761.

judge how overseas authorities, the directors of the companies, or the auditors, carried out their duties²⁸”.

69 The Chancellor went on to explain that “Lord Justice Bingham had access to all the material that he needed from the Government and the Bank. Nothing was withheld. Much of the evidence was confidential and the inquiry was held in private to avoid any prejudice to criminal proceedings and to encourage witnesses to give evidence. Since receiving the report, I have had to weigh carefully the public interest in maintaining that confidentiality against the public interest in disclosure. After taking legal advice, I have concluded that the balance lies firmly in favour of publishing Lord Justice Bingham's report unamended and in full but without the supporting appendices”.

70 The suppression of information was queried by official spokespersons for the opposition. For example, Lord Peston²⁹ said,

“I seem to recall that when we received the Statement on setting up the inquiry, we were told that not only would we be given a report, but we would be given also—except for one or two commercially sensitive matters—all the evidence. I understand that the report before us is all there is. I was in touch with the Printed Paper Office to ask whether there are other volumes and I was told that there are not. I am puzzled by that. We are told that we receive the report unamended and in full but without the supporting appendices”.

71 Whether any of the suppressed appendices of the Bingham Report relate to the contents of the Sandstorm Report (the disputed information) is not known.

72 Pages 205 to 218 of the Bingham Report contain an index to the report itself. The index does not identify the Sandstorm Report.

73 Pages 138-140 of the Bingham Report mentions “The draft section 41 report”. This would appear to be a reference to the Sandstorm Report. The

²⁸Hansard, House of Commons Debates, 22 October 1992, cols 574-89.

²⁹Hansard, House of Lords Debates, 22 October 1992, col. 864.

brief discussion (paragraphs 2.437 to 2.444) covers about two pages of the report. A large amount of this refers to the hectic sequence of events and meetings surrounding the handing of the report to the authorities. Page 140 would appear to provide an indication of the main concerns of the Sandstorm Report in somewhat abstract way. This is confirmed by paragraph 2.444 which notes that “This very brief summary fails to convey the powerful cumulative effect made on the mind by a reading of the whole report”. Elsewhere, paragraph 2.447 refers to the contents of the Sandstorm Report as “fairly damning” and paragraph 2.448 refers to them as “devastating”.

74 Lord Justice Bingham’s report seems to suggest that the Sandstorm Report contains powerful evidence of wrongdoings but there is little detail in his report. The details may have been included in the appendices, but they have been suppressed.

75 It should be noted that former Chancellor Alistair Darling who has called for the release of the missing parts of the Bingham Report. In an article published in Financial Times on 12th March 2011³⁰, Mr. Darling explained that during his term in office he read the unpublished extracts of the report and felt that the contents contain lessons for understanding contemporary developments about regulation of banks, especially as the Bank of England is poised to revert to its pre-BCCI position as the banking regulator. Financial Times notes that Mr Darling was asked to release the second part of the Bingham report while Treasury chief secretary in the late 1990s, but says he decided it was too early to risk compromising those who had given evidence. He argues that almost 20 years after the original report, the unreleased part could be published with some redactions to preserve the identity of key informants.

³⁰ Available at <http://www.ft.com/cms/s/0/7f6d5df8-4c0c-11e0-82df-00144feab49a.html#axzz1JK6aJj2x>

Keith Vaz MP, who for years has campaigned for the victims of the BCCI frauds, is quoted in the same article as saying that “I think it’s vital to get closure on this and to get it published.”

76 The position taken by the former Chancellor is that the passing of time has made the withheld information less sensitive and should be published.

77 The above logic applies to the Sandstorm Report as well.

PART VI: ARGUMENTS FOR PUBLISHING THE DISPUTED INFORMATION

There are a number of compelling arguments for the release of the disputed information. These are detailed below.

78 In common with other taxpayers, I have borne the cost of banking regulation and the preparation of the Sandstorm Report. Therefore it is not too unreasonable to expect that the money is spent wisely and that the expenditure provides value for money and that regulators do not misuse public monies to shield wrongdoers, wrongdoings and regulatory shortcomings.

79 In common with other users of financial services I have an interest in knowing that the banks are properly regulated. This not only has a bearing on the safety of peoples’ savings, but also affects all taxpayers because in the final analysis taxes are used to bail out distressed banks and compensate depositors. Therefore, citizens need to know the kind of frauds that banks indulge in and make an assessment of the possibilities of regulatory successes and/or failures. In the light of the current banking crisis, such issues are even more relevant today and public knowledge and quality of debate would be enhanced by the publication of the withheld information.

80 Combating money laundering has been identified as one of major issues facing society today. BCCI is a well known example of money laundering at a massive scale. There have also been a number of other money

laundering events that pose serious questions about regulation of banks. For example, a US Senate Committee report³¹ noted that former Chilean dictator General Pinochet laundered some of his money through bank accounts in London. Nigerian dictator General Sani Abacha laundered money and an official investigation by the Financial Services Authority (FSA) noted that “in excess of US\$1.3 billion linked to Abacha went through 42 bank accounts in the UK between 1996 and 2000³²”. A number of books³³ have noted how the City of London has long been addicted “to criminal cash³⁴”. Such episodes cast doubts on the efficiency of the UK banking regulation. Effective regulation requires vigorous public information and debate. A suspicion remains that the withheld parts of the Sandstorm Report shield some high ranking personalities home and abroad. This may enable governments to appease some high ranking persons at home and/or abroad, but it also undermines public debate and prevents the development of effective regulation. Money laundering and regulatory practices are a matter of legitimate public interest and the level of public debate, knowledge and policy choices would be enhanced by the release of the withheld information.

81 The UK government has been highly secretive about the contents of the Sandstorm Report even though large parts have been available in the US Congress Library. The argument that the report was confidential was maintained even though the UK government had provided it in full, or in part, to the US and possibly other authorities. Even some twenty years after the closure of BCCI secrecy is being maintained and this is unhealthy for a democratic society.

³¹ US Senate Permanent Subcommittee on Investigations, Money Laundering and Foreign Corruption: Enforcement and Effectiveness of The Patriot Act - Supplemental Staff Report on U.S. Accounts used By Augusto Pinochet, USGPO: Washington DC, 2005

³² cited on page 45 of the report by the UK Africa All Party Parliamentary Group, The Other Side of the Coin: The UK and Corruption in Africa, AAPPG: London, 2006.

³³ For example see, Nick Kochan, The Washing Machine: How Money Laundering and Terrorist Financing Soils Us. Texere: London, 2005.

³⁴ <http://www.guardian.co.uk/money/2005/jun/05/business.globalisation>

82 It is not too unreasonable to argue that in a democratic society information obtained under conditions of confidentiality cannot remain secret for ever. Such points have been made the former Chancellor in relation to the Bingham Report. With the passing of time the sensitivity of the information diminishes and the same must apply to the withheld parts of the Sandstorm Report. Thus information that is over twenty years old should be published. The continued suppression of past information would damage public confidence in regulatory processes and the system of government. The continued withholding of information could of itself contribute to suspicion and misunderstanding of the issues.

83 The public confidence in good governance requires transparency and accountability and that is not aided by suppression of past information, especially when it relates to wrongdoings.

84 The secrecy imposed by the UK government poses fundamental questions about what people are allowed to know. It is too easy for governments to shield individuals and organisations involved in wrongdoings. Such practices are incompatible with established notions of public interest. Senator John Kerry added that

“I think entire question about secrecy in government is once again raised by this issue [BCCI frauds]. Too often too many of us have seen instances where information that people want to keep away from the accountability process is merely classified. There is no rightful reason for it to be classified, there is no matter of national security or urgency contained therein, but it is classified, and thereby we have a secret government kept away from people, which is really part of the constitutional process of this country.

I will tell you that in my judgement there is not one piece of that memorandum [this is a reference to a CIA memorandum on the corrupt activities of BCCI] that ought to be classified, and I have sought full declassification. ... Truly our country is threatened when there is a branch of government that can hide whatever it does merely by putting a stamp on a piece of paper³⁵”.

³⁵ Page 4 of US Senate Foreign Relations Subcommittee on Narcotics, Terrorism and International Operations, *The BCCI Affair: Hearings Part 1* –

The logic of Senator Kerry's arguments is equally applicable to the UK.

85 The UK should not be striving to apply lower standards of public interest than those applied by equivalent countries, such as the US. Though the systems of government may be different, the UK also claims to advance democratic values.

86 As the Tribunal considers the possible release of the withheld information it should be noted the criminal prosecutions arising out of the BCCI frauds have long been completed. The litigation between Deloitte & Touche, the liquidator of BCCI, and the Bank of England has been settled. Thus there are no legal reasons for the continuing suppression of the information.

87 In the US, following the investigations by the US Senate Foreign Affairs Committee a number of documents held by the Central Intelligence Agency (CIA) were declassified nearly 20 years ago. This would suggest that there are no good reasons for the UK to persist with its secrecy.

88 Neither the Treasury nor the Information Commissioner has explicitly referred to any links between the Sandstorm Report and national security. Even if there were any links twenty-years ago, they are likely to have been diluted. There is no national security reason for withholding the contents of the Sandstorm Report.

89 The Treasury and the Information Commissioner's refusal to release withheld information appears to be based upon interpretations of Section 27 of the FOIA. This seems to be checked to some extent by Section 2 of the Act. However, it is not clear why some part of a report prepared nearly twenty years ago are still regarded as secret. Perhaps, twenty years ago there were some good reasons, as a number of criminal prosecutions were pending, but the same reasons are unlikely to be valid with the same force today. My argument is that public interest is served by informing citizens, especially where governments and regulators failed to protect their

August 1, 2 and 8 1991, Washington DC: US Senate Committee on Foreign Affairs.

interests, as has been the case in the BCCI scandal. It is not clear why informing citizens and making governments accountable is embarrassing to any state.

90 A key argument advanced by the Treasury is that the “disclosure of the information would prejudice the UK’s relations with another State or States”. Neither the Information Commissioner nor the Treasury has identified the State or States in question, which makes a rebuttal very difficult. The Treasury’s position paints a very odd picture of international relations. Seemingly, the UK’s relationship with one or more other states is so precarious that it rests not on trade, treaties, alliances, protocols and shared values, but on a document prepared more than twenty years ago. Such a position is hard to believe and sustain. If all the factors that constitute friendly relations with other states were to be listed, it is unlikely that a document that exposed banking frauds over twenty-years ago would carry any significant weight.

91 It is easy enough for the Treasury to make the above assertions, but I have not seen any statements by officials of the affected state/states stating that the disclosure would prejudice its relationship with the UK. Even if such evidence could be produced that would not by itself provide sufficient conditions for the suppression of the information as the withholding of information would need to be balanced against the public’s right to know about banking failures, fraud, money laundering and regulatory failures. This becomes even more significant as many aspects of the BCCI frauds remain unknown and shrouded in secrecy.

92 The above arguments seem to be given some weight in a recent judgement by the Upper Tribunal in the case of *All Party Parliamentary Group on Extraordinary Rendition v the Information Commissioner and the Ministry of Defence*³⁶ (Appeal Numbers GIA/150-152/2011). The judgement seems to

³⁶ Available at <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/appger-v-ic-judgment.pdf>

offer possibilities of disclosing information even where the government claims that the disclosure would prejudice relations between states. Paragraph 66 of the judgement states that

“Unless cogent evidence is adduced to show why a particular government would have strong concerns about disclosure of such information as we are here considering, we would be minded to conclude that no case of prejudice to international relations would be made out. If, on the other hand, there was such a case, then the public interest in disclosing the terms of those arrangements becomes that much more pressing and weighty. It is difficult to see how the Secretary of State for Defence, let alone the general public concerned with the issue, could be assured by assurances with a foreign government that was unwilling to have the terms of such arrangements made open”.

As indicated earlier, national security is not cited as the prime reason for withholding parts of the Sandstorm Report and a number of CIA documents were declassified nearly twenty years ago.

93 In his witness statement (Appendix A1) Mr Jack Blum, a former adviser to the US Senate Committee and a person most acquainted with the BCCI frauds and the uncensored version of the Sandstorm Report, states that

“During the two year period the bank spent \$26 million on lawyers and lobbyists in an effort to end all the investigations of the bank. The cover up efforts were monumental. It was obvious at the time that the cover up also involved government agencies on both sides of the Atlantic that did not want the public to see their mistakes. And, despite all of the investigations and prosecutions in both the US and the UK many serious questions remain unanswered. The present refusal to release the report appears to be part of the continuing effort to cover up what was then the greatest bank regulatory failure in history. The public has a right to know what was being covered up.

Twenty years after the closure of BCCI the time has come for real answers. The BCCI employees named in the report are either dead or retired. Most of them could not find jobs in the banking industry. Having BCCI on a resume was lethal. Thus the argument that the government wishes to protect their privacy makes no sense.

Many of the foreign relations arguments are equally inane. What governmental interest would be served by protecting the people who used the bank to finance terrorism as was alleged? None of this makes

sense. Given the passage of time many of the governments involved have changed leadership and are in very different postures than they were at the time. That the bank was a conduit to finance the Afghan war against the Russians is a matter of purely historical interest. The Soviet government no longer exists and the Pakistani government has been through multiple iterations.

The time for truth has arrived. The files should be completely open”.

I wholly concur with force of Mr. Blum’s arguments and believe that they present powerful reasons for releasing the withheld information.

94 In his witness statement (Appendix A2) Mr. Jim Cousins, a former member of the UK House of Commons Treasury Select Committee, raises two issues. These are: 1) Justice for BCCI depositors, especially for those from ethnic minorities and their right to know; and 2) the return of Bank of England as the regulator of banks and contemporary issues relating to regulation. A few snippets from the witness statement provide a flavour of the concerns.

“Sandstorm is not now just a report relating to events long ago, and of historical interest only. There remain, of course, a large number of depositors in BCCI who remain significant losers. Many of those were from the British Muslim community. The failure to resolve the outstanding issues remains an important underlying grievance and throws doubt on the effectiveness of U.K. regulatory culture.

There are, however, a number of new and contemporary issues to which the ‘Sandstorm’ report may be relevant and on which the report may cast some important light.

The return of banking regulation to the Bank of England. (The BCCI affair was, of course, an underlying factor in the removal of banking supervision from the Bank in 1997.)

The difficulty of managing the resolution of large financial institutions (which was the original reason for requesting the Sandstorm Report) is now once again a significant issue. BCCI was an early example of the ‘too-big-to-fail’ issue which now dominates banking regulation policy debates.

The concern of the U.S. Congress about regulatory or judicial decisions in other jurisdictions being influenced by political and economic interests is now once again very active. There is a real risk that the refusal to

publish the ‘Sandstorm Report’ may be used in contemporary debates (e.g. about B.P.) against British interests. The conclusions and recommendations of the Senate Foreign Relations Committee inquiry into BCCI in 1992 could be revived in a way damaging to British interests both as part of the debates about B.P., and in the implementation of the new financial and regulatory oversight regime approved by the U.S. authorities literally in the last few days.”.

95 The welfare of depositors, the public right to know and make an informed contribution to current debates is also the theme of the witness statement by Elaine Smith MSP (Appendix A3). She recalls personal experiences of how the closure of BCCI had a “negative effect on local government services and pension funds”.

She argues that in the context of the current banking crisis “it is important that the reasons as to why this bank was closed are available to the public. The Bank of England was responsible for regulation of this bank at the time. Given that the Bank of England is set to become the UK bank regulator again, it is essential that we know the full reasons behind the collapse of this bank in order that lessons can be learnt for the future. ... very much in the public interest for this information to be released”.

96 It is well known that BCCI frauds damaged the Bank of England’s reputation as a regulator. In 1998, the Bank of England’s banking supervisory powers were transferred to the Financial Services Authority (FSA). Following the current banking crisis, in February 2011 the new administration has announced proposals to reinstate the Bank of England as a regulator of banks³⁷. Therefore, the Bank of England’s past record and future possibilities are a legitimate topic of current public debate. The publication of the missing contents of the Sandstorm report would enable an informed evaluation of the past regulatory role of the Bank of England and possibly shape public choices and decision-making. This line of reasoning would suggest that the missing parts of the Sandstorm Report should be published.

³⁷ http://www.hm-treasury.gov.uk/d/consult_newfinancial_regulation170211.pdf

97 As previously noted, the full uncensored report has been seen by the US Senate Committee and a number of US law enforcement agencies. Some of its contents have also been aired in newspapers. Copies of the uncensored Sandstorm Report have possibly also been released to BCCI's liquidators as part of the legal proceedings brought against the Bank of England. It appears that at one stage the Treasury was content for me to secure the report and directed me to the courts that heard the BCCI liquidator's case against the Bank of England.

In a letter dated 28th March 2007³⁸ HM Treasury stated that

“while we are unable to provide a complete version of the report, we have ascertained that the Report (in unredacted form) was included in the documents filed by the Bank of England in the proceedings brought against the Bank by the liquidators of BCCI SA. It was also the subject of earlier proceedings (for example BCCI, (Overseas) and others v Price Waterhouse and others in 1997). Rule 5.4C(2) of the Civil Service Procedure Rules allows person to make an application to the Court for copies of certain documents that have been filed with the Court in legal proceedings where that person is not a party to the proceedings. If you wish to seek a copy of the Report from the Court, you may find it helpful in making your application to cite the following legal proceedings: Bank of Credit and Commerce International (Overseas) Ltd (in liquidation) and others v Price Waterhouse and others and Three Rivers District Council & others v The Governor and Company of the Bank of England”

.The Treasury letter did not specify the court(s) that I needed to contact. After some research I contacted the Court Service on 14th June 2007³⁹. On 24th July 2007, the Court Service informed me⁴⁰ (the letter was also copied to the Treasury) that due to the age of the cases some files have been destroyed and an examination of the remainder could not locate a copy of the Sandstorm Report. I communicated by disappointment to the Treasury on 31st July 2007.

The Treasury letter of 28 March 2007 did not say that the Sandstorm Report had been provided to the courts with any specific conditions, or that

³⁸ Pages 64-65 of the bundle of papers lodged with the Tribunal.

³⁹ Pages 73 of the bundle of papers lodged with the Tribunal.

⁴⁰ Pages 74-75 of the bundle of papers lodged with the Tribunal.

its dissemination to third parties should be restricted. The letter seemed to suggest that the Sandstorm Report could be obtained by any member of the public.

Though the Bank of England was the party to the litigation, it is unlikely to have acted without liaising with the Treasury. In view of the political sensitivity of the information it is unlikely to have filed the Sandstorm Report with the courts without consultation with the Treasury. Thus the Treasury cannot distance itself from the decision to release the Sandstorm Report to liquidators of BCCI. Even if it could, it seems that the Treasury was content to direct me to other sources from which the Sandstorm Report could be secured. This may superficially enable the government to claim that it has not released the Sandstorm Report, but the fact remains that Bank of England is/was an arm of the Treasury and it is unlikely to have made major political decisions on its own. The previous willingness to encourage me to approach the courts sits uneasily with the refusal to provide the information.

This release of the Sandstorm Report to the BCCI liquidator and the courts increases the number of parties who have seen the uncensored report and it is unfair to conceal it from the public.

98 In previous statements, the Treasury has argued that the release of the disputed information “would not assist public understanding of governmental accountability, adequacy of regulation and enforcement”. Such assertions are contestable. As a large volume of the official UK information is suppressed any official document becoming publicly available assumes new significance and provides a window for understanding money laundering, frauds and regulatory failures. The released information can enable the public to explore new avenues of inquiries. It can help to fill-in the missing pieces of the BCCI jig-saw and frame questions about regulation of banks and regulators. Such topics are highly relevant today as the country is managing another banking crisis.

99 If the Treasury's assertion that the withheld information "would not assist public understanding of governmental accountability, adequacy of regulation and enforcement" is correct then it is difficult to understand its objections to releasing information which by its own admission is not very significant. Yet at the same time it maintains that releasing the information can prejudice relationship with other states. These two reasons are inconsistent and contradictory. It is not clear how something that is insignificant can prejudice relationship with other states.

100 Exposing corruption and wrongdoing is central to good society. Government officials too easily cite relationships with other countries as an excuse for keeping people in the dark. In its witness statement (Appendix A4) The Corner House, a leading UK and global anti-corruption NGO, argues that

"Successive UK and OECD governments have made tackling fraud, bribery and corruption a priority in recent years, and have encouraged other countries to do likewise. The OECD recommends that, in the case of discretionary systems, public authorities should consider it to be in the public interest to expose and tackle bribery, fraud and money-laundering"

Therefore, it is difficult to see how the withholding of 20 year old information is consistent with the espoused public goals.

The Corner House also notes that on occasions

"The UK's judiciary has criticised the UK government on several occasions in recent years for citing the argument of prejudice to the country's relations with another state in order not to disclose information that might be perceived as being awkward or embarrassing to it. Abuse of this argument may serve to undermine public trust in government announcements and decisions rather than to enhance it. In the Al Yamamah-BAE case, evidence released in court indicated that the Prime Minister and government departments had intervened to try to halt the Serious Fraud Office corruption investigation in case it would jeopardise future export contracts; nonetheless damage to relations with Saudi Arabia was cited as a reason for stopping it".

101 Transparency, public accountability and human rights also referred in the witness statement by Mr. Raymond Baker (Appendix A5), Director of Global Financial Integrity, a highly respected Washington DC based anti-corruption think-tank. Mr. Baker asks,

“Why should BCCI’s activities remain cloaked in secret in the United Kingdom? What has been redacted from the Sandstorm Report available elsewhere? The argument that “disclosure of the information would prejudice the UK’s relations with another State or States” serves only to protect trading interests, not the economic rights and human rights of those who have lost resources directly or indirectly from BCCI’s criminal pursuits.

102 Civil society organisations are a vital element in scrutinising governments and are concerned that the withholding of the parts of the Sandstorm Report helps to shield corrupt elites. A witness statement (Appendix A6) jointly issued by some of leading NGOs states that they

“have a particular concern with the ways in which a lack of financial transparency globally can undermine efforts to reduce poverty – most obviously, by facilitating illicit financial flows that not only cost developing countries billions in lost tax revenues but also fundamentally weakening governance and promoting corruption, as the Norwegian government’s expert commission has shown. A lack of financial transparency also facilitates fraud, bribery and the theft of national assets by corrupt elites”

103 Witness statements (Appendix A7 and 8) by two UK legislators, John McDonnell and Austin Mitchell, state that the withholding of past information damages the capacity of UK parliament to develop better laws and secure public confidence. They urge publication of the withheld information.

104 The press is a vital mechanism for calling governments to account. In their witness statement (Appendix A9-15) a number of leading journalists argue that the withholding of twenty-year old information undermines confidence in democratic checks and balances and add that

“The UK freedom of information laws were designed to sweep away layers of secrecy, which harmed social justice and public accountability.

Therefore, it is deeply disturbing that the HM Treasury and the Commissioner for Information remain opposed to the publication of the document. On many occasions courts have directed the government to publish documents, most recently in the Binyam Mohamed case, even though the government argued that the publication of information would somehow prejudice its relationship with other states”.

105 The witness statement by Mr. Richard Brooks (Appendix A11) draws attention the danger that the Information Commissioner’s ruling and the Treasury’s position leads to the institutionalisation of lower standards of public interest. He argues:

“I find it particularly striking that the Information Commissioner appears to say that harm would be caused by the fact of releasing it, which implies that the British government must bend to the standards of the most secretive and possibly repressive governments. That would be a dangerous standard. The public interest would be much better served by showing that the UK operates openly. It would deter secrecy in future and improve the transparency of future inter-governmental dealings, which must be in the public interest”.

106 Accountants played a key role in the preparation of the Sandstorm Report. In his witness statement (Appendix A16) Mr. Krishen Mehta, a former partner in PricewaterhouseCoopers (Mr. Mehta had no involvement in BCCI) adds that the Sandstorm “report can lead to a better understanding of why banks fail, how regulators can do their job in a better manner, and how legislation can be enacted to ensure more financial transparency, I feel that its publication would be in the public interest ... While at PwC we were always encouraged by our leadership to be sensitive to the public interest and the trust that was placed in us. It is in that spirit that I believe that full disclosure of the report would better serve the public, and also be consistent with PwC's own values and ethos as a firm”. Thus the publication of the withheld information can play a role in improving financial regulation.

107 The full contents of the Sandstorm Report are likely to be of interest to thousands of people who were depositors, borrowers, creditors and

employees of BCCI. This point is well made in the witness statement (Appendix A17) by Ms Sarah Knott, a former bank employee

108 There must be occasions on which the UK has had differences even with its closest allies. Such differences are part of normal relationships with other states and do not necessarily result in the suppression of information from citizens. It is difficult to see why the Sandstorm Report should be an exception.

109 It is clear that various agencies of the US government had sight of the full uncensored version of the Sandstorm Report. The US Senate Committee was highly critical of the UK government's secrecy. However, the Treasury has not presented any evidence to show that the sight of the full report has prejudiced the UK government's relationship with the US government.

110 It is reasonable to assume that the government of Abu Dhabi, as the major shareholder of BCCI, also had sight of the full report. It also knows that other states, such as the US, have seen the report. However, there is no evidence to show that the UK government's relationship with Abu Dhabi has been prejudiced as a result of the disclosures.

111 BCCI had corrupt dealings with many governments and regimes. The US Senate hearings mention dubious transactions with political leaders in countries, such as Pakistan, Panama, Abu Dhabi, Nigeria, Iran and Iraq, just to mention a few. BCCI was also used by the intelligence agencies to fund the war in Afghanistan against the Soviet Union. During the last twenty years, many of the political leaders in these countries have died and there have been many regime changes. The disclosure of the corrupt dealings of the past leaders may strengthen the UK government's relationship with the current political leaders in those states.

112 BCCI had operations in many developing countries, including India, Bangladesh and Pakistan. The Bingham Report suggests that these countries were either excluded from the College of Regulators, which was

formed to exercise regulatory oversight of BCCI. Indeed, these countries objected to the closure of BCCI and even tried to mount a rescue. It is not too unreasonable to assume that even some 20 years after the events these countries would welcome disclosures.

113 The Treasury's position that the "disclosure of the information would prejudice the UK's relations with another State or States" raises fundamental questions about obligations to UK citizens. Are they to be kept in the dark so that corrupt transactions and regulatory failures remain hidden? Should relationship with other states be the main factor that governs the release of information and informs the people or enables parliament to examine regulatory apparatuses? Is the provision of information to the UK public to be subordinated to covering-up (it would be recalled that the US Senate Committee concluded that the Bank of England was engaged in a "cover-up") corrupt transactions by some rulers and political leaders.? Can we ever expect governments to tell the truth? Is their first responsibility to other states, or the UK people? These matters go to the very heart of democracy and public accountability. In my view the appeasement of other states should not be a primary factor, especially when the information is very old.

114 The Treasury position fuels the suspicion that the government is shielding corrupt elites and their transactions from public scrutiny. This may well be contrary to the United Nations Convention against Corruption. The UK is a signatory to this convention and thus has domestic and international obligations. The convention, amongst other things, require the government to encourage participation of society in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. The government needs to ensure that the public has effective access to information. The suppression of information which is twenty years old would violate the spirit, and possibly the letter of this convention.

115 In common with other taxpayers, I have borne the cost of producing the Sandstorm Report and the fall out from the BCCI frauds, but am not permitted to see crucial documents. Without full public knowledge taxpayers cannot make any assessment of the value for money or the efficiency and effectiveness of past and/or proposed regulatory arrangements. The publication of the missing information would add to the facts behind a major decision taken nearly twenty years ago.

116 The academic community has an interest in studying regulation, especially regulatory failures, and consider causes of failure, their consequences and possibilities of designing better regulatory mechanisms. Such studies form a vital input into public policy choice debates. The withholding of the parts of the Sandstorm Report is not conducive to informed and objective studies of regulation. Witness statements by Professors Jill Solomon and Michael Jones (Appendix A18 and 19) reinforce this point.

117 For how long can the Treasury continue to withhold the disputed information? If the Tribunal decides in the Treasury's favour then is there anything to prevent the Treasury from destroying the information? Such questions are pertinent because the current information in the public sphere is incomplete and the Treasury can potentially continue to raise objections to the release of the withheld information ad infinitum. Is it really appropriate for a concerned citizen to continue to make annual or periodic application for the release of the withheld information and to see whether the objections to publication have diminished? Under what conditions or time frame should the Treasury be willing or required to publish the missing information? If a concerned member of the public does not continue to seek publication of the missing information, the Treasury may well be tempted to conclude there is no/little public interest and the information can possibly be destroyed.

Some evidence for the above scenario is provided by a case relating to another banking fraud in the mid-1970s. The example is covered by a

Decision Notice⁴¹ (reference: FS50129139) issued by the Information Commissioner on 25 March 2010. It relates to the demise of Ramor Investments Limited (formerly Bryanston Finance Limited), a secondary bank. In this case, in 1975, the Department of Trade and Industry (now the Department of Business Innovation and Skills) appointed inspectors to investigate the frauds. The inspectors published an interim report in 1983, but the final report was never published. A subsequent freedom of information inquiry brought to light the fact the final report, prepared at considerable cost to the taxpayer, is believed to have been destroyed because of the judgements made by some anonymous officials. Such practices raise fears about the withheld parts of the Sandstorm Report too. Is there anything to prevent the Treasury from destroying the missing information? What binding and verifiable undertakings can the Treasury give to ensure that the information would not be destroyed? Given the uncertainties, it is best to release the information now.

Prem Sikka

22 April 2011

⁴¹ Available at
http://www.ico.gov.uk/~media/documents/decisionnotices/2010/FS_50129139.ashx

APPENDIX A

This Appendix contains the following witness statements.

1. Mr. Jack Blum, US lawyer, adviser and investigator to the US Senate Committee that investigated BCCI frauds.
2. Mr. Jim Cousins, former member of the UK House of Commons Treasury Select Committee
3. Ms Elaine Smith MSP, Member of Scottish Parliament.
4. The Corner House, an anti-corruption NGO.
5. Mr. Raymond Baker, Director of Global Financial Integrity.
6. A joint statement from a number of civil society organizations

ActionAid UK
Action Solidarite Tiers Monde, Luxembourg.
Campagna per la Riforma della Banca Mondiale (CRBM), Italy.
Christian-Aid
Commitment for Life (The United Reformed Church)
Debt and Development Coalition Ireland (DDCI)
Eurodad (European Debt and Development Network)
Jubilee Debt Campaign (UK)
Jubilee Scotland (UK)
Jubilee Nederland (NL)
Rights & Accountability in Development
Tax Justice Network
Tax Justice Network International Secretariat

7. Dr. Austin Mitchell MP
8. Mr. John McDonnell MP
9. Ms Madeline Bunting, Associate Editor, The Guardian.
10. Mr. Jason Beattie, Deputy Political Editor, Daily Mirror.
11. Mr. Richard Brooks, journalist at Private Eye.
12. Mr. Nick Mathiason, Bureau of Investigative Journalism and formerly at The Observer
13. Mr. Nicholas Shaxson, author and freelance journalist.

14. Mr. Ian Fraser, journalist and broadcaster contributing to publications including The Sunday Times, Financial Times, The Herald, The Economist, Mail on Sunday, Daily Mail, Independent, Guardian and BBC News.
15. Ms Lucy Komisar, author and journalist writing in many countries.
16. Mr. Krishen Mehta, former partner PricewaterhouseCoopers.
17. Ms Sarah Knott, former international banker.
18. Professor Michael Jones, Professor Accounting, University of Bristol
19. Professor Jill Solomon, Professor of Accounting, University of London – King's College

APPENDIX B

- 1A Letter from Austin Mitchell MP to Prime Minister Tony Blair, dated 26th October 1998.
- 1B Letter from Prime Minister Tony Blair to Austin Mitchell MP, dated 10th December 1998.
- 2A Letter from Austin Mitchell MP to Prime Minister Tony Blair, dated 22nd April 1999.
- 2B Letter from Prime Minister Tony Blair to Austin Mitchell MP, dated 10th June 1999
- 3A Letter from Austin Mitchell MP to Prime Minister Tony Blair, dated 22 June 1999.
- 3B Letter from Prime Minister Tony Blair to Austin Mitchell MP, dated 2nd August 1999