

**Impact case study (REF3b)**

<p><b>Institution:</b> University of Essex</p>
<p><b>Unit of Assessment:</b> 19 – Business and Management Studies</p>
<p><b>Title of case study:</b> Exposing Banking Fraud and Setting Freedom of Information Precedent</p>
<p><b>1. Summary of the impact</b></p> <p>Professor Prem Sikka’s research into socially irresponsible business has included investigations into fraudulent accountancy. This research on accountancy practices underpins much of his own political lobbying activity, through which he uses his research to monitor accountancy and banking fraud and to hold perpetrators of fraud to account. One particularly significant example of Sikka’s political activity has been a Freedom of Information campaign prompted by his research into the collapse of the Bank of Credit and Commerce International. This research-informed campaign had two impacts. First, the campaign released an uncensored version of the audit report, which has since been covered widely in national media. Second, Sikka’s campaign activity has itself had impact by setting significant procedural precedents for the hearing of FOI requests.</p>
<p><b>2. Underpinning research</b></p> <p>Prem Sikka’s research uncovers the socially irresponsible conduct of major organisations in international accountancy, banking, and financial industries. His publications in this area have detailed a wide variety of socially damaging practices including off-shore tax havens, transfer pricing mechanisms for tax avoidance, price-fixing cartels, and auditing mechanisms that deliberately avoid public transparency.</p> <p>Part of this research has investigated the complicity of accountancy firms in money laundering and banking fraud. The distinctive contribution of this work has been to show that some instances of white-collar crime are better understood as perpetrated by organisations and institutions rather than by individuals. Sikka’s research on this issue has uncovered how accountancy firms enable fraud by facilitating complex financial transactions that shroud the origins and the ultimate destination of financial transactions. He has also argued that fraud and money laundering is aided by accountancy firm audits that turn a blind eye to irregularities and by national regulatory systems that are reluctant to pursue cases of potential fraud.</p> <p>While this research covers a broad range of industries and their practices, the projects that constitute this body of work have often taken the form of detailed analyses of particular examples of unethical accountancy. Sikka’s publications have used particular instances of fraud and money laundering to illustrate these broader structural problems. His work has included, for instance, a detailed examination of the case of <i>AGIP (Africa) Limited v Jackson &amp; Others</i>, in which the accountancy firm Jackson &amp; Co. were found to have used a series of shell companies to launder money (1998a). His examination of the case explains the way that Jackson &amp; Co. defrauded AGIP and facilitated money laundering for other beneficiaries. This examination also argues that AGIP’s auditors, Coopers &amp; Lybrand, were complicit in the fraud by turning a blind eye to suspicious transactions facilitated by Jackson &amp; Co.</p> <p>Sikka’s publications have also addressed a second specific example in the case of the collapse of the Bank of Credit and Commerce International (BCCI). In 1998 he began research into the demise of the BCCI, which at that time was guilty of the biggest banking fraud of the twentieth century. His research detailed the role that Price Waterhouse (now PwC) played in the auditing and regulatory failures surrounding BCCI’s criminal practices. Among other things, Sikka’s publications about the auditing failures in the BCCI case reveal the significance of an audit report produced by Price</p>

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Waterhouse, which eventually led to the Bank of England's decision to close BCCI in 1991. This research showed that the report, named the Sandstorm Report, had played a crucial role in exposing BCCI's fraud, yet had only been released by the UK to the US government with great reluctance, and had not been made available to the UK public at all.

This research was crucial to discovering the Sandstorm Report and to revealing the UK Government's secrecy relating to the BCCI collapse and closure. As shown in Section 4 below, this information would prove to be essential to Sikka's Freedom of Information campaign, which set new precedent for court interpretation of the principle of late appeal under the Freedom of Information Act.

### 3. References to the research

Mitchell, A., P. Sikka and H. Willmott (1998a) Sweeping it under the carpet: the role of accountancy firms in money laundering, *Accounting, Organizations and Society*, 23 (5/6), 589-607. DOI: 10.1016/S0361-3682(98)00010-5

Mitchell, A., P. Sikka and H. Willmott (1998b) *The Accountants Laundromat*, Basildon: Association for Accountancy and Business Affairs. ISBN: 1-902384-01-6

Sikka, P. (1999) Regulating money laundering: A case study, in G. Margan and L. Engwall (eds.) *Regulation and Organizations: International Perspectives*, London: Routledge. ISBN: 041518391X

Arnold, P. and P. Sikka (2001) Globalization and the state-profession relationship: The case of the Bank of Credit and Commerce International, *Accounting, Organizations and Society*, 26 (6), 475-499. DOI: 10.1016/S0361-3682(01)00009-5.

Mitchell, A., P. Sikka, C. Cooper, P. Arnold and H. Willmott (2001) *The BCCI Cover-Up*, Basildon: Association for Accountancy & Business Affairs. ISBN: 1-902384-05-9

### 4. Details of the impact

Sikka's work as an academic is complemented by his political activism. He regularly uses his research on the fraudulent activities of accountancy firms to inform his contributions to third sector campaigners. Specifically, Sikka works with NGOs, think tanks, and political pressure groups to monitor and hold to account some of the world's biggest accountancy and auditing companies. His varied efforts to turn his research into activism involves on-going working relationships with the New Economics Foundation, Compass, and the Tax Justice Network, which he himself founded in 2003.

While Sikka's efforts to reveal the suspicious activity of accountancy firms have taken a variety of forms, one of his most significant contributions has been his use of the underpinning research on BCCI. His research had revealed that a document crucial to the collapse of a major international financial institution had been censored. Once the UK Government passed the Freedom of Information Act 2000, Sikka used the findings of his research into BCCI to inform a Freedom of Information request submitted in 2006. This request was made to the UK Treasury Department to secure missing parts of the Sandstorm Report. After the Treasury denied the request, Sikka made a successful appeal to the First Tier Tribunal, again informed by his research, that both secured the release of the Sandstorm Report to the public and set precedent for future appeal cases. His research thus had a direct impact by releasing information considered to be in significant public interest by lawyers and media commentators, and the activities underpinned by his research had an impact on UK FOI appeal procedures by setting new precedent.

#### Release of Sandstorm – using research for high profile Freedom of Information

The statement that Sikka submitted to the Tribunal in April 2011, the final step in securing the release of the document, included sections informed by the research on the BCCI and the details of

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the Sandstorm Report. His statement also cited his broader research record on money laundering in order to evidence his credentials as a reliable witness to the public interest grounds for releasing an uncensored Sandstorm Report. In his statement Sikka wrote:

'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 investigations. Organisations and financial intermediaries operating from 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 it' [corroborating source 1, paragraph 52].

In July 2011, three judges unanimously ordered HM Treasury to release most of the information withheld from the Sandstorm Report on the grounds that it was in the public interest to do so:

'In our view there is considerable public interest in the public seeing the whole of the Sandstorm Report so that it can be seen, not just what happened, but what role was played by the governments, institutions and individuals who were involved' [corroborating source 2, paragraph 29].

The significance of the release of the Sandstorm Report is attested by commentary from leading legal professionals, by mainstream national media coverage, and by specialist journalism. A legal blog operated by Timothy Pitt-Payne QC, Anya Proops, and Robin Hopkins (all barristers) referred to the judgement as an 'important new decision' and said that the 'Tribunal's recent decision in *Sikka v IC and HMT* is a good illustration of how FOIA exemptions...may be trumped by the overwhelming interest in the public being informed about corporate wrongdoing on a massive scale' [corroborating source 3]. The significance of the Report's release is also evidenced by its coverage in national media such as *The Telegraph* [source 4] and specialist blogs including AccountingWEB [source 5] and the Financial Transparency Coalition [source 6].

**Late Appeal – setting precedent and changing legal guidance for the First-Tier Tribunal**

The process by which Sikka turned his research into an FOI campaign also had its own impact. His initial FOI request was denied by the Treasury. Upon hearing of the Commission's verdict he decided to appeal the decision to the First-Tier Tribunal (FTT). Because Sikka's appeal case was submitted more than 28 days after the date of the Commission's decision, he asked the FTT to allow a late appeal. He argued that the appeal was delayed because he was on holiday when the decision notice was mailed to him, and appealed to the Tribunal for leniency in virtue of the fact he was representing himself and was unfamiliar with the process. After hearing Sikka's case John Angel, Principal Judge of the FTT, ruled that the late appeal should be heard. Angel also clarified the regulations on late appeals, as set out in the FTT ruling in December 2009:

'...tribunals might wish to take into account...whether the reason for delay was due to a holiday, ill health, or other causes largely beyond the control of the appellant...[and] the fact an appellant is unrepresented and unfamiliar with the appeal process' [source 7, paragraph 14].

The ruling also recommended the guidance documentation for appeals be changed, as a result of Sikka's case: '...in view of this case I would recommend that the appeal form and guidance notes are amended so as to assure the appellant that it is unnecessary to go to a large amount of trouble to prepare for the appeal at this stage' [source 7, paragraph 15]. In May 2010 the UK Department of Justice guidance documents were changed, and now refer appellants to the 'Ruling in Prof Sikka v Information Commissioner'. Following Angel's recommendation, they now state: 'It is unnecessary to go to a large amount of trouble to prepare for the appeal at this stage' [source 8, p.2].

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Thus Sikka's FOI campaign, informed by his research into the BCCI collapse, set a precedent for all cases of late appeal to the UK's First Tier Tribunal, and changed the guidance documents issues by the UK Department of Justice.

**5. Sources to corroborate the impact** [All sources saved on file with HEI, available on request]

1. Prem Sikka's statement submitted to the First-Tier Tribunal:  
<http://visar.csustan.edu/aaba/BCCI%20Final%20Statement%20Sikka%20-%2022%20April%202011.pdf>
2. Decision of the First-Tier Tribunal (11 July 2011):  
<http://www.informationtribunal.gov.uk/DBFiles/Decision/i544/20110909%20Decision%20and%20Conf%20Sch%202.pdf>
3. 'Sandstorm' Personal Data and the BCCI Collapse', Robin Hopkins, July 19 2011:  
<http://www.panopticonblog.com/2011/07/19/sandstorm-personal-data-and-the-bcci-collapse>
4. The Daily Telegraph, Treasury loses five-year fight to conceal 40 names linked to collapsed bank BCCI, 9 September 2011:  
<http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/8753891/Treasury-loses-five-year-fight-to-conceal-40-names-linked-to-collapsed-bank-BCCI.html>
5. 'Breakthrough for BCCI "Sandstorm Report" FOI request', AccountingWEB, July 21 2011:  
<http://www.accountingweb.co.uk/topic/breakthrough-bcci-sandstorm-report-foi-request/514300>
6. 'TJN's Prem Sikka Has Blasted Open the BCCI Case', Financial Transparency Coalition, September 14 2011: <http://www.financialtransparency.org/2011/09/14/tjns-prem-sikka-has-blasted-open-the-bcci-case>
7. First-Tier Tribunal Ruling in relation to a late appeal form (John Angel):  
[http://www.justice.gov.uk/downloads/tribunals/information-rights/how-to-appeal/Prof-Sikka-vs-IC-Ruling-0410-9.4.10\\_w.pdf](http://www.justice.gov.uk/downloads/tribunals/information-rights/how-to-appeal/Prof-Sikka-vs-IC-Ruling-0410-9.4.10_w.pdf)
8. First-Tier Tribunal 'Guides to completing the Notice of Appeal Form':  
[http://www.direct.gov.uk/prod\\_consum\\_dg/groups/dg\\_digitalassets/@dg/@en/@government/documents/digitalasset/dg\\_191444.pdf](http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/@government/documents/digitalasset/dg_191444.pdf)