S
812

PREM 19/1717

GOWER REPORT ON INVESTOR PROTECTION

THE STOCK EXCHANGE

COMMERCIAL FRAUD

THE FINANCE BILL

(FOLDER 2 FINAL VERSIONS OF ROSKILL) (FOLDER 1 Attached - ROSKILL REP.)

ECONOMIC POLICY

PART 1 : NOV. 83

PART 2 : OCT. 85

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~9/10/85~~		3.2.86					
~~21.10.85~~		PART 2 CLOSED					
~~22.10.85~~							
~~11.11.85~~							
~~13.11.85~~							
~~18.11.85~~							
~~20.11.85~~							
~~22.11.85~~							
~~6/12/85~~							
~~10/12/85~~							
~~11.12.85~~							
~~18.12.85~~							
~~19.12.85~~							
~~20.12.85~~							
~~31.12.85~~							
~~2.1.86~~							
~~9.1.86~~							
~~15.1.86~~							
~~16.1.86~~							
~~20.1.86~~							
~~23.1.86~~							
~~29.1.86~~							

PREM 19/1717

PART Two ends:-

NLW to PM 31/1/86

PART Three begins:-

DN to Home Office 3/2/86

Cabinet / Cabinet Committee Document

The following document, which was enclosed on this file, has been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES.

Reference: CC(85) 37th Conclusions, Minute 4

Date: 19 December 1985

Signed C Wayland Date 21 October 2014

PREM Records Team

PRIME MINISTER

In his minute at Flag A, Sir Robert Armstrong raises again the question of whether Mr. Michael Howard should continue to be in charge of the Financial Services Bill.

I shared Robert's misgivings about putting him in charge of the Bill. But I really do think that it is now too late to change horses. To do so would be to admit that the opposition campaign against Mr. Howard had some validity. I do not think that Mr. Needham's problems alter this judgment.

On the other hand, it would be only fair to warn Mr. Channon who is, after all, new to this area, of possible pitfalls ahead, but leave it to him to decide whether to keep Mr. Howard in charge of the Bill.

Agree to proceed in this way?

N.L.W

We should put this matter to Paul Channon. Whatever the legalities, I am becoming increasingly unhappy about the politics. NLW

(N. L. WICKS)
31 January 1986

13. CAJ

CC MA
DTI

10 DOWNING STREET

THE PRIME MINISTER

31 January 1986

Dear Mr. Gould,

Thank you for your letter of 16 January about the duties of the Under Secretary of State for Trade and Industry with regard to the Financial Services Bill.

Michael Howard has very properly declared his interest in Lloyds. Although he remains a non-underwriting member, in practical terms he is involved only to the extent of the insurance contracts he wrote before he ceased to underwrite. The outturn of these contracts in terms of potential liabilities or returns will depend essentially on ordinary commercial factors affecting any insurance contract and over which he has no control.

Michael Howard has an interest in the inclusion or exclusion of Lloyd's from the Bill to the same very limited extent that other members of the Standing Committee would have an interest in the inclusion or exclusion of an area of investment in which they might engage, for example unit trusts or life assurance. His returns from the existing insurance contracts described above could only be affected by the inclusion of Lloyds within the Bill, to the extent that a new regulatory system could impose marginal additional costs on the management of syndicates and the investment of premium trust funds, which could be passed on by managing agents to syndicate members. This would equally be the case for any other area of investment activity.

I have considered the points you raised and remain of the view that Michael Howard's duties with regard to the Bill involve no breach of the principles of public life to which you refer.

Yours sincerely

Margaret Thatcher

Bryan Gould Esq., M.P.

10 DOWNING STREET

Prime Minister

Content that the work on Rosehill should be done by end April rather than Easter? (Actually, I thought they were being over-ambitious.)

DHS
30/1

Yes ms

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

30 January 1986

Dear David

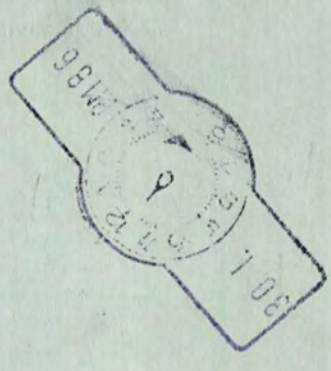
The Home Secretary has seen your letter of 22 January to Richard Broadbent. He fully agrees that H Committee should consider the proposals for legis-Pation on the Roskill Report alongside the Chief Secretary's conclusions on the need for a Unified Organisation. He confirms, however, that there will be no insuperable difficulty if proposals for implementation in the Criminal Justice Bill are not considered by H until April. Given the Chief Secretary's complex remit, and the desirability of consulting the judiciary and others on the more far reaching Roskill proposals, he sees advantage in adopting the common timescale proposed in Richard Broadbent's letter, if the Prime Minister is content.

I am copying this letter to the recipients of yours.

Yours,
S Boys Smith

S W BOYS SMITH

D Norgrove, Esq.



14

Ref. A086/305

MR ADDISON

I have seen a copy of Mr Gilbertson's letter of 27 January to you, enclosing draft replies for the Prime Minister to send to Mr Bryan Gould MP and Mr Austin Mitchell MP about Mr Michael Howard's role in relation to the Financial Services Bill.

Flag B (not yet sent)

2. The operative paragraphs of the draft replies are difficult to understand, and might I think be viewed with some suspicion by the MPs concerned. I think that the paragraphs concerned are saying that, if Lloyd's was included in the Bill, Mr Michael Howard could in certain circumstances have a personal interest with certain possible consequences.

3. The Department of Trade and Industry obviously think that the possibility is sufficiently remote as not to affect Mr Howard's entitlement to take the Financial Services Bill through Committee. I earlier recommended that this might best be avoided (paragraph 5 of my minute of 28 November to Mr Wicks), but the Prime Minister was persuaded by the then Secretary of State for Trade and Industry that Mr Howard might participate in Parliamentary consideration of provisions in the Bill which related to Lloyd's, since his residual involvement with Lloyd's was so limited.

4. I dare say that that is sustainable, at any rate technically. I think, however, that there remains some question as to whether it is politically prudent, in present circumstances. We have (as you know) one* or two other problems relating to Lloyd's, including one affecting another member of the Government. If the two MPs continue to press the issue - and they are persistent men - they may get round to the possibility

* eg Mr Needham.

RTAAAZ

that Mr Howard might resume underwriting when he ceased to be a Minister (at any rate a DTI Minister). We could do without this particular issue, minor as it is, rumbling on.

5. If the Prime Minister is content, well and good. But she might like to ask the new Secretary of State for Trade and Industry whether it is worth the risk of allowing this to rumble on, or whether he should consider putting some other Minister (not a member of Lloyd's) in charge of the Financial Services Bill.

RA

ROBERT ARMSTRONG

29 January 1986

RTAAAZ


29 I

FILE

CONFIDENTIAL

DA

bc BG

10 DOWNING STREET

From the Private Secretary

29 January 1986

JUNK BONDS

The Prime Minister has seen your letter to me of 21 January which described the work being undertaken in your department about issues raised by highly leveraged takeovers. I am sure the Prime Minister will be grateful to have a report on the results of this work when it is complete.

I am copying this letter to Rachel Lomax (HM Treasury) and John Bartlett (Bank of England).

(David Norgrove)

Michael Gilbertson, Esq.,
Department of Trade and Industry.

CONFIDENTIAL

SSBG

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215 5422
GTN 215)
(Switchboard) 01-215 7877

JU241
Secretary of State for Trade and Industry

23 January 1986

CONFIDENTIAL

Mrs Rachel Lomax
Principal Private Secretary to the
Chancellor of the Exchequer
HM Treasury
Treasury Chambers
Parliament Street
London SW1P 3AG

NBPM.

Dear Rachel,

LLOYD'S AND THE FINANCIAL SERVICES BILL

Thank you for your letter of 14 January.

The inquiry under Sir Patrick Neill's chairmanship has been asked to report by the summer. Easter is out of the question if its work is to be done well. The subject matter is complex. In addition, the time that Sir Patrick Neill will be able to give it before the current university term ends is limited. But we shall do what we can to see that the inquiry is carried out expeditiously.

In any event, even if primary legislation turns out to be needed, the Secretary of State continues to have serious doubts that the Financial Services Bill would be the appropriate vehicle for it. He has heard no fresh argument to convince him that would not be the case. Moreover, I understand from No 10 that the Business Managers have expressed the strong view that Lloyd's should not be included in the Bill.

I am copying this to the recipients of your letter.

Yours sincerely,

John Mogg

J F MOGG
Private Secretary

1786 1986 BOARD OF TRADE BICENTENARY

999-1

ECON. POL: Gower. Pt 2.

CONFIDENTIAL

DA

10 DOWNING STREET

From the Private Secretary

22 January 1986

Dear Richard,

ROSKILL REPORT

The Prime Minister has seen your letter to Stephen Boys Smith of 21 January.

The Prime Minister hopes the Chief Secretary will be able to bring forward recommendations about Roskill's proposals for a unified organisation so that they can be considered in the same timescale as the other proposals made in the Roskill Report. She has noted that the Home Secretary intends to put a paper to H Committee on these by Easter and would be grateful if the Chief Secretary would also aim at a report by Easter.

I am copying this to Joan MacNaughton (Lord President's Office), John Mogg (Department of Trade and Industry), Stephen Boys Smith (Home Office), Michael Saunders (Law Officers' Department), Richard Stoate (Lord Chancellor's Office), David Morris (Lord Privy Seal's Office), John Bartlett (Bank of England), Lance Railton (Customs and Excise), Catherine Brand (Inland Revenue) and Michael Stark (Cabinet Office).

Yours ever,
David.

(David Norgrove)

R.J. Broadbent, Esq.,
Chief Secretary's Office.

CONFIDENTIAL

CONFIDENTIAL

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215)
GTN 215) 5422
(Switchboard) 01-215 7877

Secretary of State for Trade and Industry

PS/

21 January 1986

CONFIDENTIAL

David Norgrove Esq
Private Secretary to the
Prime Minister
10 Downing Street
LONDON
SW1

Prime Minister 4

21/1

Dear David,

JUNK BONDS

My Secretary of State has seen Rachel Lomax's letter to you of 23 December on this subject, and the enclosed papers. He would agree with the broad conclusions that while junk bonds are, for a number of reasons, unlikely to catch on in this country in the foreseeable future, leveraged takeovers financed by bank lending may already be doing so.

2 The issues which this may raise for bank supervision, and for the financial markets generally, are for the Treasury and the Bank rather than for this Department. But we are actively reviewing the adequacy of existing arrangements to protect the interests of shareholders on both sides, in the sort of takeover battles which we have seen recently in the USA; and we are also giving thought to the consequences for third parties, including employees, and for the economy as a whole, if a company created by a highly leveraged takeover should collapse, as well as to the danger that pressure to repay the debt may force the company to behave in ways which may not be in the long term interests either of the company or of the economy as a whole. This type of concern of course loomed large in the decision to refer Elders' proposed takeover of Allied Breweries to the MMC; and similar action would be open to us if another case of this kind arose.

3 I am copying this letter to Rachel Lomax (Treasury) and to John Bartlett (Bank of England).

Yours ever,
Michael

MICHAEL GILBERTSON
Private Secretary

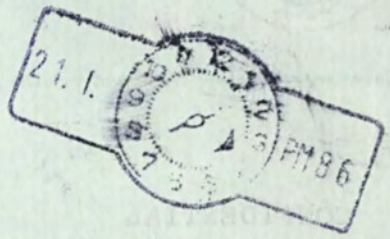
CONFIDENTIAL

DW5AIW

999-1

ECON POL PT 2

Gomer



CONFIDENTIAL

CQ/E/9

Treasury Chambers, Parliament Street, SW1P 3AG

Stephen Boys-Smith Esq
Private Secretary to the Home Secretary
Home Office
50 Queen Anne's Gate
London
SW1

21 January 1986

Dear Stephen,

ROSKILL REPORT

Wal-Hap Pt 2

David Norgrove's letter to me of 13 January recorded the Prime Minister's request that the Chief Secretary should consider Roskill's recommendations for a unified organisation with the aid of an interdepartmental working party of officials.

The Chief Secretary proposes as a first step to ask an interdepartmental group of officials to agree an issues paper. He has asked David Peretz in the Treasury to make the necessary arrangements for the interdepartmental group and to chair it. Representatives of the following departments, in addition to the Home Office, will be invited to attend:

Department of Trade and Industry
Law Officers' Department
Bank of England
Customs and Excise
Inland Revenue

By building on the work done in 1983 by the interdepartmental group chaired by Mr Monck, the Chief Secretary hopes it will be possible to complete this phase of the work by mid-February. He proposes then to invite Ministerial representatives of the departments listed above to meet him to discuss the main themes to be pursued and the sort of conclusions which might emerge. This would provide guidance for the official level group to start work on a draft report.

The Chief Secretary envisages holding a further Ministerial meeting to discuss the draft report before he reaches final decisions on the recommendations he will

CONFIDENTIAL

ECON POL: Gower PT-3

put to the Prime Minister. His aim is to make recommendations by the end of April.

I am copying this letter to David Norgrove (No. 10), Joan MacNaughton (Lord President's Office), John Mogg (DTI), Henry Steel (Law Officer's Department), Richard Stoate (Lord Chancellor's Office), David Morris (Lord Privy Seal's Office), John Bartlett (Bank of England), Lance Railton (Customs and Excise) Catherine Brand (Inland Revenue) and Michael Stark (Cabinet Office).

Yours Sincerely

Paul Lever

pp R J BROADBENT
Private Secretary

FROM THE LEADER OF THE HOUSE

HOUSE OF LORDS

Prime Minister 2

20 January 1986

21/1

Dear Douglas

Roskill Report: Early Debates

Thank you for sending me a copy of your letter of 20 January to John Biffen about the arrangements for debates in both Houses on the proposals of the Fraud Trials Committee.

Lord Roskill has already been to see Bertie Denham about the arrangements for the debate in the Lords. I understand that Monday 10 February is a date which Lord Roskill could manage, and we are accordingly proceeding with arrangements for a debate that day. Quintin Hailsham has agreed to open the debate, and Simon Glenarthur will wind up.

I am sending copies of this letter to the Prime Minister, the Lord Chancellor, the Secretary of State for Trade and Industry, the Lord Privy Seal, the Chief Secretary, the Chief Whips in both Houses and Sir Robert Armstrong.

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department

ECON POL PTD

Gomez

010

CCBG

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

20 January 1986

Prime Minister 2

DCR
20/1

Dear John.

ROSKILL REPORT: EARLY DEBATES

Following the statements in both Houses on 14 January, I thought it would be helpful if I wrote to you about the arrangements which I hope can be made for debates in both Houses before Easter on the proposals in the Frauds Trial Committee Report published on 10 January.

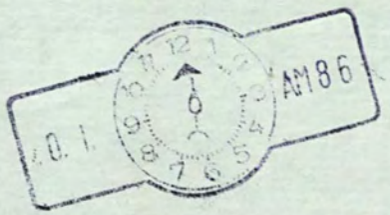
As you know my intention is to include in the Criminal Justice Bill for 1986/87 all those proposals which we accept and which fall within the scope of the Bill. My aim would be to put a paper to colleagues in H before Easter seeking policy approval for these proposals; naturally I would wish to take account of what is said in Debate on these matters. This does not give us much time and our room for manoeuvre is further limited by the fact that Lord Roskill is not available from 14 February to 5 March. I see considerable advantage in arrangements being made for a debate in the Lords to take place before his departure so that he can answer his critics. It would be helpful if the debate in the Commons could follow as soon as possible afterwards so as to allow a little time for policy clearance on specific proposals with the many interested Departments.

I realise that time is extremely short but I would be most grateful if you and the Lord President found it possible to agree to debates in both Houses next month. I had in mind a Take Note Motion in the Lords and a half day debate on the adjournment in the Commons.

I am copying this letter to the Prime Minister, the Lord President, the Lord Chancellor, the Secretary of State for Trade and Industry, the Chief Secretary, the Chief Whips in both Houses and Sir Robert Armstrong.

Yours,
Douglas.

The Rt Hon John Biffen, MP


AM86

051

CONFIDENTIAL

aBG

NBPR

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

J F Mogg Esq
Principal Private Secretary to the
Secretary of State for Trade & Industry

14 January 1986

Dear John,

LLOYDS AND THE FINANCIAL SERVICES BILL

David Norgrove's letter of 8 January records the decision to go ahead with an inquiry along the lines proposed by your Secretary of State. It also records the Prime Minister's proposal that the inquiry should report by Whitsun.

The Chancellor suspects that this may be too late for amendments to be introduced to the Financial Services Bill in the Commons, following the inquiry, if that proved necessary. If so, he would see a strong case for asking for the report to be completed earlier, perhaps by Easter. The Chancellor recognises that this will be a very tight timetable indeed. But he thinks it would be well worth trying to see if it could be achieved. If it is not possible to release the report by Easter, and if the inquiry shows that legislation is needed, then the necessary amendments would have to be introduced in the Lords, which would be the only realistic alternative, albeit very much second best.

I am copying this letter to David Norgrove (No.10), Joan MacNaughton (Lord President's Office), David Morris (Lord Privy Seal's Office), Murdo Maclean (Chief Whip's Office), Michael Stark (Cabinet Office) and to John Bartlett (Governor of the Bank of England's Office.)

Yours ever
Rachel

MRS R LOMAX
Principal Private Secretary

ECON POL
GOULER
PTR

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

13 January 1986

Dear David,

ROSKILL REPORT

I attach a revised text of the Home Secretary's statement on the Roskill Report. It takes account of the discussion at the Prime Minister's meeting on 9 January recorded in your letter of the same date to William Fittall. ~~9~~ at Plap.

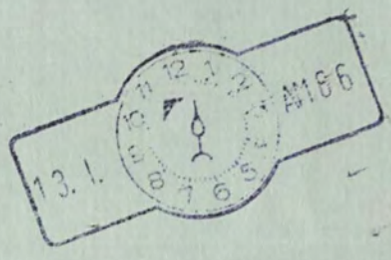
We understand that the Lord Privy Seal is content with the reference in the final sentence to an early debate. I draw Richard Stoate's particular attention to the reference to the CLRC study in the middle of the second page.

Copies of this letter go to Joan MacNaughton (Lord President's Office), John Mogg (Department of Trade and Industry), Rachel Lomax (HM Treasury), Henry Steel (Law Officers' Department), Murdo Maclean (Chief Whip's Office), David Morris (Lord Privy Seal's Office), Richard Stoate (Lord Chancellor's Office), John Bartlett (Office of the Governor of the Bank of England), and Michael Stark (Cabinet Office).

Yours,

S W BOYS SMITH

David Norgrove, Esq


13. I.
AM 86

.R.

DRAFT STATEMENT

With permission, Mr Speaker, I would like to make a statement about the Report of the Fraud Trials Committee under the chairmanship of Lord Roskill whose Report was published on 10 January. The House will recall that this Committee was set up in 1983, well in advance of recent events, to consider ways of improving the conduct of criminal proceedings arising from fraud.

The Government is most grateful to Lord Roskill and his colleagues for producing with commendable speed such a readable, thorough and radical Report. It deals with a serious and urgent problem. We fully share the Committee's concern that the perpetrators of serious fraud should be brought effectively to book. The report shows that the legal and administrative machinery for this purpose has been creaking badly. We are determined to bring about the changes in law, practice and attitudes which are necessary. There are two reasons for this. First, the reputation of our financial institutions, and of the City of London in particular, needs the support of effective action against fraud. Second, there must be no escape for offenders simply because their offences are highly complicated or because they can employ large resources to cover them up; the enforcement of the law must be evenhanded. Accordingly the Government welcomes the Report as providing a basis for early legislation to achieve substantial reforms of the law in this field, and also for new administrative measures in areas where legislation is not required.

Responsibility for the investigation and prosecution of fraud is now shared by the police, the Director of Public Prosecutions, the Department of Trade and Industry and other agencies. Co-operation has been greatly improved in recent years, and permanent Fraud Investigation Group arrangements have been in place since last January. The Roskill Committee recommended an urgent examination of the need for a new unified organisation. We accept the recommendation for such an

.../examination,

R.

examination, and it will be immediately put in hand under the leadership of [my rt hon Friend the Chief Secretary].

The Committee have called for the resources devoted to the pursuit of fraud to be expanded as a matter of priority. The Government is already taking steps to that end through the strengthening of the DTI (by nearly 200 new staff over the next few years) and the addition to the DPP's Department of nine extra lawyers with support staff. We shall be seeking to draw in more people with the necessary skill and experience from the private sector on short-service appointments. In addition, the self-regulatory agencies to be set up under the Financial Services Bill will have their own resources for the investigation of fraud.

As regards the substantive law, my noble Friend the Lord Chancellor and I will be in touch with the Law Commission about their work on conspiracy to defraud. I shall seek the advice of the Criminal Law Revision Committee on early legislation to deal with the urgent problem of the limitations on the use of a charge of conspiracy to defraud to which the Roskill Committee drew attention.

The Committee make a number of recommendations concerning juries, including provision for certain complex fraud cases to be tried by a tribunal comprising a judge and two lay members, and for the abolitionof peremptory challenges. We shall be consulting urgently about these important matters, and we shall listen with interest to the views which will be expressed in this House and another place and in general public comment.

The Committee's general approach on preparations for trial, the law of evidence and other matters would lead to significant improvements in the trial of fraud cases. The feasibilty of certain aspects of the Committee's proposals will require further study and we shall need to give more thought to the details. Some of the recommendations may well be applicable to other areas of the criminal law besides fraud.

To sum up, we have in this Report a basis for substantial and worthwhile legislation and administrative action. The report will be immensely helpful in shaping the Government's continuing fight against the insidious menace of fraud. For this we are most grateful to Lord Roskill and his colleagues. It is now for us and for Parliament to do our part in carrying forward the work they have begun. I hope that my rt hon Friend the Leader of the House will be able to arrange for an early debate on the report.

ECON POL PRZ

CONGR

File

bc BG ✓

JA (42)

10 DOWNING STREET

From the Private Secretary

13 January 1986

Dear Richard,

ROSKILL REPORT

My letter of 9 January recorded a meeting the Prime Minister held to discuss the Roskill Report. It was decided at that meeting that a Cabinet Minister should be invited to consider Roskill's recommendation for a unified organisation and certain related recommendations, with the aid of an inter-departmental working party of officials, and to report. The Prime Minister would be grateful if the Chief Secretary would be prepared to take this on.

I am sending copies of this letter to William Fittall (Home Office), Joan MacNaughton (Lord President's Office), John Mogg (Department of Trade and Industry), Rachel Lomax (HM Treasury), Henry Steel (Law Officers' Department), Murdo Maclean (Chief Whip's Office), David Morris (Lord Privy Seal's Office), Richard Stoate (Lord Chancellor's Office), John Bartlett (Office of the Governor of the Bank of England, and Michael Stark (Cabinet Office).

Yours ever

David.

(David Norgrove)

Richard Broadbent, Esq.,
HM Treasury.

CONFIDENTIAL

PRIME MINISTER

ROSKILL REPORT

You said yesterday that you would like to think over the weekend about which Cabinet Minister should be given the task of considering Roskill's recommendation for a unified organisation and the related recommendations on resources, etc.

There seem to be two main possibilities: the Chief Secretary and the Paymaster General.

The Chancellor pressed the claims of the Chief Secretary though he said he would not be disappointed if you decided against. Mr. MacGregor has an LL.B. from Kings College, London, and was a Director of Hill Samuel from 1973 to 1979. I was surprised that the Chancellor put him forward, because it would tie his hands in arguing for restraint in the provision of extra resources. On the other hand, the Treasury may have taken the view that they would not be listened to on this point and their position would be stronger if the Chief Secretary were in the Chair.

The alternative is probably Mr. Clarke. Mr. Clarke is a Silk. Who's Who shows no City connections.

You have in mind, of course, that Mr. Clarke might take on the day-to-day work on inner cities under Lord Young's guidance. If you see any attraction in Mr. Clarke also taking on the Roskill work you could discuss Mr. Clarke's workload with Lord Young when you see him on Sunday evening.

We should ideally promulgate your decision on Monday so that this can be taken into account in the Home Secretary's statement on Tuesday.

Whom would you like to take this on? I think Tom Macgregor.

DAVID NORGROVE

10 January 1986

CONFIDENTIAL

CC BG

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215 5422
GTN 215) .....
(Switchboard) 01-215 7877

JU119
Secretary of State for Trade and Industry

10 January 1986

CONFIDENTIAL

The Rt Hon John MacGregor OBE MP
Chief Secretary to the Treasury
HM Treasury
Treasury Chambers
Parliament Street
London SW1

Dear John,

WRBM

FRAUD

I am most grateful for your speedy positive response to my request for additional resources to help combat fraud.

I confirm that I am happy to proceed on the basis you suggest and that in particular our officials should examine the position in 12 - 18 months time and satisfy themselves that the increase in staff has been reflected in increased output. I also confirm for the record that there is no public expenditure implication in 1986/87 in the increase you have approved in my Department's manpower and running cost limit.

As you suggest, my officials will in due course be making a separate approach to the Treasury on additional staff for the Companies Registration Office when further work has been done on the CRO Corporate Plan.

I am copying this letter to the Prime Minister, the Lord Chancellor, the Attorney General, the Chancellor of the Duchy of Lancaster, the Home Secretary and Sir Robert Armstrong.

Yours,
Leon

LEON BRITTAN

ECON POL

BOUKER

PT 2

Prime Minister 4.
To see.
DRS
10/1

LORD CHANCELLOR'S DEPARTMENT

PRESS NOTICE

Neville House · Page Street · London · SW1P 4LS
Telephone: Direct lines 01-211 8915 or 8195
Switchboard 01-211 3000

86.5

10 January 1986

PLEASE NOTE EMBARGO

NOT FOR PUBLICATION, BROADCAST OR
USE ON CLUB OR NEWS TAPES BEFORE
1200 HOURS FRIDAY 10 JANUARY 1986

THE REPORT OF THE FRAUD TRIALS COMMITTEE

Statement by the Lord Chancellor and the Home Secretary

The following statement by the Lord Chancellor and the Home Secretary on the publication of the Report of the Fraud Trials Committee, was issued today:

"The Government heartily welcomes the publication today of the Report of the Roskill Committee on Fraud Trials. Lord Roskill and the members of the Committee are to be congratulated on producing a comprehensive and well reasoned report on this important area of law and procedure. The Committee has made a wide range of recommendations which point the way to major improvements in the conduct of fraud trials.

The Government is committed to stern action against fraud. It is now considering the Report as a matter of urgency. Early action will be taken on the Government's conclusions. Ministers will make a preliminary statement to Parliament next week."

See LCD press notice No 86.6 of 10 January 1986 for a summary of the Fraud Trials Committee Report and its recommendations.

Issued jointly by the Lord Chancellor's Department and the Home Office.
(Home Office Press Office 01-213 3030)

2

TELEPHONE
01-480 6440

10-11 CRESCENT
LONDON
EC3N 2LX

The Rt. Hon. Mrs. M. Thatcher, M.P.,
10 Downing Street,
London S.W.1.

9th January, 1986

Dear Prime Minister

I enclose a copy of a letter and its enclosures which I recently sent to my Names in refutation of Mr. Sedgemore's allegations about myself, Lloyd's and my underwriting agency, Janson Green. As you will see, all his allegations are false and it is perhaps fortunate for him that he is protected by parliamentary privilege.

You may well ask why I delayed in sending this letter for so long after the allegations were made. In the interests of accuracy, a considerable amount of research was necessary both by myself and my solicitors. Although the letter was completed shortly before Christmas, we decided that it would not be opportune to send it out over the holiday period. Therefore in order to obtain maximum impact we deferred sending it until everyone was back at work and shortly before Parliament reassembles.

Yours sincerely
Peter Green

Sir Peter Green

Enc.

Prime Minister
This looks to be a sound subsidence letter.
I have acted.
N.L.W
10.1

TELEPHONE
01-480 6440

10-11 CRESCENT
LONDON
EC3N 2LX

6th January 1986

LETTER TO NAMES ON SYNDICATES MANAGED BY JANSON GREEN LIMITED, CRESCENT UNDERWRITING AGENCIES LIMITED AND SCIMITAR UNDERWRITING AGENCIES

A number of newspaper reports have recently been published based on a series of early-day motions tabled by Mr. Brian Sedgemore M.P. and others concerning myself, the Agencies, Imperial Insurance Co. and Lloyds. As these statements are protected by Parliamentary Privilege, it is not possible to take legal action to protect the reputation of Janson Green Limited or myself. I therefore feel that the time has come to give you my personal response to those statements affecting myself which are false or misleading and relevant to the affairs of the syndicates and I therefore enclose a note I have prepared on this subject. It is also right, in these circumstances, that I should give you details of Imperial's involvement with the syndicates to which I referred in my 1983 letter to the Names. I therefore also enclose a note dealing with this issue. I also enclose a note from Peter Valentine setting out his and Cresvale's relationship with Imperial and dealing with Mr. Sedgemore's allegations about Cresvale.

The policies placed with Imperial formed a vital part of the reinsurance protection for the syndicates and in the event played an invaluable role in providing protection and funds to pay for the unknown claims to which I have constantly referred in my annual letter to the Names. I was advised by the brokers who placed the reinsurances that all the policies placed with Imperial were on terms that were at least as favourable to the syndicates, and in some respects more favourable than any other similar cover available in the Market at the time. I hope that you share my view that our consistently profitable results, contrasted with the notoriously poor performance of many other syndicates, demonstrate better than anything else that I have always put the interests of my Names above everything else.

Finally, I should refer to the Article by Mr. Levene which appeared in the Sunday Times Business News of 15th December and which alleged that I had secret dealings with land in the Turks and Caicos Islands. This allegation is totally fictitious. I have never had any interest in any land or buildings outside England.

If you have any questions I will do my best to answer them. I should also tell you that Mr. Sedgemore and the Press are being given copies of this letter.

Yours sincerely,

SIR PETER GREEN

IMPERIAL

Background

1. Imperial was formed in the Bahamas as Imperial Insurance Company Limited by my late father, Toby Green, Mr. Edward Hogg and Mr. C.R. Black, an American insurance broker, in 1959 for the purpose of managing and underwriting the Association of American Railroads mutual strike insurance plan, being business which I believe the company still underwrites. The business of Imperial was in 1972 transferred to Imperial Insurance Company (Cayman Islands) Limited.

2. My father gave me 1,250 shares of £1 (2½% of the capital). Over the years, I purchased further shares from shareholders who wished to sell or reduce their holdings, if no other buyers were available. As a result of changing the share capital into US$, bonus issues and purchases, my final shareholding was 71,674 shares of US$1 (7½% of the capital). In January 1983, I gave all these shares to a charitable trust, whose Trustees are the Northern Bank Executor and Trustee Company, Belfast, a subsidiary of the Midland Bank. This Trust had been established by them in 1979 as Trustees of a Settlement which I had made in 1963.

3. I was made a Director of Imperial in 1966 and resigned on 31st December 1982. I informed the Chairman of Lloyds when I was first made a Director as I was at that time subject to Lloyds vocational undertakings.

4. In the Autumn of 1984, Hogg Robinson, which had owned 20% of Imperial from its inception, acquired the whole company. At that time, I held 548,276 shares of Hogg Robinson Group plc (1.25% of the share capital).

Personal Benefits

5. I received fees for attending Directors meetings of Imperial and as a shareholder received dividends between 1976 and 1982. These amounts are listed below:-

I received the following fees from Imperial Insurance Company (Cayman Islands) Limited.

ACCOUNTS YEAR			DATE OF RECEIPT
Oct 18, 1972 to Sept 30	1973	US$nil	-
Year ended 30 Sept	1974	US$7500	Not known
"	1975	US$4500	April 23 1975

"	1976	US$5000	March 24 1976
"	1977	US$5000	April 5 1977
"	1978	US$5000	June 26 1978
"	1979	US$7000	May 25 1979
"	1980	US$2500	December 17 1980
"	1981	US$7500	April 24 1981
Subsequent years		NIL	-
TOTAL		US$44000	

I also received fees before this period from the Bahamian company. My records of these are incomplete and such fees were in any event exempt from income tax at that time provided that they were not remitted to the U.K. This information is not therefore available from my accountants. In addition, Imperial sometimes paid my hotel expenses incurred in connection with its business.

I received the following dividends:-

1976	US$12934.80
1977	US$13334.80
1978	US$17918.50
1979	US$26877.75
1980	US$26877.75
1981	US$35837.00
1982	US$35837.00
Subsequent years	NIL
TOTAL	US$169,617.60

These amounts have all been reported to the Inland Revenue and tax either has been or will be paid.

Policies placed with Imperial

6. In my letter to the Names in 1983 which dealt principally with the closing of the 1980 underwriting account, I wrote at some length about the problems of reserving properly long tail accounts such as we underwrite and I gave details about policies placed with Imperial.

Imperial wrote, as only one part of its overall activities, three reinsurance policies for the Marine Syndicate.

a. The first, known as the Burner, was a policy first placed in 1970 with an annual premium, any amount not being used in payment of claims being added to the policy limit for the next 12 months to "build up a credit" with the reinsurers. Little support for the policy could be found in

the Market and the Brokers only managed to place two lines in London and one in the U.S.A., a total of 25%. The balance was placed with Imperial on slightly worse terms to itself than the Market placing. The policy was cancelled in 1971 when it became clear from the large number of potential claims likely to fall on the Burner that it could not achieve its objective. At the time of cancellation the premium paid for 1970 and the deposit for 1971 amounted to £705,537.50 plus US$1,278,900 plus Canadian $59,377.50 nett of brokerage. Part of this had already been repaid as claims and the balance was returned to the Syndicate early in 1972.

b. The second policy, known as "the Rig Policy", was taken out in 1970 to protect the oil and energy account against major windstorm losses. In 1978 the policy was amended to include a Whole Account stop loss reinsurance. When I wrote to you in 1983 I regret I was mistaken when I said this policy was originally placed 50% with MIRCO (Montagu Insurance and Reinsurance Co.) and 50% with Imperial because I was confusing the Rig Policy with the third policy to which I shall refer to under c below. The Rig Policy was always written 100% by Imperial.

An annual premium was paid and after payment of claims, if any, the balance remaining was added to the sum assured for the following year. This type of policy is now known as a "Roll-over". In addition, an interest element was added to the sum assured thereby increasing the sum assured further. Initially, the Rig Policy fund was held on deposit and 50% of the interest earned was credited to the policy. This was later amended to an amount equal to 50% of the US$ 90 day Bill Rate and was further increased to 90% of the 90 day Bill Rate with effect from the beginning of 1981 in response to the growth rate in the fund and the high level of US interest rates at that time.

When we were closing the underwriting accounts for 1979 and earlier years, we took credit for recoveries under the Rig policy in order to cover our I.B.N.R. (incurred but not reported) claims for asbestos-related diseases and other environmental claims. During 1982 we decided to cancel the 1980, 1981 and 1982 policies from inception and the premiums were repaid. We also collected in full the recoveries due on the 1979 and earlier policies. During the period of these policies, premiums amounting to US$7,432,000 were paid and the sum of US$10,616,000 was collected from Imperial. Whilst these funds were held by Imperial, they were clearly shown in their accounts as a liability due to Janson Green syndicates. The funds were at all times secure and

immediately callable. The difference between these two figures was the amount of interest credited to the policies.

c. The third policy was a whole account stop loss policy which was originally placed 50% with MIRCO and 50% with Imperial in 1971. After the broker who handled these reinsurances started his own firm in 1977 Imperial agreed to take over 100% of the policy with effect from inception. Under the terms of this policy the premiums and claims were to be finally adjusted at the end of the sixth year from inception. An annual deposit premium of £25,000 was paid from which Imperial paid the brokerage. The rest of the premium due under the policy terms less any claims paid was held as a claims reserve in the Syndicate Premium Trust Fund. Accordingly, all investment earnings on these premium balances were credited to Names along with the investment profits of the balance of the Premium Trust Fund.

This policy paid claims in respect of major losses such as Computer Leasing and was also used to provide cover for I.B.N.R. reserves. During 1982 the 1980, 1981 and 1982 policies were cancelled from inception and the balance of the policies for 1979 and earlier was credited against the reinsurance to close the 1980 Account as it had already featured in the I.B.N.R. of the incoming reinsurance closing the 1979 Account.

Since the termination of the Rig Policy and the Whole Account Stop Loss (b and c above) we have not placed any other "roll-over" policy.

MR. SEDGEMORE'S MOTIONS

In the Appendix to this note you will find the text of Mr. Sedgemore's Motions with which I now deal in turn.

Motion 171

"This House calls for the resignation of... Sir Peter Green, Vice Chairman of the Council of Lloyd's."

I did not stand for election as Chairman of Lloyd's for 1984 and I retired from the Council on 31st December 1983. I am not and never have been "Vice Chairman of the Council of Lloyd's".

"Notes the manifest conflicts of interest faced by [Sir Peter] in the recent Lloyd's scandals about the affairs of the Peter Cameron-Webb Syndicate and Minet Holdings Limited and the resignation of Chief Executive Ian Hay Davison who was appointed to clear up Lloyd's."

1. There was no conflict of interest between myself and the PCW Syndicates as I have never been a member of any of those Syndicates or had any business connection with Mr. Cameron-Webb since he left Janson Green in 1966.

2. Whilst I was responsible for recommending to the Council the appointment of Mr. Hay Davison to the post of Chief Executive and Deputy Chairman of Lloyd's I have had nothing to do with his resignation as I have not been a member of the Council since the end of 1983.

"Notes the close business relationship between Sir Peter Green, Peter Cameron-Webb and Peter Dixon... and the fact that Dixon was the Green family accountant."

There is no close or other business relationship between Mr. Cameron-Webb, Mr. Dixon and myself.

Mr. Cameron-Webb and Mr. Dixon were employees of Janson Green and later Directors until they resigned in 1966 and 1967 respectively to start their own Agency. After their resignation I had no business connections with either Mr. Cameron-Webb or Mr. Dixon. Indeed it was common knowledge at Lloyd's that relations between Mr. Cameron-Webb and myself were so strained as a result of his resignation from Janson Green immediately after my father's death, that I would not meet him or speak to him if it could possibly be avoided. The same remarks apply to Mr. Dixon who was never the "Green family accountant", or the accountant for any member of the Green family.

"Sir Peter allowed Peter Cameron-Webb... to resign as a member of Lloyds without the statutory six months notice thereby allowing Peter Cameron-Webb to be out of Lloyd's jurisdiction... and preventing Lloyd's from freezing his assets."

The statement that Mr. Cameron-Webb resigned in 1982 is untrue.

Mr. Cameron-Webb signed his letter of resignation as a Member of Lloyds in August 1983. It is the decision of the Underwriting Agent which in this case was, of course, Mr. Cameron-Webb's own firm, whether to waive the six months prior to 31st December provision in the Underwriting Agreement. The Council of Lloyds at that time had no power under the by-laws to prevent a Member resigning and this view was confirmed by legal advice.

I did not therefore allow Mr. Cameron-Webb to resign as a member of Lloyd's.

"Notes that Sir Peter, when Chairman of Lloyd's, conducting a private enquiry in February/March 1982 into Cameron-Webb's £500,000 sludge fund held by Unimar in Monte Carlo..that [sic] no report was submitted to the Council of Lloyds or the Names on this matter except an assurance that everything was alright, that Sir Peter was put on notice in February - March 1982 that quota shares were placed in Unimar by Dixon through Howden Financial Services and not through normal broking channels and that notwithstanding a number of enquiries into this case Names at Lloyd's are still unhappy over this matter""

I cannot comment on the Unimar allegations as the matter is still under investigation by Department of Trade inspectors whose Report has not yet been submitted to the Secretary of State. Mr. Simon Tuckey, Q.C., who conducted a parallel enquiry for Lloyd's has reported. As the Chairman of Lloyd's said at the June General Meeting, Mr. Tuckey reported, "I do not think that there was any attempt by the Chairman of Lloyd's to cover up anything either before or during the course of the informal enquiry. During the enquiry he asked all the right questions and concluded rightly in my view that there had been no dishonesty."

Motion 172

"Sir Peter Green has never accounted for the interest on £34m placed in Imperial..."

The suggestion that £34m was placed in Imperial is false. Details of amounts paid to and repayments by Imperial appear on the accompanying memorandum headed "Imperial". In my letter to the Names in 1983, I drew the Names' attention to "an examination of this year's accounts will show the R/I to close has increased from £58m last year to £92m this year" and, with hindsight, I should have made it clear that only 15% approximately of this amount was derived from funds recovered from the rig policy which was placed with Imperial rather than "a very major part".

So that you may understand how this extra £34m of reserves required to close the 1980 account was funded I will set out the detailed calculation and sources of the funds.

		£
Reinsurance to Close 1979 Account received by 1980 Account valued at 31st December 1981		58,180,039
plus Rate of Exchange adjustment at 31st December 1982		8,686,521
		66,866,560
Net claims paid by Syndicate during 1982 in respect of 1979 and previous years	7,323,959	
less recovery on Imperial Rig XL/Stop Loss policy	5,420,988	(1,902,971)
Increase in reserves required for 1979 and previous closed years - financed from earnings on syndicate reserve funds		3,040,810
Reinsurance to Close at 31.12.82		
1979 and earlier years		68,004,399
1980 Pure year		24,201,292
Total R/I Close at 31.12.82		£92,205,691

Thus, the difference between the R/I premium received on the 1st January 1982 and the R/I premium paid on the 31st

December 1982 to cover all known and unknown claims on the closed years is £34,025,652.

"money which seems to belong to names in his own Syndicate but has gone to benefit his farm."

The point is misconceived because the policies were placed with Imperial through the brokers on arm's length terms and we were advised by the brokers that such terms were at least as good and in some cases better than any other similar cover available in the Market. In the circumstances, Imperial was entitled to the interest which it retained.

The suggestion that my farm benefited from Imperial apparently derives from previous false reports, reiterated recently in the Financial Times of 5th December to the effect that my farm benefited from the charitable fund into which all my shares in Imperial were transferred in January 1983. These reports are wholly untrue. The Charitable Trust can only be used to assist genuine causes, no payments whatsoever have been made to me or my farm, as the Trust's records can confirm, and the substantial donations made have all been to bona fide charitable causes.

"Notes that Peter Miller carried out the broking for the lucrative P and I Club in which Peter Cameron-Webb and Sir Peter Green were the lead names."

P and I Clubs are mutual insurance associations formed by shipowners to protect their third party and other legal liabilities. There are a number of such clubs in this country, in Scandinavia and elsewhere. I am not a shipowner nor have any interest in any shipping company and so cannot be a member of a P and I Club.

The principal clubs have a re-insurance pooling agreement known as the London Group which buys re-insurance in the market. Our Syndicate has led these re-insurances for many years, in the same way as we make re-insurances for insurance companies. The London Group reinsurance protection is so large, possibly the biggest reinsurance contract placed, that the whole world Market is involved in providing cover. It is unclear what aspects, if any, of this meet with Mr. Sedgemore's disapproval.

"There are three masonic lodges at Lloyd's, the Lutine of which Green and Miller are members, Fidentia and Lloyd's..."

I am not and never have been a freemason. I did not

even know that there are three lodges at Lloyd's.

Motions 230 and 232

"That this house is deeply concerned about Lloyd's Syndicates which have already been touched by scandal, particularly those managed by ..... and Janson Green Limited"

"That this house calls for an investigation into the operation of the reinsurance scheme Imperial Insurance Company (Cayman Islands) Limited, including the role of Sir Peter Green, former Chairman of Lloyds....."

I would refer you to my description of the history of Imperial set out above. These passages add nothing to the specific allegations with which I have already dealt.

CRESVALE SECURITIES LIMITED

As Chairman of Cresvale Securities Limited, I feel I must respond to Mr. Sedgemore's allegations regarding this company made in motion 231, and inform you that, due to somewhat similar allegations made in an article appearing in the Guardian on the 17th January 1983, the specific relationship between Cresvale and Janson Green was thoroughly investigated by Lloyd's, the Bank of England and the Department of Trade.

There is nothing uncommon in a Lloyd's Underwriting Agency being closely associated with an Investment Management Company, that provides a service to its Names, and full details to comply with the Lloyd's Bye-Law and Regulations were in the annual accounts of the Syndicates at 31st December 1982 and each subsequent year.

Cresvale Securities Limited not only provides investment management services to the syndicates managed by Janson Green Limited, but also to other Lloyd's Underwriting Agencies and to private and institutional investors within and outside the U.K.

One of its clients was Imperial Insurance Company (Cayman Islands) Limited and the investment advisory services provided to that Company was at Cresvale's normal rate of fees. For your information, Cresvale was also a shareholder in Imperial and I am pleased to give you full details of their interest, as follows:

March 1980	Purchase	3,000	@$8.00 =	24,000.00
April 1981	Bonus issue (1 for 1)	3,000		-
October 1982	Purchase	4,424	@$4.00 =	17,696.00
		10,424*		41,696.00
November 1984	Sale	10,424		107,888.40
		Profit		$66,192.40

*(1.1% of the capital)

Dividends received:-

1980	2,250.00
1981	3,000.00
1982	3,000.00
1983	6,254.00
1984	6,254.00
TOTAL	$20,758.80

In the capacity of Investment Advisor, I was elected a Director of Imperial, and for a time, held shares personally in the Company as follows:

November 1974 Purchase	750	@ $5.00 =	3,750.00
May 1975 Stock Dividend	62		
June 1978 Purchase	1,400	@ $7.00 =	9,800.00
April 1981 Bonus issue (1 for 1)	2,212		
	4,424*		13,550.00
October 1982 Sale	4,424		17,696.00
	Profit		$4,146.00

*(0.4% of the capital)

Cash Dividends Received:

1976	324.80
1977	324.80
1978	406.00
1979	1,659.00
1980	1,659.00
1981	2,212.00
1982	2,212.00
TOTAL	$8,797.60

I did not at any time receive Directors Fees, Payments, Loans or any other benefits except for the payment of $3,750.00 made to me in May 1974 when I attended the Annual General Meeting of the Company at which I was elected a Director. The payment was towards the cost of my travelling expenses.

I am pleased to make this declaration in order that you may not be misled by anything that is misquoted or mis-represented in the Press.

Peter Valentine

171 LLOYDS (NO. 3)

Mr. Brian Sedgemore
Mr. Dennis Skinner
Mr. D.M. Campbell-Savours
Mr. Martin Flannery
Clare Short
Mrs. Ann Clwyd
Mr. Roland Boyes

That this House calls for the resignation of Peter Miller, Chairman, and Sir Peter Green, Vice-Chairman of the Council of Lloyds, as necessary first steps towards the restoration of confidence in Lloyds; notes the manifest conflicts of interest faced by both men in the recent Lloyds scandals about the affairs of the Peter Cameron Webb syndicate and Minet Holdings Ltd and the resignation of the Chief Executive, Ian Hay Davison, who was appointed to clear up Lloyds; notes the close business relationship between Sir Peter Green, Peter Cameron Webb and Peter Dixon set out in the Neville Russell Report and the fact that Dixon was the Green family accountant; notes that Sir Peter allowed Peter Cameron Webb in November 1981 to resign as a Member of Lloyds without the statutory six months' notice thereby allowing Peter Cameron Webb to be out of Lloyds jurisdiction from 1st January 1982 and preventing Lloyds from freezing his assets; and notes that Sir Peter, when Chairman of Lloyds, conducting a private inquiry in February-March 1982 into Cameron Webb's £500,000 sludge fund held by Unimar in Monte Carlo, that no report was submitted to the Council of Lloyds or the Names on this matter except an assurance that Sir Peter was satisfied that everything was all right, that Sir Peter was put on notice in February-March 1982 that quota shares were placed in Unimar by Dixon through Howden Financial Services and not through normal broking channels, and that notwithstanding a number of inquiries into this case Names at Lloyds are still unhappy over this matter.

172 LLOYDS (No. 4)

Mr. Brian Sedgemore
Mr. Dennis Skinner
Mr. D.N. Campbell-Savours
Mr. Martin Flannery
Clare Short
Mr. Ann Clwyd
Mr. Roland Boyes

That this House notes that Sir Peter Green has never accounted for the interest on £34 million placed in Imperial, a Cayman Islands company, money which seems to belong to Names in his own syndicate, but has gone to benefit his farm; deeply regrets that Sir Peter's conduct did not conform to the highest standards expected at Lloyds; accepts the Price Waterhouse view that the 1984 offer made by Minets, the parent company of the Peter Cameron Webb syndicate, whereby the Names gave up their legal rights, was unsound and takes the view that Peter Miller, himself a Peter Cameron Webb Name, set an appallingly bad example to others of how Lloyds should be run by himself accepting the offer; notes that Peter Miller carried out the broking for the lucrative P and I Club in which Peter Cameron Webb and Sir Peter Green were the lead Names; and, in view of the fact that there are three Masonic lodges at Lloyds, the Lutine of which Green and Miller are members, Fidentia and Lloyds, calls on the Director of Public Prosecutions to give an assurance that no person involved in the fraud investigation is a freemason.

230 LLOYDS (NO.6)
Mr. Brian Sedgemore
Mr. Dennis Skinner

That this House is deeply concerned about Lloyds syndicates which have already been touched by scandal or may be touched by scandal, particularly those managed by PCW Underwriting Agencies Limited, Alexander Howden Underwriting Ltd., R.W. Sturge & Co., H.G. Chester & Co. Ltd., Sedgewick Forbes, W.M.D. Underwriting Agencies Ltd., and Janson Green Limited; believes that the whole question of the links between syndicates and agencies on the one hand and interlinked companies involved in offshore re-insurance schemes on the other hand needs further investigation; further believes that Parliament would be assisted in the discussion of these matters if Lloyds were brought within the scope of the Financial Services Bill; and calls on those Members of the House who were associated with the syndicates or agencies concerned prior to the Lloyds Act 1982 to use their expertise in helping to amend this Bill so as to restore the good name of Lloyds and to bring hope to the victims of the scandals.

232 LLOYDS (NO 8)

Mr. Brian Sedgemore
Mr. Dennis Skinner

That this House calls for an investigation into the operation of the re-insurance scheme Imperial Insurance Company (Cayman Islands) Ltd., including the role of Sir Peter Green, former Chairman of Lloyds and the role of Hogg Robinson Group, the ultimate holding company of Janson Green Ltd., which had a 20 per cent interest in the Cayman Islands Company; believes that the investigation should cover the position of R.W. Sturge & Co. which had a 31.6 per cent stake, 1977-83, in Steel Burrill Jones, an insurance broking company which was involved in the Imperial Insurance Company re-insurance scheme of Janson Green; and further calls for a separate investigation into allegations that Mr. Leslie Dew, a former Lloyd's Committee Member and Deputy Chairman in 1975 and again in 1977, until his resignation from the re-insurance Committee on 2nd March of that year led substantial banking business through Alexander Howdens while he was employed at Merretts Syndicates Ltd. and had half the commission from the brokerage arising from the business paid direct into a Swiss bank account; and believes that Mr. Dew's role as President of Gulf Oil Company's Bermudan captive insurance company Insco Ltd. should be examined.

231 LLOYDS (No 7)
Mr. Brian Sedgemore
Mr. Dennis Skinner

That this House calls for an investigations into the way in which Lloyds syndicate, Janson Green, operated its own dealing company, Cresvale Securities Ltd. in which the shares were held 49 per cent by Janson Green Ltd and 51 per cent by G.R.P.N. Valentine rather than deal through independent stockbrokers and to see if the commission earned by this company should have gone to the names; calls for the investigation to look at the links between Cresvale Securities Ltd, Cresvale International Ltd, Cresvale Future Ltd, Berisford Cresvale Ltd, Cresvale Holdings Inc and Cresvale International Inc; believes that Janson Green's interests in these companies has only been disclosed since 1983; and further notes that in the year to 31st March 1977 profits before tax on a turnover of £221,000 were £183,253 and in the year to 31st March 1983 on a turnover of £1,568,271,357 were £1,138,498.

Subject « Master/ CONFIDENTIAL JD3AH1

file

10 DOWNING STREET

9 January, 1986.

From the Private Secretary

Dear Private Secretary,

ROSKILL REPORT

The Prime Minister today held a meeting with the Lord President, the Secretary of State for Trade and Industry, the Chancellor of the Exchequer, the Home Secretary, the Attorney General, the Solicitor General, the Chief Whip and the Governor of the Bank of England to dicuss further work on the Roskill Report in the light of the Home Secretary's minute of 6 January.

The meeting discussed first the proposals for a new unified organisation (Recommendation 1 of the Roskill Report). It was agreed that it would not make sense to set up the Fraud Commission and then ask it to consider the proposal for a unified organisation. The Fraud Commission would not be familiar with the problems. It was agreed that a Cabinet Minister should be invited to consider the proposal for a unified organisation, with the aid of an interdepartmental working party of officials, and to report. The Cabinet Minister concerned should also consider Recommendations 10, 11 and 12, about resources and qualified manpower (including pay and recruitment) except so far as those recommendations related to the police. Consideration of those recommendations, in relation to the police would be carried forward by the Home Secretary, and a report prepared. It was also agreed that the Home Secretary would arrange for the preparation of a paper on the proposed Fraud Commission (Recommendation 2 of the report). It was further agreed that all other recommendations in the report would be considered by an official interdepartmental group under Home Office chairmanship, to report to H Committee by Easter.

The Prime Minister said that she would consider over the weekend which Cabinet Minister should be invited to take the responsibility for the consideration of the unified organisation and related recommendations so that the arrangements could be announced if possible in the Home Secretary's statement on Tuesday. The Prime Minister stressed the importance of avoiding departmental attitudes and interdepartmental disputes in considering the unified organisation. The roles of the Revenue and Customs in this

/area would

area would need to be looked at with an open mind. The meeting welcomed the willingness of the Secretary of State for Trade and Industry to consider bringing Section 447 investigations within the scope of the unified organisation.

The meeting considered the draft statement attached to the Home Secretary's minute of 6 January, and the amendments proposed are listed in the annex to this letter. (The Lord Privy Seal will wish to note the final amendment in particular). The Prime Minister emphasised that the statement should project a sense of urgency in taking forward the consideration of the Roskill Committee's recommendations. It was agreed that the recommendation for abolition of jury trial in complex fraud cases would need to be handled with particular care. In the statement itself the drafting should be done in such a way that it did not appear to be singled out as one which the Government was hesitant about pursuing.

It was agreed that the announcement of increased staff for the Department of Trade and Industry should be made tomorrow (Friday), to help illustrate the Government's resolve to pursue fraud, though in fact discussions about an increase had started before the Roskill Report's recommendations were known.

It was finally agreed that the Government would need to mobilise support for the more controversial of the Report's recommendations, including the proposal for abolition of jury trial in some cases, though equally it would be a mistake to go too far in a way which might encourage opposition. The Governor undertook to see what might be done in the City to encourage expressions of support.

I am sending copies of this letter to Joan MacNaughton (Lord President's Office), John Mogg (Department of Trade and Industry), Rachel Lomax (HM Treasury), Henry Steel (Law Officers' Department), Murdo Maclean (Chief Whip's Office), David Morris (Lord Privy Seal's Office), Richard Stoate (Lord Chancellor's Office), John Bartlett (Office of the Governor of the Bank of England), and Michael Stark (Cabinet Office).

Yours sincerely,
Martin Sawer (Duty Clerk)

p.p. David Norgrove

William Fittall, Esq.,
Home Office.

E. R.

AMENDMENTS TO THE DRAFT STATEMENT

1. It would be useful in the first paragraph to mention that the Committee had been set up in November, 1983, well before the recent controversies.

2. In the second sentence of the second paragraph, amend to read "... deals with a serious and urgent problem" in view of the injudicious statements in paragraph 8.37 of the Report.

3. Later in the same paragraph "... City of London in particular, needs the support of effective action ...", and

"... can employ large resources to cover them up: the enforcement of the law must be evenhanded", with consequential amendments to delete the references to "first" and "second".

4. In the first paragraph at the top of page 2 credit should be taken for the creation of the FIG; the phrase "with a Fraud Commission being set up as an independent monitoring body" should be deleted; reference to the Ministerial arrangements for considering Recommendation 1 should be made if they have been decided by Tuesday.

5. The Home Secretary should consider with the Secretary of State for Trade and Industry the addition of a sentence to the second paragraph of page 2 along the lines: "In addition, the self-regulatory agencies being set up under the terms of the Financial Services Bill will have their own resources for the investigation of fraud."

6. The meeting took the very strong view that the third paragraph on page 2 should announce that the Home Secretary was asking the Criminal Law Review Committee to look specially at the law of conspiracy. However, the Lord Chancellor would need to be consulted on this point.

7. The paragraph starting at the bottom of page 2 should be amended along the lines "The Committee make a number of recommendations concerning juries, including provision for certain complex fraud cases to be tried by a tribunal, and also about the question of peremptory challenges. We shall be consulting urgently about these important matters".

Amend the first sentence of the second paragraph on page 3 to read:

"The Committee's recommendations on preparations for trial, the law of evidence and other matters would lead to significant improvements in the trial of fraud cases."

(These changes were proposed in order to reduce the force of the distinction being drawn between the Government's attitude to the recommendation on juries and the other recommendations.)

8. Delete in the first full paragraph of page 3 the words "which the Committee had little time to work out comprehensively".

9. It was agreed that it would be useful to announce that there would be an early debate. This could be done by adding a sentence along the lines "My rt. hon. Friend the Leader of the House will be arranging time for an early debate".

PRIME MINISTER 8 January 1986

ROSKILL REPORT

We agree with Douglas Hurd's analysis and list of points for particular attention.

Unified organisation: Fraud Commission. Urgent study by a Minister with strong Cabinet backing is desirable.

Dispensing with jury trial (in exceptional cases). Highly controversial recommendation for Fraud Tribunal should be exposed for comment prior to a decision. On balance, we would support it, but it is a political risk.

Reducing or abolishing peremptory challenge. Cannot be restricted to fraud cases; an urgent decision will be needed. Roskill's arguments are most persuasive.

Most of the subjects dealt with in the departmental paper have already been discussed at some length with Lord Roskill. We have two comments on Law Reform:

1. Many fraud cases founder for lack of proof of the mental element in dishonesty. The Law Commission might be asked to study the possibility of introducing an offence of culpable or criminal negligence, using an analagous mental state to that required in manslaughter, thus allowing lesser alternative verdicts in appropriate

cases. We recommend that you draw this to the attention of Douglas Hurd.

2. Judge Hazan, a member of the Roskill Committee, was reported yesterday as calling for confiscatory penalties for convicted fraudsters, on the lines being legislated for drug offences. These might be considered for introduction in the Bill scheduled for the 1986-87 Session. The case attached makes the point. We recommend you take this up with the Home Secretary.

Draft statement to Parliament. This seems sensible.

David Hobson — Hartley Booth.

DAVID HOBSON HARTLEY BOOTH

DAILY TELEGRAPH
TUESDAY, 7 JANUARY 1986

GOLD GANG GET JAIL AND BILL FOR £467,000

By HEATHER MILLS Old Bailey Correspondent

AN Old Bailey judge called yesterday for new laws to deprive swindlers of their profits. Judge JOHN HAZAN, Q C, wants the same sort of penalties now in the pipeline for drug dealers, which will allow confiscation of their assets.

There is also a growing feeling that fraudsmen are being too leniently dealt with, and after serving a short sentence are able to enjoy the fruits of their crime, he said.

He was jailing four Asians for a £1,1000,000 gold VAT swindle.

He called it "a growth industry in white collar crime.

"There is also, sadly, a view in some quarters that as long as the victim is a Government department, like Customs, and Revenue, they are fair game. But this overlooks the fact that it is the fellow taxpayers they are defrauding."

Customs officials believe that over the last five years about £500. million has been lost to public funds through similar VAT frauds.

The gang smuggled gold bars and Krugerrand coins, into Britain, avoiding VAT on deals worth £9 million between April, 1982, and April, 1983.

Old penalty

The gold, brought into the country in briefcases and body-belts, was sold to legitimate dealers. They were charged 15 per cent. VAT, but the money was never passed on to Customs.

Most of the profits have gone to India, the court heard.

Judge Hazen said he believed this type of VAT racket had boomed because until recently the maximum jail sentence was two years.

The Finance Act 1985 had increased this to seven years—but "regrettably" he was bound by the old law because the Asians' swindle operated before the change.

Nevertheless, he imposed fines of £417,000 and costs of £50,000 on the gang.

Jailing the 42-year-old ringleader, millionaire TRIBHOUANDAS LAKHA, for two years and fining him £250,000, Judge Hazan said:

"I have no doubt you were at the back of a great deal of the swindling. You have had the lion's share and you are a very wealthy person." Lakha was also ordered to pay £15,000 towards prosecution costs.

Electrician VINOD KAPOOR, 30, of Staines Road, Hounslow, got 21 months and must pay a £75,000 fine and £5,000 costs.

IBRAHIM ISSA, a grocer, 47, of Lane Close, Cricklewood, got 15 months, with a £50,000 fine and £10,000 costs.

ANIL MARWAHA, 45, electrical agent, of St Stephen's Road, Hounslow, got nine months, with a £17,000 fine and £10,000 costs.

Vinod Kapoor

Ibrahim Issa

A fifth man, SHANTILAL LAKHA, 48, cousin and partner of Tribhouandas Lakha, of Ross Way, Northwood, was given a 12-month prison sentence suspended for two years because of ill-health. He was fined £25,000 and ordered to pay £10,000 costs.

The JUDGE said: "Until courts are given the powers to deal with fraudsmen in the way proposed for drug traffickers, to seize and freeze assets and pass further terms of imprisonment where assets are removed out of the jurisdiction in default of payment of substantial fines, all this court can do is try to make sure that none of you profit from this crime."

Sentence on the five had been postponed until yesterday after two trials which started in September and ended at Christmas.

The cost of the case is estimated at £500,000.

Subject cc Master

CONFIDENTIAL

File

DG2ASX

bc: Prof. Griffiths

10 DOWNING STREET

From the Private Secretary

8 January 1986

LLOYD'S AND THE FINANCIAL SERVICES BILL

The Prime Minister today discussed with your Secretary of State, the Chancellor and the Governor of the Bank of England the proposal set out in your Secretary of State's letter to the Chancellor of 6 January for an inquiry into Lloyd's to see whether its constitution and the steps taken by Lloyd's under it provide adequate protection for members of Lloyd's as investors.

Your Secretary of State explained that the proposed inquiry was intended to have a narrow and limited focus. In essence the question was whether the framework being created by the Financial Services Bill for investor protection was matched by the protection afforded to names as investors by the Lloyd's constitution and the rules which Lloyd's had put in place under the Lloyd's Act. Any recommendations arising from the inquiry would almost certainly be directed towards changes which could be effected by the Lloyd's authorities themselves, and they would be under great pressure to adopt them. The result should help to avoid a need for further legislation on Lloyd's.

The Chancellor argued that to set up an inquiry would be a high risk course. It was possible that it would find no cause for further legislation. But on the other hand it might conclude that protection under the Lloyd's Act was not as good as the protection which would be provided under the Financial Services Bill. Further legislation on Lloyd's which would need to be taken through in the 1986/87 session would be much better avoided. There was accordingly a very strong case for deciding now to bring Lloyd's within the scope of the Financial Services Bill provided this would not render the Bill hybrid. The Chancellor did not himself believe that this would necessarily be the case.

The Governor said that he was himself basically against an inquiry. However, he was prepared to go along with it if this was necessary to prevent Lloyd's from being drawn into the Financial Services Bill, in part because if there was a risk that it might be, the difficulties of securing a new Chief Executive would be increased. Names should for the most

CONFIDENTIAL

part be seen as shareholders and insurers at Lloyd's, and in these roles they should be able, as business people, for the most part to protect themselves. It was most important that any inquiry should focus solely on the protection of names as investors. The problems at Lloyd's had arisen over the management of money in the hands of Lloyd's between receipt of premia and payment of claims. The inquiry should focus on this area.

The Prime Minister said she was in general reluctant to set up inquiries in haste. However, noting that the Governor was prepared to acquiesce in it, the Prime Minister agreed that a narrowly focused inquiry as proposed by your Secretary of State should go ahead. The Prime Minister said she would prefer it to be headed by a lawyer and, after a brief further discussion, it was agreed that Sir Patrick Neill should be approached. (Your Secretary of State agreed to consult again if Sir Patrick refused). The inquiry should be asked to report quickly, in order to allow time for legislative options to be considered if that proved necessary. The Prime Minister proposed that the inquiry should report by Whitsun.

Your Secretary of State said he would be very reluctant to indicate that the Government would be prepared to incorporate recommendations of the inquiry into the Financial Services Bill if legislation was required. The Chancellor felt that it was important that this should not be ruled out. The Prime Minister suggested that the line should be that whether further provisions could or should be included in the Financial Services Bill would depend on what came out of the inquiry, and that to do so might risk hybridity. Your Secretary of State said he would prefer to say that the Government would of course be prepared to consider legislation if that seemed necessary in the light of the findings of the inquiry. The discussion broke off at that point.

I am copying this letter to Rachel Lomax (H.M. Treasury), Joan MacNaughton (Lord President's Office), David Morris (Lord Privy Seal's Office), Murdo Maclean (Chief Whip's Office), Michael Stark (Cabinet Office) and to John Bartlett (Governor of the Bank of England's Office).

David Norgrove

John Mogg, Esq.,
Department of Trade and Industry

CONFIDENTIAL

P 01865

PRIME MINISTER

Roskill Report

You are holding a further meeting tomorrow afternoon with the Ministers concerned (except the Lord Chancellor who is abroad) to discuss the proposals for handling the Roskill Report in the Home Secretary's minute of 6 January. The Governor of the Bank of England will also be present.

BACKGROUND

2. The Government's response to the Roskill report will be seen as a significant litmus test of their determination to tackle the scandal of fraud, and will be important in establishing the climate in which current regulatory proposals (particularly the Financial Services Bill) are discussed. The report makes 112 recommendations of varying degrees of controversiality and technical involvement. You will not want to attempt to reach decisions on all of them now. But you will want to ensure that clear and firm arrangements are put in hand for processing the report; that the exercise proceeds to a crisp timetable; and that the statement to be made next week is positive and constructive.

MAIN ISSUES

3. I suggest that tomorrow you concentrate attention on the following main issues:-

(i) Unified Organisation: Fraud Commission:
These are the two crucial recommendations in terms of long term structural arrangements. You will probably agree that the question of unified organisation needs to be handled within Government as a machinery of Government matter, and that the option - floated by the Home Secretary - of setting up a temporary Fraud Commission to do the job is neither

desirable nor realistic. I recommend that you should accept the Home Secretary's recommendation that the task of examining the unified organisation proposal should be given to a Minister of State, who should report on it direct to you. An appropriate arrangement would be to give the task to the Minister of State, Privy Council Office. (If, however, the Chancellor of the Exchequer should strongly press for the job to be given to a Treasury Minister you will at least wish to consider that). It seems right, as the Home Secretary proposes, that the question of a Fraud Commission should be processed in the same way as the unified organisation. I therefore recommend that this, too, should be remitted to the chosen Minister of State.

The Home Secretary's minute is not quite right in claiming that Lord Roskill would put less weight on a Fraud Commission if a robust unified organisation were put in place. For this and other presentational reasons you may think that the statement should deal with the Commission recommendation more positively and energetically than does the present draft. On the other hand, the status and role of a possible Commission does raise genuine and important problems, not least whether such a body should be an active monitoring organisation, as Lord Roskill would have it, or something more akin to the security commission. It would, therefore, clearly be going too far at this stage to accept the Roskill recommendation as it stands.

(ii) Resources; Qualified Manpower:

The Roskill report stresses the need not just to put more resources into combatting fraud but to ensure that better quality lawyers and accountants are enlisted. The recommendation goes beyond central Government, since it is specifically directed at police fraud squads as well. As you discussed last week with Lord Roskill, what is essentially involved

here is ways of getting into the public service - if only on temporary secondment - good quality professionals in specialities that command exceptionally high rates of pay in the private sector. These issues, too, are appropriate to be taken forward by Mr Luce, and that is what I recommend.

(iii) Recommendations on Criminal Law and Procedures, as it applies to Fraud;

These recommendations comprise two large groups. A number are in the Home Office's area and deal with such matters as Jury trial, Jury challenge and the admissibility of evidence. On the whole, this group of proposals is controversial and would require legislation. There is also a group of recommendations which fall within the Lord Chancellor's responsibilities on preparation for trial and influencing the conduct of the defence barristers through the arrangements for legal aid and costs. These recommendations are not generally so controversial and would not require legislation.

The (generally constructive) assessment attached to the Home Secretary's minute has been prepared by a group of officials chaired by the Home Office. Subject to any views that emerge at the meeting, it seems to me that since what is at issue here is basically to do with straight criminal law issues of a reasonably familiar nature, it would be sensible for the Home Office to continue to process them. It will of course, be necessary for the Home Office group to keep in close touch with Sir Peter Middleton's group (mainly of Permanent Secretaries) on fraud and related financial services issues. If there is any dispute over how this should be organised, we could hold the ring from the Cabinet Office. But it hardly seems necessary on this occasion.

You will wish to bear in mind, however, that the Lord Chancellor may have views about how the recommendations

addressed to his Department should be handled. Since he will not be at the meeting, you may think that he should at least be given the opportunity to make his views known when he is back in the country next week. Subject to that, however, I think that it would be very much the best thing for all the criminal law and procedure points to be processed together in the same official group chaired by the Home Office.

(iv) Non-Jury Trial and Restricting peremptory challanges;

These are simply the two most vivid and controversial of the criminal law and procedure recommendations. The Home Secretary is probably right to give particular attention to them in his minute. His proposal that the proposal for non-jury trial should be handled with some care initially seems sensible. On peremptory challenge, the Home Secretary is in any event putting proposals to H Committee for a meeting in the week beginning 20 January. Those proposals have their root in anxieties that have arisen about certain recent non-fraud cases, particularly the Cyprus official secrets case. In the circumstances, it seems right that the subject should proceed as the Home Secretary proposes, ie with an urgent review of peremptory challenge in general.

(v) Timetable;

The Home Secretary proposes that Ministerial decisions will be needed in H Committee by Easter in respect of those recommendations that might be included in the Criminal Justice Bill for the next session. I strongly recommend that you should agree with the Home Secretary that H Committee is the right forum to process these matters, but you will wish to consider whether the Easter target date should be expanded into something rather more significant than appears from the Home Secretary's minute. What I would recommend is that the Home Secretary and Lord Chancellor should be invited

to report to H Committee by Easter not just on the proposals that should be put into the Criminal Justice Bill, but also making proposals for a further substantive and comprehensive Government statement on Roskill to be made as soon as possible after Easter, which deals with the recommendations that do not involve legislation as well as the ones that do. These proposals would be based on the work done by the proposed Official Group chaired by the Home Office.

(vi) The Home Secretary's Statement

The draft statement may need some revision in the light of decisions on the points mentioned above. In particular:

(a) it may be useful to announce the arrangements for processing the recommendations on unified organisation and the fraud commission; and

(b) it would be presentationally helpful, and add bite to the statement, if a further more detailed announcement were promised for very soon after Easter.

Otherwise, the Home Secretary's draft statement seems on the right lines so far as substance is concerned. You may, however, wish to invite the Home Secretary to look again at the drafting throughout, to see if it is possible to inject a greater note of urgency. I have mentioned the possibility of taking a more energetic line on the Fraud Commission in paragraph 4(i) above.

(vii) Handling;

The Home Secretary's minute and attachment covers the ground quite fully, and you will wish him to open the discussion by speaking to it. All the other Ministers present will have views, but you will particularly want to ask the Lord President if he agrees that H Committee is the appropriate

forum for dealing with the matters that you are not reserving to yourself as machinery of Government points. You may wish to ask the Lord President to assume oversight, as Chairman of H, of ensuring that a full statement on the Roskill Report is worked up for presentation shortly after Easter.

CONCLUSIONS

4. You will wish to ensure that decisions are reached on:-

(i) arrangements for examining the proposals on unified organisation, a Fraud Commission and recruitment of qualified staff;

(ii) arrangements for officials to examine with urgency the recommendations on criminal law and procedure;

(iii) a specific timetable for the official group's findings to be processed through the appropriate Cabinet Committee (doubtless H Committee); and

(iv) the timing of the next announcement on the Roskill Report.

You will also wish to ensure that, in the light of the above decisions, the announcement proposed to be made next week is agreed on lines that are vigorous and constructive.

J B UNWIN

8 January 1986
Cabinet Office

CONFIDENTIAL

ccBG

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Leon Brittan QC MP
Secretary of State for Trade and Industry
Department of Trade and Industry
1 - 19 Victoria Street
London
SW1E 6RB

Prime Minister 2

DRS
7/1

7 January 1986

Dear Leon,

FRAUD

In your minute of 9 December to the Prime Minister you reviewed the need for increases in DTI manpower over the whole range of your functions relating to the proper conduct of business activity.

You proposed an additional 152 staff for the Insolvency Service mainly to increase the number of prosecutions and to implement the disqualification provisions in the new Insolvency Act. I accept that this work is closely associated with fraud, and I am prepared to agree to the increase subject to the establishment of milestones of achievement, eg numbers of cases handled leading to prosecutions and disqualifications, and also subject to review of requirements in 12-18 months' time. It is clearly difficult to estimate now how many staff will be required particularly for the implementation of the new legislation. It would therefore be sensible to review the position having regard to the output levels achieved.

Similarly, I accept the case for additional Inspectors. Their work and that of the Insolvency Service will feed through into additional work for the Solicitors and I accept what you propose for them. Again, there must be some difficulty in predicting workload and I would like the need in each case to be reviewed in 12-18 months' time.

I do not accept that a case has been made for retaining the 100 additional staff in the Companies Registration Office, which were agreed on a temporary basis to eliminate a backlog of work. In my view the work of the CRO is not closely connected with fraud. There is considerable scope for improved efficiency in the Office, in part resulting from computerisation. If you wish to seek retention of the additional staff beyond the period agreed by Treasury, I suggest that a detailed case should be discussed by our officials.

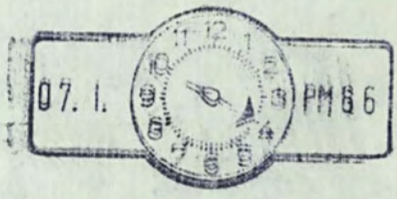
CONFIDENTIAL

ECON POL
GOWER
PT 2

I am copying this letter to the Prime Minister, the Lord Chancellor, the Attorney General, the Chancellor of the Duchy of Lancaster, the Home Secretary and Sir Robert Armstrong.

Yours ever,

JOHN MacGREGOR



RR7.33

CONFIDENTIAL

cc BG

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

7 January 1986

The Rt. Hon. Leon Brittan QC MP
Secretary of State for Trade and Industry

LLOYDS AND THE FINANCIAL SERVICES BILL

You asked for an early reaction to the proposal in your letter of 6 January.

I share your concern about Lloyds, and the Parliamentary pressures that are building up, and agree that we must seek if we can to strengthen the Government's position - not only in the context of the Financial Services Bill. But I am not convinced that your proposal for an inquiry, possibly leading to legislation in 1986/87, is the right way forward.

In any event, introducing complex and separate legislation on Lloyds in 1986/87, should that prove necessary, is for obvious reasons not an attractive prospect. If we have to grasp the nettle of legislation it would, politically, be much better to do so quickly.

I therefore do not accept that we should yet rule out the idea of bringing Lloyds within the scope of the Financial Services Bill without making it hybrid; or that this would necessarily carry the risk of unacceptable conflicts between regulation concerned with investor protection and regulation concerned with the protection of policy holders. As you say, this would be difficult but not impossible.

In short, I recognise the difficulties we will face at the Second Reading of the Financial Services Bill, but I have considerable doubts as to whether your proposal is the best way forward. I think it important to consider the alternative option further.

I am copying this letter to the Prime Minister, the Lord President of the Council, the Lord Privy Seal, the Chief Whip and Sir Robert Armstrong.

NIGEL LAWSON


07. I.
PM 8 6

cc VCG

FROM THE PRIVATE SECRETARY TO THE LEADER OF THE HOUSE
AND THE CHIEF WHIP

7 January 1986

Dear David

ROSKILL REPORT

In your letter of 31 December to William Fittall attached you mentioned that Lord Roskill had drawn attention to the convention in the House of Lords that the Chairman and members of a Committee could not speak on its report in the House. You asked Joan MacNaughton to arrange for this point to be considered, as the convention seemed on the face of it to be outdated.

There is no generally recognised convention of the kind suggested by Lord Roskill. He may perhaps have in mind the so-called Addison Rules, which limit the part which may be played by a Lord who is a member of a public board in a debate on matters affecting the board of which he is a member. These rules, however, are not normally taken as applying to members of Committees appointed to undertake inquiries. They apply to boards in a more limited sense - the National Coal Board or the Parole Board, for example.

I have found two instances in the last twenty years of a Peer speaking in a House of Lords debate on a report of a Committee under his chairmanship: on 24 July 1968 Lord Fulton spoke in a debate on the Report of the Committee on the Civil Service, and on 12 December 1973 Lord Kilbrandon spoke in a debate on the Report of the Royal Commission on the Constitution. Lord Hunt of Tanworth did not speak in the debate on 23 November 1982 on the Report of the Inquiry into Cable Expansion and Broadcasting Policy, but that can hardly be regarded as establishing a convention. Indeed, the Lord President is anxious that Chairmen and members of Committees should be encouraged to take part in debates in the House of Lords on their Reports.

I am sending copies of this letter to the recipients of yours: William Fittall (Home Office), Richard Stoate (Lord Chancellor's Office), John Mogg (Department of Trade and Industry), Rachel Lomax (HM Treasury), Andrew Lansley (Chancellor of the Duchy of Lancaster's Office), Michael Saunders (Law Officers Department) and Michael Stark (Cabinet Office).

Yours sincerely

David Beamish.

D R BEAMISH

David Norgrove Esq
Private Secretary to
The Prime Minister

ECON POL PT 2

COWER

CONFIDENTIAL

File JA (45)

cc BG

10 DOWNING STREET

From the Private Secretary

7 January 1986

Dear John,

LLOYD'S AND THE FINANCIAL SERVICES BILL

The Prime Minister has seen your Secretary of State's letter of 6 January to the Chancellor proposing an inquiry into Lloyd's.

The Prime Minister has commented that she is very sceptical about the proposal.

The proposal could if necessary be discussed further at a meeting on fraud which has been arranged for Thursday this week. Alternatively, if you felt that an earlier meeting was needed, it might be possible to fit one in tomorrow.

I am copying this letter to Rachel Lomax (HM Treasury), Joan MacNaughton (Lord President's Office), David Morris (Lord Privy Seal's Office), Murdo Maclean (Chief Whip's Office) and to Michael Stark (Cabinet Office).

Yours ever

David.

(David Norgrove)

John Mogg, Esq.,
Department of Trade and Industry

CONFIDENTIAL

JA

Prime Minister

ROSKILL REPORT

As a basis for discussion at the further meeting which you are to hold on 9 January, I attach an assessment of the Roskill Report drawn up by officials in the Departments concerned, together with the first draft of a statement for me to make in the House of Commons on 14 January (to be repeated in the Lords). When the Report is published on 10 January, I propose to put out a short press statement, thanking Lord Roskill and the Committee for the work they have done, giving a general welcome to their Report, and underlining the Government's commitment to stern action against fraud.

2. In sending you the assessment I think that there are three particular points to which I should draw your attention: first, the question of how we should handle the Committee's recommendations about a unified organisation and a Fraud Commission; secondly, how we should respond to their proposal for dispensing with jury trial in certain complex cases of fraud; third, how we deal with the question of peremptory challenge.

Unified organisation; Fraud Commission

3. The Committee's recommendations under these heads deserve careful examination. At the meeting on 31 December, Lord Roskill and Lord Benson appeared to attach much more weight to the former, and did not see the Fraud Commission as necessarily a permanent institution. One possibility would be to set up a Fraud Commission on a temporary basis for the purpose of considering whether and, if so, in what form a unified organisation should be established, and making recommendations to Ministers. I am myself doubtful of the wisdom of entrusting this task to anybody outside Government. There will have to be some knocking of heads together but in practice I think this is best done by a Minister with strong Cabinet backing and such independent advice as he may wish to seek.

Dispensing with jury trial

4. You know that among Ministers who took part in the discussion on 31 January there were different views on this proposal. We need to consider how far the other recommendations by the Committee on such matters as the provision of documents, summaries and visual aids to jurors, the preparatory hearings and the curbing of prolixity will lighten the task of a juror. I hope we can agree at any rate not to make up our minds on this proposal until we have been able to gauge the Parliamentary and public reaction. There are obvious attractions in the proposal, but it would be a mistake to make it the centrepiece of our legislation scheme if it generated such controversy as to put the scheme at risk, and if the rest of the reforms, which are radical, would in fact achieve our aims without it.

Peremptory challenge

5. This subject is already simmering, and the Roskill report will bring it to the boil again. I shall shortly be discussing our general policy with the Lord Chancellor and the Law Officers and putting proposals to colleagues in H Committee. But we must note that Lord Roskill's compelling critique goes well beyond fraud, and should in my view encourage us to boldness in tackling the question next session.

Timetable for further consideration

6. We envisage fairly early debates in both Houses - say within a month from now. Meanwhile I hope that our discussion on 9 January will enable the terms of the draft statement to be settled quickly, and provide guidance for the further work to be done so that provisions based on the recommendations which we accept can be included in next Session's Criminal Justice Bill. For this purpose it will be necessary, I suggest, for H Committee to reach detailed conclusions before Easter. I shall keep you fully informed of progress.

7. I am sending copies of this minute to the Lord President, the Lord Chancellor, the Secretary of State for Trade and Industry, the Chancellor of the Exchequer, the Chancellor of the Duchy of Lancaster and the Attorney General, and to Sir Robert Armstrong and the Governor of the Bank of England.

Douglas Hurd.

6 January 1986

E.R.

FRAUD : ASSESSMENT OF THE ROSKILL REPORT

This assessment has been drawn up by officials in the Home Office in consultation with their colleagues in the Lord Chancellor's Department, the Department of Trade and Industry, the Law Officers' Department, the Department of the Director of Public Prosecutions, and the Treasury. It has the agreement of the other Departments concerned so far as their responsibilities are affected.

Summary

2. The Roskill Committee's recommendations provide a basis for substantial and worthwhile legislation in the Criminal Justice Bill next Session. Subject to the two exceptions mentioned in the next paragraph, we suggest that Ministers could give a broad welcome in principle to the recommendations; but the feasibility of some of the recommendations will require further study, and it would be wise in any early statement to reserve some freedom of manoeuvre on the details, which the Committee probably did not have enough time to consider comprehensively. It will also be important to establish the scope of the recommendations (the report itself is not always clear on the types of case to which particular recommendations are intended to apply), and their resource implications including their effect on the handling of other types of case regarded as having a high priority.

3. The proposal for a Fraud Commission (Recommendation 2) to oversee the whole process of dealing with fraud cases from the beginning of the investigation to the conclusion of the trial ought in our view, to be considered together with the question of introducing a unified organisation responsible for all the functions of detection, investigation and prosecution, which the Committee says (Recommendation 1) needs to be examined further. Secondly, on juries, the proposal that in "complex" fraud cases it should be possible for the trial to be conducted by a Frauds Trial Tribunal consisting of a judge and two lay members instead of by a judge and jury will be highly controversial, and we do not believe that the report fully establishes

E.R.

the case for it. Our advice on this issue is that Ministers should defer judgement until they have been able to gauge what the Parliamentary and public reaction is.

We also suggest that the proposal to abolish the right of peremptory challenge should be considered in the wider context of jury challenges generally, which the Home Secretary will be bringing to colleagues in 'H' Committee later this month.

General Comments

4. The meaning of most of the recommendations is fairly clear. With some, especially those relating to procedure and evidence, the advantages of adopting them are apparent on their face. With others, where there are obviously arguments on both sides, the Committee have not done as much as one might hope to provide a striking and cogent statement of the case for their proposal. They tend to rely more on assertion than argument. That is particularly true in regard to the three recommendations which are most likely to be criticised on civil liberty grounds, namely -

requirement to disclose the defence case (Recommendation 58);

abolition of peremptory challenge of jurors in fraud cases (Recommendation 73);

dispensing with juries in complex cases (Recommendation 82).

These recommendations are all the subject of a fully reasoned dissenting opinion by Mr. Walter Merricks.

5. The recommendations fall into seven main groups: investigation (1-12); law reform (13); procedure for bringing cases to the Crown Court (14-21); evidence (22-30); preparations for trial (31-73); juries (74-99); other matters (100-112) and are considered below in that order.

Investigation

6. Recommendation 1 is for an immediate examination of the need for a new unified organisation responsible for all the functions of detection, investigation and prosecution of serious fraud cases. We recommend that such an examination should be put in hand at once, with Ministers reserving their position on the outcome.

E.R.

The present arrangements for inter-agency cooperation were devised to work within the existing distribution of statutory powers and duties. Legislation offers the prospect of being able to break that mould if it were thought right to do so. But there are arguments to be considered against unification: the new Crown Prosecution Service is based on the principle of separating investigation from prosecution; the policy of the Financial Services Bill is to distribute regulatory powers in different sectors among different bodies, and regulation is about much more than detecting fraud; fraud in turn is often just one strand in a wider pattern of criminal activity; the resource implications of setting up a separate organisation to deal with fraud cases need to be studied more thoroughly; and there would be particular constitutional and organisational difficulties in bringing the police, for this purpose, within the ambit of a unified organisation.

7. As to the form of an inquiry for this purpose, we believe that an independent outside committee might well fail to appreciate all the practical considerations; on the other hand, the matter ought not to be left solely to officials in the agencies concerned. We suggest, as one course that might be considered, to inviting a Minister of State with no current responsibility for any of the agencies concerned (though possibly with some relevant past experience) to study the question with the aid of an inter-departmental working party of officials, and to report to the Prime Minister on it. Alternatively, the proposed Fraud Commission (see next paragraph) might be used to carry out the examination; this would call for great care in selecting its members and ensuring that they would be fully seized of the practical considerations.

8. Recommendation 2 is that there should be an independent monitoring body, to be known as the Fraud Commission, to be responsible for studying the efficiency with which fraud cases are conducted. Such a Commission, with no executive functions of its own, could easily turn into a body of armchair critics of everyone from police officers to judges. This could lead to unhealthy conflict rather than to the toning-up which the Committee seem to envisage. Ministers will not wish

E.R.

to reject the proposal out of hand, but it would be desirable to retain the greatest possible freedom of manoeuvre over the constitution, terms of reference and duration of such a body. The Committee did not propose that the Fraud Commission should be statutory, and we understand that it emerged in discussion at the meeting on 31 December that Lord Roskill and Lord Benson do not see the Commission as necessarily a permanent institution. (If the proposal made above for a study of Recommendation 1 by a Minister were accepted, the recommendation for a Fraud Commission should be remitted also to that Minister for further examination, since both concern the whole process by which fraud cases are dealt with.)

My memory is that they disagreed about this.

9. Recommendations 3-6 are concerned with the exercise of powers of investigation available under the Companies Act. The DTI already act in accordance with Recommendation 4, and foresee no difficulty over Recommendations 3 and 6. Recommendation 5 envisages conferring on the police powers of investigation comparable to those available to the DTI under section 447 of the Companies Act. These are drastic powers, and we think that it might be better for the DTI to continue to exercise strengthening the arrangements for co-operation where necessary. Greater thought needs to be given to this. An alternative might be for the powers to be exercisable by police officers only in certain circumstances.

10. Recommendation 7 proposes that a single individual - "a Case Controller" - should be responsible for the control of a serious fraud case from the time of discovery until the verdict. We see this as acceptable in principle, and largely reflecting current practice; but "discovery" is probably too early a stage (there should be a decision that a case is worth pursuing), and further thought needs to be given to protecting the operational independence of the police (which the Government has been concerned to preserve in other fields) and to securing that the Controllers are themselves under control as regards priorities and use of resources.

11. Recommendations 8 and 9 are directed to the role of prosecuting counsel, requiring them to advise as to the direction of the investigation, and to adapt to leading a team of investigators and prosecutors. The recommendations have far

E.R.

reaching implications for the role of the Bar and, since prosecuting counsel are independent practitioners who are not obliged to take on such work new responsibilities on them without their agreement could not be imposed on them; accordingly we recommend that on these two recommendations there should be consultation with the profession.

12. Recommendation 10 calls for the resources devoted to the pursuit of fraud to be expanded as a matter of priority. The Government's response to this will need to be as specific as possible. It can refer to current plans for strengthening the DTI (now under discussion with the Treasury) and the DPP's Department (nine extra lawyers to be provided, plus support staff.) Police forces have already been invited to put in their extra manpower bids to the Home Office by the end of February, and these will be considered with the needs of the Fraud Squad very much in mind. The Lord Chancellor's Department is continuing to expand the number of judges and court buildings available for the Crown Court, to meet the demands of a generally increasing workload; further resources would be required in these respects to deal with an increase in the number of prosecutions for fraud. But the supply of additional manpower of the right quality, especially in the legal and accountancy professions, is very limited, and efforts will have to be made to draw in more people from the private sector (especially the City) on short service appointments which allow a greater degree of flexibility over pay and other terms and conditions.

Recommendations 11 and 12 refer more specifically to the need for more expert accounting staff in the DPP's Department and in police Fraud Squads, and for the provision of a career structure for officers in the Fraud Squad: these can be accepted in principle.

Law Reform

13. Recommendation 13 is for an appropriate law reform agency to examine the issues indicated in the report relating to the substantive law of fraud. The Law Commission has been engaged for some time on a study of the law relating to conspiracy to defraud. The Home Office and the Lord Chancellor's Department

E.R.

will explore with the Commission what can be done to speed up the conclusion of this review. It would be difficult to incorporate the outcome in the Criminal Justice Bill without expanding the scope of that Bill so that it would be open to amendment and delay on matters relating to the criminal law (as distinct from the criminal trials process) as a whole, and a far reaching review might not in any event be practicable in the time available. But there is one point, concerning the circumstances in which charge of conspiracy to defraud can be brought, which could be within the ordinary scope of a Criminal Justice Bill; the Home Secretary is considering whether to refer this to the Criminal Law Revision Committee for a quick report, but with or without the aid of such a report it should be possible to amend the law on this narrow but significant point in the Criminal Justice Bill.

Bringing Cases before the Crown Court

14. Recommendations 14-21 are concerned with enabling fraud cases to be brought to the Crown Court without the defence being able to delay the case by insisting on full committal proceedings. These recommendations seem to us acceptable in principle, but we think it would go too far to allow the prosecution to dispense with committal proceedings in any "fraud" case (a description which is hard to define precisely). We believe that it will be necessary to add other criteria and to look carefully at other details and at the resource implications - in particular, at the effect on resources if decisions on preliminary matters such as applications for legal aid were shifted from magistrates to the Crown Court. Recommendations 22-30 relate to admissibility of documentary and other evidence, and seem to us to be generally sensible; we see no reason why they should be applied in fraud cases only and would recommend accordingly.

E.R Preparations for Trial

15. This group of recommendations - Recommendations 31-73 - envisage a more intensive review of the case at preparatory hearings in the Crown Court, with a view to saving time and money at the trial itself. We believe that this approach has much to recommend it; we recommend that the details and the substantial resource implications should be urgently considered in consultation with the judges, the Bar and others with a view to establishing the feasibility of the proposals before they are embodied in legislation or rules of court. In Parliament, attention is likely to focus on the degree to which the defence will be called upon to disclose its case before the trial. Despite Mr. Merricks' reservation, our view is that the Committee's proposals on this point form part of a package which also makes for much greater openness on the part of the prosecution, and that on merits the package ought to be accepted basically in the form in which it is presented.

Juries

16. The most controversial recommendation in this group is likely to be Recommendation 82 - that in "complex" fraud cases, falling within certain guidelines, trial by a Fraud Trials Tribunal consisting of a judge and two lay members should replace trial by judge and jury. The Committee's principal argument in favour of the proposal is that in a complex fraud case, perhaps lasting some 20 days, the average juror must be out of his depth and unable to follow the figures and arguments. We do not, however, believe that the report fully establishes the case for this proposal. The proportion of defendants in fraud cases convicted and acquitted at the Crown Court does not vary much from the proportion for all offences, and there is no evidence of any other general problem affecting all cases of fraud. On the other hand the complex or technical character of certain cases can cause difficulties for all concerned in the proceedings, including the judge and counsel, who may not themselves have any special knowledge of accountancy matters or the working of the relevant sector of the commercial system. It is true the jurors are less likely as other participants to be familiar with such matters, but it is less certain that their unfamiliarity is of such a different order that their exclusion from the trial of a

E.R.

highly complex case may be necessary for a just result to be achieved. It would therefore seem advisable at least to await Parliamentary and public reaction to this recommendation before deciding whether it would in any form be regarded as acceptable.

17. The next most controversial recommendation in this group will be Recommendation 78 - that the defendant's right of peremptory challenge of jurors and the prosecution's right to standby potential jurors in any fraud case should be abolished. We see no logical grounds for having a different rule in these matters in relation to fraud cases from that which applies generally. The general question of jury challenge is under review by the Home Secretary, the Lord Chancellor and the Solicitor General, who will be making their views known to colleagues in H Committee shortly. We suggest that the question as it arises from the Roskill Report should be left to be dealt with as part of the wider issue.

18. The other recommendations relating to juries are mostly for no change in the existing law, and on points where the Committee think the law needs re-examination we see no difficulty in taking that course.

Other Matters

19. The remaining recommendations - Recommendations 100 - 112 - are on points which will arouse less interest than the proceeding proposals, and are much more matters of detail. We suggest that it would be sufficient to say that these will be carefully considered.

Conclusion

20. If the line proposed above on particular recommendations is acceptable, it would be possible for the Government on publication of the report not only to welcome the outcome of the Committee's inquiry but to accept it as a valuable basis for legislation in the next Criminal Justice Bill, reserving its position only on points of detail and in regard to the establishment of a Fraud Commission (which ought to be considered together with the wider organisational questions) and on the proposals for trial on indictment without a jury and (pending discussion in 'H' Committee)

E.R.

for the abolition of the right of peremptory challenge. A first draft of a statement on these lines, prepared by the Home Office in the light of this assessment but not yet cleared with other Departments, is attached.

DRAFT STATEMENT

With permission, Mr Speaker, I would like to make a statement about the Report of the Fraud Trials Committee under the chairmanship of Lord Roskill whose Report was published on 10 January.

The Government is most grateful to Lord Roskill and his colleagues for producing with commendable speed such a readable, thorough and radical Report. It deals with a problem of ~~growing seriousness and urgency.~~ We fully share the Committee's concern that the perpetrators of serious fraud should be brought effectively to book. The report shows that the legal and administrative machinery for this purpose has been creaking badly. We are determined to bring about the changes in law, practice and attitudes which are necessary for that purpose. There are two reasons for this. First, the reputation of our financial institutions, and of the City of London in particular, ~~depends on~~ effective action against fraud. Second, the enforcement of the law in a civilised society must be evenhanded: There must be no escape for offenders simply because their offences are highly complicated or because they can employ large resources to cover them up. Accordingly the Government welcomes the Report as providing a basis for early legislation to achieve substantial reforms of the law in this field, and also for new administrative measures in areas where legislation is not required.

/Responsibility for

Responsibility for the investigation and prosecution of fraud is now shared by the police, the Director of Public Prosecutions, the Department of Trade and Industry and other agencies. Arrangements for co-operation have been greatly improved in recent years. The Roskill Committee recommend an urgent examination of the need for a new unified organisation, with a Fraud Commission being set up as an independent monitoring body. We accept the recommendation for such an examination, and it will be immediately put in hand.

The Committee have called for the resources devoted to the pursuit of fraud to be expanded as a matter of priority. The Government is already taking steps to that end through the strengthening of the DTI (by several hundred staff over the next few years) and the addition to the DPP's Department of nine extra lawyers with support staff. We shall be seeking to draw in more people with the necessary skill and experience from the private sector on short-service appointments.

The Committee draw attention to the need for reform of the substantive law of fraud. My Noble Friend the Lord Chancellor and I are in touch with the Law Commission about the completion of their current work in this field. Meanwhile I shall be bringing forward early legislation to deal with the urgent problem of the limitations on the use of a charge of conspiracy to defraud.

The Committee make a number of recommendations concerning juries, including provision for certain complex fraud cases to be

/tried by a tribunal

tried by a tribunal comprising a judge and two lay members instead of a judge and jury. On this particular point we shall listen with interest to the views which will be expressed in this House and another place and in general public comment. As hon Members know, we are already examining in a wider context the important question of peremptory challenges.

The Committee's recommendations on preparations for trial, the law of evidence and other matters are broadly welcome to the Government. The feasibility of certain aspects of the Committee's proposals will require further study and we shall need to give more thought to the details, which the Committee had little time to work out comprehensively. Some of the recommendations may well be applicable to other areas of the criminal law besides fraud.

To sum up, we have in this Report a basis for substantial and worthwhile legislation and administrative action. The report will be immensely helpful in shaping the Government's continuing fight against the insidious menace of fraud. For this we are most grateful to Lord Roskill and his colleagues. It is now for us and for Parliament to do our part in carrying forward the work they have begun.

CONFIDENTIAL

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215 5422
GTN 215) .....
(Switchboard) 01-215 7877

Secretary of State for Trade and Industry

CONFIDENTIAL

6 January 1986

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
LONDON
SW1P 3AG

Dear Nigel,

LLOYD'S AND THE FINANCIAL SERVICES BILL

As you of course know, we have been under heavy pressure, not just from the Opposition but also from many on our own side, to include Lloyd's within the Financial Services Bill. The Prime Minister made it clear in the House on 19 December that the Government is keeping a close watch on events at Lloyd's, and that if it becomes necessary to take action or to legislate we would not hesitate to do so. With Second Reading of the Financial Services Bill approaching on 14 January, I have been considering how we can strengthen our position.

2 I have been reluctant to include Lloyd's in the Financial Services Bill itself, but have so far not totally excluded the possibility of doing so. It would be very difficult to do so, but not absolutely impossible. The difficulty stems from the fact that the Bill is about the protection of investors, and the Government's regulation of Lloyd's has been primarily concerned with protecting policyholders. There is a risk that an attempt to include Lloyd's within this Bill would render the Bill hybrid.

3 I would therefore prefer to indicate more firmly that I do not regard this Bill an an appropriate vehicle for statutory regulation of Lloyd's, even if such regulation were regarded as necessary. On the other hand, I think it is important to support this position by providing some machinery for reaching a conclusion as to whether or not the Lloyd's constitution and the steps taken by Lloyd's under it by a given date do provide adequate protection for Members of Lloyd's as Investors. We have pointed out that it is still a comparatively short while

JF5ATJ

999-1

since the Lloyd's Act came into effect, and that the internal regulatory regime set up under it has only gradually been put into place. But we are entitled to expect that a satisfactory regime should be in place within a very short period of time if further statutory intervention into affairs of Lloyd's is to be avoided. And outsiders can reasonably expect to know how and when we intend to decide whether further action on the part of Government is necessary.

4 What I therefore propose is to announce on or shortly before Second Reading that I have set up an inquiry into Lloyd's, either by an eminent person or a very small committee under his chairmanship. The inquiry would be asked to consider whether the existing Lloyd's Acts and the bye-laws and other arrangements adopted under them provide sufficient protection for external members of Lloyd's as "investors" having regard both to the development of investor protection arising out of the Financial Services Bill and the need also to provide adequate protection for Lloyd's policyholders. I would ask it to report by, say, July 1986; this would allow time for legislation (which could well be hybrid) in the 1986/87 Session. However I would hope such legislation would not be necessary; Lloyd's have extensive powers to amend their rules and constitution under their existing Act, and the inquiry would put considerable pressure upon them to produce or complete an adequate regulatory regime.

5 To be effective such an inquiry would need to be headed by a person unconnected with Lloyd's who commands wide respect in the City and elsewhere. Among names I have in mind are Sir Patrick Neill, ex-Chairman of the Council for the Securities Industry; Sir Ian Fraser (a recent past Chairman of Lazards; (subject to enquiries on whether he is a member of Lloyds); Lord Richardson (who when Governor of the Bank was largely responsible for the appointment of Mr Ian Hay Davison as Chief Executive of Lloyd's); and Sir Edwin Nixon, Chairman of IBM. My Department would provide a small secretariat.

6 I need to act quickly if I am to have the inquiry in place for second reading. I would therefore be grateful for rapid confirmation that colleagues are content with this course by close of play tomorrow (Tuesday). My officials will be separately approaching the Bank of England. I shall write again when I have reached a decision on the person I consider should head the inquiry.

JF5ATJ

7 I am copying this letter to the Prime Minister, the Lord President of the Council, the Lord Privy Seal, the Chief Whip and Sir Robert Armstrong.

Yours,
Leon

LEON BRITTAN

JF5ATJ


06. 1.
AM 8 6

hlc EL3ATX

10 DOWNING STREET

From the Private Secretary

CHIEF WHIP

DINNER WITH MR. PETER MILLER

As you asked, I attach a selection of the most recent correspondence.

On Lloyd's itself, the Government's position so far has been that the 1982 Lloyd's Act has not yet been shown to be inadequate. The Lloyd's scandals occurred before 1982. But the Government has said it would be prepared to legislate further on Lloyd's if that seemed necessary.

In talking to Mr. Miller you might point out that if scandals come to light which had their origins after 1982 the Government's ability and willingness to resist further legislation would be substantially weakened. If further legislation is to be avoided, and for its own sake, Lloyd's must be seen to be making every effort to keep itself in order.

The controversy over the resignation of Ian Hay Davison has not helped Lloyd's. Though he has not said as much, it is generally believed that he resigned over indications that the independence of the Chief Executive was to be restricted. However Lloyd's have been reported to be stepping back from that.

You will know that the Roskill Report is to be published on Friday. It has 112 recommendations ranging from use of visual aids in courtrooms to abolition of jury trial in

complex fraud cases. The Government intend to welcome it and present indications are that the majority of its recommendations will, after consultation, be accepted.

DAVID NORGROVE
6 January 1986

cc Prof. Griffith LV

50.

file

10 DOWNING STREET

From the Private Secretary

2 January, 1986.

FRAUD

The Prime Minister has invited the Governor of the Bank of England to attend the meeting on fraud scheduled for next Thursday, 9 January. I should be grateful if you could copy the paper for that meeting to the Governor of the Bank, as well as to the other Ministerial Offices to which I am copying this letter.

I am sending copies of this letter to Joan MacNaughton (Lord President's Office), Richard Stoate (Lord Chancellor's Office), John Mogg (Department of Trade and Industry), Rachel Lomax (HM Treasury), Andrew Lansley (Chancellor of the Duchy of Lancaster's Office), Michael Saunders (Law Officers' Department), Michael Stark (Cabinet Office), and to John Bartlett (Bank of England).

(David Norgrove)

William Fittall, Esq.,
Home Office.

000

THE RT HON LEON BRITTAN QC MP

CC/BG

1. FF
2. NBPM.

HOUSE OF COMMONS
LONDON SW1A 0AA

December 1985

Dear Colleague,

As you know, the Government has today published the Financial Services Bill and, given the widespread interest in the Bill and matters affecting the City, I thought it would be helpful if I set out the major provisions within it and our reasons for adopting the approach we have.

The Bill is based closely on the White Paper on "Financial Services in the United Kingdom" which Norman Tebbit published in January. The Bill will establish a new framework for investor protection designed to promote an efficient and competitive financial services industry and create a system of regulation which is both flexible and inspires confidence in users and investors that the financial services sector is a clean place in which to do business. Whilst the Bill builds on the tradition of self-regulation, it ensures that self-regulation has the teeth and the statutory backing it needs to be effective.

Under the provisions of the Bill, investments and investment business will be clearly defined and all those persons carrying on investment business will require authorisation. It will be a criminal offence to carry on investment business without authorisation. The power of authorisation will be with the Secretary of State, who will be able to transfer it to a Designated Agency, made up of practitioners and users of financial services, on condition that he is satisfied that their rules meet the specified criteria contained within the Bill. In turn, the Agency will be able to recognize other self-regulating organisations, such as the Stock Exchange, provided that their rules set equivalent standards of behaviour.

I must emphasize that the Government has decided to adopt this course of practitioner-based regulation within a statutory framework because I believe it will result in a more effective system of regulation. The City is changing continually and it is thus essential that the regulatory bodies which oversee it should be close to the market and have the flexibility to adapt with it, rather than be stuck in a straitjacket of statute. It is for this reason that I believe this approach is superior to the creation of a wholly statutory body like the American SEC; indeed, the

Chairman of the SEC has recently stated that, were he given the chance to start again from stratch, then he too would recommend this approach.

While the differences between this system and a wholly statutory one are real, they should not however be exaggerated. The fall-back powers of the Designated Agency itself will be considerable, quite apart from its ultimate responsibility for the self-regulating organisations' discharge of their duties in a proper manner and an ability to derecognize a self-regulating organisation which fails to regulate properly. The sanctions available for use against investment businesses will extend from a simple reprimand through suspension right up to a removal of authorisation, making it illegal for the person or business to engage in investment business thereafter. In addition, there will be powers to apply to the Courts for a 'restitution' order to force a business to recompense investors for any loss they have suffered as a result of its breaking the rules, as well as seek an injunction restraining the business from continuing its activities in breach of the rules.

I know that there are those who believe that Lloyds should also be included within the provisions of the Bill. I would point out to them that Lloyds already has its own regulatory system, established under the Lloyds Act of 1982, and that the events at Lloyds which have given rise to such notoriety in recent months originated before that Act was passed. I believe it is still a little early to pass judgement on the effectiveness of the new regulatory regime at Lloyds but I assure you we are keeping a close watch on events there. If it does become necessary to legislate further, I will of course not hesitate to do so, but I remain to be convinced that the Financial Services Bill would be an appropriate vehicle even if it became clear that further legislation for Lloyds was required.

I hope you will agree that the system we propose under the Bill provides an effective means of regulation and investor protection while at the same time ensuring that the City of London remains one of the great financial centres of the world. It is, of course, just one of a range of measures being introduced by the Government to tackle the problem of fraud. In particular, I would mention Lord Roskill's forthcoming report on the procedure for trying cases of criminal fraud, which we shall be studying carefully. But I am convinced that by improving both the vetting and control of all those in investment business, it will make a major contribution to the eradication of financial fraud.

With best wishes for Christmas and the New Year.

LEON BRITTAN

FILE

DSG

CBG

SUBJECT cc MASTER

10 DOWNING STREET

From the Private Secretary

31 December 1985

Dear Private Secretary,

ROSKILL REPORT

The Prime Minister today discussed with Lord Roskill and Lord Benson the Report of the Fraud Trials Committee. The Home Secretary, Lord Chancellor, Secretary of State for Trade and Industry, Attorney General, Solicitor General, Mr. Unwin (Cabinet Office), Mr. David Hobson (No. 10 Policy Unit) and Mr. Michael Farmer (Secretary to the Committee) were also present.

The Prime Minister opened the meeting by thanking Lord Roskill warmly for a Report which had been prepared with rare thoroughness. The Government intended to welcome it and to say that they would be legislating in the light of it in the 1986/87 Session. The Prime Minister emphasised that the Government took the problem of fraud fully as seriously as the Committee had done. The Government were dismayed at the time taken to bring cases to trial and at the difficulty of securing successful prosecutions. The Prime Minister hoped that Lord Roskill and other members of the Committee would continue forcefully to put the case for the proposals which they had made in their Report. It would be important not to allow a free hand to those who would no doubt oppose its more radical recommendations.

Lord Roskill said the Committee had concluded that the authorities were fighting fraud with a machine which was seriously inadequate. The services for investigation and prosecution of fraud were far too fragmented. The Committee had seen privately a working paper which had led to the formation of the Fraud Investigation Group, and had been horrified by it. It seemed that the FIG had been the result of an inter-departmental compromise which was not in the event proving to be a fully satisfactory solution. The Committee's terms of reference had not permitted the Committee to investigate this in great depth. But there was a clear need for a new central organisation with the authority to make those concerned push forward with the job, eliminating rivalry between Departments and prosecution services.

Continuing, Lord Roskill said the Committee believed that the skills and professional support available within the Fraud Investigation Group were woefully inadequate. Funds were short and this led to excessive economies. The Government legal service itself was underpaid and failing to attract people of the right calibre. Counsel were not being consulted early enough and there was a failure to bring in young counsel in a way which would enable them to gain the right training and experience. Generally, people at the Bar were now concentrating on private sector work because the rewards for public sector work were too low.

The following points were made in discussion.

(i) The pay of professionals in the public sector involved in the pursuit of fraud, including both lawyers and accountants, needed to be reviewed, together with other ways of attracting the more able people. It was noted that in the United States a period in the public service was often seen as a way towards achieving higher rewards later in the private sector.

(ii) The recommendations of the Committee would, if accepted, probably mean a need to increase the statutory limit on the number of High Court judges. It was recognised that there was a shortage at the Bar itself of people able to handle complex fraud cases.

(iii) It was recognised that the new unified organisation would need to play a central part and to have authority over other investigation and prosecution services in Whitehall.

(iv) The proposed case controllers would need to be administrators, but with a firm grounding of specialist knowledge and experience in accountancy or law. They would have, initially at least, to be part of the FIG, reporting to the DPP.

(v) Pre-trial reviews were not being taken seriously and complaints about them were widespread. They were intended as a means of ironing out difficulties and sharpening issues. However, pupils tended to be sent to the pre-trial reviews. This was in part a matter of the scale of payment for the reviews.

(vi) The Report's recommendations could in some ways be divided into three: the long term strategy involving extra resources, the more controversial recommendations including for example abolition of jury trial for some kinds of case and, thirdly, changes to the rules of evidence and pre-trial procedures. The third group, which might cause the least difficulty, were in some ways the most important in the shorter term. (Lord Roskill, however, did not accept this classification, emphasising the interlocking nature of the Report's

recommendations).

(vii) It would not be easy to confine some of the recommendations to fraud trials, and this would increase the suspicion about some of the more controversial proposals, for example, the withdrawal of the right to trial by jury as proposed for some complex fraud trials. It could, however, be argued that complex fraud cases, in which highly educated and well advised people were involved, could be distinguished from those involving less well-educated people enjoying poorer advice. The removal of the right to peremptory challenge of jurors was already a proposal in the public domain, and for long trials the composition of juries was anyway not random: many people could not afford to sit on juries for long periods. The changes proposed for fraud trials were justified on their merits.

(viii) Lord Roskill hazarded that the number of cases to be tried without juries might be 10-15 per year. Their effectiveness would be a substantial deterrent to major fraud. Lord Benson believed the number of cases tried without juries would be rather larger.

(ix) The Committee had received evidence, which they had been unable to publish, that one clearing bank alone estimated that it suffered some 20,000 fraud cases a year. Most offenders were not prosecuted.

(x) Paragraph 8.37 argued that fraud was posing a threat to London as a financial centre. This risked being misunderstood. Lord Benson explained that it was intended to mean that unless the growth of fraud were checked, it would come to pose a threat to London's position. This would need careful presentation.

The meeting then discussed the major recommendations in turn.

Recommendations 1 and 2:
Lord Benson believed that a Fraud Commission would be unnecessary if there were a strong unified organisation. Lord Roskill disagreed. It was noted that the Commission's criticisms of the handling of particular cases or the courts generally would need to be handled very tactfully, and often privately.

Recommendations 4 and 5:
The Secretary of State for Trade and Industry had reservations about the proposal to confer on the police powers of investigation comparable to those available under Section 447 of the Companies Act. But these were not reservations of principle. The number of investigations under Sections 431 and 432 had already been substantially reduced.

Recommendation 15:
It was argued that some judicial involvement might be needed in the procedure for dispensing with full committal proceedings. Lord Roskill was, however, concerned about the risk of setting up a new procedure which would lead to further delays, and it was noted that one option could be to give power to the Attorney General to dispense with full committal proceedings. It was also noted that Recommendation 20 risked opening up another new lengthy procedure. But this recommendation balanced recommendation 15.

Recommendation 22:
This recommendation was also likely to be controversial, though more with lawyers than with the man in the street. (Lord Roskill believed that this was in fact probably the most important recommendation in the Report). The phrase "without formal proof" risked being misunderstood.

Recommendation 58:
This was also likely to cause major controversy, but was right. The defence already in many cases outlined in writing the nature of the case at the preparatory stage.

Recommendation 82:
The Secretary of State for Trade and Industry believed that this was the only recommendation which was likely to prove very controversial with non-lawyers. The Home Secretary and Solicitor General believed it would be argued that if the Report's other recommendations for speeding up procedures, improving the laws of evidence, and requiring jurors to be competent in English, were adopted, there would be no reason to withdraw trial by jury for complex fraud cases. Lord Roskill defended the recommendation on the grounds that it was necessary to understand the transactions in order to be able to say whether there had been dishonesty, and he also noted that standards of honesty had fallen in a way which allowed too many juries to conclude "There but for the grace of God go I". It was, however, noted that an argument of this latter kind, if deployed, would lead to suspicions that juries would be withdrawn from other kinds of case.

After a brief discussion of the timing of publication of the Report, it was agreed that publication should take place on Friday 10 January, and Lord Roskill would hold a press conference on it in the morning. CFRs could be circulated to journalists the previous day. (I should be grateful if the Lord Chancellor's Department could establish that this is the appropriate timing for circulation of CFRs and inform the Committee). The Home Secretary and Lord Chancellor should put out a press statement at the time of publication, to be followed by oral statements in Parliament.

Lord Roskill drew attention to the convention in the House of Lords that the Chairman and members of a Committee could not speak on its report in the House. It was agreed that the convention seemed on the face of it to be outdated, and the point should be discussed with Lord Whitelaw. I should be grateful if Joan MacNaughton could arrange for this point to be considered.

Bringing the meeting to a close, the Prime Minister noted that Ministers would be holding a further meeting to discuss fraud on Thursday, 9 January. A paper should be prepared by the relevant departments as the basis for that meeting which should discuss, among other things: ways of structuring the new unified organisation as proposed by the Roskill Committee, including the position of the proposed case controllers; the present position on recruitment and pay of lawyers and accountants involved in the investigation and prosecution of fraud; a timetable for further discussion of the Report; a draft of the statement to be published by the Home Secretary and Lord Chancellor on publication of the Report.

I am sending copies of this letter to Joan MacNaughton (Lord President's Office), Richard Stoate (Lord Chancellor's Office), John Mogg (Department of Trade and Industry), Rachel Lomax (HM Treasury), Andrew Lansley (Chancellor of the Duchy of Lancaster's Office), Michael Saunders (Law Officers Department) and Michael Stark (Cabinet Office).

Yours sincerely
Martin Sarner (Duty Clerk)

pp. David Norgrove

William Fittall, Esq.,
Home Office.

E.R.

PRIME MINISTER

ROSKILL REPORT

Lord Roskill, Lord Benson and the Secretary to the Committee are coming in tomorrow at 1030 to discuss the Roskill Report. The list of those attending the meeting is attached.

The Home Office have produced a note to provide an agenda and you have also seen the Policy Unit's note of 17 December.

HANDLING

I suggest you first invite Lord Roskill to introduce his Report. The discussion might then be in two parts: the recommendations themselves (the bulk of the discussion) and handling and presentation of the report.

On handling and presentation, you will be able to tell Lord (1) Roskill that the Government intends to welcome the Report and to announce their intention to legislate in the light of it in (2) the 1986/87 Session. The Government will not be giving substantive reactions when the Report is published, but at (3) least preliminary views would be given during the Debate which will no doubt be needed within a month or so of publication.

(4) The Home Office letter discusses the date of publication. They seem to be a bit behind the game: the Lord Chancellor's Department are working towards publication with a Press Conference by Lord Roskill on Friday 10 January. Though this is in the Recess, it is the only way of publishing the Report whilst sticking to the timetable for the Financial Services Bill.

(5) You will want to emphasise to Lord Roskill and Lord Benson the need for them to promote their Report and to continue to take a close interest, publicly and privately, after the initial flurry. You have also said that you want to point out to Lord Roskill that his discussion of the growth of fraud (paragraph 8.37) is likely to be misinterpreted and will need to be put (6) in the right context at his Press Conference when the Report

is published. In discussing resources (paragraph 2.71) Lord Roskill should also acknowledge that the Government is taking action to increase them both in quantity and quality.

David Norgrove

30 December 1985

DG2ASF

LIST OF GUESTS ATTENDING MEETING AND LUNCH ON TUESDAY, 31 DECEMBER 1985

The Prime Minister

Rt. Hon. Lord Hailsham of St. Marylebone

Rt. Hon. Leon Brittan, MP

Rt. Hon. Douglas Hurd, MP

Rt. Hon. Lord Roskill

The Lord Benson

Rt. Hon. Sir Michael Havers, MP

Sir Patrick Mayhew, MP

Mr. Michael Farner

Mr. Brian Unwin

Mr. David Norgrove

Mr. David Hobson

DRAFT SEATING PLAN FOR LUNCH ON TUESDAY, 31 DECEMBER

Sir Patrick Mayhew	Mr. David Hobson
The Lord Benson	Rt. Hon. Leon Brittan
PRIME MINISTER	Rt. Hon. Lord Hailsham of St. Marylebone
Rt. Hon. Lord Roskill	Rt. Hon. Douglas Hurd
Rt. Hon. Sir Michael Havers	Mr. Michael Farmer
Mr. Brian Unwin	Mr. David Norgrove

ENTRANCE

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

24th December, 1985

David Norgrove, Esq.
No. 10 Downing Street

Dear David

ROSKILL REPORT

The Prime Minister, accompanied by other Ministers, is to see Lord Roskill and Lord Benson to discuss Lord Roskill's report on 31st December. This letter offers advice on the handling of the meeting. The Home Secretary and other Ministers have not yet had an opportunity to consider the issues, but this letter draws on some preliminary conclusions reached at a meeting of officials of the main Departments involved which took place yesterday.

Background

The report offers a useful and vigorous range of proposals for facilitating and making more effective the investigation, prosecution and trial of fraud cases. None of the recommendations seems obviously misconceived. Some, however, are concerned with complex issues of organisational efficiency with which the Committee have not been able to deal fully within the time available; and they imply a change in priorities which may have implications for the handling of other types of case. Three points are likely to give rise to controversy on civil liberty grounds:

58-60 (i) the proposed requirement on the defence to disclose its case before the trial (**Recommendations 58-60**);

(ii) abolition of the right of peremptory challenge of jurors (**Recommendation 78**);

78 (iii) trial otherwise than by jury in certain "complex" cases (**Recommendation 82**).

82

But overall the recommendations seem to provide a basis for substantial and worthwhile legislation in next season's Criminal Justice Bill.

Points for discussion

Against this background, the Prime Minister might wish

(a) to **thank** Lord Roskill and Lord Benson, as representatives of the Committee, for the hard work involved in the production of a report covering such wide ground to a strict

timetable;

(b) to give a **general welcome** to the report, and to assure Lord Roskill and Lord Benson of the importance which the Government attaches to a vigorous and sustained attack on fraud;

(c) to inform Lord Roskill and Lord Benson that, as an earnest of this, the report is to be **published** very soon. The Home Office will keep Lord Roskill in touch with the arrangements - timing, press release, interviews etc. It is a matter for judgement whether there would be advantage in discussing some of the details with Lord Roskill and Lord Benson at the meeting (see below for outline of timing options);

10 Jan

(d) to point out that, even though the report is likely to be widely welcomed when it appears, there will in due course be **criticism** on civil liberty grounds of the proposals which would restrict jury trial and the defendant's right of silence; and to seek Lord Roskill's and Lord Benson's estimate of the weight of this criticism and the importance which they attach to these particular recommendations;

(e) to suggest to Lord Roskill and Lord Benson that they will need to find ways of putting over publicly - not merely at the outset but continually until the legislation has been passed - the **positive arguments** that support the Committee's recommendations;

(f) to explore in particular the likely reactions of the **legal profession** and the way in which these may be reflected in the debates in both Houses;

(g) to raise with Lord Roskill and Lord Benson the question how far it is realistic and sensible to treat fraud cases as raising issues distinct from those arising in **other criminal cases**. The Committee themselves seem clearly to be of the view that many of the changes which they propose could be of value in criminal cases generally, and the arguments which they produce in favour of these changes do not identify very good reasons for confining the changes to fraud cases. Nor do they offer a readily usable definition of what constitutes a "complex" fraud case. On the other hand, the opposition to such changes would be greater if they were to be applied to a wider range of cases. This comment applies particularly to the proposal that the prosecution should be able to avoid committal proceedings and that in some cases the right to trial by jury should be curtailed.

I hope that the above may suffice to get a good discussion going. It would seem advisable to avoid saying anything to Lord Roskill and Lord Benson that Ministers would not wish to have repeated outside.

E.R.

Timing of Publication

Your letter of 18th December recorded the Prime Minister's view that the publication of the Roskill Report should be accompanied by a Government statement setting out a clear timetable for handling the report and announcing the Government's intention to legislate in the light of it. The Prime Minister also said that publication should take place before the Second Reading of the Financial Services Bill but not during the Recess. Since the Ministerial meeting on 18th December, there have however been developments which you and I have discussed. I have also been in touch with the Private Offices at the Lord Chancellor's Department and DTI.

The nub of the problem is that Lord Roskill has an unmoveable engagement in court from Monday 13th to Wednesday 15th January. On the assumption that he would not wish the report to be published when he was unavailable to the press, we cannot publish the report before the Second Reading of the Financial Services Bill (already announced for Tuesday 14th January) unless we publish while Parliament is in Recess.

Ministers will have to decide therefore whether to:

(a) publish the report on Monday 13th notwithstanding Lord Roskill's non-availability. This is difficult to contemplate unless Lord Roskill gives his consent. Another disadvantage of this option is that it would involve the Home Secretary in making the Roskill statement immediately before the Second Reading of the Public Order Bill that afternoon;

(b) publish Roskill while Parliament is in Recess and have a Parliamentary statement on the first available day. The disadvantages of this are that it would make the Parliamentary and public handling of the report that much more difficult. A further consideration is that while the Commons resumes on Monday 13th, the Lords is not back until the 14th. Publishing when Parliament is in Recess and having no statement does not seem an option;

(c) Publish Roskill as soon as Parliament is back and Lord Roskill available (Thursday, 16th would be the first possible date) and move back the Second Reading of the Financial Services Bill. This would involve a change in the business which has already been announced;

(d) keep the Second Reading of the Financial Services Bill as announced, but publish Roskill either later that week or early the following week, but in any event before the Bill went into Committee.

From the Home Office point of view, either option (c) or (d) would be much preferable to either of the other two. But

there are other considerations which no doubt Ministers will wish to consider collectively.

Copies of this go to the Lord Chancellor's Department, Treasury, DTI and the Law Officers' Department and to the DPP.

Yours ever

(W. R. FITTALL)

Top Copy
With
PM
File.

Margo - We spoke.

This
One

With the Compliments

of the

Chancellor of the Exchequer's

Private Secretary

L Sears

233-5512

28/1

Treasury Chambers,
Parliament Street,
SW1P 3AG

CONFIDENTIAL

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

Mr Norgrove
10 Downing Street
LONDON
SW1

23 December 1985

Dear David,

JUNK BONDS

Your letter of 20 November asked for a Treasury note on the growth in the use of junk bonds in the US for financing takeovers. You subsequently told me this would not be necessary, since you had been sent a copy of a paper on the subject by the Bank of England. Then, more recently, you said it would, after all, be helpful to have a paper which looked rather more at the possible implications for the UK.

We have now prepared such a paper, with help from the Bank of England and DTI. I attach a copy. It has annexed to it a rather longer paper by the Bank of England about US experience. As you will see the paper goes a little wider than the use of Junk Bonds, and examines the use of leveraged takeover bids more generally.

The paper suggest two broad conclusions:

- First, the institutional and tax conditions here are different from those that have led to the use of junk bonds in the US. They are not such as to be likely to encourage the growth of a junk bond market here. The UK takeover rules would also tend to prevent the use of this technique. Although the leading US company in this field (Drexel Burnham Lambert) have been trying to interest UK companies in the technique, they do not appear to be having any success.

- "Leveraged" takeovers financed by bank borrowing rather than bond issues do, however, take place in the UK, and have for many years. Such lending is likely to have a greater effect on the wider monetary aggregates than bond issues, unless the latter were bought by banks, but it is not easy to trace the

effects through. There could also be prudential implications for banks, and it is clearly important that the Bank of England supervisors should keep a check on banks' exposure to companies engaging in leveraged takeover bids.

I am copying this letter to John Mogg (Department of Trade & Industry) and to John Bartlett (Bank of England).

Yours ever
Rachel

RACHEL LOMAX

CONFIDENTIAL

THE FINANCING OF CORPORATE ACQUISITIONS : LEVERAGED TAKEOVERS

This note briefly sets out the latest state of play on attempts at regulating "junk bonds" in the US and the reasons why these bonds have not been emulated in the UK. Paragraphs 10-12 attempt to provide a broad estimate of the monetary effects of the recent level of takeovers in the UK. Attached is a copy of a recent Bank of England internal paper on takeovers and mergers.

Introduction

2. In the United States, a pattern of takeovers has emerged (often associated with the New York investment banking firm of Drexel Burnham Lambert Inc) under which takeovers are arranged by the would-be acquirer through the establishment of a "shell" company. The shell company issues bonds (called "junk" bonds because they are usually rated at Ba or lower by Moody's and BB or lower by Standard and Poor), secured against the stock it acquires in the target company, in order to buy the stock. This technique enables companies with a low capitalisation to take over companies with much larger ones, and has been one factor leading the latter to develop various devices to ward off hostile bids. (Such devices include "poison pills", for example arranging a loan to finance payments due, making it a term of the loan that it would be immediately repayable in the event of a takeover. This would face the purchaser with an unwelcome immediate outflow.) These tactics represent a special type of leveraged takeover, which is any takeover where a high proportion of debt is used to purchase the target company. Junk bonds can of course be issued for other purposes than takeovers.

The Proposed Federal Reserve Regulation

3. The recent publicity about the intention of the Federal Reserve to impose margin requirements on shell companies relates to takeover financing using junk bonds. Under the Fed's proposal,

they will be prevented from financing more than 50 per cent of a stock purchase with loans secured by the stock, and the Fed are accepting comments from the public on this proposal in the period up to 23 December. The Administration oppose what the Fed intend, but it nonetheless appears as if Mr Volcker will proceed without Administration backing, as he is empowered to do. Drexel Burnham Lambert has protested about the proposed change, but are also ready to adopt new approaches to get around any new Fed regulation. The new regulation will not affect the many forms of leveraged takeovers in the US besides those financed by low-grade bonds issued through a shell corporation. It may not affect, for instance, the activities of T Boone Pickens of Mesa Petroleum who is one of the most famous practitioners of leveraged takeovers.

Junk Bonds in the UK

4. The particular leveraged takeover technique outlined above is not at present a major factor in the UK. There is no market for low-grade bonds in the UK as there is in the US, since the obligations on trustees and other provisions in our legislation, and our supervision arrangements for banks, building societies and insurance companies, discourage pension funds and financial institutions from investing in low-grade bonds. We also lack the equivalent of money market mutual funds, which are one of the main ways US individuals can participate in the high yield bond market while spreading their risks. Further, the UK does not have a tax provision for individuals similar to Individual Retirement Accounts, whereby Americans can invest up to $2,000 per annum (or the amount of their earned income, if less) in securities the income on which may be rolled-up and taxed only on withdrawal (there is a small extra penalty charge on withdrawals before retirement).

5. Therefore the conditions do not exist here for a low-grade bond market equivalent to the one in the US, which has led to $35 billion in high yield debt, yielding up to 4 per cent above those on "investment grade" bonds, having been issued there in

the period 1977-1984. Nor have bidders for UK firms so far tapped the US junk bond market (at least on any scale) and switched the proceeds into sterling.

6. The takeover rules are also probably on balance more restrictive as they affect hostile bidders in the UK: in the United States "two-tier" offers are possible under which one price is paid for the first 50 per cent of stock acquired and a lower one for the second 50 per cent. Short time limits for acceptance of offers can also be used as a tactic in the US, although to comply with the Williams Act the minimum offer period has to be more than twenty business days. It is hard to mount a defence or counter-offer in so short a period.

7. But the fact that the particular method of effecting leveraged takeovers now being regulated against in the US is not at present a significant factor here (although Drexel Burnham Lambert would like to extend their operations to the UK) is not to deny that over the past two years UK takeovers have been accelerating in total value, and that some of them are highly leveraged. The net result of this may be to leave targeted companies saddled with large debts if bids are successful. As in the US, this in turn may lead to corporate raiders selling off the assets of the target company in order to pay off the debt incurred in purchase.

The Financing Pattern in the UK

8. It is not easy to assess the financial effects of takeovers. Even the presumption that bond or equity finance will have less effect on monetary growth than direct bank lending has to be examined in each case, since a large proportion of the securities concerned might, in principle, be taken up by the monetary sector. But aggregate data for even the primary financing arrangements for takeovers in the UK are not available in any great detail. The Office of Fair Trading, for instance, have very little relevant material. Any thorough investigation would therefore have to be a special exercise. The overall pattern can be only broadly

estimated on the basis of DTI figures, which do not trace the ultimate source of cash used in takeover transactions.

9. There could of course be more substantial grounds for concern over the growth of takeover finance in debt form. A series of takeovers financed by debt, apart from their possible effects on industrial concentration and structure, which may not necessarily be at all harmful, could alter the balance between corporate debt and equity in an undesirable way. Effective banking supervision has an important role to play here, and should prevent unhealthy exposure by banks through involvement in leveraged takeovers and management buyouts.

10. It is known that direct bank finance has been a large element in such recent attempted takeovers as Elders/Allied (where a shell company, IXL, has been set up as an intermediary) and Argyll/Distillers. In the case of Elders/Allied foreign banks have agreed to provide the finance and certain US banks such as Citibank now operating in London have a strong expertise in this general field. Other geared bids (Hanson/Imperial) have featured issues of loan stock convertible into equity later. (In both the Hanson/Imperial and GEC/Plessey cases, however, the acquirers have sufficient cash not to be seriously affected by the pressures of high gearing.) A large increase in gearing may be even more characteristic of management buyouts than of corporate takeovers. The Molins buyout, for instance, would have - if it had gone through - raised gearing from 9 per cent to over 90 per cent.

11. The overall position on financing takeovers in the UK (see Annex A) is that during 1980-84 about 55 per cent of the purchase price has been financed by the cash, about 39 per cent by the issue of shares, and about 6 per cent by the issue of fixed-interest securities. It is unknown what proportion of the cash used in UK takeovers is raised by special issues of debt instruments. With the notable IXL exception, it is unusual here for a shell company to be set up to facilitate a takeover (although this seems to be more common in the case of management buyouts)

and the total amount of fixed interest debt issues for all purposes is not large. The major source of credit in the UK is the banking system, and bank lending to finance merger activity takes place on a fairly large scale to borrowers that appear to loan managers to be creditworthy.

12. The total value of acquisitions and mergers within the UK in 1984 was about £5.5 billion; 54 per cent of it financed in cash. The pace of takeover activity has accelerated this year, and in the first three quarters of 1985 the total value of takeovers was £6.1 billion, of which perhaps 40 per cent or £2.4 billion was in cash. A significant proportion of these cash figures could have been financed by bank lending, though the ultimate impact on aggregate bank lending and the money supply will depend on how quickly these loans are repaid, and what the recipients of cash offers do with the proceeds. Some will go to reduce bank borrowings; some to avoid the need for borrowing that would otherwise have taken place. And bank lending for this purpose will to some extent replace lending for other purposes.

13. The progressive reduction in the rate of Corporation Tax from 52 per cent in 1983-84 to 35 per cent in 1986-87 should tend to discourage the use of bank borrowing and other debt financing for takeovers as interest tax deductions become less valuable. But until the current takeover boom subsides, it is likely to outweigh this and other factors which might tend to reduce bank finance for takeovers.

Conclusions

14. There are significant differences between the institutional conditions in the UK and the US, and between the tax laws of the two countries. The conditions which have encouraged the growth of a junk bond market in the US do not obtain in this country. In particular, the UK takeover rules would tend to prevent the use of junk bonds in leveraged takeovers in the UK. However, leveraged takeovers financed by bank borrowing rather

than bond issues have taken place in the UK for many years. There are implications in this for the wider monetary aggregates, but it is not easy to quantify the effects. More important is the prudential aspect. The banking supervisors need to maintain checks on banks' exposure to companies engaging in leveraged takeover bids. So far, there are no grounds for belief that this is a problem, but it is clearly important to keep this under review.

FILE NOTE

cc David Norgrove
Sue Goodchild

MEETING WITH LORD ROSKILL: 31 DECEMBER

At the Prime Minister's request, the meeting will now convene at 1030, last for some 2 hours, and be followed by lunch.

Those attending the meeting will be:

Lord Chancellor
Attorney General
Solicitor General
Home Secretary
Secretary of State, Trade and Industry
Lord Roskill
Lord Benson
Michael Farmer
Brian Unwin
David Norgrove

I have to confirm the revised times with the Attorney General's and the Solicitor General's offices.

Advice from the Drivers (Bob) was that the journey time for Lord Roskill would be one and a half hours. Lord Roskill himself thinks that is cutting it fine. We agreed therefore that the pick-up time would be 0830. He stressed that, in case of any difficulty in finding his home, the confused Driver should ring him on 0635-40606.

MARK ADDISON
23 December 1985

CAJ

CONFIDENTIAL

CC/BG

LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

H. STEEL, CMG OBE
LEGAL SECRETARY

Prime Minister 2

DRN
20/12

David Norgrove Esq.
Private Secretary to the
Prime Minister
No.10 Downing Street
London SW1

20 December 1985

Dear David,

FRAUD

The Solicitor General undertook after Wednesday's meeting to let the Prime Minister have a note outlining where we now stand on the Lloyds case. I now enclose that note which, for good measure, also covers the JMB case.

When we spoke on the telephone yesterday you mentioned that the Prime Minister had also asked the Attorney General for advice on whether there was any way to prevent Fraser (in the JMB case) from leaving the country whilst the police investigation was still in progress. The Attorney General's advice is that this would be possible only if we could find some other charge against him on which he could be arrested, brought before the court and held. We have consulted the DPP who tell us that they have no evidence against him in respect of any offence which would justify arresting him and charging him at this stage. There is therefore no action which can be taken to hold him in this country if he should choose to abscond.

Yours ever,

H STEEL

CONFIDENTIAL

PRIME MINISTER

1. This note sets out the present position in relation to the enquiries being conducted by Fraud Investigating Groups established by the DPP into the allegations of fraud relating to Lloyds and Johnson Matthey Bankers Limited.

Lloyds:

2. The Fraud Investigating Group comprises the Deputy Director of Public Prosecutions, the Controller of FIG, an Assistant Director and a professional officer, two Detective Superintendents, 5 Counsel (2Leading Counsel). Special arrangements have been made for the whole team to thoroughly familiarise itself with Lloyds underwriting practices and in particular the operation of re-insurance contracts. Enquiries have concentrated on identifying re-insurance contracts which have been used as a vehicle for transferring funds from the syndicates concerned out of the United Kingdom. But it is the tracing of those funds to establish the identities of the ultimate beneficiaries which is crucial to the success of the investigation. The relevant transactions occurred in several different foreign countries.

3. Several persons who have been associated with PCW and Howden and who could, if so minded, undoubtedly shed considerable light on what occurred, have been interviewed by the police. Each has proved untruthful or, at best, highly unreliable. Other difficulties encountered by the Investigators are the securing of evidence from persons who are abroad (and who cannot therefore be compelled to testify) and overcoming restrictions on the disclosure of confidential information imposed by the law in other jurisdictions. These circumstances have given rise to three specific serious problems, two of which have attracted substantial publicity. They are :

(a) Obtaining evidence from Switzerland: This is the most serious problem. The Banque du Rhone in Geneva was acquired by Howdens and became

the vehicle by which money fraudulently obtained from Lloyds syndicates was laundered. Furthermore, two Directors of the Bank, Benbassat and Zilkha, played a large and important part in the operation. Information as to transactions conducted through the Banque du Rhone is essential if the Investigators are to trace the ultimate destination of the moneys.

Although the Swiss authorities responded to a commission rogatoire at an early stage of the Inquiry, a further commission rogatoire was sent on 2 January 1985 seeking information concerning banking transactions and of Benbassat and Zulkha remains unanswered - despite numerous reminders, visits to Switzerland and negotiations through diplomatic channels. Delay was occasioned at one point when the Swiss decided that they could give no assistance to the British authorities on the ground that we could not grant reciprocity were the circumstances to be reversed. They have now resiled from that position.

Negotiations resulted in an arrangement that the Swiss Examining Magistrate would lift banking secrecy and permit the two witnesses (Benbassatt and Zilkha) to be interviewed in England but despite initial optimism this visit has not materialised. Efforts are continuing and if their presence in the UK interview cannot be procurred, the Director will again press for execution of the commission rogatoire. However, that process is likely to be slowed down by the elevation to the Supreme Court Bench of the Magistrate originally assigned to the case.

(b) Deloittes Report: Following the acquisition of the Howden Group by Alexander and Alexander Inc. and discovery of the true financial position, the firm of Deloitte Haskins and Sells was instructed to investigate the affairs of the Howden Group and prepare a report with a view to the institution of proceedings by Alexanders against the former auditors of Howden, including Arthur Young and Company, for negligence. A number of draft reports have been produced by a Partner, one Shearer.

Because the reports are for the purpose of litigation, they attract legal privilege both in this country and the United States. Alexanders' legal advisers are extremely anxious to ensure that nothing is done which might constitute waiver of that privilege. A major source of concern was the duty which would arise on the part of the Director, in the event of criminal proceedings being instituted, to disclose to the defendants any material documents in his possession, including the reports.

The following agreement has been reached with the solicitors acting for Alexanders as regards the various categories of information and documents :

(i) The draft reports by Shearer: These have been made available to the DPP subject to arrangements which are consistent with his duty of disclosure mentioned above. But they are privileged and under no circumstances must it be disclosed that the Director has had sight of them. It can safely be said that "the DPP has sought and received informal advice from Deloittes".

(ii) Documents seized from Howdens: Upwards of a million documents were seized by Deloittes from the offices of Howdens. They are available to the investigation team but the sorting and identification of originals is a major task.

(iii) Banque du Rhone documents: Alexanders, as part of their purchase of Howdens, became owners of the Banque du Rhone in Geneva. Mention has already been made of the significance of transactions through this Bank.

Swiss Banking law imposes stringent requirements as to confidentiality. The solicitors to Alexanders managed to obtain documents from the Bank on stringent terms and undertakings which preclude their disclosure to the DPP. Ironically, these are the documents the DPP seeks to

acquire through the outstanding commission rogatoire mentioned above.

(c) Lloyds Transcripts: The Director first requested the Lloyds transcripts in May 1985. Lloyds declined to hand them over on the basis that to do so would constitute a breach of their bye-laws. The DPP has continued to press his request and recently has been able to point to a very recent helpful decision by the Courts on public interest (Lion Laboratories -v- Evans). Lloyds took the Opinion of Leading Counsel and conceded that the transcripts could be handed over and this was done on 16 December. It is likely that Lloyds were also influenced by the adverse publicity attracted by their refusal.

Prognosis : Although the obtaining of the Deloittes Reports and the Lloyds transcripts represents substantial progress, the prospects of ultimate success still depend heavily upon securing evidence from the Banque du Rhone. Until a break through is made in this respect it is not possible to say when the investigation will be completed.

3. It must also be borne in mind that even when sufficient evidence is available to justify the institution of proceedings, it may still be necessary to overcome extradition hurdles. For example, Cameron Webb and Dixon are believed to be either in the United States or Costa Rica. We have no extradition arrangements with the latter and proceedings in the USA are notoriously lengthy. Grob has both British and swiss nationality but resides in Switzerland. The Swiss do not extradite their own nationals and it remains to be seen what attitude they will take to a request in his case.

Johnson Matthey Bank Limited:

4. Since the announcement by the City of London Police on 27 November that he had requested the formation of the Fraud Investigation Group, arrangements have been made to ensure that the investigation team is sufficiently staffed and

equipped to carry out a swift and effective investigation. The Head of the City of London Fraud Squad will lead the Inquiry and he will have no less than 40 officers to assist him, drawn both from the City of London Fraud Squad and the Metropolitan Police Fraud Squad. Premises at Bishopsgate are being swiftly converted to form a headquarters for the Inquiry and a computer has been purchased.

5. The positive evidence of fraud so far revealed by police enquiries involves the submission of false documents in order to obtain money from the Bank. The sums involved in this aspect of the case are extremely modest when set against the enormous losses of Johnson Matthey Bank Limited. Thus, although the press statement made by the City of London Police made direct reference to the discovery of this evidence, it does not represent any narrowing of the scope of the Inquiry and the Fraud Investigation Group will be concerned with any fraud at whatever time it has arisen.

6. As regards this wider Inquiry, there is, as yet, no evidence of fraud by any of the senior officers of the Bank although there is strong suspicion of corruption by some as a quid pro quo for the granting of giant loans to borrowers such as Spira and Shamji. One junior official in JMB has admitted a relatively minor offence of corruption and consideration of his position has been reserved. It may be that the Director and the Attorney General will have to decide whether, if he is able to provide evidence concerning other more serious offences, the public interest might be better served if he were treated as a witness rather than prosecuted.

7. Although the present police inquiry is the result of a request from JMB Limited itself, Mr Brian Sedgemore MP has made a large number of allegations which have also been passed to the police for investigation. These include a particularly serious allegation against the new management of JMB Limited. The majority of the allegations made by Mr Sedgemore allege criminal conduct on the part of clients of JMB and persons associated with them but not to the detriment of JMB. Where appropriate, these allegations have been referred ,

in accordance with police procedures, to the appropriate enforcement authorities (e,g, Inland Revenue, Scottish police). As the result of the disproportionate amount of time which the police were required to spend investigating and responding to these ancillary allegations, Detective Chief Superintendent Squires, Head of the City of London Fraud Squad, wrote to Mr Sedgemore requesting that he cooperate with the police by passing to them any useful information he may receive rather than using it to attract sensational publicity. He received an uncooperative answer.

Prognosis: The investigation is proceeding but it is still too soon to make any prediction as to when it will be concluded and the likely outcome.

20 December 1985

Note
Thank you.
David.

MR. NORGROVE

c.c. C.F.
Drivers

MEETING WITH LORD ROSKILL ET. AL.

I spoke to Lord Roskill this afternoon. He is content with the timing that we have arranged for the meeting, vis 10 a.m. on Tuesday 31 December for an hour and a half.

At Lord Roskill's request I spoke to Lord Benson; Lord Benson will also be coming to the meeting. Their Lordship's telephone numbers over the Recess are indicated in the diary.

Lord Roskill will need picking up by car. Directions (for the benefit of the Drivers/C.F.) are as follows.

> M4 to exit 13, make for Winchester. Go round Newbury. Two miles south of the town on the A34, stick to the main Winchester road, do not take the Basingstoke road which goes around to the left. Climb a long hill, passing 'The Swan' pub on the left. At the top of the hill the A34 goes straight ahead for two miles, across Newtown Common. Three hundred yards over the brow of the hill there is a pillar box on the left. Fifty yards further on there is a single telephone pole painted white. This marks the end of Lord Roskill's drive. There are no other indications that this is his home. About a third of a mile down the drive take the left of three forks, which leads you to the house.

fine

Lord Roskill suggested the Commission's Secretary might attend. Lord Benson was clearly of the view that he should not. They are to discuss this further between them, and will let us know if they believe anyone else from their side should be invited.

MLA

MARK ADDISON
20 December 1985

PS. As you know, attendance on their side is to be strictly Lord Roskill and Lord Benson. The latter will be making his own way here.

CAJ

File

cc Prof. Griffith

10 DOWNING STREET

From the Private Secretary

20 December 1985

Dear Stephen,

ROSKILL REPORT

My letter of 18 December to John Mogg commissioned urgent consideration of the recommendations of the Roskill Report. The Prime Minister has asked that in taking this forward the Home Office and Lord Chancellor's Department should work closely with the interdepartmental group on fraud chaired by Sir Peter Middleton.

I am copying this letter to John Mogg (Department of Trade and Industry), Joan MacNaughton (Lord President's Office), Richard Stoate (Lord Chancellor's Office), Rachel Lomax (H.M. Treasury), Andrew Lansley (Chancellor of the Duchy of Lancaster's Office), Richard Broadbent (Chief Secretary's Office H.M. Treasury), Henry Steel (Law Officer's Department), Kieran Murphy (H.M.Treasury), Michael Stark (Cabinet Office).

Yours ever,

David.

DAVID NORGROVE

Stephen Boys Smith Esq.
Home Office

SFW

010

CVBG

CONFIDENTIAL

P 01854

From: J B UNWIN
19 December 1985

MR NORGROVE

FRAUD

The Prime Minister's meeting yesterday agreed that the Lord Chancellor and the Home Secretary should produce a paper for consideration by the Group on around 8 or 9 January setting out their initial assessment of the Roskill recommendations. Your minute on yesterday's meeting will no doubt commission this.

2. One important purpose of the next meeting will be to settle what can/should be said when Roskill is published. The provisional game plan was that this should be on 13 or 14 January, with the Second Reading of the Financial Services Bill postponed until 15 January, and that at the minimum the Government should give a commitment to legislate in the next session to implement Roskill (subject to a limited period of consultation on its recommendations) and that the necessary increased resources would be provided. It may be, however, that the report by the Lord Chancellor and the Home Secretary could enable some decisions to be taken and announced on some recommendations immediately. This will need to be considered at the 8-9 January meeting.

3. There is also an urgent need to get on with detailed consideration at official level of the Roskill recommendations. I mentioned briefly to the Prime Minister the suggestion that Sir Peter Middleton, who is already engaged in these issues, should be asked to take this on. She thought that this was sensible, as did the Chancellor with whom I also had a word afterwards.

4. We could wait until the early January meeting to formalise this. I think, however, that the sooner detailed official consideration gets under way, the better. I suggest, therefore, that you issue instructions on this immediately, either in your record of yesterday's meeting, or separately. DTI officials tell me that they would be content with this (by analogy with the earlier Wass exercise); and in view of their particular responsibilities, and the wide range of Departmental interests involved, I am sure it is right for the Treasury to be in the lead.

J B UNWIN

Cabinet Office

LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

H. STEEL, CMG OBE
LEGAL SECRETARY

19/12/85

Dear David

Fraud

Hamish, I back up at 1 can give you an update:-

(a) Copy of the S-G's Note to R Rudgard;

(b) Background note for PM's use;

(c) the Note of the S-G's Conference on "Lloyds".

I confirm that the DPP minuted the Lloyds transcript on 16 December. Further notes on the current position re. Lloyds, on the point concerning JMB think

I you

You mentioned will follow
a.s.a.p. — but probably
not today.

Yours ever,

Henry

PARLIAMENTARY QUESTION

FOR WRITTEN ANSWER

Thursday of 19 December 1985

QUESTION

230 MR NICHOLAS BUDGEN: To ask Mr Attorney General, whether he is yet in a position to make any announcement about the resources available to the Director of Public Prosecutions for fraud investigation work.

MEMBER'S CONSTITUENCY: WOLVERHAMPTON S.W. (CONSERVATIVE)

ANSWER

The Attorney General: -

As I told the House on 2 December, the work load of the Fraud Investigating Group in the Department of the Director of Public Prosecutions, and indeed of other Divisions of that Department which handle fraud cases, had substantially increased in recent times and the resources previously available had come under serious strain and were being reviewed. As a result of that review, My Right Honourable and Learned Friend has asked, and the Treasury has now agreed, that the Director should be given authority to recruit 9 additional professional officers to enable the Fraud Divisions to be adequately staffed. There will also, ~~of course,~~ be corresponding increases in non-professional support staff. The situation will be kept under review and My Right Honourable and Learned Friend will not hesitate to seek further staff for the Director if that is shown to be necessary.

V Pms 19/12

DPP RESOURCES FOR FRAUD WORK

The Solicitor General will be announcing today, in a written reply to a question from Mr Nicholas Budgen (attached), that the DPP has now been given authority to increase his staff engaged on fraud work by nine professional officers and corresponding extra support staff. The background and details are as follows:-

EXISTING STAFF

15 professional officers (i.e. lawyers) deployed in 3 divisions. 2 divisions cover FIG cases and other major frauds and the third deals with all other fraud cases (in particular, corruption in central and local government).

20 non professional staff serve all three divisions

AGREED INCREASE

This will take the form of an increase in the headquarters complement of the DPP (i.e. over and above what was originally proposed in consequences of the establishment of the Crown Prosecution Service) to permit the three fraud divisons to be enlarged.

There will be 9 additional professional officers deployed so as to give two extra to each of the FIG divisions and five extra to the other fraud divisions. This represents an increase of 60 per cent.

Support staff are to be increased by six (four EOs and 2COs), an increase of 30 per cent.

TERMS OF APPOINTMENT

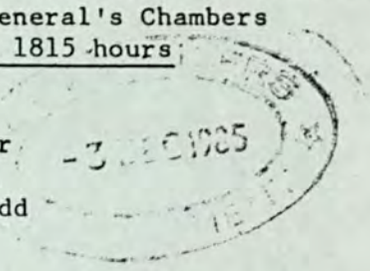
Because of the difficulty of recruiting lawyers of the right quality for permanent employment in the Civil Service, it has been agreed that, to the extent necessary, the additional professional officers can be recruited on short-term contracts at salaries of almost £20,000. It is thought that this should be sufficiently attractive to members of the Bar of the right quality. It is also hoped that some of the major firms of city solicitors may be willing to second some of their staff.

ACCOUNTANTS

The above details do not relate to accountants. From 1 February 1985, two accountants have been seconded to the DPP from the DTI and DTI will shortly second three Examiners (who are not accountants but are experienced in investigating companies in liquidation). In addition the DPP uses the services of major accountant firms and retired accountants. ~~For the moment~~ This is thought to be sufficient for present purposes but the employment of whole time accountants has proved very successful and they are now being used to the fullest extent possible. The DPP may therefore have to ask for authority to employ more accountants on his staff in the near future.

Reference M Wooler

Note of a conference held at the RCJ, Attorney General's Chambers on Wednesday, 27 November 1985, between 1630 and 1815 hours



Present: Solicitor-General; N Lyall and S Wooler
E M Hill QC; T Langdale and G Boal
Ch Supt Squires; Supt Nove and Supt Todd
DD; AD F/A; AHG & Miss Wake

MH drew the SG's attention to a 6 page Note prepared following conference held on 26 November.

MH said that there was total agreement that there should be no prosecution which is based simpliciter upon the reinsurance contracts. Criticisms can be made of the orders and contracts but it is our view that they provide insufficient basis for an allegation of crime, especially Minet. Allegations of crime must be all fraud related; this is really a "hunt the money" exercise.

MH continued that we have got to consider whether we should adduce evidence to demonstrate that the reinsurance contracts were unusual, ie to attack their terms. We cannot decide at the moment which way we will go.

SG said the reinsurance contracts have been examined closely by Lloyd's in their disciplinary investigations but took it that the mere fact that they were made will not sustain a prosecution for fraud.

MH said the contracts were "shams". Sham reinsurances were a feature of the Lloyd's market in the 1970's. They were vehicles for tax evasion, avoidance, premium income relief etc.

MH said there are problems re charges, ie conspiracy to defraud and conspiracy to steal, and had in mind decisions in Ayres, Hollinshead etc. There are other problem areas, ie extradition. Basically we must for the moment concern ourselves with the technical problem of conspiracy to defraud and extradition proceedings. In relation to Minet there came a stage (between 1970 -1975) when having got monies overseas by means of a reinsurance contract they started milking the funds. We can attack them with conspiracy to defraud and steal. The pattern of behaviour in the Howden case is different, but the same sort of approach re offences can be used. One sadness of the case is that the agreement to purchase the BdR antedates the 1980 Companies Act (re insider dealing).

MH said the same analogies apply but are not so simple in Howden.

JW added that we went into this in detail but he was always concerned that if we cannot prove the reinsurance contracts were fraudulent we would be "out of court". We have always agreed that the practice in Lloyd's of reinsuring to their own reinsurer was extensive and one cannot really complain that these people, Minet and Howden directors, were reinsuring to their own companies. Once we get to the stage that they have got the scheme in place, although the means of getting the money from the names may be lawful, it is the taking of the money later which is unlawful; if we can prove that then we are getting somewhere.

MH referred to canvassing the possibility that the alternative to a criminal prosecution is a revenue prosecution.

...../2

MH said the present view seems to be that the Revenue, if faced with the choice, would prefer to compound and settle than to institute proceedings. However, we do not believe that that would be their attitude if Cameron-Webb and Dixon came back to this country. The Director and Deputy Director have made it clear that if they pursue that particular policy they must not do anything that would preclude our launching a prosecution. They have proposed a timetable (in a letter dated 13 November) for their own investigation, starting with a series of interviews from 1 December and concluding sometime in February, with various people in the PCW Minet and Howden Groups.

In the PCW Group the first four are Hardman, Oldworth, Newman and Davies.

SG queried whether they would "louse up" our chances of a prosecution.

MH said we should ask them not to touch Hardman, Oldworth and Newman and Benbassat, Zilkha, Grob, Page etc. Also amongst their prospective interviews in Howden is Todd. Todd is somebody we want to see because he is so central to some of the evidence that took place in Howden. It is hoped to turn and use him.

MH continued that we are ultimately faced with the question whether we say to the Revenue "you lay off now until we are ready, or you lay off the following people until we are ready".

SG said we are not in a position to instruct them.

JW said we should just try and persuade them. There is a fairly fiery chairman of the Inland Revenue who has made it perfectly clear that they are anxious to get on themselves and they would do so, paying attention to our problems.

SG was anxious to determine how we should deal with this.

MH said we must look at the whole business of Geneva.

MH continued that notwithstanding their general view that we believe the IR would rather compound than prosecute, except for Cameron-Webb, Dixon and Harrison.

Cameron-Webb is in Florida but may be going to Costa Rica

Dixon is in Costa Rica

Grob in Switzerland

Page, Comery, Carpenter, Hart and Posgate in UK

Oldworth and Wallrock in UK

Newman in Holland

We have no treaty with Costa Rica.

We cannot extradite from the USA for <u>any</u> conspiracy unless contained in some special Act covered by our Extradition Act.

...../3

Grob: believed to have joint British and Swiss nationality (it is believed Swiss will not extradite their own nationals).

Page: believed to be terminally ill, but has been so for 3 years.

Comery: is an international entrepreneur.

Carpenter: is ill (heart bypass operation).

Oldworth: supposed to be ill.

Wallrock: is in Hong Kong.

MH discussed our ability to extradite. We cannot extradite for Revenue offences though that may not exclude our ability to extradite for criminal offences which have a Revenue element.

The obvious substantive offence is theft. If we can establish a guilty, fraudulent time, getting the money out is a theft. The difficulty with that approach is what event amounts to the theft, is it the movement of money out?

MH said there are other possible offences which could be committed here, although they are ultimately related to goods abroad. We have considered S.24 of the Theft Act 1968 (re handling stolen goods) ie, brown envelopes in the Minet case.

MH said the crucial problem in both cases is to open up Geneva. By opening up Geneva we may also open up Panama and Bermuda etc.

MH said that our initial attempt to open up Geneva was a Commission Rogatoire sent in 1982 which asked for bank accounts in relation to a number of the Minet companies or trusts. It did not have a direct bearing on Howden. We got back a number of copy accounts from the BdR. These copy accounts had a number of deletions. We can see the dates of which we have accounts running. The problem is to prove them in any UK proceedings which will require witnesses. The obvious witnesses are Benbassat and Zilkha. Benbassat was managing director of BdR. Their contact with the people particularly on the Howden side, but also once the non-sterling route in the Minet side was set up in 1978, was quite substantial. Benbassat gave evidence in the Lloyd's enquiry.

The big Commission Rogatoire sent last year was handled by Herr Bolliger and was given to a Geneva Magistrate called Harari. Harari faced with this enormous Com Rog decided a simpler solution to this problem was to release them to come over here and be seen by our officers. The Swiss indicated that they would be given immunities for banking secrecy and prosecution but not against 3rd party proceedings. Benbassat and Zilkha's lawyers have said they will come but will not be able to help us much more. We should pursue the exercise with Benbassat and Zilkha and try and get them over here.

MH thought that B and Z's value to us is not necessarily as witnesses but as providers of information which would enable us to "unlock" Geneva. Even if they are "playing around" we had better get them on record as soon as possible.

It was suggested that faced with the possibility that they may refuse to come under the pretence that they could not be given immunities from third parties, we must ask the Swiss to carry out the Com Rog and make them come. We may have problems as the Swiss Magistrate may wish to turn the Com Rog into a criminal examination.

MH said three other people have been interviewed within the BdR who ought to be in a position to help us. They are Stoyanovich, Coyle and Zufferey.

Stoyanovich and Coyle were clerks in the BdR and handled most of the paper which was generated and Stoyanovich kept a file which she handed to Dixon in c 1973. She is in a position to provide a good deal of information. Zufferey was the manager of BdR. A further Com Rog re these three was sent off today.

MH said there was a complication as a new Geneva Magistrate has been appointed and we do not know what his attitude will be to immunities and releases.

JW thought it just possible that if we say to the Swiss you do the Com Rog they will allow the investigation to be done by the police; obtaining statements from them and then using these statements to be averred in the formal hearing of the Com Rog. We should get our police to liaise with their police. This will be the more satisfactory way if we have to use the Swiss Com Rog route. He likened situation to Swiss request of us; police take statement from bank official who can then go before the magistrate and confirm.

MH said it was very important to get hold of, and be able to use as a witnesss, Shearer from Deloittes.

SG asked RW how she got on when she visited Switzerland.

RW replied that she had talked to Herr Bolliger, who had had a letter addressed to the Swiss Magistrate, from solicitors acting for Benbassat and Zilkha, saying that they were willing to come but it would not be much use as they did not know much about the Hart Rollovers etc.

SG asked JW about the interrogation of witnesses before the Swiss Magistrate.

JW said the Magistrate would lift the banking secrecy; the police officer would take a statement; witnesses would be brought before the Magistrate who would check their written statements with them. If we can persuade the Swiss to do this it would be very valuable to us. If we can do this in this country why not in Switzerland?

SG asked what the procedure would be.

JW said we still expect them to come over here but if they do not appear soon we will have to go to Switzerland and put this proposition to them.

SG asked if this would apply to Stoyanovitch and Coyle as well. JW said "yes".

MH said the value of that is again two-fold. One is information, because one of the difficulties is that there is a mass of information in this case which we can not use, even for the purposes of evidentially interviewing major suspects because we do not have the documents. The other advantage on the information basis would be that it would enable us to supplement what we can get out of Shearer, using him as our principal witness in the case.

...../5

Shearer/Deloittes

The history of this is that prior to the Alexander and Alexander takeover of Howden an audit, or an internal report, was prepared by Arthur Youngs for Howden. When A & A took over in 1982 they asked Deloittes to do a fair value report. When Deloittes went in they were led by Shearer. They then did a raid on Billiter Street (which is the office of Howden Group) and took possession of a vast quantity of documents. Shearer led a raid on the BdR and got hold of all the internal accounts. He then prepared an interim report. We need Shearer and the Deloitte's interim report which has attached to it documents seized. Shearer has picked his way through, particularly from the Howden point of view, all the accounts and records and has traced movements of monies. He was acting for Deloittes, instructed by A & A, in contemplation of civil proceedings by A & A against Arthur Youngs. Shearer is only too happy to help. Denton Hall & Burgin (solicitors for A & A in proceedings against Arthur Youngs) are stopping Shearer and Deloittes from giving us the information and this is a problem which we have to solve. Shearer has been a witness from 1982 - 1984 in the Lloyd's enquiry and DTI investigation and proceedings in Gibraltar.

DHB have asid to the Commissioner of Police that they would not be prepared to release Shearer and the report for fear of breaching "work product" privilege and required certain undertakings as to confidentiality. The Director was not prepared to do this. The report is something which we could not obtain under S.9 of PACE because it would be covered by legal privilege.

MH said whether they have actually waived work product privilege in relation to Shearer's evidence, none of us think it is appropriate to have an argument with DHB at the moment. A letter was drafted to go to an American law firm over here but we have since heard from the firm that there would be a conflict of interest if they acted for us. MH is now trying to contact an ex-pupil of his (Tony Davis) who is with an American firm, who have offices in this country, called Lawrence Graham. In order to get expeditious advice we may have to fly him over here or MH could go there.

The complication is that whatever DHB may be saying to us, they have given to the Revenue Shearer's report under S.20 of the Taxes Management Act. Contact has been made with Lionel Alexander at the Revenue and it transpires that they have had this report since February 1983. Lionel Alexander has said that we can have the report but we have doubts about whether he is entitled to give it to us. We are going to go back to DHB and ask them again to give us the report. He said we should say to DHB that they are talking nonsense about "work product" privilege and if they did it for the Revenue then they should do it for us. Shearer has actually exercised search powers in the BdR and has got all the documentation; he is also willing to help.

Shearer is very important to us because even if we cannot have Benbassat, Zilkha, Coyle, Stoyanovich and Zufferey if we have Shearer as a witness and can prove documents we can actually open up Geneva.

MH said we will pursue Shearer and this will be done in conjunction with the third Commission Rogatoire.

MH said that some witnesses have been seen ie, Mrs Watts in Jersey, who has provided some information; Sampson, who has proved to be dishonest, and Cassidy who has virtually had a nervous breakdown.

...../6

Reference.....

MH then showed the Solicitor General Supt Nove's chart.

SG asked confirmation that we have been denied the transcript of the Lloyd's disciplinary hearing. MH said "Yes".

SG
~~MH~~ said Michael Howard is very anxious that Lloyd's should produce everything possible.

SG said have we asked the Chairman.

JW said we have not, but that Bill Beckett had blocked our having the transcripts.

SG said more pressure should be brought to bear on Lloyd's.

MH said they are relying on defence privilege as it was a private hearing.

JW said he would prefer to go to Ian Hay Davidson, rather than the Chairman.

NL asked if anybody had explored the soundness of the argument of defence privilege.

MH said that however important Shearer may be, our principal targets with regard to Minet and Howden are Cameron-Webb and Dixon. Dixon, we believe, is in Costa Rica. Cameron-Webb may go there. If they are in Costa Rica we have no extradition treaty. If Cameron-Webb stays in the USA we have to get him out and exhaust his ability to go through appellate procedures. Grob is a Swiss National and is in Switzerland. It is believed the Swiss will not extradite a Swiss National so, although we hope we have found a way of obtaining the evidence, there may be other reasons which will prevent us from launching any prosecution or the complete prosecution.

MH described the problems relating to promises of confidentiality given to witnesses by the DTI and Lloyd's Inspectors. He said we are having another go at the DTI and Linda Skinner at Lloyd's to make sure we have got everything that was written or said to the witnesses.

JW said that since moving over to Head Office he was very impressed by the progress in the last few months. If we do open up Geneva then the speed of the investigation will become very much faster. He thought that it is possible, now that we know what DHB did for the Revenue, that they should do the same for us. His problem has always been that, with the Attorney General's Guidelines on Disclosure, once we get into a prosecution we will be duty bound to let the defence have the Shearer Report. If we had given the undertakings we would be in a terrible dilemma.

If the undertakings only extend to the investigation and we must not make discovery of the Report outside the investigators, Director and Counsel, then we can disclose. The Revenue, making use of the Taxes Act, makes all the difference to DHB and they are able to say they were forced to do it.

NL asked MH re "work product" privilege, how long he anticipated it would take to get the necessary advice from America.

MH said he did not think it would be too great a problem; he had other enquiries with an American academic and should get an answer this week.

NL asked if there was any indication of overall time scale.

...../7

Reference.....

JW replied that we are in so many hands which is very frustrating. Our big Com Rog has been in Geneva for nearly a year. If the new Magistrate is determined to do everything by the book, it may take much longer.

SG commented that the great thing was that Shearer wanted to help, which should speed things up.

MH said we would be trying to talk to DHB next week.

Supt Squires said that the overall view was that we have reached the stage where there were so many problems and felt they were marking time.

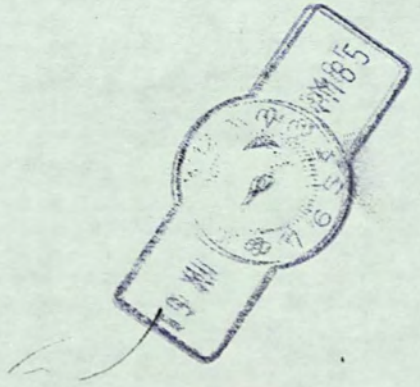
SG sympathised with police and commended them on their high quality work.

SG asked how the American line would develop.

MH said he was loath to send correspondence over to the States and JW agreed that this would be very costly time-wise.

JW asked NL to please have a word with his source in the City to see if he could get the transcripts.

Conference closed at 1815 hours



PRIME MINISTER

ROSKILL REPORT

Lord Roskill would be happy to come in during the Recess to discuss his report, and to come to see you either at Chequers or here. Agree to see him with whoever else is available, of Lord Chancellor, Attorney, Solicitor, Home Secretary, Chancellor, Mr. Brittan?

Yes

DN

(DAVID NORGROVE) + MU

19 December 1985

Tomorrow to Hampshire.
Could do either. Probably would
1 - 4 looking after Grandchildren.

Newbury 0635 40606.

Privy Council 13, 14, 15.

CC MASTER

DSG

(CAJAAJ)

10 DOWNING STREET

From the Private Secretary

18 December 1985

Dear John,

FRAUD

The Prime Minister today held a meeting to discuss the minute about fraud of 9 December sent jointly by your Secretary of State and the Attorney General, and also to consider the handling of the Roskill Report. Your Secretary of State, the Lord President, the Lord Chancellor, the Chancellor of the Exchequer, the Home Secretary, the Chancellor of the Duchy of Lancaster, the Chief Secretary, the Attorney General and the Solicitor General were present.

The Prime Minister expressed great concern both about the public perception of the extent of fraud and about the fraud itself. The problems at Lloyds had emerged in 1982, yet the Director of Public Prosecutions was still seeking evidence. General allegations of fraud were being made and the Government needed to get a grip on the position, both through improved co-ordination and through its handling of the Roskill Report.

Your Secretary of State suggested that the Government would probably want to implement a large part of Roskill's recommendations. A slot had been earmarked in the 1986/87 session for a Criminal Justice Bill to achieve that. When the Report was published the Government should indicate that its recommendations would be considered urgently, that it would be the Government's intention to legislate in the light of the Report, and that the report would be treated in effect as a Green Paper, with responses required within a short time-scale. Much of the detail would fall to the Department of

JB

Trade and Industry, though the main controversial recommendations were matters for the Home Office. The Financial Services Bill would strengthen the barriers to fraud, both through its requirement for licences and through the substantial increase in the number of investigators who would be employed by the new organisations. It was, however, also important to strengthen the Government's own resources.

In discussion the following points were made

(i) The Chief Secretary had now agreed an extra nine professional staff plus supporting staff for the Director of Public Prosecutions. There were limits on how many extra staff the DPP could absorb, but this increase should ease the present major bottleneck. Capacity in the DPP's office had in effect constrained the size of the fraud squad.

(ii) The key to resolving the delays in reaching conclusions on Lloyds was obtaining evidence about transactions in Switzerland. This was difficult under Swiss law, but it now seemed likely that the DPP would be able to obtain a report from Deloittes in the United States which might open the way.

(iii) The Attorney General reported that JMB's affairs were being investigated intensively. 40 of the best police officers available were working on the job, supported by substantial computer facilities. There was evidence of loans being made on the basis of forged documents. A report was being prepared. It was not possible to say when a prosecution would be brought, but the DPP was well aware of the need for speed and people had already been allocated to take on the task. The Chancellor noted that without his knowledge the Bank of England had employed Mr. Fraser as a consultant following his resignation from his post at JMB. He had ceased to be a consultant in March, before the Chancellor made his July Statement about JMB. The Chancellor had only learned at the end of July about the appointment.

(iv) It was noted that the bulk of Roskill's recommendations were sensible and would not be controversial. However, it would not make sense to try to legislate for them in the Financial Services Bill. Other recommendations, particularly those which would withdraw the right to trial by jury in complex cases, would be controversial. In the circumstances it would be difficult for the Government to reject the Report's major recommendations whether or not it might wish to do so.

After a brief discussion of handling of the Roskill Commission Report, the Prime Minister said it should be published before the Second Reading of the Financial Services Bill (though not in the recess), and accompanied by a Statement. This should set out a clear timetable for handling the Report and announce the Government's intention to legislate in the light of it. There would probably need to be a debate on it within a month or so of publication and the Government could then not adopt a listening position. Work therefore needed to start urgently to consider the Report's recommendations. If the Report could be published on 13 January, the Second Reading of the Financial Services Bill could follow on 15 January. Staff increases at the DTI should be announced as soon as possible, and in any case before the Roskill Report was published to avoid giving the impression that it was the Roskill Report itself which had caused the Government to increase those resources. The Chief Secretary should discuss with your Secretary of State and the Law Officers the proposals made in their minute of 9 December so far as they had not already been settled. (The Prime Minister expressed concern that the increases proposed might not be adequate, whilst recognising that quality was at least as important as quantity). The extra staff should as far as possible be temporary rather than permanent: the appointment of extra staff for the DPP on short commissions was a useful example. The Prime Minister said she would tomorrow at Question Time herself announce the extra staff for the DPP. (A PQ has now been arranged in order also to put the

announcement more formally on the record).

Bringing the meeting to a close, the Prime Minister invited the Home Secretary and the Lord Chancellor to consider with the Attorney General the main recommendations in the Roskill Report, and to report back for a meeting to be held on 9 January. The meeting would also need to review the presentation of the Government's position when the Report was published, and to decide how further work should be carried forward. The Prime Minister accepted that it might not be possible to circulate a paper until nearer the date of the meeting. It was agreed that it would be helpful for the Prime Minister and others concerned to discuss his recommendations with Lord Roskill during the Recess if that could be arranged.

Other points which arose are being followed up directly with those concerned.

I am copying this letter to Joan MacNaughton (Lord President's Office), Richard Stoate (Lord Chancellor's Office), Rachel Lomax (H.M. Treasury), Stephen Boys Smith (Home Office), Andrew Lansley (Chancellor of the Duchy of Lancaster's Office), Richard Broadbent (Chief Secretary's Office, HM Treasury) and Henry Steel (Law Officers Department).

Yours ever,

David.

David Norgrove

John Mogg, Esq.,
Department of Trade and Industry.

CONFIDENTIAL

file PM2AAJ

10 DOWNING STREET

18 December 1985

From the Private Secretary

Thank you for your letter of 17 December enclosing a draft letter for the Prime Minister's signature in reply to Mr. Sedgemore.

You will want to know that the Cabinet Office suggested an amendment to the second paragraph to read "as required by the usual conventions applying to Ministers in his position", rather than "as required by the rules ....". The reason is that if the letter referred to the rules Mr. Sedgemore would demand to see them, and the Government have just refused a request from the Treasury and Civil Service Committee for a copy of Questions of Procedure for Ministers in which these rules are stated.

I am copying this letter to Michael Stark (Cabinet Office).

(David Norgrove)

Michael Gilbertson, Esq.,
Department of Trade and Industry

CONFIDENTIAL

JB

From the Secretary of the Cabinet

Mr Norgrove

May I propose one further small amendment, as noted in red on the attached draft. If we use the word 'rules', Sedgmore will only demand to see them – and we have just refused the TCSSC's request for a copy of QPM in which these rules are stated.

M Stark 15/XII

file

JA

10 DOWNING STREET

17 December 1985

THE PRIME MINISTER

CF
In view of current
CITY matters, perhaps
you should have this?
JF 19/12

Dear Lord Roskill,

Thank you for sending me a copy of your report. Even a quick glance at the recommendations shows how thoroughly, and creatively, the Committee has gone about its task. Quintin Hailsham will no doubt be writing to you more formally to express the Government's gratitude. But I wanted to send you immediately a personal note of thanks, and my warmest congratulations.

Yours sincerely

Margaret Thatcher

The Right Honourable The Lord Roskill.

BM

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

JU975
Secretary of State for Trade and Industry

17 December 1985

CONFIDENTIAL

David Norgrove Esq
Private Secretary to the
Prime Minister
10 Downing Street
London SW1

Dear David,

LETTER FROM BRIAN SEDGEMORE MP ABOUT LLOYD'S

We spoke earlier today about the Prime Minister's reply to Mr Sedgemore's letter.

Further to my letter of yesterday to Nigel Wicks, Mr Howard has on further reflection suggested that the draft reply might be revised.

As I explained in my letter to Nigel Wicks, in accordance with paragraphs 74 - 77 of Questions of Procedure for Ministers, Mr Howard ceased underwriting on taking up his appointment. He accordingly resigned from all the syndicates in which he had previously participated. He is, however, still a member of Lloyd's. Although it is possible to give notice of an intention to resign from membership, this does not become effective for a futher 30 months, for the reasons I explained. The Questions of Procedure for Ministers do not require Ministers to give notice of an intention to resign, and Mr Howard has not given any such notice.

... I attach a revised version of the draft reply to Mr Sedgemore. I am copying this to Michael Stark (Cabinet Office).

Yours ever,

Michael

MICHAEL GILBERTSON
Private Secretary

999-1

DRAFT REPLY FOR THE PRIME MINISTER TO SEND TO:

Brian Sedgemore Esq MP
House of Commons
LONDON
SW1

You wrote to me on 11 December about Lloyds.

The Lloyds Act of 1982 contains extensive statutory powers for regulating all aspects of Lloyd's activities. As you know, the events which have attracted notoriety in recent months originated before the Act was passed. It is, I believe, too early to say that the regulatory system set up under the provisions of the Act is inadequate. But, as Leon Brittan made clear at the weekend, if further action by the Government is necessary to ensure that there is effective regulation of Lloyds activities we shall have no hesitation in initiating such action including, if necessary, further legislation.

As to Michael Howard's position, he has made it clear that he ceased all underwriting at Lloyd's on 2 September, the day on which he was appointed to the Government, as required by the ~~rules for~~ usual conventions applying to Ministers in his position. Accordingly, at that time, he ceased to be a member of any of the syndicates in which he previously participated.

I cannot therefore accept your suggestion that there is a conflict of interest arising out of his responsibilities for the Financial Services Bill.

JF5ARD

PRIME MINISTER 17 December 1985

THE ROSKILL REPORT

The Report agrees with the public belief that the legal system in England and Wales is incapable of bringing the perpetrators of serious fraud expeditiously and effectively to book, and that the legal system, in relation to such crimes, is archaic, cumbersome and unreliable. At every stage, investigation, preparation, committal, pre-trial review and trial, the procedure is open to delay and abuse. If the Government cherishes the vision of an "equity-owning democracy", then it also faces an inescapable duty to ensure that financial markets are honestly managed, and that the perpetrators of fraud are convicted and punished.

A fundamental change is recommended. It suggests that the trial Judge should be empowered at an early stage to discharge the defendant at a preparatory hearing on the grounds that a prima facie case had not been made out. An obligation should be placed upon the defence to reveal the nature of the defence case once the prosecution case is disclosed, and pretrial reviews must be made effective.

Substantial revision of the rules of evidence is said to be necessary to deal with the international criminal and the deliberate obstructionist.

A. Good Points

Other important and non-controversial recommendations include:

a. The need for a new organisation to deal with all functions of detection, investigation and prosecution of serous fraud to be examined.

b. A case controller to be responsible for the control of a serious case from discovery until the verdict.

c. Better preparation of cases to be required with early appointment of prosecuting counsel to advise on the investigation and, later, conduct the case.

d. Many recommendations for speeding up the hearing of cases, designed to clarify the points at issue and to reduce time-wasting and prolixity including the use of visual aids.

e. Better training for lawyers, Judges and court administrators involved in fraud cases, with barristers automatically learning accountancy so that they can understand a balance sheet.

B. Debatable Points

More controversial suggestions include the following:

a. The establishment of a "Fraud Commission" quango to study and advise on the efficiency with which fraud cases are conducted. We are not sure whether it is necessary to establish a new body rather than allocate this

responsibility to an existing department, which would also have a co-ordinating role.

b. Abolition of the right of peremptory jury challenge in fraud cases. This may be a good point and it has been raised in the House of Commons as a general issue. Is it advisable to deal with it solely for fraud cases?

c. The establishment of a "Fraud Trials Tribunal" for complex fraud cases, following application to the High Court. Abolition of jury trials for such cases is bound to be controversial because it abolishes, even in a small number of cases, the right to have a jury trial. There is a dissenting opinion on the Committee which may be influential but, on balance, we would support the proposal.

C. The Acknowledged Gap

The Committee suggests that an appropriate body, such as the Law Commission or the Criminal Law Revision Committee should examine the substantive law of fraud and consider the need for legislation. We agree with this view. Many fraud cases founder because the prosecution are unable to prove the mental element in dishonesty. Businessmen are believed when they say "I was appallingly negligent but I never intended to do anything wrong".

Culpable or criminal negligence using an analagous mental state to that required in manslaughter should be urgently considered by the Law Commission. This would allow a lesser and alternative verdict.

Conclusion

The Committee likens its proposals to the abolition of the mediaeval practice of trial by combat. Sadly, the Committee, however, makes no firm recommendations about time limits in which prosecutions must be brought, though it urges others to decide this (para 6-100). We believe tight time limits on Scottish Criminal Procedure lines is essential. Convenience of counsel and Judges while important must not be permitted to override time limits - as the Report implies (para 6-52).

Time limits

As a minor criticism, but one to which we attach no blame, we add that the Report could have taken the opportunity to recommend confiscatory penalties for convicted fraudsters. It does make the very valuable point that any adequate system for discovering fraud acts as a deterrent and will help prevent fraud occurring in the first place.

We therefore recommend that the Report is welcomed and that an urgent study be undertaken to see that Government policy on it is decided quickly for action in 1986/7.

HARTLEY BOOTH

DAVID HOBSON

E.R.

PRIME MINISTER

FRAUD

I would suggest three extra points on this:

(i) there should be another meeting of Ministers before Roskill is published;

(ii) the announcement of extra resources for fraud investigation should be made at the same time as Roskill is published;

(iii) also when Roskill is published, the Government should announce that it has accepted at least the first of its recommendations, namely:

"The need for a new unified organisation responsible for all the functions of detection, investigation and prosecution of serious fraud cases should be examined forthwith."

Furthermore the announcement should say that the examination has already started. The proposed study chaired by Sir Peter Middleton could be the vehicle for it.

DAN

(DAVID NORGROVE)

17 December 1985

DA.02

P 01846

PRIME MINISTER

Fraud

(Meeting with Ministers at 3.45 pm on Wednesday, 18 December)

You are holding a meeting tomorrow afternoon with Ministers concerned to discuss the issue of fraud, following the discussion in Cabinet last week at which you stressed the need for those investigating complex fraud to have sufficient resources to undertake their investigations swiftly; and for every effort to be taken to counteract any suggestions that the Government were protecting those who were suspected of fraud or impropriety.

2. With their joint minute of 9 December the Secretary of State for Trade and Industry and the Solicitor General have circulated a paper on fraud. This reviews the present arrangements for combatting fraud, describes the further improvements in hand (including those in the Financial Services Bill), and makes a case for increased resources both in the DTI and the DPP's office. Much of the paper is more about insolvency and regulation of financial services generally, rather than the specific issue of fraud, but (as the Chancellor of the Exchequer intends to make clear in his statement on the Banking Supervision White Paper) these regulatory arrangements condition the climate in which financial fraud becomes possible. The paper also notes that the Roskill Committee's report (of which you have just received a copy) is likely to recommend wide-ranging measures to reform the criminal proceedings relating to fraud trials, and that this is likely to have a significant effect on the climate in which the current problems are discussed.

Objectives of Meeting

3. It would seem premature to try to take specific decisions on the substance (eg on manpower) at tomorrow's meeting, but in view of the

serious continuing public concern at developments in the City, which must offer a potential threat to our invisitble earnings, I suggest that you should use tomorrow's meeting at least to achieve the following objectives:-

(i) to impress on colleagues the very great importance of the right presentation. The Government must be seen to be responding vigorously and adequately to recent developments;

(ii) to satisfy yourself that the various measures in hand or in preparation are an adequate response to the current situation;

(iii) to make sure that the immediate issues on manpower and other resources will be taken forward and resolved by the Ministers concerned with the minimum delay;

(iv) to make arrangements for an early assessment for Ministers of the Roskill report, so that decisions can be taken on it as quickly as possible in the New Year.

Presentation

4. There is increasing public concern that the "authorities" are failing to react adequately to unsavoury City developments (witness the article by Miles Kington in today's Times - in jest, but a reflexion of current concerns). These worries must also be aggravated by the prospect of the "big bang" in the City next year when the opportunities for misconduct could be greater. Much of this criticism is no doubt uninformed and does not acknowledge the wide range of measures already introduced or in preparation by the Government. These include:-

- the Banking Supervision White Paper (to be published today, with a statement, by the Chancellor);

- the Building Societies Bill (second reading on 19 December);

And the Insolvency Act.

- the Financial Services Bill (to be published on 19 December, with second reading early in the New Year);

- the Roskill Report, which it is the intention to publish before the second reading of the Financial Services Bill.

However, the fact is that the criticism exists and is likely to continue, and you will wish to consider how the Government can more effectively publicise the measures it is taking and convince the City and the public of its determination to ensure that action against fraud will be vigorous and adequate. You may wish to invite the Lord President to consider how best the presentation of the Government's stance might be coordinated. It will be particularly important, for example, to strike the right note in the Government's response when Roskill is published.

Adequacy of Current Government Response

5. The paper by the Trade and Industry Secretary and Solicitor General suggests that the range of measures described - subject to action on Roskill - is an adequate (and suitably flexible) response to the needs of the current situation. You will wish to consider, however, whether all the key problems are in fact adequately being covered. For example, the financial press certainly does not accept that it is right to allow self regulation to continue at Lloyds and to exclude it from the scope of the Financial Services Bill. I believe the Trade and Industry Secretary is himself giving further thought to this, and you may wish to ask him to comment. You will also want to ask the Chancellor to confirm that he still believes the Banking Supervision Bill will give the Bank of England and the Government sufficient powers and authority in the banking field, particularly given the increasing opportunities (not least through the application of new technology) for sophisticated and rapid manipulation of financial transactions. Finally, you may also wish to allude to the question raised in your comments on the Banking Supervision White Paper (Mr Norgrove's letter of 6 December) "whether the Treasury and other departments are confident that the arrangements now being put in place for supervision of banks, other

Flag A.

financial institutions, brokers, conglomerates, etc are comprehensive - that there are no gaps through which particular kinds of activity or business can fall".

Extra Manpower

6. The Trade and Industry Secretary and the Solicitor General argue for extra staff in the DTI and the DPP's office. On the face of it, the case is a good one. But this needs qualifying. First, it is not clear that the problem is one of numbers only. As important, or more so, it is getting the right quality of staff. This could depend on ability to pay the right rates for the right people. Second, the immediate concentration should be on resources directly relevant to fraud. Much of the joint paper is about regulation and insolvency, which, through relevant, does not bear directly on the immediate problems and may be of lower priority. Third, it may not be sensible to take final decisions until the Roskill recommendations have been considered. These will broadly target on how to get a better "hit rate" from prosecution of fraud cases in the courts. I suggest, therefore, that you ask the Trade and Industry Secretary and the Solicitor General to take matters as far as they can bilaterally with the Chief Secretary, who should recognise the need for the Government to respond urgently to the current situation; but note also that it may be necessary to revert to this question when the Roskill report is being considered.

Arrangements for considering Roskill

7. Since other Ministers will not have seen the report, you will not be able to discuss it substantively tomorrow. You will, however, want to ask the Lord Chancellor and the Home Secretary to report back to this Group with their preliminary assessment of the recommendations by, say, the middle of January at the latest. It will then be necessary to process the recommendations in detail. On the analogy of the work done prior to the Chancellor of the Exchequer's July 1984 announcement (which foreshadowed the establishment of the Fraud Investigation Group (FIG)) one possibility would be for this to be done by an official Group chaired by the Permanent Secretary to the Treasury. This would be

appropriate given the resource questions involved and the need to co-ordinate the policies of a number of departments. If the Chancellor of the Exchequer and other colleagues were agreeable to this, the Treasury might be invited to start considering now how best to set this exercise up so that the detailed work can start without delay after the next meeting of Minsiters in mid January.

Handling

8. You will wish to invite the Trade and Industry Secretary and the Solicitor General to introduce their paper. The Chancellor of the Exchequer may then wish to comment, particularly on the question of banking supervision. You may then wish to go through the objectives listed and discussed above, inviting the relevant Ministers to comment as appropriate (eg the Lord President and the Chancellor of the Duchy of Lancaster on the presentational and political issues, and the Lord Chancellor and the Home Secretary on the Roskill report).

CONCLUSIONS

9. You may wish to reach conclusions on:-

(i) the most effective way to present and coordinate the Government's image, not least in relation to the response to Roskill;

(ii) whether in subtance the arrangements being put in place by the Government are an adequate response to the current situation;

(iii) how best to take forward the manpower issues;

(iv) how best to arrange for urgent consideration of the Roskill report in the New Year.

17 December 1985
Cabinet Office

J B UNWIN

From: The Right Honourable The Lord Roskill

16th December 1985

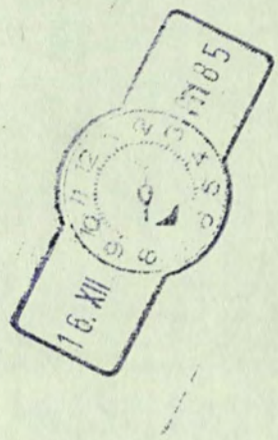
Dear Prime Minister.

I write to inform you that the Fraud Trials Committee of which I have been Chairman has completed its work. I have today handed its Report to the Lord Chancellor and, of course, sent a copy to the Home Secretary. I understand that you wish to see the Report immediately and I accordingly have pleasure in sending you a copy.

Yours sincerely,

Roskill

The Right Honourable
Mrs. Margaret Thatcher, M.P.,
10 Downing Street,
London, S.W.1.


16. XII
1985

CONFIDENTIAL

CC BG

NBPN

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

Leon Brittan Esq QC MP
Secretary of State for Trade & Industry
1 Victoria Street
LONDON
SW1H QET

11 December 1985

FINANCIAL SERVICES BILL : CIVIL LIABILITY OF DESIGNATED AGENCIES AND COMPETENT AUTHORITIES

with DN?

Thank you for copying to me your letters of 7 November and 5 and 10 December. I have also seen Quintin Hailsham's replies of 28 November and 6 December, and the Governor's letter of 15 November. The arguments for and against granting immunity from damages to the designated agencies have been well aired in your correspondence, and I find the case finely balanced.

If more effective supervision were the sole concern, I agree that the supervisors would feel they had a freer hand if they were not constrained by fear of massive suits for damages. The nature of the City is changing, and the American influence is likely to become stronger. Increasing litigiousness is a likely and unwelcome price we shall have to pay for London's place as a world financial centre.

This argument applies equally, however, to the Bank of England and the Building Societies Commission, who will respectively be supervising banks and building societies. Neither institution would face bankruptcy if successfully sued for heavy damages. But arguably a supervisory body which had ample funds would be a more promising target for litigation, particularly where the plaintiff had little or nothing to lose. It would be odd to base such an important legal distinction between supervisors solely on their relative access to financial resources.

So if you decide to include immunity from damages for the designated agencies in the Financial Services Bill, I should be inclined to do the same in respect of the Building Societies Commission, in the Building Societies Bill, and of the Bank of England in next year's Banking legislation.

On the other hand, the lack of direct accountability of the SIB - and the Bank of England - is certainly an argument for exposing them to the normal process of law. There are also a number of shorter term political arguments, which will undoubtedly be deployed.

Financial Services Bill

TPm

In the first place, Lloyds, who already have such immunity, are widely felt to have been remiss in their supervision of the market and individual syndicates in recent years. The political pressure is more likely to be for removal of this immunity from Lloyds, than for its extension to others.

The aftermath of the JMB case also makes a particularly awkward background to the proposal. It will appear that, at the first opportunity after a failure of supervision, the Government is taking action to protect supervisors from the possible consequences of subsequent shortcomings. I do not think this is a narrow banking point.

On balance, it may be that the most sensible thing is to include clauses in the Financial Services Bill granting the immunity you propose, but be prepared to consider dropping them if they are strongly opposed. Meanwhile, I shall arrange for similar clauses to be prepared for the Building Societies Bill on a contingency basis, for introduction at a later stage if your own proposal goes ahead.

Like Quintin Hailsham, I am copying my letter to the Prime Minister, members of the Cabinet, and to Sir Robert Armstrong. A copy also goes to the Governor.

NIGEL LAWSON

CONFIDENTIAL

HOUSE OF LORDS,
LONDON SW1A 0PW

11 December 1985

R13

NBPT
cc BG

My dear Leon.

FINANCIAL SERVICES BILL

Thank you for your further letter of 10th December.

I have found your exposition of the key financial protection for investors most helpful. The regime which you propose meets my concern about the protection of investors by placing the liability for damages at a proper level. It ensures that any normal liability will be met through insurance or through a compensation scheme without harming the primary structure of self-regulation through the designated agencies.

I am copying this letter of the Prime Minister, Cabinet colleagues and other members of L Committee and the Solicitor General and to Sir George Engle and Sir Robert Armstrong.

Yrs:

L.

From: THE RT. HON. LORD HAILSHAM
OF ST. ... PVE. CH. FRS. D.CL.

The Right Honourable
Leon Brittan, Q.C., M.P.,

MR NORGROVE 10 December 1985

FINANCIAL SERVICES BILL
INDEMNITY FOR DESIGNATED AGENCIES

There is a disagreement between Leon Brittan and the Lord Chancellor about providing indemnities in the Financial Services Bill for designated agencies from liability for damages. The latter objects to the inclusion of such a clause.

It is unlikely that adequate insurance can be obtained for such bodies whose assets are negligible, and, without either this, an indemnity for the organisation as a whole, or individual personal indemnities, it would seem unlikely that suitable persons would be found to act as members.

The Bank of England's regulatory functions are not covered by indemnity at present, nor is the matter dealt with in the coming White Paper. It is understood, however, that they seek to have such an indemnity included in the Banking Bill to be introduced in the next Session.

We support the inclusion in the Bill of an indemnity clause for designated agencies. This appears preferable to individual indemnities for members from the Government, or to trying to enforce indemnities from the whole Financial Services industry, since the agencies will be carrying out statutory functions for the Government.

We also support Leon Brittan's rejection of the Bank of England's suggestion that self-regulatory agencies should also be indemnified. Such bodies should be indemnified by the members who are the subject of self-regulation (eg insurance companies, unit trusts, etc).

David Hobson

DAVID HOBSON

CONFIDENTIAL

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

10 December 1985

CONFIDENTIAL

The Rt Hon Lord Hailsham
of St Marylebone CH, FRS, DCL
House of Lords
LONDON
SW1A OPW

Dear Quintin,

Thank you for your prompt reply to my letter of 5 December.

The key financial protection for investors is that a designated agency will be required, as a condition for the transfer of powers, to have rules which provide for compensation for investors who suffer loss as a result of a breach of rules by, or the insolvency of, an authorised business. These rules may require insurance cover to be obtained by the authorised business and/or contributions to be made to a compensation scheme. Clients' funds will also be required to be segregated. Unless I am satisfied on both these points, I cannot transfer any functions to a designated agency. Parliament will also have to be satisfied as the Bill makes delegation orders subject to affirmative resolution.

In the event of a loss arising from a breach of rules or insolvency, the investor's first claim will be against the investment business concerned. If it cannot pay, then the compensation arrangements will ensure that most private investors' losses are met. If the arrangements described in my previous letter are implemented, such losses will be met, in full, up to £30,000 for each investor.

It is only losses above this limit, or losses incurred by persons other than private investors, which might give rise to a claim against the designated agency. Such a claim would only arise if the agency had either negligently failed to take some reasonable action which would have prevented or reduced the losses or had taken some unreasonable action which precipitated the losses.

The prospects for such a claim would be at best uncertain and I would not expect investors to regard the absence of a right to bring such a claim as significantly reducing the protection available to them. They will, rightly, look to the Government to ensure that the designated agencies carry out their functions efficiently. As I explained, in my first letter, the regulatory authorities, both statutory and self-regulating, in the United States are excluded from liability for damages and there does not seem to have been any misunderstanding as a result.

As to insurance, I am not quite sure what your reference to a master policy or mutual insurance means. On the assumption that there will only be one designated agency, namely the Securities and Investments Board, SIB has explored the possibility of obtaining insurance. But the cover that could be obtained is quite inadequate to meet the potential risks and the cost (which would be borne by investors) for even this limited cover would be very high. This confirms the experience of other, established, regulatory authorities and of my own department's discussions with the insurance industry. I see no prospect therefore of SIB being able to obtain adequate insurance cover for this purpose in the foreseable future.

As you rightly say in your letter in the last resort I must strike the balance. I remain convinced that the Bill should provide for an exemption from liability for SIB and I propose to include such an exemption in the Bill on introduction. If this has your support, so much the better. After introduction I shall naturally want to listen to the arguments which are raised in debate.

I am copying this letter to the recipients of yours.

LEON BRITTAN

Econ. Pol. Covers.

P62

The National Archives

LETTERCODE/SERIES PREM 19 PIECE/ITEM 1717 (one piece/item number)	Date and sign
Extract/Item details: Letter from Gilbertson dated 10 December 1985 with attachments	
CLOSED FOR .....YEARS UNDER FOI EXEMPTION	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	
TEMPORARILY RETAINED	31/10/2014 S. Gray
MISSING ON TRANSFER	
MISSING	
NUMBER NOT USED	

B/F Jan

For Further Ma

Prime Minister 2

See particularly paras 14-18 and para 21 (very encouraging). A meeting is being arranged.

DRN 9/12

CC Rachel/Lenox
cc S/G
cc BX.

PRIME MINISTER

I thought you might find it helpful to have a synopsis. DRN

FRAUD

Your Private Secretary's letter of 20 November asked for a paper on Fraud. This paper is attached. It has been prepared by the DTI in consultation with other Departments concerned. It takes a broad, rather than a legalistic view of what constitutes fraud. So it covers the whole range of our responsibilities for enforcing the law on probity and proper conduct of business activity, focusing in particular on the financial services sector. It does not cover the Police.

2. We have been concerned that our discharge of responsibilities should match public expectations of the required response to the problem. The legislative action in the Insolvency Act and the forthcoming Financial Service Bill are important elements. But we both need to make sure that we have adequate manpower to implement what is on the statute book.

3. There are four main areas where we propose extra manpower:-

a) The DTI's Inspector of Companies needs more staff to be able to handle the increased number of cases requiring action by his inspectors, including cases coming to him from the Fraud Investigation Group. Last year the Inspector had to consider 474 cases and accepted 120 for investigation; over the next two years the figures are likely to rise to 690 and 215 respectively. Seventeen

DW1AFN

17

Doubt whether this is enough

extra staff are needed over this period (an increase of 50 per cent). for an 80% increase in investigations.

b) The DTI's Inspector General of the Insolvency Service needs more staff if his expert investigators are to make more impact on uncovering (and securing prosecution of) the wrong-doings which underlie the 12,500 compulsory liquidations and bankruptcies currently handled annually by the Service. In addition the procedures for disqualification of directors which Parliament obliged us to introduce into the Insolvency Act are more manpower intensive than the proposals we put. With current levels of cases the Service expects annually to have to handle returns covering 55,000 individuals involved in compulsory and voluntary liquidations and out of these to identify the perhaps 6,000 to 9,000 potentially disqualifiable directors and then to decide which of them to take to court for a disqualification order. An extra 152 posts in the Service are needed over the next 2 years (a 10 per cent increase). Efficiency measures should help to offset these increases by 125 posts over the same period and these savings have already been taken into account in the DTI Manpower target for 1 April 1988.

c) In order to take the cases identified by the DTI's Inspector of Companies and the DTI's Inspector General of Insolvency Services through to prosecution and in order to handle cases coming direct from the new Securities and Investments Board the DTI Solicitors Department needs to be strengthened by 26 over the next two years (a 40 per cent increase in the DTI's prosecution staff).

d) The Director of Public Prosecutions has a major role to play once criminal cases have been detected. The DTI refers the more serious of its cases to the DPP. But he also receives cases from many other sources of which the most important is the Police. These tend to be the cases which attract most public attention and their handling has an important bearing on public confidence in enforcement procedures. Paragraphs 14-18 of the paper outline the extent of the DPP's manpower needs, namely 9 extra lawyers plus support staff (an increase of 75 per cent on current lawyer strength in the DPP's Fraud Division). Extra accountants and company investigators will be needed as part of the support staff.

4. The paper refers also the work of the DTI's Companies Registration Office - public disclosure is an important protection against fraud. The growing volume of work there is more than matching efficiency gains. The additional 100 staff agreed by the Treasury in 1984, which were due to be reviewed in the autumn of 1986 (and which are not provided for in our manpower target for 1 April 1987) will therefore need to be retained.

5. Many of the extra staff will be lawyers and company investigators. People with the necessary qualifications are much in demand. We have faced difficulties in attracting and retaining suitable staff. We must not hesitate to offer terms which allow us to meet our needs. We are, at the same time, trying to recruit a total of 300 extra lawyers for the Crown Prosecution Service.

DW1AFN

6. We shall, of course, be discussing with the Chief Secretary the implications of these proposals for manpower and gross running costs limits. The DTI's manpower ceilings will need increasing by 255 at 1 April 1987 and 295 at 1 April 1988. The DTI's running cost limit needs to be increased by £2½m for 1986/87. No addition to the DTI's PES provision for 1986/87 will be needed since the additional gross cost should be met by the forecast increases in receipts at the CRO and the Insolvency Service. The DPP is still discussing with the Treasury the manpower and running cost provisions for his Department in the form in which it will exist from 1 April 1986 with the creation of the Crown Prosecution Service; no net increase in lawyer manpower is envisaged.

7. We are sending a copy of this minute and paper to the Chancellor of the Exchequer, the Lord Chancellor, the Attorney General, the Chancellor of the Duchy of Lancaster, the Home Secretary and Sir Robert Armstrong.

L. B.

L B

Department of Trade & Industry

P M

Law Officers Department

9 December 1985

DW1AFN

1 This paper examines the present arrangements for combating fraud, including the achievements of the Fraud Investigation Group (FIG), describes the further improvements in hand, including those to be promoted by the Financial Services Bill, and notes that the report of the Roskill Commission on the conduct of fraud trials is expected shortly. The paper is mainly concerned with fraud where the victims are in the private sector (or abroad), not fraud against Government Departments, eg tax or state benefit fraud . (The Revenue Departments operate under their own legislation which, generally speaking, gives them greater investigating powers than the police.)

BACKGROUND

2 There is no statutory offence of fraud : most prosecutions are for offences against the Theft Act which covers obtaining money by deception. Fraud is not easily defined : whereas the aggrieved creditor is likely to cry fraud even when there was only recklessness, it can be hard to persuade juries of fraudulent intent.

3 There is widespread concern that 'financial fraud' is a serious problem damaging the City's reputation, largely generated by a few spectacular cases, especially when a prosecution appears delayed. There is also a widespread suspicion that a lot of fraud escapes detection or prosecution altogether, and that this may encourage its growth. Increasing public concern over fraud is likely to be a continuing source of embarrassment for the Government.

4 Although the present arrangements for combating fraud are complex they are an integral part of the regulatory pattern. They involve Government Departments (Trade and Industry, Treasury, the Home Office, the Lord Chancellor's Department, the Law Officers and the Director of Public Prosecutions), the Bank of England, Registry of Friendly Societies, the Police, professional bodies (such as the Law Society, the Institute of Chartered Accountants in England and Wales) and existing self-regulatory bodies (such as the Stock Exchange and Lloyd's). The growth of financial conglomerates poses special problems for regulators, and some of these relate to the prevention of fraud. A group established under DTI Chairmanship including the Treasury, Bank of England and the Securities and Investments Board, to ensure cooperation and coordination between regulators will consider these problems and a report will be made to Ministers by the end of the year.

DTI's RESPONSIBILITIES IN RELATION TO FRAUD

5 The DTI's powers and responsibilities can be divided broadly into 7 categories :

(a) wide general responsibilities to investigate fraud and misconduct, carried out by companies registered in Great Britain (and certain other Northern Ireland and foreign bodies deemed to be companies for the purposes of the Companies Act) whatever the nature of their business - with specific responsibilities through the duty placed upon official receivers to

investigate causes of the failure of companies against which winding up orders are made;

(b) a power to petition the court to wind up a company on public interest grounds;

(c) powers to apply to the court for the disqualification of company directors;

(d) the operation of the Companies Registration Offices where companies are required to file accounts and other documents relating to their business primarily in order to enable creditors and prospective creditors to assess their credit-worthiness;

(e) general responsibilities towards consumers;

(f) far more specific responsibilities to protect those dealing with certain traders subject to special regulation, eg insurers, dealers in securities;

(g) powers dealing with the qualification of auditors (and after the Insolvency Act has come into operation) insolvency practitioners - although action against their misconduct remains primarily a matter for the professional bodies concerned.

6 The responsibilities of the other departments and bodies concerned, although as important, tend to be more specific than those of the DTI eg the Registry of Friendly Societies is concerned with the solvency of building societies and those insurers who carry on business as friendly societies, the Bank of England with deposit institutions other than building societies. The Stock Exchange and Lloyd's (which has its own Act) deal with the regulation of their markets. Combined with the widespread concern over the Johnson Matthey Bankers affair and the problems at Lloyd's in the early 1980s there is a growing wave of criticism that the as yet unpublished Financial Services Bill will be inadequate, either because it will propose an inherently inferior substitute for statutory regulation on the model of the US Securities and Exchange Commission, or because whatever the merits of self-regulation they have to be backed up by a more vigorous and extensive scale of Government investigation and prosecution than has ever taken place, or it is alleged, is ever likely to be mounted.

OBJECTIVES

7 In exercising its existing powers and in designing improvements the DTI has the following objectives :

(a) to deter offenders generally: the DTI needs to be seen as an effective prosecutions department;

(b) wherever practicable to protect the public from the consequences of offences already committed:

(c) where the risk of repetition is serious, to "disable" the offender (eg by imprisonment or disqualification).

8 The main improvements - some undertaken by bodies other than the DTI - are described below.

ACTION TO INCREASE SCALE OF DTI INVESTIGATION

9 Ministers are considering whether to increase the number of DTI specialists and other staff handling company fraud and insolvency work. At present around 500 complaints per year lead to 100 enquiries under Section 447 of the Companies Act. The number of complaints is expected to rise. The intention is that the Department should be able to investigate and take effective action on an anticipated increase in company fraud cases and that Official Receivers should be able to devote more time to investigation of company and bankruptcy cases believed to conceal fraud and to deal with disqualification work expected to result from the new powers under the Insolvency Act 1985. (See para 10 below) There are, however manpower and expenditure implications as well as the practical obstacles to recruiting specialist lawyers and investigators of the required calibre.

NEW INSOLVENCY ACT

10 The Insolvency Act will introduce the following relevant changes :

(a) it will enable the Secretary of State or Official Receiver to apply to the court for the disqualification of a company director for unfitness after he has been involved in only one receivership or insolvent liquidation; [disqualification reports would probably be justified in some 3000 cases a year but because of resource implications and possible political considerations it is proposed to set as a realistic target 1000 applications a year, but this will require some extra staff]

(b) where a company in insolvent liquidation has been judged by the court to have been trading wrongfully the liquidator may be able to recover part of the deficiency from the directors concerned; and

(c) various considerations of procedure made possible by the Act will enable better use to be made of specialist manpower directed to the investigation of fraudulent trading and other criminal activities and investigation of directors conduct for disqualification purposes. (see (a) above).

BENEFITS TO COME FROM THE FINANCIAL SERVICES BILL

11 The Financial Services Bill will include several measures to help deter, detect and punish fraud:

(a) it will extend the requirement to be authorised to all kinds of investment business; contravention will be a criminal offence, one relatively easy to prove;

(b) it will supplement the Government's resources by private sector resources of the Designated Agency (the "Securities and Investments Board") and the Self-Regulating Organisations, paid for by authorised businesses;

(c) it will enable the Designated Agency to recruit the necessary number and quality of staff, free from Government constraints over staff numbers, salary levels and costs;

(d) it will draw upon the expertise of practitioners to spot fraud and malpractice more easily and to tackle it more quickly;

(e) it will retain and extend existing criminal offences in this area while placing greater reliance on civil sanctions where the standard of proof is less demanding and the scope for rapid action greater;

(f) in particular it will allow the Secretary of State or the Designated Agency to go to court to get injunctions and "restitution orders" (which will recover illegitimate profits for investors who have suffered loss);

(g) there will also be a range of intermediate sanctions falling short of withdrawal of authorisation, and civil remedies for investors;

(h) compensation schemes funded by authorised businesses will protect investors and provide a spur to vigorous enforcement. (Reputable businesses will be keen to encourage enforcement in order to reduce claims on the compensation schemes);

(i) wider investigation powers will be extended to cover all investment businesses, to question and to obtain documents; the Designated Agency will be able to use its powers against authorised businesses and connected persons, while the Secretary of State will be able to use the powers more widely; there will also be wider powers to investigate insider dealing;

(j) prosecutions will be reserved to the Secretary of State and DPP, but the Designated Agency will be able to use its resources to assist with investigations; and

(k) statutory obstacles to the exchange of information between various regulators of financial services (including the Bank of England) will be removed.

EFFORTS TO IMPROVE COMPLIANCE AT CRO

12 One important protection against fraud is public disclosure. Last year, the Public Accounts Committee severely criticised the DTI for having allowed large numbers of companies to be in default of their obligations under the Companies Act to file annual returns and annual accounts. The Committee strongly disapproved of reductions in staff numbers at CRO at a time when new companies were being incorporated at an unprecedented rate. Mr Tebbit secured extra staff rescources for this work and gave it a new priority. Since then there has been a steady improvement in compliance levels, though there is still a long way to go before it reaches an acceptable level. Despite big improvements in productivity, if the register continues to grow at the current rate, more staff will be needed to maintain a high level of compliance and ready access to the information by the public.

INCREASED VIGILANCE BY AUDITORS

13 The DTI is seeking to persuade the auditing profession that their members should be more ready to report fraud. Where they discover or suspect fraud by employees they should continue to report it to the management, who are responsible for dealing with it. Where it looks as if company directors are themselves involved the auditors should be prepared to report it to the DTI.

FRAUD INVESTIGATION GROUP

14 The Fraud Investigation Group (FIG) was established on a formal basis in January this year. The term FIG is the collective name for two divisions in the office on the DPP, and it also describes the mechanism employed for dealing with certain major frauds. Under the Chairmanship of the Controller of FIG, it aims at close and early cooperation between police, investigators from the DTI, lawyers in the DPP's office, accountants and other appropriate experts. The objective is to concentrate on major offences and major offenders, to terminate unfruitful enquiries as soon as possible and to investigate those cases likely to proceed to trial as effectively and quickly as possible.

15 One or more of the following elements are usually found in FIG cases :

(a) frauds on Government departments or local authorities;

(b) large scale shipping or currency offences;

(c) frauds on foreign governments;

(d) an international dimension;

(e) frauds on nationalised industries and public limited companies;

(f) frauds by persons connected with Lloyd's, the Stock Exchange and other commercial exchanges; and

(g) the involvement of well-known public figures.

16 At present 34 cases are being dealt with on a FIG basis. Of them, 11 have been committed for trial, of which one concluded successfully at Oxford Crown Court and another is now proceeding at the Central Criminal Court.

17 A third division in the DPP's office deals with non-FIG frauds, but such is the volume of serious frauds reported that a number of these non-FIG cases have to be dealt with by the two FIG divisions. The increase in this volume can be gauged by the fact that in November 1984, the Director had 26 serious fraud cases awaiting trial while he now has 77.

18 The Director of Public Prosecutions has expressed grave concern as to the adequacy of his present manpower resources to meet these increased demands on his Fraud Division and the Solicitor General shares that concern. At present, the average case load for a professional officer on one of those Divisions is 34 active cases. Accordingly, the Director has sought Treasury authority for an increase of 9 in the number of professional officers (together with a corresponding increase in support staff) for those Divisions. This request has been made in the context of the Director's proposal to the Treasury as to future manpower requirements following re-structuring of his Department to form the Headquarters of the Crown Prosecution Service. If authorised the result would not be an increase in the overall strength of his legal staff but a smaller reduction that would otherwise have resulted from the re-distribution of prosecution business and the delegation to local offices of work presently undertaken by the DPP.

LLOYD'S

19 Considerable progress has been made by the Council of Lloyds's over the better regulation of the Lloyd's market and it would be mistaken to interpret Mr Davison's recent much publicised resignation as chief executive as implying that these reforms will be abandoned. Lloyd's main insurance business is not within the scope of the Financial Services Bill because - as explained in the White Paper - it consists almost entirely of non-life insurance, which does not fall within the Bill's definition of investment business. However underwriting agents at Lloyd's do necessarily undertake other investment business as part of their insurance business - managing names insurance funds and soliciting new names - and this will be specifically exempted in the Bill, since they are matters for Lloyd's itself to regulate.

THE NEW BANKING BILL

20 The Police have now confirmed that they have discovered evidence of fraud upon Johnson Matthey Bankers in 1981 though concern about fraud amongst banks more generally is not as acute as it is for other financial sectors. The new arrangements

being proposed in the forthcoming White Paper on banking supervision, while not being directed at fraud as such, should make it harder to perpetrate and also reduce the risk to depositors when it does occur. In particular, new arrangements for disclosure of information beween the Bank of England, auditors and other supervisors should help to detect fraud at an earlier stage. Rules about the amounts lent to individual borrowers or related groups of borrowers should help protect depositors where fraudulent losses do occur.

FRAUD TRIALS

21 The Roskill Committee is expected to present its report to the Lord Chancellor and the Home Secretary before Christmas. There is reason to suppose that it will recommend wide-ranging measures to reform the criminal proceedings relating to fraud trials. This is likely to have a significant effect on the climate in which these matters are discussed and to present the Government with a considerable opportunity for effective action. DTI Ministers regard it as essential that the report is published before the second reading of the FS Bill.

CONCLUSION

22 The constantly changing pattern of fraud requires a flexible response from the authorities, including legislative change. The forthcoming Financial Services Bill will form a major part of this response and contains the legislative improvements already started this year with the Insolvency Act. The increasing scale of fraud poses a serious resource problem for Government - in terms of staff numbers, quality and cost. The DTI is therefore, in parallel with the Solicitor General, putting forward proposals for increases in resources to deal with this problem.

Eran Pol Pt 2

Gower

CC B/G

FROM:
THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

HOUSE OF LORDS.
LONDON SW1A 0PW

CONFIDENTIAL

6 December 1985

NBPM

My dear Leon:

FINANCIAL SERVICES BILL

Thank you for your further letter of 5th December 1985 ~~ATTACHED~~.

I am still not happy about your proposal to exempt the statutory agencies from liability for damages.

Whilst having every sympathy with your difficulties I wonder if you have sufficiently explored the possibility of a master policy or mutual insurance to be obtained by these bodies. Are you really satisfied that the City and the wider investing public will appreciate in practice and in the long term that these statutory agencies offer no direct financial protection in giving their approval or licence? Of course in the last resort you must balance between the needs of self-regulation and the exclusion of that liability which you agree would exist but for these proposals.

I am copying this letter and, for ease of reference, our earlier recent exchange of correspondence, to the Prime Minister and Cabinet colleagues and to Sir Robert Armstrong.

yrs:

L.

The Right Honourable
Leon Brittan QC MP
Secretary of State for
Trade and Industry

ccBG

To Mr Seater
COPY
For Advice & draft reply

COPIES TO
A
B
C
D
E
F

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SWIH 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

5 December 1985

CONFIDENTIAL

The Rt Hon The Lord Hailsham of
St Marylebone PC CH FRS DL
The Lord Chancellor
House of Lords
London SW1A OPW

Please advise & remind
I dont like this – Can they
not get a master policy or
a mutual insurance?

Dear Quintin,

FINANCIAL SERVICES BILL

I have considered again most carefully the arguments in your letter of 28 November about my proposal to confer on designated agencies an immunity from liability for damages for anything done or omitted in good faith in the discharge of functions exercisable by those agencies by virtue of a delegation order.

I share your reluctance to depart from the normal principles of liability. As you say, the Government did not propose this in the White Paper. Indeed, my own initial view was that we should not make any special exemption for designated agencies. But in the past year, indemnity insurance has become increasingly difficult for any regulator to obtain. Even regulators with excellent track records have found that they have not been able to obtain the major amounts of cover they need and the cover they have been able to obtain has increased enormously in cost. In all the circumstances, I have been forced to the conclusion that an exemption from liability for damages is necessary. The crucial factor for me is my concern about the disastrous consequences for the whole regulatory system if an award was made against a designated agency of such a size that it became insolvent. The agency would not then be able to continue its role and the Government would have to resume all its regulatory functions at very short notice, without having the resources or the expertise to undertake them effectively. The consequences for the regulatory system and investor protection would be very serious. I do not believe that we should take the risk of this happening.

You mention two particular concerns: relative lack of Parliamentary accountability and protection of the small investor. Parliamentary accountability will be provided largely through my powers (jointly with the Governor) to appoint and remove members of the governing body of designated agencies and my power to withdraw transferred functions in whole or in part if a designated agency

JH3CLZ

999-1

does not continue to meet the criteria for delegation. I shall therefore be accountable to Parliament for the use of these powers. The agencies will also be required to publish annual reports which will be laid before Parliament and no doubt fully debated. Protection of small investors is one of the prime objectives of the Bill. Under it, I shall not be able to transfer powers to a designated agency unless I am satisfied that the rules of that agency make the best possible provisiosn for indemnity against losses arising from defaults by investment businesses. In considering whether the provision is adequate, I shall be looking particularly at the position of the private investor. The Securities and Investments Board is now working out compensation arrangements for such losses and is considering proposing a compensation scheme which would meet in full losses incurred by private investors up to £30,000. If, as I hope, this can be achieved, the protection afforded to small investors would be virtually complete (and much better than that available to depositors under the Banking Act) and the question of recourse against the agency by small investors would not arise even if it to prevent the losses arising.

I welcome the considerable debate which I agree there will be about giving designated agencies an immunity from damages. I remain convinced that, despite the disadvantages, the exemption is necessary for the proper functioning of the new regulatory arrangements. In view of the shortness of time before introduction, Parliamentary Counsel has included an exemption in the current print of the bill (and it will also appear in the next Legislation Committee print) on the basis that it is still provisional pending further consultation with you. I attach a copy of the relevant provision. The current exemption for The Stock Exchange as competent authority is continued by the Bill.

I think that this is an issue on which the Government needs a clearly defined view when the Bill is introduced. I must introduce the Bill immediately after Legislation Committee on 17 December if, as has long been planned, it is to be published before Christmas. I would like to resolve this issue well before then so that the text of the bill can be finalised. It would, therefore, be most helpful if you would let me know within the next day or so if you wish to pursue this point further, and in that case perhaps we might have a word about it.

I am copying this letter to the Chancellor of the Exchequer and the Governor of the Bank of England.

LEON BRITTAN

JH3CLZ

FINANCIAL SERVICES BILL

Exemption for designated agencies

Schedule 7, paragraph 3:

Neither a designated agency nor any member, officer or servant of a designated agency shall be liable in damages for anything done or omitted in good faith in the discharge or purported discharge of the functions exercisable by the agency by virtue of a delegation order.

LM1ABZ

C85733

RESTRICTED

HOUSE OF LORDS.
LONDON SW1A 0PW

28 November 1985

My Dear Leon,

Financial Services Bill

Thank you for your letter of 7 November 1985 on your proposal to confer on designated agencies an immunity from liability for damages for anything done or omitted in good faith in the discharge of functions exercisable by those agencies by virtue of a delegation order.

I can well see that the SIB or MIBOC may feel inhibited in the exercise of their delegated functions by the prospect of possible actions for damages, should any negligence be attributable to them. I do not think it follows self-evidently that such a liability ought to be excluded. The normal means of protection for anyone - even a statutory corporation - whose skill and judgment may be called into question is for him to seek indemnity by insurance. In your letter you explain that even insurance is virtually unobtainable for an 'untried regulator'. I would point out, however, that this point was not raised in the White Paper and it has not been thought necessary, until now, for any immunity from liability for damages to be conferred on the designated agencies.

As you will know, I did indicate to your predecessor some concern over the relative lack of Parliamentary accountability inherent in the self-regulatory system which was being proposed.

The Right Honourable
Leon Brittan QC MP
Secretary of State for Trade and Industry
Department of Trade and Industry
1-19 Victoria Street
London
SW1H 0ET

RESTRICTED

RESTRICTED

The lesser the degree there is of direct Parliamentary accountability, the greater the need, I would suggest, for the designated agencies to be subject to the ordinary law. I do forsee considerable opposition to such an immunity being conferred on an agency which is only indirectly subject to Parliamentary control. You have identified the risk as arising from large-scale claims for damages, but we must also bear in mind the protection of the small investor whose rights would be curtailed. There is no satisfactory means of distinguishing, for the purposes of granting immunity, between two broad classes of claim and I do not think the attempt should be made.

The Governor of the Bank of England has copied to me his letter to you of 15th November 1985, arguing that your proposals for immunity should be extended to self-regulating organisations recognised by the SIB. I note, and support, your intention to resist pressure to extend any immunity to these organisations. As you rightly say, these bodies cannot be said to be exercising any statutory function.

I am copying this letter to the Chancellor of the Exchequer and the Governor of the Bank of England.

YRS:

ACTION | To Mr Saker

COPY | For Adv... early reply

COPIES TO

A

B

C

D

E

F

Secretary of State for Trade and Industry

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET 5422
TELEPHONE DIRECT LINE 01-215
SWITCHBOARD 01-215 7877

7 November 1985

The Rt Hon the Lord Hailsham of St Marylebone PC, CH, FRS, DL
The Lord Chancellor
House of Lords
LONDON
SW1A 0PW

Dear Quintin,

FINANCIAL SERVICES BILL: CIVIL LIABILITY OF DESIGNATED AGENCIES AND COMPETENT AUTHORITIES

I am writing to seek your agreement to the inclusion in the Financial Services Bill of a provision excluding designated Agencies, competent authorities and their staff from liability for damages for any act or omission in the performance of their statutory functions under the Bill, unless the act or omission is done in bad faith.

2 As you know, the Bill will enable the Secretary of State to transfer many of his functions under the Bill to a designated Agency or Agencies which meet specified criteria. The Securities and Investments Board (SIB) and the Marketing of Investments Board Organising Committee (MIBOC) have been set up. I have been considering whether designated Agencies should be relieved of liability for damages. I have no doubt that they should remain liable to suit so that any person concerned can invoke the aid of the Courts if the Agencies fail properly to carry out their functions, but liability for damages raises more difficult issues.

3 The main problem arises because of the size of the claims which might be made against an Agency. If a large investment business fails and it is claimed that the Agency could and should have taken some action to prevent the failure, the claims could run into millions, possibly even tens of millions, of pounds. The Agencies will have no funds of their own. They will be financed almost entirely out of the fees paid by recognised bodies and authorised persons. For an untried regulator, indemnity insurance is virtually unobtainable. A successful claim for a large amount of damages could be disastrous. At best, it would involve a substantial increase in fees, possibly by several hundred per

JH3CII

000.1

cent; at worst, it could mean insolvency and the collapse of the Agency, with the regulatory functions reverting to my Department, with all the resource implications that would involve. I would also want the Agency to exercise its statutory powers free from concern about a major damages claim. Such a risk could well inhibit the use of the powers and make it over-cautious.

4 I conclude that we must avoid these problems by giving the Agencies and their staff an exclusion from liability for damages in respect of acts or omissions in performing statutory functions under the Financial Services Bill. The exclusion should not apply if decisions have been taken in bad faith.

5 There are several precedents for excluding regulators from liability for damages. Lloyds already has such an exclusion although that has been challenged. So do the Independent Broadcasting Authority and, within my own Department, the Patent Office. In the United States, the Federal agencies and the self regulating bodies are largely excluded from liability, except where there is bad faith (although the effect of that exclusion is probably not exactly the same as under our legal system).

6 I have considered carefully the effect on investors and investment businesses of an exclusion from liability for damages. One of the criteria for the transfer of functions to an Agency is that the Agency's rules make proper provision for compensation. I shall be considering particularly the adequacy of compensation for private investors. For authorised businesses, they will be able to seek judicial review if an Agency improperly uses its intervention powers and will also be able to go to the Tribunal. In my view, therefore, the effect of exclusion from liability for damages would not be unduly serious and is outweighed by the advantages of having an effective regulatory system.

7 Under Regulation 8 of the Stock Exchange (Listing) Regulations 1984, the Council of The Stock Exchange is given freedom from liability for damages for acts or omissions in carrying out its functions as the competent authority for the purpose of the listing regulations. The Financial Services Bill will replace the listing regulations by primary legislation. I propose that it should continue The Stock Exchange's existing exemption.

8 It is likely that the self-regulating organisations (SROs) which are expected to seek recognition under the Bill will also press for exclusion from liability. I intend to resist any such pressure on the basis that SROs, unlike the Agencies and The Stock Exchange Council in its capacity as competent authority, will not be exercising statutory functions.

JH3CII

9 It would be most helpful to have your comments as soon as possible as I would like to include this subject in the bill on introduction.

10 I am copying this letter to the Chancellor of the Exchequer and the Governor of the Bank of England.

Yours,

LEON BRITTAN

JH3CII

999-49

ECON POL
GOULD
PTZ

PRIME MINISTER

JUNK BONDS

Junk Bonds are, as you know, only one element in a rash of take-overs in the United States. Companies have issued debt to buy out shareholdings of unwelcome predators, in some cases leaving themselves very highly geared. They have taken over other companies to make themselves unattractive, and they have sold off bits of themselves to make predators lose interest, among other shenanigans.

The evidence on the effects of these activities is controversial. Some people argue that leveraged take-overs enable entrepreneurs and aggressive smaller companies to shake up the lethargic giants, including particularly the oil companies. It forces them to pay much closer attention to their growth and earnings.

The argument against this is that managements often behave in a way which helps them to keep their jobs, but does nothing for their shareholders. Certainly some companies have been substantially weakened by their efforts at self defence (e.g. Disney Corporation) and generally the industrial sector as a whole becomes more highly geared.

Company law and the take-over rules in the United Kingdom act as a brake on frenetic take-over activity. But this is clearly an area which needs to be watched.

David Norgrove

22 November 1985

MJ2BJK

22 November 1985

MR NORGROVE

FRAUD

I wrote this paper for the Policy Unit, but it may also be of interest to you.

David Hobson

DAVID HOBSON

B/f when note on fraud from DTI arrives.

DGV
22/11

20 November 1985

BRIAN GRIFFITHS

cc PU members

FRAUD

You asked for a paper giving some examples of fraud in commercial life. Clearly it is bound to be a selective list, and it omits such areas as Social Security frauds and corruption.

1. Basic Frauds

The classic cases usually involve setting up companies, obtaining goods on credit, selling them, and disappearing to Spain with the proceeds, leaving the creditors to wind up a company with no assets. After a while, the miscreants return from Spain and repeat the process.

Another example is payroll fraud, putting "dead men" on the payroll and drawing their salaries.

Company employees' buying of commodities on a "heads I win, tails you lose" basis is not unknown. If a profit is made, the deal was for the benefit of the company executives and does not appear in the books; if the market goes the wrong way, it goes into the books and the company picks up the tab. This has also been done by bank employees in foreign exchange transactions - easy to miss out of the books unless there is a good system, because the business is conducted on the telephone. It is not unknown in syndicated investment transactions if the beneficial ownership of the syndicate can be decided after the result of the deal is known.

2. Cash Frauds

A common type of fraud is "teeming and lading", using tomorrow's cash receipts to meet today's outgoings. This is

easy to perpetrate if the cash controls are weak and paying in money to the bank erratic and sloppy.

Another, quite common in building societies, is to cover up cash thefts by creating phoney acounts for non-existent people, forging the basic documentation. The perpetrator may use his parents' address, or some other friendly address, so that he can collect the auditors' confirmation letters, sign them in the forged name, and post them to the auditors agreeing the balance. Sometimes these frauds have gone on for years (Wakefield, Grays, Alfreton).

3. Falsifying Accounts of Business

It is not unknown for proprietors or managers of businesses to falsify accounts. There may be various reasons, such as the following:

a. If the business is for sale, a better price can be obtained if the profit record is good. Therefore debtors and stock may be overstated and liabilities understated.

b. In a group of companies, branch staff may be nervous as to the continuance of their jobs; therefore they falsify the monthly accounts to make it seem that their business is profitable. I have known cases where the whole management of a subsidiary has been involved in this process, successfully hoodwinking the auditors by the manufacture of false documentation. The hope in the minds of those concerned must be that they will trade their way out of trouble.

c. Managements responsible for budgets are often anxious to seek to conform "actual" results to them; on occasion this involves falsifying the figures.

4. The Stock Exchange

The Stock Exchange has a compensation fund to ensure that clients do not lose money. The most common fraud on the Stock Exchange is probably pledging clients' securities to secure a stockbroker's overdraft. Another is passing transactions to clients at false prices, making an undisclosed "turn". The Stock Exchange has, by its compensation arrangements, managed to avoid some of the opprobrium falling on others.

5. Security Dealers and Commodity Dealers

There have been a number of cases where organisations purporting to make investments on clients' behalf have used the money for a different purpose, often including lining their own pockets. One example: Norton Warburg, which cheated pensioners of the Bank of England and Unilever. These organisations have no compensation fund, a gap which will be rectified for security dealers by the new legislation.

Regulation of the commodity markets may become a topical subject following the tin fiasco. There is no evidence of fraud there, but the supervision of the market appears to have been minimal.

6. Lloyd's

The most publicised problems at Lloyd's appear to be with certain syndicates where the underwriters or their associates are alleged to have defrauded the "names" for whom they act in a number of ways, such as:

a. Paying themselves excessive expenses or perquisites.

b. Creaming off the better and less risky business for themselves or their friends, by way of baby syndicates or otherwise, leaving the names to underwrite the "leftovers".

c. Operating organisations in tax havens such as Bermuda, and milking these funds without disclosure.

It is also alleged that these organisations have been evading tax by various subterfuges. The syndicates objected to include some managed by Minets, Howdens, and Willis Faber, and considerable litigation can be expected, extending for a long time.

Alexander & Alexander, a US broker, brought an action against various directors of Howdens which was settled. They lost a lot of money because the financial position of the Howden Group, when they acquired it, was much worse than they expected.

Lloyd's complain that the Attorney General and DPP are not taking action against the miscreants, and this is likely to get further publicity when the Securities Industry legislation is introduced - particularly in view of the resignation of the Chief Executive at Lloyd's, Ian Hay Davison.

7. Banks

Allegations of fraud have been and are being made in the JMB affair - mainly, it appears, in connection with what seems to be a most imprudent level of lending. Was it corrupt or merely inefficient? What is the margin between acceptable hospitality and corruption?

Banks belong to a scheme to protect small depositors against failure, but this does not cover the Bank of England's possible losses.

There is also some smell emanating from Henry Ansbacher, which lost money following making an investment in the USA.

There have been a number of banking failures over the past 10 years, including London & County, Cornhill Consolidated, First National Finance, and Slater Walker. Common to these have been greedy and naughty directors lining their own pockets and borrowing short and lending long.

8. Three Personal Experiences

The next three cases illustrate the problems of dealing with fraud cases in practice.

British Printing

The Chairman, Wilfred Harvey, was in the habit of drawing large sums of money from the company. At the end of the year his account was substantially in debit, and the commission on the group's profits to which he was entitled was insufficient to regularise his account. The main way by which he was put into credit was for the company to buy a new subsidiary, backdated to the end of the financial year, ostensibly from a vendor but actually from Wilfred Harvey himself. He had acquired the sahres for much less than the company paid him for them, the company's purchases being supported by stockbrokers' contract notes supplied by a crooked stockbroker.

One of the transactions was published in the auditors' report on the company, indicating that the Chairman had made a profit of over £250,000 on the transaction. This was front-page news in a number of newspapers. Prior to this,

details of the transaction, together with supporting documents, had been supplied to the Director of Public Prosecutions.

The resulting investigation was carried out by a single Detective Inspector, and after 2 years Harvey was arrested. Due to high blood pressure, he was released. Later, summonses were issued on other charges, but he produced medical evidence to the effect that he was prone to high blood pressure which might come on if, as might be expected, he was irritated by what was said in court! So he was unable to appear in court, and eventually the matter was dropped.

No charges were brought against others concerned in the frauds - the Company Secretary and the stockbroker, who produced false backdated statements. It was felt that their evidence was needed to convict Harvey.

MC

A fraud investigation was made into a contracting company which had issued a prospectus and then failed. Profits had been "manufactured" by inflation of stocks and work in progress on contracts, and by failing to provide adequately for reinstatement of sites.

A single Detective Sergeant was assigned to this work. It was evident, after he had been on the job for 6 months, that he really did not understand how the fraud had been carried out and what he should investigate.

After a while, the investigation was dropped, and no prosecutions resulted.

London & County Securities

The Inspectors in this case - Andrew Leggatt QC (now Mr Justice Leggatt) and myself - reported on a number of matters where fraud was alleged, in particular a transaction involving the theft of some £5 million.

Before the report was prepared, I suggested to the DTI that the investigation by the Authorities might take at least 2 years after the Inspectors' Report was prepared, based on my experience in the British Printing case. I was told that they would endeavour to bring prosecutions within 6 months. But again it took 2 years, and by the time the trials were held, perhaps another 2 years had passed.

One can argue that the greatest unfairness is the time these matters overhang the defendants. The main defendant, Caplan, remains in the USA as extradition proceedings failed.

9. What should be done?

a. I believe the main skill needed in investigating and proving complicated fraud cases is to find a limited number of specimen frauds and to break them down into simple explanations as to what happened. This is both a good discipline and necessary to present a good case in court.

b. It is necessary to put sufficient personnel into the investigation with proper direction, so that charges can be brought within a reasonable time, and supported by evidence and witness statements.

c. I have little experience of attending criminal trials, but sat on a murder trial jury as foreman once. What struck me was the apparent lack of preparation by

prosecuting counsel. I do not believe this experience unique. They need to settle in their own minds what they need to prove, and concentrate on what is relevant to this.

d. Whether or not the Roskill Committee recommends trial by a judge, or judge and assessors, on the grounds that fraud cases are too complicated for a jury to understand, skill in picking the essentials in the case, and seeing the wood for the trees, will still be invaluable.

e. Improved extradition arrangements to cover Spain - where many alleged criminals reside - are needed.

f. There is open criticism of the Attorney General and DPP in Whitehall and outside. No results have been seen from the Chancellor's Fraud Investigation Group (FIG) initiative. The situation encourages fraud, and is dangerous to the Government's reputation.

David Hobson

DAVID HOBSON

21 November 1985

PRIME MINISTER

Recently you asked for information on Junk Bonds. I enclose a paper from the Bank of England, and also a speech by the Chief Executive Officer of Drexel Burnham Lambert, the major issuer of Junk Bonds (more politely "High Yield Bonds") in the United States.

BG.

BRIAN GRIFFITHS

0192c

(7) mmkb (7) 21. 5.85

FROM: MRS C M ALDRED

NOTE FOR RECORD

Copies to

Mr Loehnis	Mr R M G Brown
Mr Walker	Mr Foot
Mr Flemming	Mr D W Green
Mr Farrow	Mr Hayden
Mr Holland	Mr Marr
Mr Anderson	Mr Raikes
Mr Hewitt	Mr Shilson
Mr Lomax	IFD
Mr Price	BSD Group 6
Mr Taylor	Group II
Mr Beverly	

US: "JUNK BONDS"

1 This note attempts to put together what we know about junk bonds, otherwise called high-yield securities. The issue is topical not only because of the apparent recent increase in investor interest in such securities but also because of (i) the implications for the troubled US thrift industry of its investment in such securities, (ii) the increased use of junk bonds to finance takeovers, and particularly hostile takeover bids, and (iii) reports that the leading underwriter of junk bonds in the US, Drexel Burnham Lambert (DBL), is considering underwriting issues for UK companies.

What junk bonds are

2 Junk bonds is the term given to US corporate bonds which are rated at below investment grade by the major US rating agencies, that is at Ba or lower by Moody's and BB or lower by Standard and Poor's. Recently, the junk bond market has grown significantly in relation to the total corporate bond market. There are now reportedly some $100 bn of junk bonds outstanding, equivalent to more than 18% of the total stock of US corporate bonds, compared to an equivalent figure of only 5% in 1981. Nevertheless, reflecting the dominance of the larger investment - grade bond market by a small number of relatively large blue chip bond issuers, DBL estimates that as high a proportion as 85% of US corporations are now rated at below investment grade (though it is far from clear that all 85% here have agency ratings or are even active bond issuers).

3 The significance of an investment-grade rating is that US law and regulation forbid certain entities, particularly trusts and federally-chartered banks and thrifts, from investing in corporate bonds of lower than investment grade. These restrictions, of course, reduce the size of the market of potential purchasers of junk bonds.

The issuers

4 Traditionally, issuers of junk bonds have been established corporations whose debt has been downgraded from investment-grade level rather than companies making their first excursions into the credit markets. Since the late 1970s, however, some 350 untested companies, whose borrowing had previously been restricted to private sources, have allegedly sold over $30 bn of junk bonds rated at below investment grade from the outset. This probably accounts for a large part of the recent growth in the junk bond market. According to DBL, last year there were 122 new issues of junk bonds totalling $14.3 bn, a considerably larger number and amount than the previous year's 87 and $7.3 bn. Shad, SEC Chairman, has put last year's figure at over $15 bn, compared to only $2 bn in 1981. Unfortunately we do not have an analysis of junk bond issuers by sector or data on the extent of the oil sector's dependence on such instruments.

5 Recently, junk bond issues have been increasingly arranged to finance corporate takeover bids, that is, institutional investors have committed themselves to buy the bonds if the bid is successful. This technique enables a relatively small company to raise funds to bid for a relatively large company by borrowing against the assets of the company to be acquired, but if the bid is successful it leaves the merged company highly geared. Congressional staff estimated earlier this year that there were more than $14 bn of junk bond issues arranged to finance a total of 7 takeovers alone (of CBS, Unocal, Uniroyal, Crown Zellerbach, Hilton Hotels, American Natural Resources and National Can). However, to date, a number of junk-bond-financed takeover bids have been unsuccessful and the bonds have not been issued, viz the recent failure of Mesa's bid for Unocal.

But the arbitrageurs and others can still make a killing.

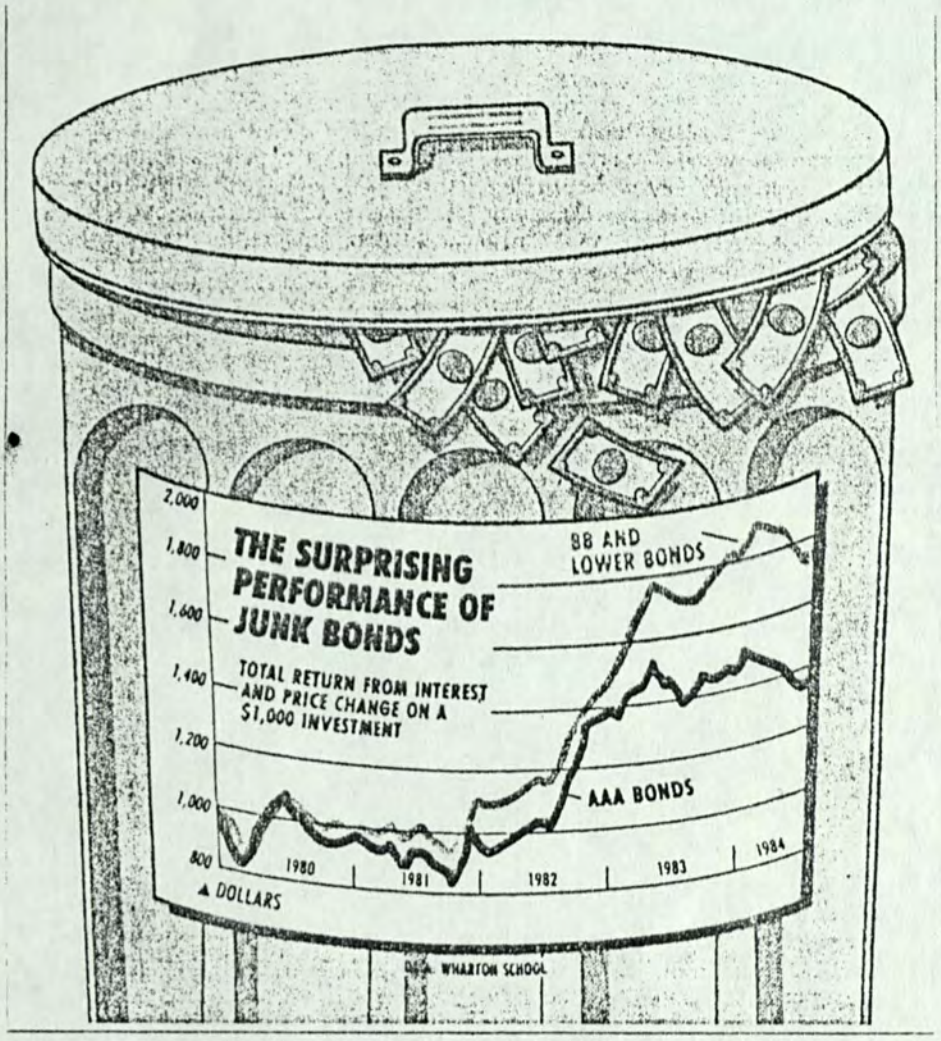
How they perform

6 Junk bonds - known as "high-yield securities" in polite Wall Street circles - tend to carry higher yields than investment-grade corporate bonds; typically, the differential is of some 3-5 percentage points. This is not surprising given both that their lower rating implies that they are viewed as relatively risky investments and the restricted market of potential purchasers. A study by the Wharton School of Economics found that between 1980 and mid-1984 the average annual rate of return on junk bonds was 13.5%, almost double the 7.2% return for AAA-rated bonds (ie the top class of investment-grade bonds). Other studies reportedly have reached similar conclusions.

7 The differential between returns on junk and investment-grade bonds has widened since 1982 as the chart (on the dustbin!) overleaf shows. The figures overleaf show how the differential widened substantially in the final quarter of last year, allegedly reflecting a high level of new issues of junk bonds at that time. So far this year, however, the differential has narrowed, by almost 150 basis points from the end-1984 peak, presumably at least partly reflecting an increase in the popularity of such securities amongst investors (see paragraphs 8 and 9). At the same time, the average yield on BB-rated long-term bonds with a 9% coupon has fallen to 12.9% from 14.8% at end-1984.

8 Advocates of investment in junk bonds emphasise the, perhaps surprisingly, low default rate attached to them. According to DBL, to date defaults on "original-issue junk" (ie bonds rated at below investment grade from the moment of issue?) have produced losses of only 0.52% pa. An independent study by Professor Edward Altman found that between 1974 and 1984, the default rate (as measured by dollar volume) on junk bonds was 1.5%, comparing perhaps not too unfavourably with 0.8%? 0.5%?* for investment-grade corporate bonds and a Wharton study came to a similar figure for junk bonds. (The other side of the coin is, of course, that the performance of investment-grade corporate bonds may have been below expectations.) Altman also found that,

*The account in "International Businessweek" is unclear but we expect to receive a copy of Altman's report shortly.



Differentials between average yields on AA and BB-rated seasoned industrial long-term bonds with a 9% coupon (basis points)

1984	26 Jul	180	1985	31 Jan	201
	30 Aug	170		28 Feb	120
	27 Sep	216		28 Mar	107
	25 Oct	252		25 Apr	125
	29 Nov	254		16 May	138
	27 Dec	280			

Source: Salomon Bros Inc's "Bond Market Roundup"

even allowing for losses due to defaults, junk bonds outperformed US Treasuries by an annual average of between 490 and 580 basis points between 1978 and 1983.

The investors in junk bonds

9 Pension funds, insurance companies, state-chartered thrifts, mutual funds, unit trusts and individuals are major investors in junk bonds. The apparent recent increase in investor interest in junk bonds may perhaps be explained by a growing market awareness that their relatively high yield combined with a still low default rate has meant that, to date at least, junk bonds have tended to outperform most other financial investments. Certainly, the financial press has been giving these facts greater airing recently.

10 Because junk bonds are usually issued in units of $25,000 or more, small individual investors generally invest indirectly in junk bonds through mutual funds and unit investment trusts which specialise (albeit generally not exclusively) in junk bonds. There are reportedly nearly 40 such mutual funds. This indirect form of investment enables individuals to invest a smaller amount (as little as $1,000) and acquire an interest in a more diverse portfolio. Like the underlying bonds, junk bond mutual funds have tended to yield relatively high returns. According to Lipper Analytical Services, between 1974 and 1984 junk bond mutual funds gained 214% in value and A-rated bond mutual funds only 148%. However the difference appears to have been substantially reduced more recently, the equivalent figures for the 1979-84 period being 79% and 73% respectively; last year the value of A-rated bond funds rose more than junk bond funds.

The risks

11 Junk bonds are not only high-yield but also high-risk securities. By definition they are viewed as more speculative investments than blue chip corporate bonds, whatever the actual return realised on junk bonds in the past. Although a junk bond investment portfolio can be spread over a wide range of industries, it is possible to envisage credit risks to the

portfolio as a whole if, for example, recession and/or a hike in interest rates seriously impeded the borrowers' debt-servicing ability. The risks seem likely to be greater with respect to low-rated rather than high-rated borrowers.

12 The economic environment of slower growth and a possible small rise in interest rates which some forecast for this year and next may well make junk bonds riskier investments than in the recent past. As it is, already in 1984 losses to investors on account of bankruptcies were more than double losses over the entire 1976-83 period, according to DBL. Moreover, this year has seen the largest ever junk bond default when Sharon Steel Corp failed to make interest payments on $426 mn of CCC-rated bonds.

13 These risks are particularly great for corporations which have borrowed, whether through junk bonds or other means, to finance corporate acquisitions and have in consequence become highly geared. The issue of junk bonds to finance takeovers is a form of leveraged buyout with most, if not all, of the attractions and potential pitfalls of such a technique (see pages 2-4 of my note of 16 July 1984, copy attached). Robert Lindley, IFU, is writing a paper on recent trends in US takeovers and mergers.

14 Another serious concern is that some state-chartered thrifts have invested in junk bonds in an attempt to reduce the interest rate mismatch between their low-yielding mortgage assets and their high-cost deposits. (States such as California and Texas allow state-chartered thrifts broad scope to invest in junk bonds). The FHLBB has estimated that the thrift industry as a whole has some $3-5 bn of junk bond investments, although only a few thrifts are thought to have invested heavily in them. Indeed, such is the concentration of the thrift industry's junk bond investments that one thrift is reported to hold $2 bn of such securities (see Mr Foot's note of 15. 5.85). The worry is not only that thrifts lack the experience and expertise to manage such investments but also that any problems which may arise could exacerbate thrifts' other, more widespread, problems.

The regulators' and legislators' reaction

15 The SEC Chairman, John Shad, who publicly warned about the potential dangers of leveraged buyouts early last year (see page 3 of the attached note) recently extended this warning to junk bonds generally. "High yield bonds are of very low quality. The corporate issuers are highly leveraged. Their fixed charge coverages are paper thin. ...Even a mild recession will have very serious repercussions for some of these companies .... One can no longer take confidence in the fact that the favourable experience to date will persist indefinitely. As confidence builds, the tendency is to overdo a good thing. Excesses inevitably lead to a day of reckoning".

16 In recent testimony to a Congressional Sub-Committee, the Fed Vice-Chairman Preston Martin noted that debt-financed takeovers exposed the financial system to greater risks and then turned to the question of junk bonds in particular. "The large investors who purchase most of these bonds are relatively sophisticated and should be aware of the risks involved. But it would be fair to say that one cannot really be entirely comfortable about such assumptions, especially when the market has not been tested by some signifciant negative surprises - which inevitably will come at some point." On thrifts' purchases of junk bonds, he added that "given the evident sensitivity of financial markets to the fortunes of individual banks and thrift institutions, I think it is incumbent upon supervisors at both the federal and state levels to keep a close eye on developments in this area." Martin also expressed his personal view that all federally-insured banks and thrifts should be barred from purchasing junk bonds, other than those issued by start-up companies.

17 The FHLBB is considering restricting junk bond investments by state-chartered, federally-insured thrifts, thereby extending such restrictions to most state-chartered thrifts. A FHLBB official wrote recently that "the incentive for risk taking by savings institutions with low capital and government insured liabilities is of tremendous concern to us". He added, however, that given the actual past record of losses on junk bonds, which corresponds closely to the loss record on money-centre banks' commercial

loans, "precluding the holding of high-yield bonds by savings institutions on the grounds of "safety and soundness" could be deemed arbitrary, in the absence of data to substantiate the assertion of excessive risk".

18 Corrigan, FRBNY President, recently expressed concern that the availability of junk bond financing might lead to excessive borrowing in the US economy. "Junk bonds may be providing credit market access and/or financing terms to individual borrowers or classes of borrowers who might otherwise be rationed out of the market or at the very least might be required to pay a higher risk premium. Enhanced access to markets for such economic agents can, of course, be beneficial to them and to the economy more generally. However, the end result of this may be a situation in which the economy as a whole is simply taking on too much debt relative to its equity base and to its income-producing capabilities." This worry takes on particular significance against the background of the general gearing up of the US corporate sector in recent years.

19 Worries that some corporations are becoming excessively highly geared and that the use of junk bonds to finance hostile takeovers is an inefficient use of capital, prompted Congressmen, led by the Republican Chairman of the Senate Budget Committee, Peter Domenici, earlier this month to introduce legislation imposing a moratorium on takeovers thus financed until the end of the year.

Conclusions

20 The evidence suggests that, to date, junk bonds have tended to yield higher returns than many other types of investment, despite their greater riskiness. Immediate economic prospects combined with the recent increase in corporate leveraging generally in the US suggest, however, that this trend may not continue. This may be particularly true with respect to recent and pending issues of junk bonds to finance corporate takeovers, which tend to leave the borrowing companies particularly highly geared and vulnerable to debt-servicing difficulties if demand and cashflow are below expectations and/or if interest rates rise

sharply. Another particular concern is that existing junk bond investments by a small number of state-chartered thrifts may turn sour and exacerbate the more widespread problems of the thrift industry. However, all federally-chartered depository institutions are barred from such investments. The financial regulators, and Congress, appear to be aware of the potential problems and are considering some damage-limiting action.

International Division
Group III HO-3
21 May 1985

Mrs C M Aldred (4386)

The Case For High Yield Bonds

Frederick H. Joseph

Vice Chairman and Chief Executive Officer

Drexel Burnham Lambert

The heated rhetoric generated by recent hostile takeover attempts has linked high yield bonds (pejoratively dubbed "junk bonds") with a number of unrelated issues such as the fraudulent activities at ESM, the financial problems of thrift institutions, bad commercial lending by certain large U.S. banks, foreign loans, the overleveraging of America, practices of corporate predators and greenmail. This loaded language does nothing to clarify the facts.

Problems exist in the financial markets, demonstrated by the thrift's recurring difficulties and the bankruptcies of government securities dealers. However, these difficulties are totally unrelated to high yield bonds. As far as we know, none of the Ohio or Maryland S&L's that encountered difficulties owned any high yield bonds. There is no substantiated evidence of abuse in the high yield bond market.

High Yield Bonds Are Not Junk:

Newly issued public high yield bonds provide companies rated below investment grade with access to public capital markets.

It is critical to understand that only 675 of the 20,000 companies in the United States with assets in excess of $25 million have been rated investment grade by the major rating agencies, Moody's and Standard & Poor's. These agencies rely heavily on historic data and size, which are not necessarily valid indicators of future capability to service debt. High yield bonds typically are issued by midsized growth companies unable to attract an investment grade rating, often simply because they lack the requirements of history or size. Thus, high yield bonds effectively replace the private term loans traditionally made by insurance companies. Investors are protected from changing circumstances by market liquidity instead of the less efficient mechanisms of restrictive covenants found in private placement agreements.

A Growing Market:

The newly issued high yield bond market began to evolve in 1977 when approximately $900 million of bonds were issued by midsized and growing companies. The market has grown fairly steadily, reaching $14 billion of new issues in 1984. Over 350 companies have used the public market to issue $35 billion of high yield debt since 1977. Many of these companies, such as Humana Inc., MCI Communications, Coastal Corporation, Beverly Enterprises, People's Express and Kinder-Care have recorded impressive results and HAVE

enhanced the growth of our nation's economy. Far more jobs are being created by small and midsized companies than by the relatively few larger companies. In fact, Fortune 500 companies have seen net losses of jobs in recent years.

Measuring Performance:

Institutional investors who buy corporate bonds are essentially risk-adverse. This has led to a somewhat inefficient market which pays investors premiums for accepting incremental risk. It has been proven empirically that these premiums are well in excess of the actual increase in risk and, with premium returns averaging 4 to 8 times the actual increase in risk, high yield bonds have been an unusually successful investment vehicle. In fact, more money has been lost in the bond markets through the downgrading of investment grade debt than through defaults of below investment grade issues.

Confirmation of high yield performance is available in a number of academic studies. An analysis by the Wharton School of the University of Pennsylvania of investment return for the period of January 1930 to June 1984 found that below investment grade bonds produced a total return of 13.5 percent a year, almost double the 7.2 percent return for AAA corporate bonds. The Wharton study concludes that, "In the context of a well-diversified portolio, the risk of lower-quality bonds was no greater than the risk of high-quality bonds."

Furthermore, defaults have been below expectations. A New York University study found that from 1974 to 1984, although the default rate on high yield bonds is higher than for all corporate bonds, the actual

losses were only about one percent because the defaulted bonds retained about 41 percent of their par value. The New York University study concluded that even including losses from defaults, the high yield sector outperformed Treasuries by an annual average of 490 to 580 basis points from 1978 to 1983.

As with any quality of bond, investors should diversify portfolios of high yield bonds, as do the investment professionals who dominate this market. The individual investor should participate only through professionally managed vehicles, such as mutual funds or unit trusts.

High Yield Debt in Acquisitions:

Despite the press attention high yield bonds have attracted, they have not been a major source of funding for mergers and acquisitions. Of the $122 billion used to finance mergers and acquisitions in 1984, less than 2 percent came from high yield bonds. Most of these activities were financed by cash, bank borrowings or internally generated cash flow. Commitments to fund attempted takeovers with high yield bonds have been greater this year, but have actually been exercised only in the highly regarded hostile-turned friendly acquisition of American Natural Resources by Coastal Corp. Understandably, some managements of large companies, previously impregnable to challenge because of sheer size alone, view with alarm the ability of smaller companies to mount takeover bids backed by public debts. However, the discipline imposed on these managements by this potential competition is certainly a positive development.

There have also been claims that high yield bonds structured for use in recent takeovers are of low quality, thereby discrediting historic default ratios as a measure of future security. However, no knowledgeable credit analyst who has reviewed these securities would agree with that assertion. On the contrary, because of the hostile environment and the speed with which such financings must be arranged, these issues have been of higher credit quality than other issues providing comparable returns. They have been carefully structured to provide significant protection to the institutional purchasers.

Unfriendly Acquisitions!

While reasonable people may differ on the merits of hostile takeovers, there is certainly significant evidence that such free market activities benefit the economy as a whole. In his study, "Takeovers: folklore and science," published in the Harvard Business Review, Professor Michael Jensen found that "scientific evidence indicates that activities in the market for corporate control almost uniformly increase efficiency and shareholders' wealth."

A similar conclusion was drawn by President Reagan's Council of Economic Advisers. In a section of the 1985 report entitled "The Market for Corporate Control," the CEA concludes that competition plays a central role in the evolution of the economy. "(It) breaks down entrenched market positions, unsettles comfortable managerial lives and provides incentives for innovative forms of business organization and finance."

An argument against takeovers is that the successful bidder must

sell off assets to pay the acquisition debt or that the corporation which mounts a successful defense does so by leveraging itself. This restructuring, particularly in the case of the oil industry, is caused by real economic forces independent of takeovers, although timing and the particular measures adopted have been influenced by takeover activity. ARCO recently adopted a restructuring program which will ultimately produce a higher dividend, fewer shares outstanding and higher earnings per share. Exxon is continuing its efforts to improve the return on shareholder equity. The company has repurchased some 96 million shares, or 11 percent of its previous common share capitalization. However, this program has not precluded a high level of capital expenditures. In fact, the company has budgeted capital and exploration expenditures for 1985 at $10.5 billion versus $9.8 billion in 1984.

Whether the restructuring of the oil industry bodes well for our economy, time will tell. We do know that no pressure was brought to bear on managements in the steel industry 15 years ago. They did not restructure their companies and the nation is faced today with the results of their failure to act. Perhaps it is time to try another approach.

Another criticism of hostile takeovers is that they limit long-term economic growth and curtail corporate expenditures for research and development. An extensive study by economists at the Securities and Exchange Commission found that this theory is not supported by empirical evidence. The data strongly suggests that investment in long-term projects does not increase vulnerability to a takeover. The 57 target

firms who experienced hostile tender offers had an average R&D to sales ratio of 0.77 percent, which was less than one-half that of their industry peers.

Another unsubstantiated red herring focuses on the role federally insured thrifts play as a purported major source of capital to finance takeovers. This position stems from the mistaken belief that savings & loans have been major participants in takeover financings. On the contrary, of the three major financings recently arranged, thrifts represented a de minimus amount of the total commitments and those few participants have typically been knowledgeable high yield bond professionals.

Participation of Thrifts in the High Yield Market:

Thrifts have been relatively small participants in the newly issued high yield bond market. We estimate they hold between $3 to 5 billion of these securities. The Garn-St. Germain bill wisely authorizes such investments by thrifts to allow them to improve their risk adjusted returns toward levels necessary to ensure their long term viability. Clearly, such investments should be made prudently, subject to professional credit analysis within the thrift or retained by them on a pooled basis. Diversification, which is critical to the success of such an investment program, should be required, if not voluntarily pursued. Based on all available historic and current data, these investments will continue to provide above average risk-adjusted returns to thrifts, in addition to the liquidity absent in mortgages and commercial loans.

Decline in Takeover Activity:

The recent Delaware court decision which allows Unocal to discriminate against its largest shareholder, provides extraordinary protection to management and will sharply reduce takeover activity. Blatant abuses in the takeover arena such as greenmail and poison pills may well lose their effectiveness through the self-correcting nature of the free market system.

In specific cases legislation may make sense to insure that both the aggressor and target company have a fair opportunity to act responsibly. For example the ten day notification requirement under rule 13D creates opportunities for abuse and should be addressed.

Corporate takeover activity is a matter that deserves careful discussion, analysis and deliberation. Loaded words and dramatic rhetoric only cloud the discussion and make it more difficult to deal with these complex market events.

High yield bonds are not the cause of takeovers, nor are they the primary source of capital used to finance them. They are the financial instruments used to provide midsized growth companies with access to the public market for capital and as such, they are an integral part of our nation's economic fabric. High yield bonds have made a substantial contribution to our economic vitality and ability to compete globally.

CONFIDENTIAL

SLW

file

c Prof. Griffiths

10 DOWNING STREET

From the Private Secretary

20 November 1985

x ref.

JUNK BONDS

The Prime Minister has heard reports about the growth in the use of junk bonds in the US for financing of takeovers and more generally. She would be grateful for a note on this please.

I am copying this letter to John Bartlett (Bank of England).

no comments coming DN aware + agrees.

(DAVID NORGROVE)

Mrs. Rachel Lomax,
HM Treasury.

CONFIDENTIAL

LR

cc Prof. Griffiths

10 DOWNING STREET

From the Private Secretary

20 November 1985

FRAUD

The Prime Minister would find it helpful to have a note to remind her of the present arrangements for combating fraud, to explain how the Financial Services Bill will strengthen those arrangements, including the increased powers of investigators, together with a description of what has been achieved so far by the creation of the Fraud Investigation Group, and anything that can be said about the progress made by the Roskill Commission. Could you arrange for this please?

I am copying this letter to Tony Kuczys (H.M. Treasury) and Henry Steel (Law Officers' Department).

DAVID NORGROVE

John Mogg, Esq.,
Department of Trade and Industry.

ATTENTION: NICK TOWLE, URGENT

NEWS RELEASE

THE STOCK EXCHANGE

cc: M Mogford
BI
JC/Jean Lee
MH(HD)

LETTER FROM STOCK EXCHANGE CHAIRMAN TO THE PRIME MINISTER

Releasing the text of his recent letter to the Prime Minister, Sir Nicholas Goodison, Chairman of The Stock Exchange said today

> "From my close dealings with the DTI on enforcement questions, I am quite clear that those responsible are as keen as I am to get fraudulent offences prosecuted. But there will be no success in this crucial task unless adequate resources are provided in all those parts of Government which have responsibilities for the pursuit of fraud".

The text of the letter is attached.

Public Affairs Department
The Stock Exchange
Old Broad Street
LONDON EC2N 1HP

Please contact:
Luke Glass
Tel. (01)-588-2355

20.11.85

Fax
930 4433
x3161

THE STOCK EXCHANGE

SIR NICHOLAS GOODISON
CHAIRMAN

LONDON, EC2N 1HP
TELEPHONE: 01-588 2355
TELEX: 886557
TELEGRAMS: STOCKEX LONDON EC2

1st November, 1985

Your government's Financial Services Bill will shortly be published. It is based upon the principle that self regulation within a statutory framework is a sound and efficient way of ensuring a well-regulated financial market. This is a principle that The Stock Exchange can wholeheartedly endorse, particularly given its own record in maintaining high standards.

But I have to say that I am concerned about one particular aspect of financial regulation. There is a continuing and worrying failure to bring prosecutions against individuals who, on the basis of evidence we have been able to unearth, seem highly likely to have been involved in financial fraud. If this situation continues, it is bound to damage the reputations of those City institutions which believe in the effectiveness of self regulation.

I hope, therefore, that you will give urgent consideration to the resources your government is prepared to devote to the investigation and prosecution of financial fraud. I appreciate that these resources, requiring as they do high skill and expertise, are likely to be costly. There are also many other demands for increased resources from other parts of society. But until the City can demonstrate publicly that it is running an honest shop, it is unlikely to generate the confidence in investors that is necessary to ensure that our mutual objectives of wider share ownership and international competitiveness are achieved.

The Rt. Hon. Margaret Thatcher, M.P.,
Prime Minister,
10 Downing Street.

C/F file

JA

cc MA

cc Ress

10 DOWNING STREET

THE PRIME MINISTER

20 November 1985

Dear Sir Nicholas,

I very much share the concern set out in your letter of 1 November. I agree that financial fraud must be pursued vigorously and effectively, not least to protect London's reputation as an international financial centre.

As you know, we are taking action on a number of fronts. The Financial Services Bill will strengthen and extend regulation in the City, requiring the financial services industry to meet high standards of conduct. The Bill will also provide investigators with greater powers.

The Department of Trade and Industry and the prosecution authorities will remain responsible for enforcing the criminal law. We have already taken steps to improve the effectiveness of the prosecution of fraud. The Fraud Investigation Group was established in January this year to improve co-operation between the Police, the Director of Public Prosecutions and the Department of Trade and Industry. I fully accept the importance of ensuring that resources are adequate for the job, both in the Fraud Department of the DPP and in the relevant parts of the DTI.

Successful prosecution, however, depends on adequate evidence. This requires a high degree of co-operation with financial institutions and those responsible for their regulation and supervision. I readily acknowledge the

co-operation that the Stock Exchange has always given in this respect. Criminal charges are a very serious matter and the standard of proof required by the courts is, rightly, high, higher by its nature than that normally sought by regulatory authorities.

As you know the law and procedure governing complex fraud trials is at present being reviewed by a Committee under the chairmanship of Lord Justice Roskill. Its report is expected early in the New Year. I am sure that the Committee will identify any improvements that can be made, and we look forward to receiving its recommendations.

Yours sincerely,

Margaret Thatcher

Sir Nicholas Goodison.

LPO

LT4.11

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

18 November 1985

David Norgrove Esq
10 Downing Street
LONDON SW1

Dear David

FRAUD: LETTER TO THE PRIME MINISTER FROM SIR NICHOLAS GOODISON

You asked for a revised draft reply to Sir Nicholas Goodison, to reach you today. This is now attached.

Yours ever,

Tony

A W KUCZYS
Private Secretary

2563/32

DRAFT REPLY FOR THE PRIME MINISTER'S SIGNATURE

TO: SIR NICHOLAS GOODISON

I very much share the concern set out in your letter of 1 November. I agree that financial fraud must be pursued vigorously and effectively, not least to protect London's reputation as an international financial centre.

As you know, we are taking action on a number of fronts. The Financial Services Bill will strengthen and extend regulation in the City, requiring the financial services industry to meet high standards of conduct. The Bill will also provide investigators with greater powers.

The Department of Trade and Industry and the prosecution authorities will remain responsible for enforcing the criminal law. We have already taken steps to improve the effectiveness of the prosecution of fraud. The Fraud Investigation

Group was established in January this year to improve co-operation between the Police, the Director of Public Prosecutions and the Department of Trade and Industry. Since it was set up, the Group has had a very heavy workload. I fully accept the importance of ensuring that resources are adequate for the job, both in the Fraud Department of the DPP and in the relevant parts of the DTI.

Successful prosecution, however, depends on adequate evidence. This requires a high degree of co-operation with financial institutions and those responsible for their regulation and supervision. I readily acknowledge the co-operation that the Stock Exchange has always given in this respect. Criminal charges are a very serious matter and the standard of proof required by the courts is, rightly, high, higher by its nature than that normally sought by regulatory authorities.

As you know the law and procedure governing complex fraud trials is at present being reviewed by a Committee under the chairmanship of Lord Justice Roskill. Its report is expected early in the New Year. I am sure that the Committee will identify any improvements that can be made, and look forward to receiving its recommendations.

A BF

cc BG?

cc HMT!

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

David Norgrove, Esq
10 Downing Street
London SW1

NFA

Told the Treasury that we need a tougher, less waffly reply. DNS 14/11

13 November 1985

BF

Dear David,

FRAUD: LETTER TO THE PRIME MINISTER FROM SIR NICHOLAS GOODISON

You wrote to Rachel Lomax on 4 November requesting a draft reply to Sir Nicholas Goodison's letter to the Prime Minister of 1 November.

I attach a draft reply which we have discussed with the Department of Trade and Industry and with Mr Dorian Williams, Director of the Fraud Investigation Group. Mr Williams has told us that the Fraud Division of the DPP has been faced with a heavy increase in cases over the last 12 months and needs, in his view, to be further strengthened. The Treasury is prepared to consider a bid for extra resources sympathetically on its merits. We would strongly recommend however against making any undertakings to Sir Nicholas at this stage.

Yours sincerely,

Philip Wynn Owen

PHILIP WYNN OWEN
Private Secretary

DRAFT REPLY FOR THE PRIME MINISTER TO SEND TO SIR NICHOLAS GOODISON

Thank you for your letter of 1 November. I entirely share ~~entirely~~ your concern that financial fraud should be pursued vigorously and effectively.

I was glad to know that you endorse ~~see your endorsement of~~ the general approach of the Financial Services Bill. ~~That~~ The ~~legislation~~ will extend the range of activities subject to self-regulation and ~~should strengthen~~ will increase the powers of investigators ~~hands by providing them with greater powers.~~

I fully accept that a system of protection based on self-regulation involves continuing responsibilities for the Government in the prosecution of fraud. However I know you will ~~however I know~~ appreciate that criminal charges are a very serious matter and the standard of proof required by the courts is consequently higher than for regulatory breaches.

We have already taken a number of initiatives in this area. In particular, the Fraud Investigation Group was established in January this year to improve cooperation between the police, the Director of Public Prosecutions and the Department of Trade and Industry. Since the Group's inauguration, the Fraud Department

of the DPP has undertaken a heavy workload of investigations. We fully recognize the importance of ensuring that it has the resources it needs to do its job, and that goes, too, for the staffing of the relevant parts of the DTI.

You will also be aware that the report of Lord Justice Roskill's Committee on the law and procedure governing complex fraud trials is expected early in the new year.

Econ Pol: Power.

P&T 2

Prime Minister

Nevertheless, we should be concerned about proposals to reduce the independence of the Chief Executive.

CONFIDENTIAL

12 November 1985

MR NORGROVE

c. Prof. Griffiths

DGV 12/11

LLOYD'S

I understand that Ian Hay Davison read out his letter of resignation at yesterday's Council Meeting. When it was suggested that some modification might be desirable, he said that he had already sent out copies; and it transpired that he had already seen the DTI without the Chairman or the Council being aware.

I gather that it had always been expected that he would go in 1986, as he had said all the year that he would do so. There was criticism of the administration, particularly the Regulatory Services Department. A Committee was set up under Sir Kenneth Berrill to make recommendations, and it was agreed that the elected Chairman and Deputy Chairman, Ian Hay Davison and certain senior executives, would put recommendations together for this Committee. Disagreement here led Davison to resign.

It was clear that a new Chief Executive would need different terms of reference, because circumstances had changed.

Temporarily Retained
J. Cray
13/11/2014

David Hobson

DAVID HOBSON

CONFIDENTIAL

E.R.

PRIME MINISTER

LLOYDS

Mr Ian Hay-Davison has resigned.

Mr Miller, Chairman of Lloyds, came with Sir Kenneth Berrill (who has a role at Lloyds as well as being Chairman of the Securities and Investments Board) to see Mr Brittan to tell him this. It seems that Lloyds may have been looking to reduce the independence of Mr Hay-Davison's position, and to make him more directly controlable by the membership.

A development of that kind would of course be of concern to DTI as the regulatory authority. But the immediate public line if asked is that his resignation is of course a matter for Mr Hay-Davision, though the Government will necessarily want to take a close interest in developments.

DAVID NORGROVE

11 November 1985

Lloyds

RR3.40

cc BG

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

11 November 1985

The Rt. Hon. Leon Brittan QC MP
Secretary of State for Trade and Industry

11/11

TAKEOVER PANEL

Thank you for your letter of 21 October. It is helpful to know what kind of safety net on takeover practices could be contrived once the existing regulatory framework in the Financial Services Bill is in operation in 1987. I am not completely confident that any diminution before then in the Takeover Panel's authority will be gradual and manageable. But the assessment of this risk, and the priority which you are able to give to contingency planning, is obviously for you to judge.

I am copying this to the Prime Minister and Sir Robert Armstrong.

NIGEL LAWSON

ECON POL

GOWER REPORT

PTZ

CONFIDENTIAL

file ECL

bc BG.

10 DOWNING STREET

From the Private Secretary

5 November 1985

FINANCIAL SERVICES BILL AND BUILDING SOCIETIES BILL: TRANSFER OF FUNCTIONS

The Prime Minister has seen your Secretary of State's minute of 22 October. She agrees that it would make sense to have the Financial Services Bill and the Building Societies Bill applying to the whole of the United Kingdom and the consequent Act administered on that basis. She also agrees to the transfer of functions between Departments described in paragraph 5 of the minute.

I am copying this letter to John Mogg (Department of Trade and Industry), Mike Neilson (Economic Secretary's Office, H.M. Treasury) and Michael Stark (Cabinet Office).

(David Norgrove)

Jim Daniell, Esq.,
Northern Ireland Office.

CONFIDENTIAL

VC

10 DOWNING STREET

From the Private Secretary

4 November 1985

I attach a copy of a letter the Prime Minister has received from Sir Nicholas Goodison, Chairman of the Stock Exchange.

I should be grateful if you could provide a draft reply for the Prime Minister's signature, to reach me by Monday 14 November.

BF

(DAVID NORGROVE)

Mrs Rachel Lomax

TREASURY

cc MA

THE STOCK EXCHANGE

SIR NICHOLAS GOODISON
CHAIRMAN

LONDON, EC2N 1HP
TELEPHONE: 01-588 2355
TELEX: 886557
TELEGRAMS: STOCKEX LONDON EC2

R2

1st November, 1985

Dear Prime Minister

Your government's Financial Services Bill will shortly be published. It is based upon the principle that self regulation within a statutory framework is a sound and efficient way of ensuring a well-regulated financial market. This is a principle that The Stock Exchange can wholeheartedly endorse, particularly given its own record in maintaining high standards.

But I have to say that I am concerned about one particular aspect of financial regulation. There is a continuing and worrying failure to bring prosecutions against individuals who, on the basis of evidence we have been able to unearth, seem highly likely to have been involved in financial fraud. If this situation continues, it is bound to damage the reputations of those City institutions which believe in the effectiveness of self regulation.

I hope, therefore, that you will give urgent consideration to the resources your government is prepared to devote to the investigation and prosecution of financial fraud. I appreciate that these resources, requiring as they do high skill and expertise, are likely to be costly. There are also many other demands for increased resources from other parts of society. But until the City can demonstrate publicly that it is running an honest shop, it is unlikely to generate the confidence in investors that is necessary to ensure that our mutual objectives of wider share ownership and international competitiveness are achieved.

Yours sincerely

Nicholas Goodison

The Rt. Hon. Margaret Thatcher, M.P.,
Prime Minister,
10 Downing Street,
London SW1.

CONFIDENTIAL

Ref. A085/2722

PRIME MINISTER

Yes Prime Minister? Content?

DRS 4/11

Financial Services Bill and Building Societies Bill: Transfer of Functions

The Secretary of State for Northern Ireland proposed in his minute of 22 October that legislation on financial services and on building societies should be enacted on a United Kingdom basis. This involves amendment to the Northern Ireland Constitution Act 1973 and minor transfers of functions from the Northern Ireland Office to the Treasury and to the Department of Trade and Industry. I see no problems in what is proposed.

TLS

for ROBERT ARMSTRONG
(Approved by Sir Robert and signed in his absence)

25 October 1985

CONFIDENTIAL

Gower Report + Econ Pol
1972.

CONFIDENTIAL

B/F Await CO advice

PRIME MINISTER

FINANCIAL SERVICES BILL AND BUILDING SOCIETIES BILL : TRANSFER OF FUNCTIONS

You will be aware that it is proposed to present these Bills early in the new Parliamentary Session. The matters which they will cover are relevant to Northern Ireland; but because the subjects are currently in the "transferred" category (ie subjects on which a Northern Ireland Assembly could legislate in a "devolved" situation) it would be normal for legislation by Order in Council to follow the Acts in order to provide the same law in Northern Ireland.

2. On these particular subjects it is quite impracticable both now and in the future to have laws which differ in effect or content between Northern Ireland and the rest of the United Kingdom. Activity in financial services is largely generated by interests common to the whole of the United Kingdom and in the case of Building Societies the vast bulk of business transacted in Northern Ireland is through societies with headquarters in Great Britain. The specialist institutions (in the case of Financial Services) and expertise in prudential supervision could not be provided for Northern Ireland separately in a way which is efficient and cost effective. Hence it seems a waste of resources to prepare separate legislation for Northern Ireland and have separate administration arrangements.

3. Douglas Hurd took the view - and I endorse it - that it makes sense to have the Bills applying to the whole of the United Kingdom and the consequent Acts administered on that basis. It follows that we should remove the ability of any future local devolved administration to act in this field. This would be done by a modest change in the Northern Ireland Constitution Act 1973 to remove the subject from the "transferred" to the "reserved" category. If this is done by a short provision in each of the Bills as appropriate I do not expect that it will create any difficulty in Northern Ireland

CONFIDENTIAL

/(indeed

(indeed in debating the Gower Report the Northern Ireland Assembly positively favoured United Kingdom wide enactment and administration of financial services).

4. Both Leon Brittan (who will be promoting the Financial Services Bill) and Ian Stewart for the Treasury (which has responsibility for Building Societies legislation) have agreed to the suggestion that the Bills can be drafted and presented on a United Kingdom wide basis and can include a modification to the Northern Ireland Constitution Act.

5. As a consequence, two minor functions of Departments under my direction and control in the fields covered by the Bills will be transferred to Treasury and the Department of Trade and Industry respectively. No transfer of Function Order will be required.

6. I am copying this minute to Leon Brittan, Ian Stewart and to Sir Robert Armstrong.

N Sheard
Private Secretary

for T K

(Approved by the Secretary of State and signed in his absence)

22 October 1985

ssd

CC 240

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET 5422
TELEPHONE DIRECT LINE 01-215
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

21 October 1985

NSPM

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
LONDON
SW1P 3AG

Dear Nigel,

TAKEOVER PANEL

Thank you for your letter of 4 October.

2 We have indeed given some thought to the sort of powers which would be needed if the Takeover Panel ceased to be effective. The Secretary of State would need powers to make and enforce rules about the conduct of takeover bids covering both the content of offer and defence documents, and the behaviour of participants. These powers would have to apply to all participants, offerors and offerees as well as the merchant banks and others advising them. They would therefore go very much wider than any of the powers currently proposed in the Financial Services Bill, which apply only to those carrying on investment business, and would bring in anyone (including foreigners) making a bid and any company which was the target of the bid.

3 The rules would be statutory and would have to be applied and interpreted accordingly. There could be a power to waive the requirements of the rules in particular circumstances. But it is most unlikely that it would be possible to build in the same sort of flexibility as the Panel now enjoys to impose additional requirements, to require compliance in the particular way it does now with the spirit as well as the letter of the rules, and to reinterpret rules and principles on the spot.

4 On the analogy of the Financial Services Bill, the Secretary of State would not himself wish to exercise the powers (indeed he would not have the resources to do so). We would therefore need to provide that he could transfer his powers to a body meeting specific criteria. This could be SIB or some other body. SIB will in any case be concerned in the takeover area as most takeovers

JF5AKK

involve the use of authorised businesses, and it would be sensible not to have two bodies exercising statutory powers over the conduct of authorised businesses during takeovers. The problem is, however, that SIB is a private sector body and for constitutional reasons we have concluded that it should not exercise authority over persons other than authorised businesses. An extension of its role at this stage would be highly controversial and might well also call into question generally the acceptability of our whole policy of using a private sector body to regulate investment business. To propose giving powers to regulate takeovers to a statutory body would similarly undermine our existing policy. On the other hand, to exclude persons other than authorised businesses would significantly weaken the effectiveness of the regulation of takeovers, and in particular would make it impossible to enforce the requirement to make a bid after building up a specified stake in a company.

5 I concluded, therefore, that any powers we might take now even as reserve powers were likely to be less effective that the present arrangements unless the Take Over Panel seriously and regularly failed to impose its authority. There are some worrying signs, but so far in general it is coping effectively. If the voluntary approach does break down, we may be forced to adopt the statutory route. But I would prefer to delay until it is clearly necessary to do so. Our advice is that the system is unlikely to break down before our new regulatory regime for investment businesses is in operation in 1987. Any breakdown after then can be dealt with by deciding whether to build on an established regulatory system or to make some separate arrangements for takeovers.

6 I am not sufficiently convinced that we yet have the right long-term answer for me to want to include reserve powers in the Financial Services Bill. I am also concerned that to do so might undermine the Panel's existing authority. I welcome your view that we should not precipitate a change which we all want to avoid. As you know both the Panel and the Governor have expressed concern on this point.

7 I would expect any weakening of the Takeover Panel's authority to be a gradual not a sudden process. In the meantime we would not be powerless. The powers we are proposing in the Financial Services Bill will in any case give the Secretary of State (or any agency to which he delegates his powers) the power to make wide ranging rules about the conduct of authorised businesses and the content of documents. These powers could be used to give statutory force to rules on the lines of the takeover code and to enforce those rules. The rules would apply only to authorised businesses but it would be possible to prohibit authorised businesses from acting for offerors or offerees who did not behave in specified ways. This would not be an ideal arrangement but it would enable the situation to be held until new legislation could be prepared.

JF5AKK

8 I therefore propose to tell the Panel that I am not proposing to include any reserve powers in the Bill but that I shall need to keep the situation under review in the light of developments in the coming months. I would not propose to give any priority to further contingency planning at this stage.

9 I am copying this to the Prime Minister and Sir Robert Armstrong.

LEON BRITTAN

JF5AKK

ECON POL

GOWER REPORT

PT 2

CONFIDENTIAL

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

9 October 1985

CONFIDENTIAL

David Norgrove Esq
Private Secretary to the
Prime Minister
10 Downing Street
LONDON
SW1

Dear David,

FINANCIAL SERVICES BILL : INTERNATIONAL RECIPROCITY

My Secretary of State wrote to the Chancellor of the Exchequer on 7 October about his decision to include in the Financial Services Bill a discretionary power enabling him to declare ineligible to conduct investment business in the UK a firm from any country which does not accord British firms broadly equivalent access to its financial markets.

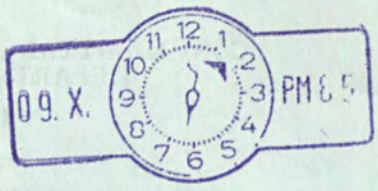
2. Given the importance of this issue, I am sending a copy of the letter to you and to Michael Stark (Private Secretary to Sir Robert Armstrong).

Yours ever

Michael Gilbertson

MICHAEL GILBERTSON
Private Secretary

JF1AID


09. X.
PM 6 5

CONFIDENTIAL

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

DW724

Secretary of State for Trade and Industry

Prime Minister 2
To be aware.

7 October 1985

CONFIDENTIAL

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
LONDON
SW1

cc: PS/MH
PS/MFT
PS/Sir BH
Mr Caines
Mr Williams
Mr Rickford
Mr Hilton FS
Mr Muir I
Mr Wells FS

Dear Nigel,

FINANCIAL SERVICES BILL : INTERNATIONAL RECIPROCITY

I am writing to let you know that I have come to the conclusion that the Financial Services Bill should include a discretionary power enabling me to declare ineligible to conduct investment business in the UK a firm from any country which does not accord British firms broadly equivalent access to its financial markets.

2 I understand that you too are in principle in favour of such a power. The City itself is divided on the subject, but I am satisfied that we need to have such a power, in reserve, in order to defend ourselves against discrimination abroad and to strengthen our hand in securing the progress towards international liberalisation that we seek.

3 I know that you have already begun to consider the merits of including a similar provision in the forthcoming Banking Bill. Though some considerations here may be different, we will want to be as consistent as those considerations allow; and so my officials will be giving yours details of the power proposed for the Financial Services Bill as soon as possible.

4 I am sending a copy of this letter to Geoffrey Howe.

Yours ever,

Leon

LEON BRITTAN

039

CC NO

NBPT.

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

Rt Hon Leon Brittan QC
Secretary of State
Department of Trade and Industry
1-19 Victoria Street
London SW1H OET

4 October 1985

Dear Secretary of State,

TAKE-OVER PANEL

Thank you for your letter of 1 October. I am sure you are right that there is a real risk of the Take-Over Panel's traditional authority coming under increasing strain. I agree that we need to prepare adequately for that outcome without, by our preparations, precipitating it.

Naturally, like you, I attach a good deal of weight to the Governor's and the Panel's views. But to say the problem is best faced when it arises is to run some risk of a rather difficult period between an occasion on which the Panel is conspicuously and unacceptably flouted and the Government being able to bring forward legislation.

So I would suggest that as a minimum we should do some contingency planning, and give thought now to the kind of powers we should have ready to introduce if needed. Indeed I am not yet convinced that it would necessarily be wrong to include such powers in the Financial Services Bill, on a reserve power basis. It would be easier to judge whether such a power would undermine or enhance the Panel's standing if we had a draft clause to look at.

I would of course be quite happy for you now to indicate your present thinking to the Panel. But I hope that in doing so you could avoid ruling out the possibility of reserve powers in some form - making clear that we would only include them after further consultation on a draft clause and if convinced it would buttress the Panel's work.

If you agree with this approach we could then consider the issue further, with the Governor, on the basis of a draft clause, and after discussion by our officials.

I am copying this to the Prime Minister and Sir Robert Armstrong.

Yours sincerely
Nigel Lawson

NIGEL LAWSON

(approved by the Chancellor and signed in his absence)

ECON POL: Gower Report: Nov 1983

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET 5422
TELEPHONE DIRECT LINE 01-215
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

/ October 1985

The Rt Hon Nigel Lawson PC MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
LONDON
SW1P 3AG

Prime Minister
Await the Chancellor's reaction?
DRW
2/10.

Dear Nigel,

TAKE-OVER PANEL

In the White Paper on "Financial Services in the United Kingdom" we said that if practitioners in, and users of, the securities market felt that statutory backing for the City Panel on Take-overs and Mergers would be helpful, the Government would be willing to consider it. I have considered all the advice we have received. I have concluded that we should not expressly provide for statutory backing for the work of the Panel in the forthcoming Financial Services Bill.

2 I believe that the Panel is presently doing a good job in regulating takeovers on a non-statutory basis, and that it enjoys the support of the City. Nevertheless I have considered whether it would be prudent to include reserve powers in the financial services legislation in case that support were to diminish. The Panel and the Governor of the Bank of England have advised against this because of the risk that the existence of reserve powers might undermine the authority of the Panel, thus causing precisely the decline of the voluntary system which the Government wishes to avoid.

3 The Governor acknowledges that it will not be possible indefinitely to regulate the conduct of takeovers by self-regulation without statutory backing, but believes that the problem is best faced when it arises.

4 There can be no certainty about future City attitudes towards the Panel, with or without reserve powers. It is a matter of judgment. Some influential members of the City have said privately that they see some advantage in taking reserve powers. The Association of Investment Trust Companies and the three Institutes

JF2AEA

of Chartered Accountants have said so formally. I am however reluctant to go against the considered judgement of the Governor of the Bank and the Panel. I also take the force of the point that it would be difficult to draft provisions on takeovers now and to be sure that they would adequately cope with the problems when they really arise. We would also be adding a controversial topic to what is already a lengthy and complex Bill.

5 If despite all our wishes and expectations there were to be a significant decline in the City's support for the panel, the Government would naturally have to reconsider the position, and to introduce fresh legislation if need be. In the time this would take it would be possible to give some limited degree of support to the Take-Over Code through general powers in the Financial Services Bill which will cover the conduct of authorised businesses and the content of offer documents.

6 It would be helpful if you could let me know whether you agree with this approach this week, so that the Panel can be told before we become preoccupied with the Party Conference. It would be convenient for our decision to be known by the time the Committee on the Securities Industry is dissolved on 17 October.

7 I am copying this to the Prime Minister and to Sir Robert Armstrong.

Yours,

Leon

LEON BRITTAN

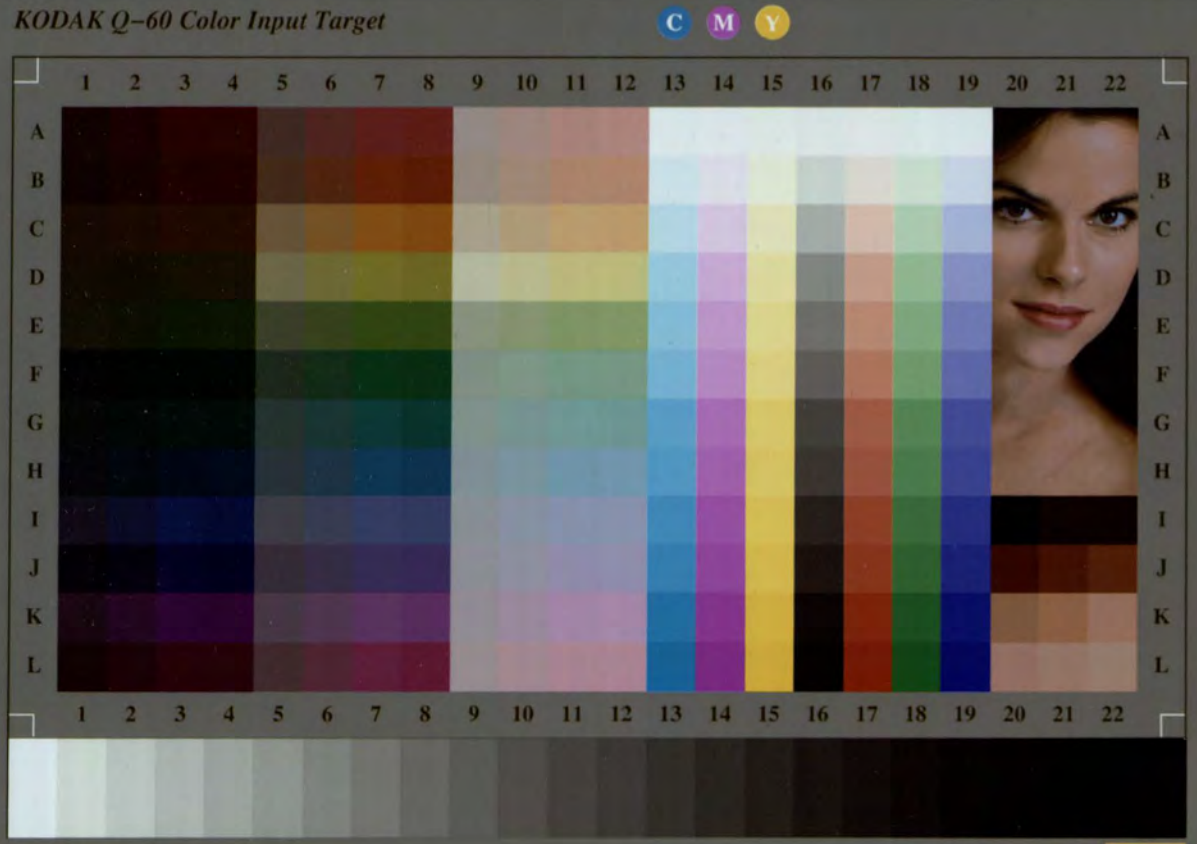
JF2AEA

PART ONE ends:-

JOHN REDWOOD MOR: THE BIG BANG 18/9/85

PART TWO begins:-

S/SDT TO CH/EX 1/10/85.


KODAK Q-60 Color Input Target
C M Y
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22
A B C D E F G H I J K L
IT8.7/2-1993
2007:03
FTP://FTP.KODAK.COM/GASTDS/Q60DATA
Q-60R2 Target for
KODAK
Professional Papers
Kodak