

1 Wednesday, 2nd November 2005

2 (10.26 am)

3 MR JUSTICE TOMLINSON: Good morning, Mr Cooke. Good
4 morning, Miss Montgomery.

5 MISS MONTGOMERY: I am sorry, I suspect Mr Pollock might be
6 going by the clock. I wonder if your Lordship can just
7 rise so I can find out where he is.

8 MR JUSTICE TOMLINSON: Well, that seems fair.

9 (10.27 am)

10 (A short break)

11 (10.28 am)

12 MR JUSTICE TOMLINSON: Yes, Mr Pollock, good morning.

13 MR POLLOCK: My Lord, as your Lordship knows, the
14 liquidators are officers of the court and from time to
15 time seek the guidance and direction of the Chancellor.
16 The liquidators applied to the court for directions.
17 That application came before the Chancellor and was
18 heard over a period of three days. The Chancellor heard
19 the arguments of the liquidators, the Luxembourg
20 liquidators and the English Liquidation Committee. In
21 a reserved judgment given earlier today, he held that it
22 was no longer in the best interests of the creditors for
23 the litigation to continue, and he directed that the
24 action be discontinued.

25 MR JUSTICE TOMLINSON: I see.

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<p>1 MR POLLOCK: The proceedings before the Chancellor are 2 private, but he has authorised a statement in these 3 terms, and I can say nothing more. 4 MR JUSTICE TOMLINSON: You mean the terms you have just read 5 out? 6 MR POLLOCK: Without running the risk of being in contempt 7 of court. 8 MR JUSTICE TOMLINSON: I see. So the proceedings are at an 9 end, subject to any further applications that may be 10 made? 11 MR POLLOCK: Yes, and I should simply say that any such 12 applications, my Lord, would have to be made in due 13 course, and in proper form, because, of course, of the 14 necessity of ensuring that the Chancellor has 15 an opportunity to give any such directions as he would 16 wish. 17 MR JUSTICE TOMLINSON: Right. Do I follow from that that 18 the formal position is that you will serve notice of 19 discontinuance? 20 MR POLLOCK: My Lord, we may already have done so. If not, 21 it is being done, I think, even as we speak, so I would 22 simply ask your Lordship to rise so that we may clear 23 our stuff away and leave, since we in fact have no more 24 instructions, we are no longer instructed to stay here. 25 MR JUSTICE TOMLINSON: First of all, before I do that, there</p>	<p>1 MR JUSTICE TOMLINSON: Yes. 2 MR STADLEN: The Bank will be making applications to 3 your Lordship, and there is a great deal that in due 4 course the Bank wishes to say, and indeed there are some 5 things that the Bank wishes to say in any event, as it 6 were, before due course. 7 MR JUSTICE TOMLINSON: Yes. 8 MR STADLEN: But it may be that the appropriate thing is 9 that your Lordship should rise shortly to give me 10 an opportunity to take instructions, and then we would 11 invite your Lordship to hear what we have to say. 12 MR JUSTICE TOMLINSON: Yes, well, we need not detain 13 Mr Cooke any longer, need we? 14 MR STADLEN: We certainly need not detain Mr Cooke. 15 MR JUSTICE TOMLINSON: Well, Mr Cooke, you have heard what 16 has happened. I shall choose my words with great care, 17 as you will appreciate, there are, as it is apparent, 18 certain further matters which I may have to consider. 19 Obviously you are now released from any further 20 attendance, the action is at an end. 21 I will just say this, Mr Cooke, there have been some 22 very, very serious allegations made against you, and 23 indeed against your colleagues. I have been studying 24 the documents in this case now for a very long time, 25 I have heard detailed submissions on them from both</p>
<p>1 are two things. First of all, I would enquire of 2 Mr Stadlen whether there are likely to be any ancillary 3 applications that I may have to deal with. 4 MR STADLEN: Yes. 5 MR JUSTICE TOMLINSON: I only say that because if the matter 6 is completely at an end and my involvement is at an end, 7 there might be certain things I would say in bidding 8 Mr Cooke farewell. 9 If there are likely to be further matters of which 10 I am seized, which I shall have to consider, I shall 11 consider my language with more care. 12 MR STADLEN: There is a great deal that has to be said on 13 behalf of the Bank, and there are applications that will 14 be made on behalf of the Bank to your Lordship 15 consequent upon the order of discontinuance, as 16 your Lordship knows -- well, your Lordship may not know, 17 first of all, that the Bank has had absolutely no prior 18 notice of this capitulation, not even five minutes, not 19 even when my learned friend Miss Montgomery was in court 20 at 10.29. 21 The position is, as your Lordship knows, that under 22 CPR 38.6, the discontinuance by the claimants of their 23 claims carries with it an automatic presumptive 24 liability to pay all the legal costs incurred by the 25 Bank in defending this action.</p>	<p>1 sides, I have heard you give evidence for, I think it is 2 now 20 days, and I heard your former colleague Mr Quinn 3 before you give evidence for 28 days. 4 Although obviously I would have to consider further 5 developments, had the trial continued, although 6 obviously I would have had to consider further 7 submissions in due course, my careful study of the 8 documents and my consideration of them, and of all the 9 inherent probabilities, and my consideration of 10 Mr Quinn's evidence and of your evidence, have left me 11 in no doubt that the very serious allegations of 12 impropriety and dishonesty against you are wholly 13 without foundation. I do not think I shall say any 14 more. 15 THE WITNESS: Thank you, my Lord. 16 MR JUSTICE TOMLINSON: I propose to rise now, and you will 17 let me know if there is anything further I need to deal 18 with today. 19 MR STADLEN: My Lord, yes, there will be. Perhaps we could 20 let your Lordship know through the usual channels. 21 MR POLLOCK: And your Lordship will no doubt take it as no 22 discourtesy if we ask to be excused. 23 MR JUSTICE TOMLINSON: Well, you have no further 24 instructions to be here. 25 MR POLLOCK: Exactly, my Lord.</p>

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<p>1 MR JUSTICE TOMLINSON: No, I will certainly not interpret it 2 as any discourtesy. Whether it should be right that 3 some observer should be present on your behalf merely to 4 hear what is being said or what further applications are 5 to be made is of course a matter for you, but I shall 6 not obviously interpret it as any discourtesy. 7 MR POLLOCK: It is not a question just of instructions, 8 my Lord, it is a question of sanction, as you will 9 understand. 10 MR JUSTICE TOMLINSON: Yes, but I shall understand, if you 11 are not here, you are not here, and I shall certainly 12 not regard it as any personal discourtesy on anyone's 13 behalf. 14 Right, thank you very much, I will await 15 developments. 16 (10.35 am) 17 (Hearing adjourned) 18 (11.05 am) 19 Submissions by MR STADLEN 20 MR JUSTICE TOMLINSON: Yes, Mr Stadlen? 21 MR STADLEN: My Lord, I apologise for the delay, but 22 arrangements were made to put Messrs Lovells on notice 23 that we were going to be addressing your Lordship and to 24 give them an opportunity to be represented if so 25 advised.</p>	<p>1 action was issued as long ago as 24th May 1993. Today, 2 over 12 years later, the claimants have, by their 3 discontinuance, publicly conceded that the claim against 4 the Bank is hopeless, and that it cannot succeed. 5 After more than 12 years, their case has collapsed, 6 and there should be no mistake, this is unconditional 7 surrender. It does not represent a settlement of the 8 action, or any form of agreement or compromise with the 9 Bank. 10 It is a unilateral discontinuance and abandonment of 11 the action, and a withdrawal, as a consequence, of all 12 the allegations made against the Bank and its officials, 13 and under CPR 38.6, the discontinuance by the claimants 14 of their claims carries with it an automatic presumptive 15 liability to pay all the legal costs incurred by the 16 Bank in defending this action. 17 While first and foremost, the Bank naturally 18 welcomes the unqualified abandonment of the action, the 19 withdrawal of the very serious allegations made against 20 it and many of its officials, and the ending of this 21 costly and wasteful piece of litigation, it is, in my 22 respectful submission, nothing short of a scandal that 23 it has taken so very, very long for the claimants to bow 24 to the inevitable. 25 It has always been clear that this case was</p>
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<p>1 MR JUSTICE TOMLINSON: Right. 2 MR STADLEN: I can repeat that the Bank had no more notice 3 than your Lordship did this morning that the liquidators 4 were planning to discontinue this action, and I should 5 just mention, because your Lordship may have noticed the 6 Governor of the Bank of England in the back of court -- 7 MR JUSTICE TOMLINSON: I had decided not to mention that, 8 although I had wondered. 9 MR STADLEN: I should therefore indicate, for the avoidance 10 of any doubt, that in one of those rare coincidences in 11 life, this was arranged last week in order to show 12 a foreign law student the way in which the Commercial 13 Court operates, and has absolutely nothing to do with 14 the bombshell that was announced 35 minutes ago. 15 MR JUSTICE TOMLINSON: In view of what you said, I assumed 16 that must be the case. 17 MR STADLEN: Indeed. My Lord, as your Lordship knows -- and 18 I should make plain that what I am about to say is 19 scripted, and the reason it is scripted is that 20 notwithstanding having had not a minute's notice of 21 this, it will have occurred to your Lordship that it has 22 occurred to the Bank for no small time that there was 23 always a possibility that the liquidators might 24 discontinue this action. 25 As your Lordship knows, the original writ in this</p>	<p>1 hopelessly misconceived and doomed to failure. 2 Mr Justice Clarke, now, of course, the Master of the 3 Rolls, set out in great detail why that was so as long 4 ago as July 1997, and so in 1998 did the majority of the 5 Court of Appeal, and in 2001, the late Lord Hobhouse and 6 Lord Millett. 7 Contrary to the oft repeated shibboleth promulgated 8 by the claimants to your Lordship, the majority of the 9 House of Lords never held that the claimants were 10 entitled to proceed to a public trial and 11 cross-examination, even if the disclosed documents 12 revealed no basis for maintaining the allegations. 13 As we have exposed in your Lordship's court, the 14 documents alone showed that those allegations were 15 utterly hopeless. 16 The claimants' discontinuance is a vindication of 17 the Bank and the 22 impugned officials and of the iron 18 determination of two successive Governors to defend the 19 action at enormous cost, both in terms of legal costs 20 and in terms of the cloud of suspicion hanging over the 21 heads of perfectly innocent public servants. 22 For over a decade, the Bank and the gradually 23 swelling numbers of impugned officials have had to 24 endure patiently and in silence the publicity which the 25 claimants have courted for their outrageous and baseless</p>

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<p>1 allegations and now at long last the time has come to 2 redress the balance. The boot is on the other foot and 3 the day of reckoning beckons. It is time for the 4 spotlight to shift to the other side of the court and 5 for scrutiny to be brought to bear on the manner in 6 which this hopeless case has been prolonged, long after 7 its utter hopelessness was apparent for all to see. 8 It has always been clear to anyone who has read the 9 Bank's contemporary documents that they provide no 10 support for the claimants' serious allegations and on 11 the contrary are in myriad respects irreconcilably 12 inconsistent with them. No judge has ever held that 13 there is any evidence to support the claim and as soon 14 as the claimants inspected the Bank's documents, the 15 only proper course was to discontinue the action at that 16 stage. That was at least a year before the trial of 17 this action began, and had they dropped the action then, 18 tens of millions of pounds of costs would have been 19 saved, nearly two years of court time not wasted, and 20 the precious time of a Commercial Court judge wasted, 21 and the utterly groundless allegations of dishonesty 22 against the Bank and its 22 maligned officials would not 23 have been given the publicity which has been 24 deliberately courted by the claimants. 25 The way in which this litigation has been conducted</p>	<p>1 sought to broadcast those allegations as far and wide as 2 possible, and in her memorable phrase in The Times, 3 Patience Wheatcroft accurately said that the case has 4 been a miserable headache for former Bank employees 5 whose careers brushed BCCI. 6 The claimants have widened the scope of their 7 original allegations of dishonesty to include no fewer 8 than 22 officials of the Bank in an 11-year period, even 9 though it was clear on the face of the documents on 10 which they themselves relied that those allegations were 11 unsupportable. 12 They included amendments to impugn the honesty of 13 14 junior or middle ranking officials in a move which 14 the former Governor, Sir Edward George, as he then was, 15 described at the time as shabby and disreputable. 16 Even my learned friend Mr Pollock conceded that the 17 claimants' last minute allegations against the part 2 18 officials were in a number of cases based, to use his 19 word, on slender evidence. 20 In the event, when it came to it, in most cases, the 21 claimants did not even try before your Lordship to 22 justify those allegations, or point to any evidence 23 which could support findings against them. In no case 24 was there ever a shred of evidence to justify the 25 allegations having been made, still less to justify</p>
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<p>1 has been nothing short of disgraceful. Allegations of 2 dishonesty against decent, hard working, honest 3 officials have been scattered like confetti, often on 4 the hoof, with no regard to the distress and upset 5 caused to the officials and their families. In that 6 regard, I can tell your Lordship that there has been 7 a very great deal of upset caused to officials and their 8 families, with no support in the documents, no live 9 witnesses, of which there were none on behalf of the 10 claimants, and in many cases, without even any attempt 11 to make them good in the presentation of the claimants' 12 case to the court, and a classic example of that was the 13 utterly outrageous and unpleaded allegation made on 14 Day 5 of the trial by my learned friend Mr Pollock on 15 behalf of the claimants that there had been a high-level 16 conspiracy, a dishonest conspiracy at the top of the 17 Bank, to deceive the Bingham Inquiry, an unpleaded 18 allegation which was withdrawn on Day 6 and which should 19 never have been made. 20 Two former officials of the Bank, in their late 60s 21 and early 70s respectively, with extremely distinguished 22 careers as public servants behind them, have been 23 subjected to offensive and derogatory allegations in 24 a public court. 25 The claimants, by their love of publicity, have</p>	<p>1 findings of dishonesty. 2 Your Lordship will recall the astonishing process 3 during the course of the opening in which we revealed to 4 your Lordship, time and time and time again, that where 5 allegations were made against individual officials, they 6 were either supported by no particulars, or the 7 particulars which were relied on to support them were 8 either complete gibberish or positively inconsistent 9 with the allegation being sought to be made. 10 MR JUSTICE TOMLINSON: My recollection is that as the case 11 was developed by Mr Pollock, the allegations of 12 dishonesty came necessarily to encompass still more 13 people than the 22 who were identified in the pleadings. 14 MR STADLEN: Indeed they did, and one of the disgraceful 15 aspects of the way in which the case was presented to 16 your Lordship was that allegations of dishonesty were 17 made on the hoof against people in respect of whom there 18 had not even been any pleadings, simply in order to 19 answer the unanswerable question, if there had been 20 a dishonest conspiracy going on on the part of the 21 22 named officials, why did the other non-named 22 officials not spot it? 23 Every time either the Bank or your Lordship, in 24 intervention, said, "Well, what about Mr X, Mr Y or 25 Mr Z?", the answer was, "Well, okay, we will say they</p>

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<p>1 were dishonest as well".</p> <p>2 MR JUSTICE TOMLINSON: Or even the American lady lawyer on</p> <p>3 secondment.</p> <p>4 MR STADLEN: Or indeed even the lady American lawyer on</p> <p>5 secondment. Retired Bank officials all round the home</p> <p>6 counties were dragged back into this disgraceful</p> <p>7 litigation on the back of allegations supported by, as</p> <p>8 I say, evidence which my learned friend himself accepted</p> <p>9 was slender, and which when it came to it they did not</p> <p>10 even seek to suggest to your Lordship justified</p> <p>11 a finding of dishonesty against them.</p> <p>12 It has been an abuse of the process. For six</p> <p>13 months, a wholly misleading picture was presented to the</p> <p>14 court, with not a single reference to the existence, let</p> <p>15 alone the contents, of a mass of other documents which</p> <p>16 had been inspected by the claimants, and whose contents</p> <p>17 were thus known to them, and those documents, when we</p> <p>18 came to show them to your Lordship, made a complete</p> <p>19 mockery of the claimants' submissions, and when they</p> <p>20 were shown to the court by the Bank, it was immediately</p> <p>21 apparent that the very heart of their case was</p> <p>22 unsustainable, and the most dramatic and obvious example</p> <p>23 of that was the disgraceful allegation in respect of the</p> <p>24 so-called dawn raid to Basle, the allegation that</p> <p>25 Mr Cooke, as chairman of the Cooke Committee, had</p>	<p>1 your Lordship's recent judgment on the Bank's</p> <p>2 application to curtail Mr Cooke's cross-examination.</p> <p>3 Your Lordship said:</p> <p>4 "Mr Pollock emphasises that it is no part of the</p> <p>5 claimants' case that Mr Cooke is generally or</p> <p>6 congenitally dishonest; rather he submits that Mr Cooke</p> <p>7 knowingly bent the rules, no doubt for reasons which at</p> <p>8 the time seemed good to him. The problem was that it</p> <p>9 was the first step on the slippery slope, and it was the</p> <p>10 subsequent necessity to behave in order to keep hidden</p> <p>11 what had happened which forced Mr Cooke ever further</p> <p>12 down the path of untruth, and has led to his now giving</p> <p>13 dishonest evidence to me. I should perhaps mention that</p> <p>14 the reasons which at the time seemed good to Mr Cooke</p> <p>15 must have co-existed with the knowledge on his part that</p> <p>16 in consequence of his actions, depositors would probably</p> <p>17 suffer loss or at least the recklessness as to the</p> <p>18 serious risk which that would eventuate."</p> <p>19 In other words, as your Lordship highlighted, the</p> <p>20 allegation, totally and hopelessly inconsistent, that</p> <p>21 Mr Cooke was dishonest and knew or suspected that</p> <p>22 depositors would probably suffer loss, but nonetheless</p> <p>23 was acting for reasons which at the time seemed good to</p> <p>24 him.</p> <p>25 Why on earth should Mr Cooke or any of the others</p>
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<p>1 deliberately set out to deceive his colleagues into</p> <p>2 thinking that the Concordat said something which he knew</p> <p>3 perfectly well it did not.</p> <p>4 That allegation, which had not been pleaded, was</p> <p>5 demonstrated to be unsustainable by a stack of</p> <p>6 contemporary material, which was well-known to the</p> <p>7 claimants, and which, had they been brought to</p> <p>8 your Lordship's attention in the claimants' opening,</p> <p>9 would have made it impossible for them to even have the</p> <p>10 nerve to raise those allegations.</p> <p>11 The presentation of the claimants' case was riddled</p> <p>12 with inconsistencies which would be comical if they were</p> <p>13 not so serious. My learned friend Mr Pollock himself</p> <p>14 conceded in his opening speech that the allegedly</p> <p>15 dishonest officials were just decent people trying to do</p> <p>16 their jobs, a striking phrase, which can have left</p> <p>17 nobody in this court in any doubt that the suggestion</p> <p>18 that those same people can have had the dishonest state</p> <p>19 of mind required to commit misfeasance was simply</p> <p>20 absurd.</p> <p>21 Indeed, that concession by my learned friend was</p> <p>22 hopelessly inconsistent with the claimants' pleaded case</p> <p>23 that the same officials acted throughout in bad faith,</p> <p>24 and indeed, the sheer implausibility of what they were</p> <p>25 seeking to prove is crystallised in one passage of</p>	<p>1 have been motivated to license BCCI in circumstances</p> <p>2 where he or they knew that depositors would probably</p> <p>3 suffer loss? Why would he be so utterly determined to</p> <p>4 license an institution that he knew or suspected would</p> <p>5 collapse, or was at least at serious risk of collapse,</p> <p>6 so that he would dishonestly mislead the Governors of</p> <p>7 the Bank of England in the process?</p> <p>8 The claimants have never had a remotely plausible</p> <p>9 answer to this impenetrable conundrum at the rotten core</p> <p>10 of their case.</p> <p>11 The entirety of my learned friend's factual</p> <p>12 submissions, which took up nearly six months of court</p> <p>13 time, were directed to proving a state of mind on the</p> <p>14 part of the Bank which Lord Neill, astonishingly, also</p> <p>15 instructed by the claimants -- not astonishing that he</p> <p>16 should be instructed, but astonishing that he should be</p> <p>17 making irreconcilable submissions to your Lordship --</p> <p>18 conceded would not in law amount to misfeasance in</p> <p>19 public office even if it had been proved.</p> <p>20 In other words, for six months, my learned friend</p> <p>21 Mr Pollock was advancing factual arguments which my</p> <p>22 learned friend Lord Neill accepted, had they been</p> <p>23 proved, would not have enabled them to succeed as</p> <p>24 a matter of law.</p> <p>25 MR JUSTICE TOMLINSON: That did strike me at the time as</p>

1 a very singular feature of the case, Mr Stadlen.
 2 MR STADLEN: If that is not an abuse of process, it is
 3 difficult to know what is, that a litigant should
 4 instruct two leading counsel to argue irreconcilable and
 5 inconsistent propositions. Great swathes of their
 6 pleaded case were either recast or abandoned altogether,
 7 leaving with them no cause of action, and when this was
 8 flushed out, the claimants shamelessly sought to suggest
 9 that they had not been abandoned and to withdraw the
 10 concession, and the most brazen example of that was the
 11 so-called failure to revoke claim, which was the
 12 cornerstone or the flagship of their post-licensing
 13 claim.

14 Your Lordship will recall that my learned friend
 15 Lord Neill sat silent in court when your Lordship said
 16 that you understood that that claim had effectively been
 17 abandoned by the claimants, and nothing was said to
 18 disturb your Lordship's understanding for days and weeks
 19 of court time, and when, weeks later, they sought to
 20 resile from that abandonment, and to revive the claim,
 21 it was with no credibility whatsoever, as can be gauged
 22 from the fact that as recently as your Lordship's
 23 judgment of last week, on the Bank's application to
 24 curtail the length of Mr Cooke's cross-examination,
 25 your Lordship did not even mention the failure to revoke

1 claim when summarising the claimants' post-licensing
 2 claim.

3 To add insult to injury -- well, all this required
 4 the Bank to spend months hitting the constantly shifting
 5 target, painstakingly setting the record straight,
 6 pointing out in detail the endless ducking and weaving,
 7 and giving chapter and verse to the endless examples of
 8 submissions made by the claimants which were either
 9 inconsistent with the contemporary documents or with
 10 their own pleaded case, or with their own previous
 11 submissions, or in many cases, with all three.

12 And if the Bank took ten months to open the case, it
 13 was for that reason.

14 To add insult to injury, even after the full extent
 15 of the hopelessness of their case had been laid bare,
 16 the claimants did not even then have the decency to
 17 abandon the case and apologise to the Bank and the
 18 22 maligned officials. Instead, they insisted on
 19 subjecting Brian Quinn, a thoroughly honest and decent
 20 public servant of great distinction, who was appointed
 21 a CBE in 1996, to the ordeal of cross-examination for no
 22 less than seven weeks, accusing him of dishonesty, lying
 23 and misfeasance.

24 Indeed, if it had been left to them, they would have
 25 cross-examined him for more than 12 weeks, and as

1 your Lordship has recently said in the judgment
 2 curtailng Mr Cooke's cross-examination, Mr Quinn's
 3 cross-examination could in fact have been conducted in
 4 a significantly shorter period.

5 Even with all they knew about Mr Quinn's medical
 6 position, they still opposed the Bank's application to
 7 limit the cross-examination to seven weeks, and when
 8 your Lordship so ordered, made an appeal against
 9 your Lordship's order which the Court of Appeal
 10 dismissed in no uncertain terms in a judgment in which
 11 they held that your Lordship's heavy criticisms of my
 12 learned friend Miss Montgomery's cross-examination of
 13 Mr Quinn were fully justified.

14 It was as plain as a pikestaff to everyone who heard
 15 Mr Quinn's evidence that he was transparently honest and
 16 conscientious and that the whole of their case against
 17 the Bank was built on sand, but still they did not
 18 apologise or issue a public acknowledgment that their
 19 allegations were completely misconceived. Instead, they
 20 insisted on bashing on, with no thought to the effect on
 21 the Bank's second witness, Mr Cooke, a 73-year old man,
 22 also a public servant of great distinction, he was
 23 appointed a CBE in 1997, and Mr Cooke was thus exposed
 24 to the completely unnecessary and avoidable stress and
 25 inconvenience of preparing for what the claimants had at

1 that stage promised would also be more than 12 weeks of
 2 cross-examination.

3 Then, in the latest grotesque and intimidatory move,
 4 the claimants told your Lordship that they would wish to
 5 continue to cross-examine Mr Cooke until next February,
 6 a massive 16 weeks or 64 days of cross-examination. And
 7 given the pulling of the plug today, with the implied
 8 recognition that the claim was hopeless, and the
 9 revelation by my learned friend Mr Pollock this morning
 10 for the first time to your Lordship and the Bank that
 11 the liquidators applied to the Chancellor's court for
 12 directions, and that there was a hearing over three
 13 days, heard, he said, over three days, notwithstanding
 14 that, the claimants resisted the Bank's application to
 15 curtail Mr Cooke's cross-examination, and sought to
 16 persuade your Lordship that they should be entitled to
 17 cross-examine him for 64 days or 16 weeks, a period of
 18 time which your Lordship, in our respectful submission,
 19 quite rightly labelled grotesque, that was
 20 your Lordship's word, grotesque because it was both
 21 unreasonable and inhumane.

22 Indeed, that is the same epithet that can be applied
 23 to their approach to the Bank's application to curtail
 24 the cross-examination of Mr Quinn, given his medical
 25 condition.

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<p>1 The fact is that right up to the very last court day 2 before they discontinued, in other words yesterday, the 3 claimants continued to accuse Mr Cooke in the most 4 offensive terms possible of dishonesty, giving lying and 5 evasive evidence to your Lordship. 6 Indeed, their inhumanity seemed to have no bounds, 7 dictated either by decency or compassion, and as 8 your Lordship commented in the curtailment judgment in 9 respect of Mr Cooke, the manner in which they had sought 10 to downplay the significance of Mr Cooke's health 11 problems was unfortunate; indeed it was, and in our 12 submission, it went even further than that, because as 13 your Lordship will recall, in resisting the Bank's 14 curtailment application, they went so far as to accuse 15 Mr Cooke of deliberately refusing to take medication as 16 a transparent tactical device designed to persuade 17 your Lordship to reduce the length of cross-examination. 18 Your Lordship emphatically rejected that submission, 19 which was a disgraceful one, which should never have 20 been made. 21 In Mr Cooke's case, the prospect of this ordeal was 22 increased months in advance by the inflammatory and 23 intimidatory remarks made by my learned friend 24 Mr Pollock on Day 1 of the trial, when he referred to 25 litigation as a blood sport, with the claimants as the</p>	<p>1 to have been committed by the Bank. 2 Your Lordship will recall that Mr Pollock did not 3 shy away from accusing Mr Cooke of perjuring himself in 4 your Lordship's court. 5 For nearly five gruelling weeks, for five gruelling 6 weeks, Mr Cooke has responded with patience, dignity and 7 transparent honesty, as your Lordship has already 8 indicated, to sustained, hostile and at times downright 9 offensive attempts to blacken his hard-earned and 10 well-deserved reputation, not just as an international 11 banking supervisor of the highest calibre, but, and this 12 is not an overstatement, as one of the progenitors of 13 the modern system of international banking supervision 14 itself. 15 As with Mr Quinn, the exercise, as your Lordship has 16 pointed out, failed, but the point is that it should 17 never have been attempted and it should never have been 18 sustained as long as it was. 19 Indeed, in the past few weeks, your Lordship as well 20 has had to bear the brunt of my learned friend's 21 discourtesy and indeed downright rudeness, as have the 22 representatives of the Bank, and that is not something 23 that should happen in the Commercial Court, as 24 your Lordship has had occasion to point out at 25 an earlier stage of these proceedings.</p>
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<p>1 unspeakable, and Mr Cooke as the uneatable. 2 There was also the thoroughly inappropriate comment 3 made by Mr Grierson of Messrs Lovells to the London 4 Evening Standard when he said that the impending 5 cross-examination would be "bloody". Such comments are 6 highly inappropriate in any piece of litigation, but the 7 more so when directed to the media rather than to the 8 court, as so many of the claimants' efforts have been 9 directed. 10 It is to be hoped that it is the last of a very long 11 series of disgraceful features of the claimants' conduct 12 of this litigation that the towel has unceremoniously 13 only arrived in the ring at the end of the fifth week of 14 Mr Cooke's cross-examination, when there is no good 15 reason why this could not have happened at the beginning 16 of the summer, sparing Mr Cooke the anxiety associated 17 with waiting to give his evidence, and then being 18 cross-examined in the most aggressive and rude terms 19 imaginable, and accused of dishonesty and lying to 20 your Lordship. 21 As recently as 17th October, the claimants made 22 plain that the primary purpose of their 23 cross-examination of Mr Cooke was to challenge his 24 honesty, and they repeated their allegation, as they 25 have since, that he was central to the misfeasance said</p>	<p>1 Nothing that has happened over the last few months 2 has changed the objective prospects of the claimants 3 proving their case, so that the failure to discontinue 4 even at the end of July, after they had heard the first 5 live witness being tested, as they so frequently 6 incorrectly protested the House of Lords had said they 7 were entitled to do, even after Mr Quinn had had seven 8 weeks of cross-examination, your Lordship having pointed 9 out that by that time, of course he would either have 10 been found to be honest or dishonest, and it therefore 11 would have followed, because of the nature of the case, 12 that the claim would either have succeeded or failed, 13 even at that stage, when it was transparently obvious to 14 everybody in court that Mr Quinn was as honest as the 15 day is long, just as Mr Cooke subsequently turned out to 16 be, they did not have the decency at that stage to 17 discontinue, and any talk of the Vice Chancellor or 18 applications for directions is a complete red herring. 19 There was nothing to stop the liquidators discontinuing 20 these proceedings at a much earlier stage; indeed, they 21 should have discontinued once they had inspected the 22 Bank's documents at least a year before the trial began, 23 when the hopelessness of the allegations was revealed to 24 them. 25 The continuation, the failure to discontinue, even</p>

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<p>1 at the end of July, was, in the Bank's respectful 2 submission, a further cynical exercise in wasting huge 3 amounts of costs, and disregarding the obvious adverse 4 effects on the Bank's officials.</p> <p>5 The claimants' cynical strategy in this litigation 6 was vividly illustrated by a comment made by 7 Mr Richards, one of the liquidators of Deloitte, to the 8 press in October, criticising the Bank for refusing to 9 enter into a settlement of the claim. Mr Richards was 10 quoted as saying:</p> <p>11 "It is our usual practice to approach defendants to 12 see if they are willing to negotiate, and we regret that 13 the Bank has so far refused to discuss a settlement. 14 The Bank has unlimited public finance at its disposal, 15 unlike the commercial organisations we have successfully 16 pursued for recovery".</p> <p>17 Today, the claimants' approach, litigation with 18 a view to obtaining a commercial settlement, induced by 19 pressure, has finally and justifiably failed.</p> <p>20 Discontinuance at the eleventh hour belatedly 21 reflects what has been obvious to everyone for over 22 a year, namely that the action was bound to fail. The 23 question is, why has it taken so long, and why have the 24 claimants waited until the eleventh hour to throw in the 25 towel?</p>	<p>1 evidence presented to the court, it is plain that each 2 of the officials individually and the Bank are 3 completely innocent of all the allegations made against 4 them.</p> <p>5 Of course, such a judgment would carry with it the 6 risk that the claimants and maybe others would be 7 criticised by your Lordship for the manner in which this 8 litigation has been conducted, and so they have played 9 their "get out of jail" card by discontinuing the action 10 and thus seeking to deprive your Lordship of the 11 opportunity of giving the Bank and the officials the 12 public exoneration to which they well know they are 13 entitled.</p> <p>14 Instead, they seek to skulk into the shadows with 15 not so much as an apology, still less any objective and 16 unspinnable confirmation that their allegations were 17 hopelessly misconceived.</p> <p>18 Herein lies the final cynicism of the claimants' 19 approach to this court and to this litigation. 20 A resounding judgment rejecting their allegations might 21 have been regarded by them as increasing their exposure 22 to the risk of an order to pay the Bank's costs on 23 a full indemnity basis, and since the Bank's costs are, 24 given the seriousness and scale of the allegations which 25 it has had to defend, very substantial, the difference</p>
<p style="text-align: right;">Page 27</p> <p>1 That is a question which we will in due course 2 invite your Lordship to consider. Several possible 3 explanations spring to mind. Given the way their case 4 has so spectacularly imploded and the observations 5 your Lordship has made at various stages in the trial 6 about the way in which the case has been pursued, and 7 indeed the observations that your Lordship made this 8 morning, in which your Lordship said that your careful 9 study of the documents and your consideration of them, 10 and of all the inherent probabilities, and your 11 consideration of Mr Quinn's evidence and of Mr Cooke's 12 evidence, have left your Lordship in no doubt that the 13 very serious allegations of impropriety and dishonesty 14 against Mr Cooke are wholly without foundation.</p> <p>15 Given all of that, it is easy to understand why the 16 claimants might now wish to avoid a final judgment and 17 the criticism of them that it might have contained.</p> <p>18 Throughout the course of the trial, the claimants 19 have conducted an aggressive PR campaign designed to 20 give maximum publicity and exposure to their unfounded 21 allegations, including allegations of dishonesty.</p> <p>22 As they well know, the only remedy open to those 23 officials and to the Bank to clear their and its names 24 is a written judgment from your Lordship exonerating 25 them and publicly declaring that in the light of the</p>	<p style="text-align: right;">Page 29</p> <p>1 between standard and indemnity costs is obviously also 2 itself going to be substantial.</p> <p>3 A final judgment would expose the claimants to 4 criticism. To seek to avoid such criticism at the 5 expense of depriving the Bank and the impugned officials 6 of the opportunity of being exonerated by the court in 7 a reasoned judgment is to add insult to injury, and the 8 court should have none of it.</p> <p>9 The Bank will be making an application for indemnity 10 costs to your Lordship, and in ruling on that 11 application, the Bank will ask your Lordship to look at 12 the claimants' conduct in the round.</p> <p>13 Your Lordship's judgment should, in our respectful 14 submission, in due course, address why the allegations 15 against the Bank and its officials, made in a public 16 court and broadcast by the claimants in the media, 17 apparently with the assistance of a PR agency retained 18 for that very purpose at the creditors' expense, were 19 thoroughly unjustified.</p> <p>20 There are several reasons why both in the interests 21 of justice and in the interests of public policy, and 22 the due administration of justice, it is and remains 23 a matter of the highest importance that there should be 24 a written judgment from your Lordship.</p> <p>25 First and foremost, the Bank and the impugned</p>

<p style="text-align: right;">Page 30</p> <p>1 officials deserve no less. The claimants having chosen 2 to traduce their representations in such a flagrant and 3 calculated way, they are entitled as a matter of basic 4 justice to have their reputations exonerated by the 5 court in no less public a way. 6 No doubt the small army of spin doctors that once 7 sought to maximise the publicity for the very serious 8 allegations made against the Bank is now as I speak 9 engaged on a damage limitation PR exercise. 10 A resounding judgment from your Lordship, making it 11 clear that the allegations were unsupported by the 12 evidence adduced over nearly two years, would be 13 incapable of being spun, and in this context, one notes 14 that the liquidators' case is closed, and was closed 15 a very long time ago. 16 Secondly, this is a watershed case. Nearly 17 two years of Commercial Court time have been wasted by 18 claimants pursuing a case which was hopeless, and whose 19 hopelessness was apparent from the disclosed documents. 20 Before that, the litigation had been persisted in 21 for an additional 11 years. Misconceived allegations of 22 dishonesty and misfeasance against a public body and 23 22 officials having been made, two successive Governors 24 of the Bank took the principled decision not to give in 25 to the pressure in order to establish the important</p>	<p style="text-align: right;">Page 32</p> <p>1 almost untrially complex claims, safe in the knowledge 2 that the claimant can always bail out at the eleventh 3 hour, and avoid the criticism of the court and maybe 4 indemnity costs by discontinuing. 5 The House of Lords has pointed out in the past that 6 litigants have no unlimited right to the scarce 7 resources of court time, and indeed, there is House of 8 Lords authority that it can be an abuse of process to 9 seek to deprive the court of the opportunity of 10 delivering judgment by the device of unilateral 11 discontinuance, and depriving the defendant of the 12 benefits of having such a judgment. 13 Fourth, I have in the past identified occasions when 14 the claimants have tried to play fast and loose with the 15 court. This, in our respectful submission, is the 16 ultimate attempt to do so, and the court should have 17 none of it. 18 There are some who may say that the way in which the 19 claimants have so relentlessly pursued a case which has 20 for so long been so transparently hopeless and then 21 abandoned it has brought the legal system into 22 disrepute, and it is striking that Bleak House began on 23 television last week, the comparisons have been made too 24 frequently for it to be necessary to elaborate. 25 In the Bank's respectful submission, after a trial</p>
<p style="text-align: right;">Page 31</p> <p>1 principle that speculative damages claims against public 2 bodies carrying out difficult regulatory functions will 3 not result in cash settlements. 4 Your Lordship may recall that Mr Grierson of 5 Messrs Lovells, on behalf of the liquidators, appeared 6 on the Today programme on the first morning of the trial 7 to inform the nation that the Bank knew Lovells' 8 telephone number, and had only to pick up the phone. 9 And Mr Richards, the liquidators' comment shows the 10 liquidators' disappointment when the Bank refused to 11 play their settlement game. Their discontinuance today 12 shows why the Bank was right not to give in to that 13 pressure. 14 Third, in addition to a responsibility to defeat 15 a hopeless and vexatious claim for very substantial 16 damages, and its understandable determination to protect 17 the reputation of both the Bank and its officials, these 18 points of principle explain why two successive Governors 19 of the Bank have so vigorously and justifiably defended 20 these proceedings for so long. 21 Litigation like this should never be allowed to 22 happen again. The court has a vital role to play in 23 deterring similar claims in the future, and in 24 particular, by making it clear that there is no soft 25 option for claimants of persisting in hopeless and</p>	<p style="text-align: right;">Page 33</p> <p>1 of 255 days, if you do not count this morning, because 2 it has been discontinued, the court should not permit 3 this to happen. 4 Some 255 days into the trial, and with very serious 5 allegations of dishonesty having been publicly made and 6 pursued, without any apparent regard for their effect on 7 the reputations of those sought to be impugned, the 8 claimants should not now be able to skulk off into the 9 shadows, thereby denying the Bank the public vindication 10 of its position, let alone an apology for the harm 11 caused and the time and money wasted. 12 As I say, the Bank intends in due course to make 13 an application to your Lordship that the claimants 14 should pay the Bank's costs on an indemnity basis, and 15 in support of that application, the Bank will rely on 16 a myriad of points and examples of the unreasonable and 17 even disgraceful manner in which the litigation has been 18 conducted, and in giving judgment on that application 19 for indemnity costs pursuant to CPR 38.6, the Bank will 20 invite your Lordship to give, in summary form if needs 21 be, a reasoned judgment exonerating the Bank and the 22 22 officials and roundly rejecting the allegations made 23 by the claimants of the kind which, had it been 24 delivered at the conclusion of the trial, would have 25 itself have been a ground for awarding the Bank</p>

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<p>1 indemnity costs.</p> <p>2 Your Lordship has heard all the evidence which the</p> <p>3 liquidators relied on, and your Lordship has heard all</p> <p>4 the evidence which the Bank relied on. There is nothing</p> <p>5 to stop your Lordship from exonerating the Bank and its</p> <p>6 officials and there are very good reasons why</p> <p>7 your Lordship should do so.</p> <p>8 Last but not least, your Lordship has sat patiently</p> <p>9 through nearly two years of this trial, and is entitled</p> <p>10 to have your say. It is not for the claimants to</p> <p>11 dictate what the court may or may not say, or when it</p> <p>12 may or may not say it. And indeed, your Lordship has</p> <p>13 already this morning gone a long way to exonerating both</p> <p>14 Mr Cooke and Mr Quinn, but as your Lordship appreciates,</p> <p>15 the allegations were made against 20 other officials,</p> <p>16 and indeed more as the case proceeded.</p> <p>17 There are therefore three steps --</p> <p>18 MR JUSTICE TOMLINSON: Mr Stadlen, it follows, as night</p> <p>19 follows day, that the observations I have made about</p> <p>20 Mr Cooke and Mr Quinn apply equally to every officer of</p> <p>21 the Bank. I have seen no foundation for any allegation</p> <p>22 of dishonesty against any officer of the Bank at any</p> <p>23 stage.</p> <p>24 MR STADLEN: I am very grateful for your Lordship's</p> <p>25 indication. My Lord, there are three steps that the</p>	<p>1 the Bank, and they were able to assess the impact and</p> <p>2 import of what transpired.</p> <p>3 The consequences of the dramatic timing of the</p> <p>4 collapse of the liquidators' case this morning will need</p> <p>5 to be worked through. The Bank has not had a chance to</p> <p>6 give considered and careful thought to the full</p> <p>7 ramifications of their abandonment of the case, in terms</p> <p>8 of the appropriate consequential orders which should now</p> <p>9 be made.</p> <p>10 The Bank will need to go back over the awful saga of</p> <p>11 this litigation for the purpose of preparing its</p> <p>12 application and its submissions, and the Bank will</p> <p>13 reflect on the scope of submissions which it will wish</p> <p>14 to address to your Lordship, and would suggest that</p> <p>15 a date is fixed, and we would suggest Friday of next</p> <p>16 week, at which a timetable for a hearing can be</p> <p>17 arranged.</p> <p>18 These are matters for another day. For today, what</p> <p>19 matters is that the charade of this grotesque claim is</p> <p>20 finally at an end. Only last month, in the courtroom</p> <p>21 immediately above the one in which we stand today,</p> <p>22 counsel for one of the defendants in the Equitable Life</p> <p>23 litigation described the abandonment of that claim as</p> <p>24 the biggest climb-down in English legal history, and as</p> <p>25 this case has shown on previous occasions, records once</p>
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<p>1 Bank will in due course invite the court to take to</p> <p>2 address these matters.</p> <p>3 First, this is an appropriate case in which the</p> <p>4 court should order the claimants on discontinuance to</p> <p>5 pay the Bank's costs on an indemnity basis. It will be</p> <p>6 necessary to explain to your Lordship in much greater</p> <p>7 detail than can be done today why such an order is</p> <p>8 justified in this case, and a suitable timetable will be</p> <p>9 required to deal with this application on a proper</p> <p>10 basis.</p> <p>11 Secondly, the court, in giving its ruling on that</p> <p>12 application, will be invited to record its views, even</p> <p>13 if only in summary form, on the merits of the case</p> <p>14 against the Bank and its 22 officials before the towel</p> <p>15 was thrown in, and thereby provide the Bank and its</p> <p>16 officials with a measure of the public vindication which</p> <p>17 the claimants have sought cynically to deny the Bank by</p> <p>18 discontinuance at this very late stage.</p> <p>19 And thirdly, the court should in some way register</p> <p>20 its disapproval of the manner in which this litigation</p> <p>21 has been conducted in relation to the serious and</p> <p>22 unfounded allegations of dishonesty made and pursued</p> <p>23 throughout the trial in the face of the wholly</p> <p>24 contradictory evidence, and they were sitting in this</p> <p>25 court every day as well as your Lordship and as well as</p>	<p>1 set are there to be broken, and it can be asserted with</p> <p>2 complete certainty that the claimants have today</p> <p>3 performed the most remarkable and humiliating climb-down</p> <p>4 ever to have taken place in any piece of English</p> <p>5 litigation.</p> <p>6 In fact, the Equitable Life case does not compare.</p> <p>7 This action has been persisted in for 12 years, has gone</p> <p>8 to the House of Lords three times, the Court of Appeal</p> <p>9 six times, and unlike the Equitable Life case, this</p> <p>10 action has not been settled by means of a compromise in</p> <p>11 which the Bank has waived its entitlement to be</p> <p>12 reimbursed its costs by the claimants.</p> <p>13 As your Lordship appreciates, the claimants have</p> <p>14 unilaterally discontinued the action with the automatic</p> <p>15 consequence under CPR that they are presumptively liable</p> <p>16 to pay all the Bank's outstanding legal costs, at least</p> <p>17 on a standard basis. This represents unconditional</p> <p>18 surrender.</p> <p>19 Perhaps the most striking feature of the climb-down</p> <p>20 is the complete collapse of the claimants' monstrous</p> <p>21 allegations of dishonesty. This was not a case about</p> <p>22 negligence. As my learned friend Mr Pollock told the</p> <p>23 House of Lords last summer, Day 3, page 182,</p> <p>24 lines 11 to 14:</p> <p>25 "This is not a case about someone may have made</p>

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<p>1 a mistake; our case is that most if not all of the 2 central supervisors lied to Lord Justice Bingham and 3 lied and lied again to Lord Justice Bingham. We have 4 made this as plain as plain can be".</p> <p>5 This was a case which involved allegations of 6 dishonesty unparalleled in their gravity and their 7 extent, and an alleged conspiracy involving, on the 8 pleadings, no less than 22 officials, from close to the 9 top of the Bank to junior analysts, over a 11-year 10 period, though as your Lordship observed on Day 134, 11 page 14, lines 15 to 20, in the oral presentation of the 12 claimants' case, far more than 22 officials were 13 impugned, practically every time the claimants came 14 across someone saying something inconvenient to their 15 case, as your Lordship has pointed out this morning, 16 they said he too was dishonest, no matter how 17 far-fetched, how unsupported by evidence, and how 18 disgraceful.</p> <p>19 This nonsense has now come to an end, and under the 20 court's rules the automatic presumptive result of this 21 throwing in the towel is that the claimants are liable 22 for all the Bank's costs, at least on a standard basis.</p> <p>23 As to the future, the Bank will take time to 24 consider its response to today's volte face, but there 25 is nothing that so becomes the disgraceful nature of the</p>	<p>1 that directions were being sought in respect of the 2 application that has led to this discontinuance.</p> <p>3 Indeed, while my learned friend said he hoped that 4 no offence would be caused to your Lordship if they did 5 not stay to listen, it might be thought that it speaks 6 eloquently and volumes of the way in which the claimants 7 have conducted this case that they have not even had the 8 courage to sit here in open court and face the 9 consequences of what they have done.</p> <p>10 Final exoneration of the Bank's officials and the 11 costs consequences of the liquidators' decision are 12 matters for another day. Today is a day to welcome the 13 final abandonment of the action; better late than never.</p> <p>14 My Lord, we would suggest that possibly Friday of 15 next week, subject to your Lordship's availability, 16 might be an appropriate occasion on which to have 17 a hearing to fix a timetable for leading up to a hearing 18 on which such applications as the Bank wishes to make 19 may be heard.</p> <p>20 MR JUSTICE TOMLINSON: Yes, on the footing that you would by 21 then have given notice to the liquidators of the nature 22 of such applications?</p> <p>23 MR STADLEN: Just so.</p> <p>24 MR JUSTICE TOMLINSON: Mr Pillow, is there anything you want 25 to say?</p>
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<p>1 way in which this litigation has been conducted as the 2 disgracefully long time that it has taken for the 3 claimants finally to put their moribund case out of its 4 misery, and the manner in which the end has finally 5 come.</p> <p>6 Particularly in that regard, one takes note of the 7 fact that as recently as a couple of weeks ago, the 8 claimants were resisting the application that Mr Cooke's 9 cross-examination should be curtailed, notwithstanding 10 his health, notwithstanding his age, notwithstanding his 11 commitments, and they were seeking to persuade 12 your Lordship he should be cross-examined until some 13 time next year, for 64 days.</p> <p>14 Even today, we are told that the application for 15 directions to the Chancellor's court took place over 16 three days, no attempt was made to contact the Bank to 17 say, "There is some application going on, and if you 18 will agree, we will suspend the cross-examination of 19 Mr Cooke, something can be said to the judge which will 20 be put in totally neutral terms, so that no inference 21 can be drawn by the judge", no attempt to spare Mr Cooke 22 even the last few days of the ordeal of 23 cross-examination, and as late as yesterday, my learned 24 friend Mr Pollock was accusing Mr Cooke in open court of 25 lying, knowing, as he presumably must then have done,</p>	<p>1 MR PILLOW: My Lord, I am neither instructed nor authorised 2 to say anything.</p> <p>3 MR JUSTICE TOMLINSON: No, but I am giving you the 4 opportunity just in case.</p> <p>5 MR PILLOW: I am grateful.</p> <p>6 MR JUSTICE TOMLINSON: Yes. Well, now, Mr Stadlen, 7 I propose to say very little this morning, for a number 8 of reasons, but mainly because, as I anticipated would 9 be the case, I am likely to be seized of yet further 10 applications in which I shall have to consider the 11 conduct of this action as a whole.</p> <p>12 And, of course, whilst I do not know what evidence 13 will be placed before me on the claimants' side, I am at 14 the moment in a state of complete ignorance as to what 15 advice may have been given at any stage, or what 16 constraints may have existed in relation to the 17 liquidators' course of action, and I am not going to 18 speculate on that for the moment, and I await to see 19 what, if anything, I am told about matters of that sort.</p> <p>20 In view of the fact that you propose to make your 21 application for costs on an indemnity basis, and to 22 support it in the manner which you have described, it 23 would, I think, be unfortunate if I were to say anything 24 which might be regarded as prejudging the issues which 25 I shall have to determine.</p>

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<p>1 I therefore propose to await developments in that 2 regard, and to see how matters develop.</p> <p>3 I would just say this, that it has been a matter of 4 surprise to me for about a year now that the action was 5 being pursued, and it is also obvious, as you have 6 pointed out, Mr Stadlen, that there are lessons to be 7 learned from this trial. No doubt there are many 8 lessons to be learned, but there are certainly lessons 9 to be learned in terms of litigation which is pursued, 10 if it turns out to be the case that this litigation can 11 be so characterised, with a view to obtaining 12 a commercial settlement, rather than with a view to 13 obtaining a judgment on the merits as they might appear 14 to be.</p> <p>15 But I do not propose to say any more about that for 16 the time being. I agree that it would be sensible that 17 we should meet next Friday, and subject to your being 18 told to the contrary or subject to any problem that may 19 arise, I suggest that we do set aside next Friday 20 morning to deal with that, at 10.30.</p> <p>21 There are just one or two observations I would like 22 to make, not having had any opportunity to think about 23 it. The first observation I would like to make is that 24 it is obvious from what I have said already that to some 25 extent, there has already been a public exoneration of</p>	<p>1 I would also just like to say publicly that I have 2 received the most enormous help and support from my 3 assistant, Mr Stephen Cromie. The trial of a long 4 action like this is potentially a somewhat lonely job, 5 and to have had the assistance of someone of Mr Cromie's 6 experience and insight has for me made the whole 7 experience somewhat more enjoyable than it might 8 otherwise have been, and I would wish to pay tribute 9 publicly, in case he is not here on a subsequent 10 occasion, to the enormous contribution he has made to my 11 ability to try this action.</p> <p>12 I also wish to say publicly that in my judgment, 13 a huge contribution to this litigation has been made by 14 you, Mr Stadlen. You addressed me at enormous length on 15 the documents in this case, as a result of which I had 16 a far better understanding than I might otherwise have 17 had, had I had to study those documents on my own.</p> <p>18 Your address to me was a tour de force, if I may say 19 so, and no doubt it is something for which your clients 20 are deeply grateful, but I am deeply grateful to you for 21 your very great assistance given to me throughout this 22 case.</p> <p>23 Right, we shall meet then at 10.30 next Friday. 24 (12.00 pm) 25 (Hearing adjourned until 10.30 am)</p>
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<p>1 the Bank's officials by the remarks that I have made to 2 Mr Cooke earlier, and the remarks I made earlier about 3 the extent to which those remarks obviously apply to 4 every other official of the Bank.</p> <p>5 The second point I would just like to make is that 6 throughout this trial, I have received the most 7 extraordinary assistance from the legal teams involved, 8 and I say that without prejudice to any other 9 observations I may have to make, in particular the 10 claimants' solicitors have been remarkably helpful in 11 supplying me with the transcripts of the daily 12 proceedings at the various addresses which I have asked 13 them to supply me with those documents.</p> <p>14 I would also like to pay tribute to the shorthand 15 writers. It so happens that today we do not have 16 present our usual team, I do not mean by that any 17 disrespect to the ladies who sit in front of me today, 18 who have done just as good a job as those who are more 19 usually in their seats, but it so happens that we have 20 been extraordinarily well served for a period of very 21 nearly two years on a daily basis by the same two 22 people, who have, in my view, performed quite 23 remarkably, and with a degree of professionalism which 24 leaves me in some awe as to their ability and their 25 dedication.</p>	<p>1 on Friday, 11th November 2005)</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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