PART 3

S 812

MT

CONFIDENTIAL FILING

Gower Report on Investor Protection

The Stock Exchange

Commercial fraud

The Finance Bill

IN ATTACHED FOLDER ISRO NEWSLETTERS NOS 1+2

ECONOMIC POLICY

PART 1: NOVEMBER 1983

PART 3: FEBRUARY 1986

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~3.2.86~~		~~31.7.86~~					
~~12.2.86~~		~~26.8.86~~					
~~13.2.86~~		~~17.9.86~~					
~~12.3.86~~		~~22.9.86~~					
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~~2.4.86~~		~~1.10.86~~					
~~4.4.86~~		26.9.86					
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PREM 19/1718

PART 3 ends:-

PUSS/NIO TO SS/HOME 26/9

PART 4 begins:-

SS/HOME TO LPC 1.10.96

PRIME MINISTER

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

CC 3G

Parliamentary Under Secretary of State

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
50 Queen Anne's Gate
LONDON
SW1H 9AL

NBM

26th September 1986

Dear Secretary of State,

ROSKILL

In Tom King's absence on holiday I am responding to your letter of 17 September to Willie Whitelaw.

As Tom said when he wrote to you on 22 July, serious fraud is a problem in Northern Ireland.

I understand it is intended that the investigatory powers of the SFO may extend throughout the United Kingdom but these powers will not bite on any of the small but growing number of serious and complex Northern Ireland cases. Since, as yet, the RUC have no PACE powers nor any FIG arrangements we clearly face a situation where the gap in statutory powers, and the effectiveness of investigation and prosecution of serious fraud as between Great Britain and Northern Ireland will continue to widen. This situation will not escape the attention of fraudsters, particularly sole traders (outside the scope of Companies Acts investigation), cross-border and international fraudsters and those able to exploit the British Isles dimension of the stock exchange. We are therefore examining various options as to how the measures you are taking might be made available in Northern Ireland.

In any event, if SFO type powers are to be provided for in Northern Ireland we would wish to ensure that Northern Ireland investigators could use these throughout the United Kingdom as well as make enquiries abroad. On the latter point, officials here will be in touch with yours on the question of whether England and Wales provisions alongside Scottish legislation will be sufficient to fully satisfy the international need for United Kingdom reciprocation in mutual assistance matters.

/...

Since Northern Ireland could continue to be significantly out of step in these matters for some time, we would not wish gratuitously to draw the attention of fraudsters to this readily exploitable situation. Thus we intend, if possible, to avoid comment on these initiatives until we have taken decisions as to the implementation of similar powers in Northern Ireland. I therefore support the terms of the proposed Home Office announcement (amended as proposed by the ~~Lord Chancellor~~ Att.-Gen.) omitting as it does any clarification of the jurisdictional extent of your proposed measures.

I am copying this letter to the Prime Minister, other Members of H Committee, the Secretary of State for Trade and Industry, the Attorney General and to Sir Robert Armstrong.

John Donnelly

for LORD LYELL
(Approved by the Minister and signed in his absence)

JLD

ECON POL Gomen PT3

COBG

ATTORNEY GENERAL

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn xxxxxxxxxxxxxxx936.6201

24 September 1986

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
50 Queen Annes Gate
London SW1

NBM

Dear Home Secretary,

ROSKILL

I write in response to your letter of 17th September 1986 to the Lord President. In it you outlined the results of discussions held by your officials with the police and other interested Departments to try to overcome the reservations expressed by colleagues to the proposals set out in your letter of 17th July.

The revised proposals for the relationship between SFO and the police, in particular reflecting the agreement that they should be partially co-located, represent a real and welcome advance.

They are not ideal, nor likely to be as effective as either a unified organisation or the proposals for a bi-partite arrangement made by the Chief Secretary's Working Group. For example, there will not be a single police commander corresponding to the Head of the SFO with responsibility for the deployment of men and resources to individual cases, and for the subsequent management of the police part in those investigations. And it will remain the case that primary responsibility for the investigation of complex fraud will rest with individual police forces on a territorial basis.

Nevertheless, I recognise that efforts to persuade the police service to move closer to the bi-partite organisation envisaged by the Chief Secretary would at present be unlikely to succeed. I am therefore prepared to agree the present proposals, subject of course to my being at liberty in the future to suggest

modification or re-structuring in the light of experience. Here the functioning of the monitoring committee which you have suggested will be important.

I would find it helpful in view of the fact that I shall have Ministerial responsibility for the SFO, if it were to be chaired by my Legal Secretary.

We must take care to see that the legislation should not fix me with direct Ministerial responsibility for the investigation of one particular category of crime. As I see it, the function of the SFO will be to identify alleged offences which, on account of their serious or complex character, ought to be the subject of a joint investigation by the police in collaboration with the SFO, and also to ensure that such investigation comes about. My officials are consulting with your Legal Adviser's Branch on the terms of the instructions to Parliamentary Counsel, and I do not envisage difficulty in finding the right formula.

The only remaining issue arising out of the proposal to establish an SFO is the question of funding. In my view there will inevitably be a net cost, and we cannot divorce policy questions from the issue of who is to bear that net cost. I am writing separately to the Chief Secretary on this. I would prefer agreement to be reached on the question of funding before announcement of any policy decision. As to the terms of the announcement, I am content with what you propose subject to some relatively minor amendments indicated on the attached copy. My officials will of course explain the reasoning behind those amendments if required.

Copies of this letter go to other members of H Committee, Secretary of State for Trade & Industry, Sir Robert Armstrong and the Prime Minister (to whom I understand your letter of 17th September has also now been copied).

Yours sincerely

Stephen Wooler

Approved by the Attorney General
and signed in his absence.

ACTION AGAINST FRAUD - THE GOVERNMENT'S
RESPONSE TO THE ROSKILL REPORT

The Home Secretary is to introduce a wide range of measures to improve the efficient investigation of fraud and the successful prosection of fraudsters [without removing the right to jury trial.] In addition to accepting the Roskill Committee's recommendation that peremptory challenge of jurors should be abolished, the Government has decided upon the following proposals:

- a Serious Fraud Office to ~~investigate and prosecute~~ initiate and carry on investigations and to join police in major fraud;

- new procedures for taking and admitting foreign evidence, readier admissibility of reliable documentary evidence and further practical steps to assist in the presentation of the evidence to the jury (applying to all criminal proceedings);

- streamlined court procedures in serious fraud cases, including a preparatory stage of trials to clarify issues for the jury;

- ~~restricting the wider use of~~ removing restrictions on the common law charge of conspiracy to defraud;

- police action to match the new arrangements including a review of the training of fraud squad officers

2. Where legislation is necessary to give effect to those proposals, provision will be made [in the forthcoming Criminal Justice Bill.

3. The Government has decided that the measures to be taken would be evaluated carefully and given time to take their course, but has ruled out as unlikely to bring benefits which would justify its costs the creation of a new advisory body, as Roskill had suggested. Nor

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does the Home Secretary intend to pursue, at this stage, the recommendation for a special tribunal to replace juries in serious fraud cases. The proposal is not ruled out for ever. But, many of the other measures are intended to make it easier for juries to understand the evidence in complex fraud cases. These should be given a chance to prove themselves before such a radical change as dispensing with the jury is contemplated.

4. Commenting on the decisions today, Mr Hurd said:

> " This very positive response to the Roskill Report should be seen as part of our strategy for combatting fraud and safeguarding the probity of our financial institutions. The strengthened investigative and court powers in the Companies Acts 1980 and 1981, changes in the Insolvency Act 1985, and the new regulatory framework in the Financial Services Bill are all part of the same picture. Fraud can do great damage not only to its victims, but to confidence in the commercial and financial institutions which are so vital to the country's future. The new Serious Fraud Office and the substantial improvements I have announced today in law and court procedure are evidence of our full-hearted commitment to stern action against fraud."

The proposals in more detail

I Serious Fraud Office

5. A statutory body will be set up to investigate and prosecute the most serious and complex frauds, developing the existing non-statutory arrangements for coordination and including the revenue Departments. The office will operate under the superintendence of the Attorney General in much the same relationship as the Office of the Director of Public Prosecutions. The members of the new office will have a range of relevant professional skills and qualifications, and will include lawyers, accountants and officers experienced in company legislation. They will work closely with designated officers of the Metropolitan and City Police Company Fraud Department and will have the investigative

/and prosecuting

and prosecuting powers they need, including those now exercised by the Director of Public Prosecutions as well as powers for obtaining access to documents and information, but not police powers of search, arrest and detention. The objective is to bring together the necessary powers and expertise so that major fraud cases can be brought to trial as rapidly and effectively as possible.

6. (The decision to establish a Serious Fraud Office follows a study by the Chief Secretary to the Treasury and other interested Ministers, which was announced by the Home Secretary during the Debate on the Roskill Report in the Commons on 13 February.

II Evidence

7. There are two main changes in the present law. Each will apply to criminal cases generally and not just fraud. Under the first, archaic inhibitions on the use of documentary evidence, which Roskill criticised, will be considerably relaxed. Many documents will normally be admissible as evidence, with the judge having discretion to exclude them only if he considers it would be in the interests of justice to do so. The weight to be attached to the contents of such documents will of course be a matter for the jury. There will be an exception for written statements by witnesses who could be expected to attend court in the usual way and be subject to cross-examination. In accordance with the Roskill Committee's recommendation, these will not normally be admissible, unless the judge considers that it would be in the interests of justice to admit them. The revised rules of evidence will take account of the possible use of live video links as a means of taking evidence directly from a witness who could be cross-examined.

8. The second main change will be the introduction of a procedure under which courts in this country will be able to request the authorities in other countries to arrange for evidence to be taken on commission for use in proceedings here, or for documents to be produced. Evidence taken in this way will be readily admissible, on the basis described for documents.

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9. A further change relates to the presentation. The Roskill Report points out that material which summarises and presents the evidence more clearly, for example as a schedule or chart, can greatly assist the jury in understanding a complex case. Reforms to the rules of evidence will allow this kind of evidence to be admitted.

10. The Roskill Committee heard of otherwise well-founded cases which were not prosecuted because of expected difficulties over the strict proof of documentary evidence. The changes now planned should enable reliable and relevant evidence to be taken into account by the court without weakening the principle that witnesses with substantive evidence to give should testify in person and be subject to cross-examination.

III Court Procedures

11. Again, there are two new procedures, both of which were recommended by Roskill. Under the first, prosecutors will be able, in serious or complex fraud cases, to transfer the case straight to the Crown Court for trial, without the need for committal proceedings in the magistrates' court. It will be open to the defence to make an application to the Crown Court for discharge, on the ground that there is no case to answer.

12. Under the second new procedure, if the trial judge believes that the conduct of a fraud trial will be assisted by clarifying in advance the issues which will fall to the jury, he will be able to order preparatory hearings. These will be in open court. The judge will be able, at this stage, to decide points of law and make orders designed to simplify the presentation of the evidence to the jury. Both parties will be obliged to indicate in outline the nature of their case but the line of defence will not be disclosed to the jury unless with the consent of the defence of the leave of the judge.

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IV Conspiracy to Defraud

13. The Bill will provide that this offence can be charged whether or not other offences could also be charged. The Roskill Report drew attention to the case of Ayres, in which the House of Lords decided, in effect, that any relevant offence in statute must be charged in preference to a common law charge of conspiracy to defraud. The Home Secretary remitted the matter to the Criminal Law Revision Committee earlier this year. The CLRC Report (published on 9 September) recommends restoring the full ambit of the common law offence. The Committee takes the view that, at present, not only are conspiracies relating to major frauds charged as relatively trivial offences in statute (carrying low penalties) but also that juries can be confused when one charge has to be substituted for another as the details of the case unfold during the trial. Prosecutors will be given guidance on the proper use of the common law charge, which will carry a maximum penalty of ten years' imprisonment.

V Police action against fraud

14. The joint Metropolitan and City Police Company Fraud Department already has 200 officers dedicated to the investigation of commercial fraud. The increases in Metropolitan Police manpower announced by the Home Secretary on 20 May should enable the Commissioner to strengthen further his commitment to the investigation of fraud. The Association of Chief Police Officers has undertaken to review the training of fraud squad officers, and both Commissioners (the Metropolitan Police and the City) are examining the scope for improvement in career structure or repeated periods of service for fraud squad officers, to build on experience, and for accountants attached full-time to the fraud squad. Specialist advice on accountancy and other matters related to fraud is already available to the police and will be improved by the establishment of the Serious Fraud Office.

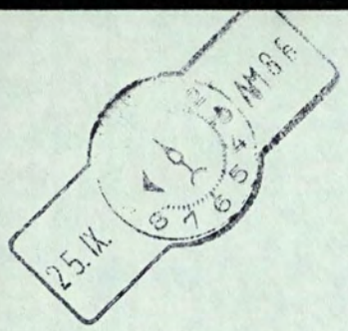
Notes for Editors

a. The Roskill Committee was set up in November 1983 with the following terms of reference:

> "to consider in what ways the conduct of criminal proceedings in England and Wales arising from fraud can be improved and to consider what changes in existing law and procedure would be desirable to secure the just, expeditious and economical disposal of such proceedings."

Its report was published on 10 January 1986 and made 112 recommendations. Debates on the report took place in both Houses of Parliament in February 1986.

b. The Home Secretary announced his decision to seek the abolition of peremptory challenge of jurors in reply to a Private Notice Question from Mr Gerald Kaufman on 9 July (Official Report, col 305).



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cc Press

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PRIME MINISTER

ROSKILL

The Home Secretary did not in the event make a statement before the recess to announce the Government's decisions on Roskill. The main obstacle was the belief, held strongly by the Chancellor among others, that to do so would take the pressure off the police to agree that police fraud officers should work alongside the Serious Fraud Office.

The Home Secretary in his letter below says the Commissioner of the City of London police has now agreed that a group of his fraud squad officers should work with the SFO and be co-located with it.

The Home Secretary proposes to announce the decisions in the week before the Party Conference. He has circulated a draft of his proposed statement (below).

You will remember that the two main Roskill recommendations which are not to be accepted are, first, that for a new advisory body and second, the proposal for a special tribunal to replace juries in serious fraud cases (the fear was that to withdraw the right to a jury trial would jeopardise acceptance of other recommendations, for example on admissability of evidence, which might themselves be more helpful than the proposed tribunals).

DKN

MT

DAVID NORGROVE
22 September 1986

BM2AVA

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

17 September 1986

Dear Willie,

ROSKILL

You will recall that my letter to you of 17 July, setting out proposals for the investigative powers for the Serious Fraud Office (SFO) and for the relationship between the SFO and the police, met with some reservations from colleagues. On that basis it was decided that we should not make a Roskill announcement before the Recess and that officials should pursue the outstanding issues.

The discussions which my officials have since held with the police and other Departments have produced results which in my view overcome the earlier difficulties. I therefore hope that colleagues will now feel able to accept the amended proposals outlined in this letter and to agree to the postponed announcement going ahead.

Colleagues felt particularly strongly that a designated group of police officers should be co-located with the SFO to ensure effective working. We have therefore been back to the police. The Commissioner of the City of London Police has offered to designate a group of his Fraud Squad officers, who would be supplemented to meet special needs, to work with the SFO and to co-locate them with the SFO. He is also prepared to suggest that his force should provide premises for this purpose, such as have been made available for the JMB enquiry. The Metropolitan Police have agreed that a small group of their Fraud Squad officers, the precise numbers flexible in the light of experience, should be designated to work with the SFO and thus build up experience and provide an element of continuity. Accommodation would be available for SFO representatives working with these officers in the investigation of particular cases. The far wider range of demands on the Metropolitan Police does mean that, more than is the case in the City, this commitment would need to be adjustable in response to other operational emergencies. This move on the part of the police thus delivers co-location of that part of the joint Metropolitan and City Police Company Fraud Department, namely the City component, which is likely to handle the majority of SFO cases; equally, it preserves both Commissioners' ultimate command and control of their officers, which, as I emphasised in my earlier letter, it is their constitutional right to do. I hope colleagues will agree that the arrangements now proposed are very much on the lines originally envisaged by the Ministerial working group.

As with my earlier proposals, I remain of the view that measures should be put in hand to monitor the police commitment to the work of the SFO. I have in mind here an inter-Departmental group of senior officials, similar to the Drugs Intelligence Steering Group, representing the Home Office, Attorney General, Department of Trade & Industry, Treasury and the police, who would meet periodically to review progress and resolve any

The Rt Hon The Viscount Whitelaw, CH., MC.

/over....

difficulties. I see chairmanship of the group as falling to either the Home Office or the Law Officers' Department; this, together with precise terms of reference, could be left to officials to work up. For the present, I should welcome colleagues' support in principle for such a monitoring group.

Subject to general acceptance of these proposals the way is now clear for the announcement of our decision on the Roskill Report. I should like to make it in the form of a Home Office statement in the week before the Party Conference, and therefore not to Parliament. I would simultaneously write to Gerald Kaufman and other interested people. I enclose a draft announcement and should be grateful for agreement to my proposal and the draft by 25 September..

I am sending copies of this letter to other members of H Committee, to the Secretary of State for Trade & Industry, to the Attorney General, and to Sir Robert Armstrong.

Yours,

Douglas.

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RESPONSE TO THE ROSKILL REPORT

The Home Secretary is to introduce a wide range of measures to improve the efficient investigation of fraud and the successful prosection of fraudsters without removing the right to jury trial. In addition to accepting the Roskill Committee's recommendation that peremptory challenge of jurors should be abolished, the Government has decided upon the following proposals:

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ECON Pol Comm PTB

NBPM

MR NORGROVE

17 September 1986

FINANCIAL SERVICES BILL

Following various press reports of possible problems with the final stages of this Bill, I have ascertained the latest position from the Department of Trade and Industry.

The Lords' Report stage is scheduled for October 14th, 16th and 20th, with Third Reading on 27th. The House of Commons will have to consider the Lords' amendments after this.

There are many amendments which will be grouped to facilitate their passage but which may worry the Government's leaders in the Lords, particularly as the Government's spokesmen are not outstandingly strong. The hope is that they will not lose their nerve as it is thought that both sides want to see the Bill passed.

Labour will, it is thought, concentrate on two points which the Government will and should oppose - the exclusion of Lloyd's from the Bill, and the intention that the Securities and Investment Board (SIB) should not be a statutory body.

Other points which may be debated by cross-benchers are:

a) Bankers' responsibility for segregation of clients' moneys. It is thought that amendments will deal with this.

b) Various points sponsored by the Law Society.

c) The question of immunity for Recognised Professional Bodies (RPBs). The Government conceded this for the SIB and for Self-Regulatory Organisations (SROs) but not for RPBs such as the Law Society and the Institute of Chartered Accountants. The view is that so far the Government has lost the argument in debate but won the vote. When brought up again, they might lose both and, though the issue will be hard fought, if they lose the vote next time, they might have to concede.

David Hobson

DAVID HOBSON

The National Archives

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From: THE PRIVATE SECRETARY

CCBB

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

26 August 1986

Prime Minister

MEA 27/8

Dear David,

ROSKILL

Thank you for your letter of 31 July ~~at~~ flop indicating the Prime Minister's agreement with the proposal that the Serious Fraud Office (SFO) should have a power to order the production of documents where it thinks it is right to do so, and that it should be an offence to refuse to answer its questions. You have asked what constraints there will be on the powers of the SFO in these respects and what checks there will be to prevent abuse.

We have considered these questions with the Law Officers' Department, the Director of Public Prosecutions and the Department of Trade and Industry, who will be concerned with the establishment of the SFO. Our view is that, as these powers will be modelled on those which are already available to the Secretary of State for Trade and Industry under the Companies Act 1985, the safeguards should be similar to those on the exercise of these powers by DTI officials. The Attorney General will be accountable to Parliament for the manner in which the SFO carries out its investigations, including the exercise of its powers. If a person against whom the powers were directed felt that their exercise was ultra vires it would be open to him to challenge them in the Divisional Court by means of an application for judicial review and, if an individual believes that he has suffered loss or damage as a consequence of the wrongful exercise by the SFO of its powers, he will be able to sue for damages in the civil courts. It will also be the case that members of the SFO will be civil servants and therefore subject to civil service disciplinary procedures for improper behaviour or the abuse of their position.

I am copying this letter to the recipients of yours.

Yours

Clare

MS C PELHAM

David Norgrove, Esq.,

Econ Pol: Gower PT3.

file

SBW

cc BG

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

31 July 1986

Dear Stephen,

ROSKILL

The Prime Minister has seen your Secretary of State's letter of 17 July to the Lord President about the Government's response to the Roskill Committee. She has noted the intention that the Serious Fraud Office should have a power to order the production of documents where it thinks it right to do so, and that it should be an offence to refuse to answer its questions. The Prime Minister would be grateful to know what constraints there will be on the powers of the SFO in these respects and what checks there will be to prevent abuse.

I am sending a copy of this letter to the Private Secretaries to members of H Committee, to Tim Walker (Department of Trade and Industry), Michael Saunders (Attorney General's Office) and to Michael Stark (Cabinet Office).

Yours,
David.

DAVID NORGROVE)

Stephen Boys Smith, Esq.,
Home Office.

SBW

011/2985

CONFIDENTIAL

CCBG

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

Stephen Boys-Smith Esq
Private Secretary to the Home Secretary
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

N BPM.

30 July 1986

Dear Stephen

ROSKILL

I will request if required

The Chief Secretary has seen your letter of 24 July, in which you say that the Home Secretary notes that apart from outstanding questions about the SFO, other aspects of his proposed announcement have proved acceptable to colleagues on the basis of decisions already taken by Ministers.

The Chief Secretary certainly remains content to proceed with the package as a whole, if it includes a SFO established on the basis agreed by colleagues on 30 April. But as I said in my letter of 24 July, if this were not to prove possible, then both the Chief Secretary and the Chancellor believe there should be further collective discussion to determine whether the Government's overall response to Roskill is satisfactory.

No doubt Home Office officials will be involving officials of other interested departments, including the Treasury, in their further consideration of the outstanding issues to do with the SFO. The Chief Secretary trusts that these issues can be settled quickly, with a view to an early announcement of the Government's response to Roskill, in the autumn.

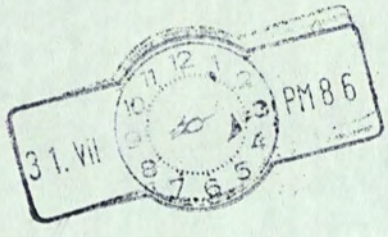
I am copying this letter to David Norgrove (No. 10), to Private Secretaries to members of H Committee, to Tim Walker (Trade and Industry), Michael Saunders (Attorney General) and to Michael Stark (Cabinet Office).

Yours,

Jill

JILL RUTTER
Private Secretary

CONFIDENTIAL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CONFIDENTIAL

Treasury Chambers, Parliament Street, SW1P 3AG

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

24 July 1986

Dear Stephen,

ROSKILL

The Chief Secretary has seen your letter of 22 July and the proposed statement on the Government's response to Roskill.

As he said in his letter of 21 July to the Lord President, the Chief Secretary is very concerned that without an announcement about an effective Serious Fraud Office the Government's overall response to Roskill will be seen as very inadequate. He notes that he is not alone in this concern. He strongly believes that unless Police co-operation can be secured on the basis he recommended in his report there should be further collective discussion to determine whether the Government's overall response for Roskill can still be seen as satisfactory.

The Chief Secretary would, as he proposed in his letter of 21 July, have been content to see the Home Secretary make a reference to the Serious Fraud Office as envisaged in his earlier draft, with the amendment the Chief Secretary proposed about the role of the Police. That was:

> "The Office will work in the closest collaboration with the Police, and will be supported by and co-located with a group of police officers assigned for the purpose."

If the Home Secretary cannot accept this, the Chief Secretary believes that no statement should be made about the Government's response to Roskill until this issue is settled. The Chief Secretary is certainly not prepared to accept the false statement in paragraph 6 of the draft reply that he has not yet completed his study of the Serious Fraud Office. That

study was completed in April and the results were endorsed by H Committee on 30 April. Delays now result from the Police's unwillingness to co-operate on the basis agreed by Ministers at that meeting.

The Chief Secretary accepts that this may mean delaying the statement until the autumn. But he believes that it would be preferable to announce - and take credit for - a substantial package at the beginning of the new session rather than announce a package without any firm commitment to an effective Serious Fraud Office on the day the House rises. The Government's critics could all too easily point to an announcement on this basis as clear evidence that the Government itself was anxious not to draw attention to its reponse to Roskill. The Chief Secretary believes it would be much better to wait until the Government was able to announce a credible and worthwhile package, including an effective Serious Fraud Office.

I am copying this letter thiss to David Norgrove at No.10, Private Secretaries to members of H Committee and the Private Secretaries for Trade and Industry, the Attorney General and to Michael Stark at the Cabinet Office.

Yours,

Jill Rutter

JILL RUTTER
Private Secretary

010

CORG

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

23 July 1986

CONFIDENTIAL

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

Prime Minister 2
There is briefing in your folder about this.
DBR
23/7.

Dear David,

MINET HOLDINGS PLC

Minet Holdings plc is one of two major Lloyd's companies under investigation by DTI inspectors. The Prime Minister may wish to be aware that my Secretary of State will tomorrow be publishing an interim report of the investigation into Minet Holdings plc and WMD Underwriting Agencies Ltd (a connected company).

The report demonstrates how substantial sums in sterling and US and Canadian dollars derived from reinsurance business of two Lloyd's syndicates were diverted to Unimar Panama, a Panama company beneficially owned by Mr John Nash (a non-executive director of S G Warburg & Co Ltd) and his family. The payments were made under arrangements between Mr Nash, Mr Peter Cameron-Webb, former chairman of PCW Underwriting Agencies Ltd (a Minet subsidiary now called Richard Beckett Underwriting Agencies Ltd), and Mr David d'Ambrumenil, a Lloyd's broker, then chairman of Seascope Insurance Services Ltd which is now a subsidiary of Henry Ansbacher Holdings plc. The inspectors are highly critical of these arrangements which were made without reference to Exchange Control Act requirements and Lloyd's Rules. They accuse Mr Cameron-Webb, Mr d'Ambrumenil and Mr Peter Dixon, a former Minet director, of dishonesty in relation to the use to which some of this money was put.

This affair was the subject of a private enquiry in late 1982 by Sir Peter Green, then chairman of Lloyd's, followed in 1983 by another Lloyd's enquiry conducted by Mr Simon Tuckey, QC. The

inspectors criticise Sir Peter's findings and handling of the matter but firmly reject any suggestion of a "cover up" by Sir Peter which has been the principal allegation by critics of his enquiry who include Mr Brian Sedgemore MP.

The most likely question that publication will raise is whether there will be a prosecution. This is a matter for the Director of Public Prosecutions who has been given a copy of the report. We understand, however, that the Director has concluded that the prospects of a successful prosecution resulting from further investigation by the police of what is, in fact, a subsidiary matter are not such as to justify diversion from the effort now being made to bring the main Minet investigation to a satisfactory conclusion.

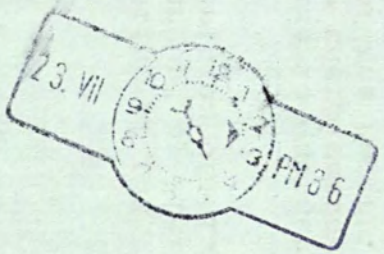
Publication may also raise questions about Lloyd's competence and willingness to regulate itself and its proposed exemption under the Financial Services Bill. As you know, the Neill Committee is looking into this aspect. The committee have a copy of the report.

Copies of this letter go to Tony Kuczys (Treasury), Henry Steel (Law Officers Department), and John Footman (Bank of England).

Yours ever,
Michael

MICHAEL GILBERTSON
Private Secretary

1786 1986 BOARD OF TRADE BICENTENARY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PRIME MINISTER

ROSKILL

The Home Secretary would like to announce before the recess the conclusions reached on the Roskill Report.

see Boys Smith to MacNaughton 22/7/86

The draft answer below is in line with the conclusions reached by H Committee. However, paragraph 6 is compelled to say that no conclusion has been reached on the question of a unified organisation responsible for the investigation and prosecution of fraud. As you know, Ministers have decided in favour of a Serious Fraud Office. The difficulty is that it has not yet proved possible to reach agreement with the police.

The Home Secretary wants to go ahead with the statement even though there is this major gap. The Lord President's view is that if this is what the Home Secretary wants to do then he should be allowed to do it. The Chancellor and the Chief Secretary, however, feel that the response will look very thin if there is no conclusion on the unified organisation, particularly when set alongside the Government's rejection of the recommendation for a fraud tribunal for serious offences. I understand that Mr. Channon and the Attorney General share this concern, though we have not received their letters.

The Chancellor and the Chief Secretary privately also fear that if the announcement is made on Friday, the Home Secretary will lose interest in pushing the police towards agreement on the Serious Fraud Office.

Do you want the statement to go ahead or delay until the autumn?

DRN

DAVID NORGROVE
23 July 1986

JA1AYW

This really is an interim report. - the point is a non-point and some of the things that have been announced previously. I think it is fair - but if the Home Sec will keep to announced there

Conclusions, but may go ahead and

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

22 July 1986

Dear Joan

ROSKILL

The Home Secretary is grateful for the responses received so far to his letter of 17 July about Roskill. He is more sanguine than some of his colleagues about the likelihood that a Serious Fraud Office could work satisfactorily with the police on the basis he proposed. As he said in his letter, the police response to the SFO concept is positive in tone, and they are ready to co-operate fully with the new office. But he understands the misgivings expressed by the Attorney General and others, and would like to reflect on them further.

In the meantime, he is very anxious that Parliament should receive an account of the Government's overall response to Roskill before the Recess. It is now seven months since the report was published, and, even with no firm conclusion yet on the SFO, the response is substantial. I enclose a revised draft of the proposed Parliamentary reply, giving much less prominence to the question of unified arrangements for investigation and prosecution. The Home Secretary very much hopes colleagues will be ready to agree to an announcement on these lines on Friday. I should be grateful if comments (by telephone if more convenient) could reach me by noon on 24 July.

Copies of this letter and its enclosure go to the Private Secretaries to the other members of H, to the Secretary of State for Trade & Industry, to the Attorney General, and to Michael Stark (Cabinet Office)

Yours ever

William Fittall.

for S W BOYS SMITH

Miss Joan MacNaughton

OR.

ROSKILL REPORT: ARRANGED QUESTION

To ask the Secretary of State for the Home Department what conclusions have been reached on the Report of the Fraud Trials Committee.

DRAFT REPLY

The Report of the Fraud Trials Committee chaired by Lord Roskill was published in January. Since then we have been considering it actively, with the benefit of debates in both Houses, and comments on the White Paper on Criminal Justice. We have decided to take action on a wide range of the Report's recommendations, and shall be bringing before the House proposals to that end in the forthcoming Criminal Justice Bill.

2. First, we propose to remove the restrictions imposed by recent case law on the use of the charge of conspiracy to defraud. The Roskill Report identified these as a source of concern, because in some cases they prevented the prosecution of the charges which most fully reflected the seriousness of the fraud and carried adequate maximum penalties. I therefore referred the matter to the Criminal Law Revision Committee for urgent advice. Their report, which will be published shortly, recommends the restoration of the full ambit of the common law charge, and I propose to accept that recommendation.

3. Second, in line with recommendations of the Roskill Report, we shall be proposing changes in the law to make it easier for a wide range of documents to be admitted in evidence, and to provide for a procedure under which evidence can be taken from witnesses resident abroad. These changes will apply in all criminal proceedings, not just fraud.

/4.

4. Third, we shall streamline court procedures in fraud cases. We accept the Roskill Committee's argument that in cases where serious or complex charges of fraud are pending, there are good grounds for the Crown Court becoming seized of the matter as early as possible. We shall therefore be coming forward with a procedure under which, as Roskill recommended, the prosecutor would be able to issue a certificate transferring such cases to the Crown Court without the need for committal proceedings. The defendant would have the right to apply to a Crown Court judge for discharge on the ground that there was no case to answer. We shall also propose that in suitable fraud cases the judge should be able to order that there should be preparatory hearings, at which the matters agreed and those at issue could be identified and clarified before the jury was called in. These hearings would take broadly the form envisaged by the Committee. To help in clarifying the issues, the defendant would be obliged to disclose in outline the nature of his case, but to prevent the disclosed outline from becoming the focus of the trial it would be made available only to the prosecutor and the judge, as was suggested in a note of dissent to the report.

5. Fourth, as I announced in reply to a Private Notice Question from the rt hon Member for Manchester Gorton on 9 July, we accept the Committee's recommendation that peremptory challenge of jurors should be abolished.

6. Finally, as I indicated during the debate on 13 February, we have accepted the Committee's recommendation that the need for a unified organisation responsible for the investigation and prosecution of fraud should be examined. The study by the Chief Secretary has not yet been completed, but we shall announce our conclusions as soon as possible.

/7. The

7. The readier admissibility of documents, including charts and other visual aids, and the institution of preparatory hearings at which the issues can be clarified and simplified should do much to tackle the difficulties which jurors sometimes encounter in understanding the evidence in complex fraud cases. I have not closed my mind to the idea of a special tribunal to replace the jury in such cases, and share the concern which led the Committee to recommend change on these lines. But I should prefer to let the other measures designed to ease the task of the juror take their course before contemplating so radical a change.

8. In this and other respects we shall want to evaluate very carefully the effects of the changes made in the light of the Roskill report. But I am not persuaded that the creation of a new body outside Government with a continuing advisory role would bring benefits which would justify its costs. We therefore do not propose to pursue the Committee's idea of a standing Fraud Commission.

9. If unchecked, fraud can do great damage not only to its victims but to confidence in our commercial and financial institutions. The Roskill Committee performed a considerable service in highlighting weaknesses in the investigation and prosecution of fraud, and the arrangements for bringing cases to trial. Many of its recommendations were directed at practitioners outside Government, and bore on professional attitudes and practices. But our acceptance of the great majority of those which do fall to Government, and our commitment to legislation, are evidence of our determination to take stern action against fraud.

OLD

CCB

Prime Minister 4
You may like to see the powers proposed for the Serious Fraud Office.

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

17th July 1986

25/7

Dear Willie.

ROSKILL

At its meeting on 30 April H Committee accepted the Chief Secretary's proposal that a new body, the Serious Fraud Office, should be established to investigate the most serious cases of fraud. It should be staffed by lawyers, accountants and others who would work closely with the police, and it would be responsible to the Attorney General. It was also agreed that further consideration should be given to the investigatory powers that should be available to this body, and to its working relationships with the police. I have now considered the question of powers in the light of the enclosed report from officials, and I have consulted on the question of working relationships with the police. I invite colleagues to endorse the proposals set out in this letter.

Investigatory Powers

The working group took as its starting point the powers which are at present available to the DTI under the Companies Act 1985. It did not prove feasible to express SFO powers in terms equivalent to DTI powers because of the extent of the adaptations which would be required to meet the circumstances in which the SFO is likely to need to exercise them. Consequently the group focussed on the powers which are necessary to investigate suspected offences and to obtain evidence. Its recommendations are summarised in paragraph 25 of its report. The main proposals are that:

(i) the SFO should have a power to order the production of documents where it thinks it right to do so, backed up a power to obtain a search warrant from a magistrate where ordering production is not practicable;

right? in what sense

(ii) the SFO should have a power to require persons to provide information, and it should be an offence to refuse to answer its questions; and

(iii) the SFO should be authorised under certain circumstances to disclose information which comes to its attention through the exercise of its powers, to specified competent authorities, including Government Departments and professional supervisory bodies.

The Rt Hon The Viscount Whitelaw, CH., MC.

/over.

These powers are modelled on those available to DTI investigators under the Companies Act, rather than those available to the police under the Police and Criminal Evidence Act 1984, and would be included in the Criminal Justice Bill. I must admit to some misgivings that they may excite more Parliamentary interest than will be comfortable during the passage of what will anyway be a large and in some respects controversial Bill. We shall want to give careful thought to the formulation of the necessary provisions, and to keep in close touch with colleagues about their handling in Parliament.

The proposal to enable the SFO to require people to answer questions, subject to a penalty for refusing to do so, derives from the Companies Act. This may be politically sensitive as it could be seen as undermining the right to silence. Some members of the working group thought that the statements obtained through the exercise of this power should be admissible in criminal proceedings, as they are under the Companies Act. Others, however, thought it difficult to justify asking Parliament to include such a provision in a measure dealing specifically with criminal investigations (the Companies Act having primarily a regulatory purpose). They concluded that it would be an acceptable compromise between the requirements of the investigation and recognition of the importance of the right to silence if a statement obtained through the exercise of this power were not admissible against the person who made it, unless it was made voluntarily after the investigation had cautioned the suspect. This would preserve the normal requirements in criminal proceedings
which Parliament has continued under the Police and Criminal Evidence Act. But statements inadmissible against the person making them (who might be only a minor participant) would be admissible against others. This seems to me the best solution, and I hope that colleagues will feel able to accept it.

The working group also considered the implications of the proposal that the head of the SFO should be able to confer SFO investigatory powers on police officers who were working with his staff in an investigation. This proposal was intended to avoid any confusion which might arise from members of an investigating team having differing powers. But disparity would exist anyway as it is not intended to confer police powers on SFO staff and the police are not accustomed to exercising a power to require people to answer questions. Some members of the working group have suggested, in the light of consultation with the police, that the proposal should be reconsidered.

While the police accept that the powers proposed for the SFO would be useful to enable accountants and lawyers to obtain records and information to help them to establish whether an offence has been committed, they feel strongly that their existing powers would enable them to investigate the offence. Giving police officers SFO powers would create an accountability gap: the head of the SFO would not be accountable for their use of such powers (as distinct from the decision to delegate) but accountability within the police structure for the exercise of non-police powers would be difficult to arrange. I believe that, while it would be right to make SFO powers available to non-members who work under contract for it, such as outside accountants, such powers ought not in practice to be available to the police (though I see no need to exclude them on the face of the Bill). I hope that colleagues will agree.

<u>Relationship Between SFO and Police</u>

H Committee also invited me on 30 April to discuss further with the police arrangements for their co-operation with the Serious Fraud Office. The police will not be an integral part of the SFO; I see the relationship as one of collaboration, not subordination. From the discussions which have been held with the police, I am satisfied that they are ready to work in the

fullest co-operation with the SFO. I shall monitor their performance to ensure that this is so.

The SFO will assume prosecutory powers, now held by the Director of Public Prosecutions, for a range of fraud cases. The police have no difficulty in accepting this transfer of powers, and hence the responsibility of the Head of the SFO to undertake the direction of the way in which enquiries should be pursued towards prosecution. They recognise that the SFO will have the resources and skills to conduct this function energetically, and they welcome such additional skills and resources.

I share the concern of colleagues that the police effort on SFO cases should be adequate as regards quantity of personnel, and also as regards quality and continuity of experience. Bearing in mind that the great majority of SFO cases will be London-centred, the joint Metropolitan and City Police Company Fraud Department provides a natural complement to the SFO. That Department comprises 200 police officers dedicated to fraud enquiries. The police recognise that SFO cases are likely to be among the most serious, and see no difficulty about treating them on that basis. They would not, however, be prepared to sub-divide the Metropolitan and City Police Company Fraud Department. They consider that such a division would be operationally inefficient and would reduce their capacity to respond constructively to the inevitably variable demands from the SFO. Moreover, the police are very conscious of the growing links between fraud and other major organised criminal activity, such as drug trafficking. The MCCFD has established links with the other criminal investigation specialisms within the Metropolitan Police. It would be counter-productive to treat fraud as an entirely separate type of crime, when all the indications are that the criminals are increasingly diversifying. These areguments are not only powerful. They are related to operational matters which are constitutionally the responsibility of the two Commissioners. I have therefore decided to proceed on the basis that the police will provide the SFO with the necessary support from within MCCFD. The Metropolitan Police Commander in charge of MCCFD will act as the senior police officer to whom the Head of the SFO will relate. The MCCFD will, moreover, continue to provide a national resource for any expertise or support which any other force may from time to time request, as well as maintaining their national intelligence base function.

On location, the police would welcome physical arrangements which made close co-operation with the SFO easy. They find that the present arrangements, whereby the Director's staff are located from close to the MCCFD, is helpful. If it proved convenient for the SFO and the MCCFD to be housed in a single set of premises the police would have no objection, provided that there were no additional costs for them, and that the part of premises occupied by the police were formally vested in the police.

As I announced to the House on 13 January, the police have already responded positively to other Roskill recommendations as regards career structure, training and the use of qualified accounting staff. Their response to these recommendations will be carried forward with the SFO dimension fully in mind.

I am satisfied that the police response to the SFO concept has been made positively and that, bearing in mind their responsibilities, which go more widely than the investigation of fraud alone, their support of the SFO will meet the practical needs of that Office in the most efficient and effective way. I am, however, concerned to monitor the progress of the police commitment to the investigation of fraud and the SFO in particular; to that end my officials will be taking forward work, in consultation with

the police and other Departments as necessary, on how this might best be achieved.

Conclusions and Further Announcement

If colleagues accept the proposals set out in this letter, the way will be clear for a further announcement of our decision on the Roskill Report before the recess, which might be on the lines of the enclosed draft. In order to enable me to make the announcement before the House of Commons rises, I should be most grateful if you and other colleagues would let me have your replies to this letter not later than midday on Tuesday 22 July.

I am sending copies of this letter to other members of H Committee, to the Secretary of State for Trade & Industry, to the Attorney General and to Sir Robert Armstrong.

Yours,

Douglas

INVESTIGATORY POWERS FOR A SERIOUS FRAUD OFFICE

REPORT OF A WORKING GROUP OF OFFICIALS

Introductory

1. In his minute of 8 May, reporting to the Prime Minister on H Committee's discussion of issues arising from the Roskill Report, the Lord President mentioned the Chief Secretary's proposal for a Serious Fraud Office

> "which would be staffed by lawyers, accountants and others and possess prosecuting powers [and powers] analogous to those given to DTI Inspectors under the Companies Act to require the production of books and papers. It would not, however, be given police powers of search arrest and detention... The controller of the SFO would be empowered to delegate SFO powers to the police in individual cases."

We have met as a working group under Home Office chairmanship, with membership as set out in Annex A, to consider in more detail what **investigatory** powers a Serious Fraud Office would require. (We assume that its **prosecuting** powers would be equivalent to those of the DPP.)

2. We have taken as our main criteria for this purpose the propositions that the SFO's investigatory powers should be -

(a) no less than are at present exercised to good effect in the investigation of fraud under the existing FIG arrangements, but

(b) no greater than Ministers will be able to justify to Parliament as necessary for the effective investigation of serious fraud.

In seeking to estimate what may be acceptable to Parliament we have had regard both to recent and current legislation for the regulation of companies and financial institutions, and to the provisions of the

Police and Criminal Evidence Act 1984 (some of which were enacted with fraud investigations specially in mind).

3. We have taken as our starting-point the outline proposals on powers for a Serious Fraud Office contained in an annex to the paper by the Chief Secretary which was before H Committee on 30 April. This annex listed the proposed powers in fairly general form, and its references to the corresponding powers exercisable by the Secretary of State for Trade and Industry or his inspectors were illustrative rather than exhaustive. It had originally been hoped that the SFO's investigatory powers could be expressed in terms of the equivalent DTI powers, subject to certain adaptations; but further examination has shown this not to be feasible because of the extent of the adaptations which would be required to extend these beyond the specific circumstances in which they can be exercised under existing legislation. The SFO will need to be able to obtain information from a wide range of people and in less restricted circumstances. Some of the DTI powers are vested in inspectors appointed by the Secretary of State; others are vested directly in the Secretary of State who, however, is empowered to confer them on his officers in individual cases. The SFO powers will need to be more uniformly vested, possibly in certain staff of the SFO, working under the general superintendence of the Attorney General. The Head of the SFO would be empowered to confer SFO powers on such other persons as he may decide. Consequently the scope and nature of the powers will need to be set out explicitly in the legislation.

4. We have therefore considered afresh what sort of investigatory powers the SFO will need, bearing in mind the criteria indicated in paragraph 2 above. The existing arrangements whereby fraud is investigated by DTI inspectors, who also possess wide powers for company regulation, or by police officers with the full range of police powers, or by both together, have the advantage that powers originally designed and justified for other purposes can in practice be deployed against fraud without attracting public attention. The establishment of a new statutory body solely to investigate and prosecute fraud presents us with a dilemma: either the wider powers must be overtly given to the new body, or it must make do with the powers

ordinarily available for criminal investigation. The first course would give those responsible for investigating fraud powers wider in some respects than are available to those investigating rape, murder or terrorism. The second course would leave fraud investigators under the new scheme less well armed than they are now. The compromise arrangements described below should minimise the embarrassments. They cannot, however, altogether avoid them.

Extent of investigatory powers: general

5. Investigation of fraud principally involves -

(a) access to documents and records held by an organisation or by an individual associated with that organisation (primarily but not necessarily when the organisation itself is under investigation);

(b) questioning individuals who may have information relating to the affairs of the organisation which is being investigated; and

(c) obtaining information from other agencies which hold records which relate to the affairs of the organisation under investigation (e.g. Government Departments, the Bank of England and other banks, the Stock Exchange, accountants).

In succeeding paragraphs of this report we consider what powers could usefully and justifiably be conferred on the Serious Fraud Office under each of these heads; to what extent the SFO should be authorised to pass on information to other investigatory or regulatory agencies; and to what extent provision should be made for the delegation of any or all of these powers to people who are not on the staff of the SFO itself.

Access to documents

6. There are two ways in which the SFO might be authorised to gain access to documents and records.

i. It could itself have and exercise a power to order the production of the relevant material in cases where it thinks there is good reason to do so. This would reflect the approach in s.447 of the Companies Act 1985, which gives the DTI a similar power.

ii. It could request a magistrate (or, in the case of confidential material, a circuit judge) to order the production of the relevant material in cases where he is satisfied that there is reason to believe a serious offence has been committed and the required material is likely to constitute relevant evidence. This would reflect the approach in ss.8 and 9 of the Police and Criminal Evidence Act 1984.

7. To cover the full range of serious fraud cases, such a power would in either case need to be exercisable in relation to the documents or records of any individual or organisation engaged in business (in the widest possible sense) - companies, partnerships, friendly societies, charities, building societies, insurance companies, and investment organisations.A requirement to produce material should be imposable on any person in possession of it. It would also be necessary to provide a back-up power to enable the SFO to seek a search warrant from a magistrate where a production order has not been complied with, or in circumstances where making a production order might prove impracticable because it might result in the disappearance, destruction, or alteration, of the records.

8. Giving the SFO its own power to order production would provide great flexibility by enabling an investigation to begin in cases where the SFO might have reason to be suspicious about the conduct of the affairs of persons or bodies engaged in trade or business or carrying on professional activities, but did not have grounds to believe an offence had been committed. This would provide the SFO with an opportunity to investigate with a view to establishing whether there was evidence of an offence. It would, however, limit the safeguards on the exercise of the power as it would not, in practice be possible to question the reasons for its exercise at the time. However, the

.../SFO

SFO would be accountable to the Attorney General for the conduct of its investigations and, through him, to Parliament. The Attorney General's responsibility would cover the role of the SFO in deciding which cases to investigate and the manner of investigation adopted, including any exercise of the power to require production of documents (but it would not extend to the conduct of the police in carrying on an investigation in collaboration with the SFO). As regards the SFO's prosecution decisions, for which he would likewise be responsible, we understand that the Attorney General would, as a general rule (consistent with his practice in relation to cases handled by the DPP) confine answers to the basis of the decision in the particular case, without giving details of the evidence or other considerations which have led to a particular decision.

9. Requiring the SFO to obtain a production order from a magistrate would provide an independent assessment of the grounds on which the power was exercised, and would reduce the likelihood of its exercise being directed against people who turn out to be innocent. But it could seriously weaken the investigation by preventing access to evidence where it was not possible to establish, on the basis of the available information, the nature of any offence that might have been committed. In view of the confidentiality which surrounds business affairs, this could provide an opportunity for offenders to cover their tracks and operate beyond the reach of the SFO.

10. The essence of fraud investigations, unlike many other criminal offences, is that there may well be no certainty that any offence has been committed until documentary evidence becomes available to the investigators. For this reason a power appears necessary to enable evidence to be sought before the fact of an offence has been established, and on grounds which do not amount to evidence which a judicial authority could be asked to accept. In view of the seriousness of the cases which concern the SFO and the opportunities for offenders to conceal evidence, the wider powers represented by the Companies Act seem more appropriate than the more narrowly defined approach of the Police and Criminal Evidence Act, and are likely to result in a more effective investigative body. The working group recommends this approach should be adopted. We believe that failure

.../to comply

to comply with a production order from the SFO should constitute an offence punishable by a fine and altering, destroying, or concealing records relevant to the body under investigation (unless there is no intention to conceal information), or providing false information should be an offence punishable by a fine or imprisonment or both (as under the Companies Act).

Questioning individuals

11. There is no restriction on people charged with the investigation of offences questioning anyone they believe may be able to provide useful information. The Judges' Rules referred to the citizen's duty to assist the police in their investigations, and the Codes of Practice issued under the Police and Criminal Evidence Act 1984 refer to the right of the police to question people. The duty to assist the police is, however, a civic rather than a legal duty and no penalty is attached to a refusal to co-operate. A witness may be subpoenaed and required to answer questions in court, but he is not required to answer questions by the police outside court. The right to silence, arising from the acceptance that no-one may be required to incriminate himself, has been upheld by the Royal Commission on Criminal Procedure and preserved under the Police and Criminal Evidence Act. The police are required, when questioning a suspect (though not a witness) to caution him that he is not required to say anything and, when they have sufficient evidence to charge him, they must not (except in narrowly defined circumstances) continue to question him. The admissibility of confession evidence is controlled by s.76 of the 1984 Act, which excludes it under specified circumstances.

12. The Companies Act provides the investigator with a wider power. Where an Inspector is appointed, s.434 authorises him to require agents and officers of the company he is investigating or others who may have relevant information to attend before him. The Inspector may examine them on oath, and s.436 provides that a refusal to attend or answer questions may be regarded as a contempt of court. S.447, which authorises the Secretary of State to require the production of documents etc, also authorises him to require the person who holds the

.../documents

documents, or anyone who is or was an officer of the company, to provide an explanation of the documents. Similar provisions are contained in clauses 92 and 147 of the Financial Services Bill, relating to investigations into investment business and into insider dealing. Information or documents obtained under s447 may be used with a view to the institution of or otherwise for the purposes of any criminal proceedings pursuant to or arising out of the Companies Act and similar legislation, or for an offence entailing misconduct in the management of a company's affairs, or misapplication or wrongful retainer of its property.

13. We believe that the SFO will need, for the purpose of effective investigation, power to require people connected with the body whose affairs it was investigating to attend before it and to provide information and answer questions. This information would be obtainable in the form of a witness statement and would be admissible as evidence in criminal proceedings. This would be of particular help in relation to witnesses who may have relevant information but who may be reluctant to provide it fearing, for example, pressure from employers. It may also seriously handicap the conduct of an investigation if the SFO were not able to require explanations of documents which may be technical, complex, or deliberately misleading. DTI investigations under the Companies Act may, of course, lead to criminal proceedings, but this represents only a very small proportion of all criminal investigations and it would constitute a major departure from the rules governing criminal investigations in general to give an investigator and prosecutor the power to require a suspect to answer questions and provide information which might incriminate himself. It is the DTI practice not to seek explanations under s447 from a person after he has been charged with an offence, but its powers may be used to require a person to answer questions and provide information which might incriminate him. DTI investigators do not allow a potential defendant to volunteer information of a type which could not be obtained under s447 without administering a caution.

14. The police are required to caution people who are suspected of an offence before questioning them. This arises from the Codes of

.../Practice

Practice issued under the Police and Criminal Evidence Act 1984, and section 66(9) of the Act requires others charged with the duty of investigating offences to act in a similar manner. Both of these requirements reflect the earlier provisions of the Judges' Rules.

15. In view of the complexity of fraud investigations it may be defensible for the SFO to have a power to require persons to answer questions, and to make a failure to answer an offence. The working group was divided over the use to which information gathered in this way might be put. Some members felt it should be subject to no restrictions as the existing powers of DTI investigations under the Companies Act were not and as the new powers under the Financial Services Bill will not be. The provisions on admissibility of evidence have not met with any Parliamentary opposition during the passage of this Bill. It might well be thought odd for DTI-type powers to be vested in the SFO in a weaker form than that in which they are now available for fraud investigation through the FIG machinery. However, others felt it would be more consistent with normal practice in criminal prosecutions if oral evidence gained in this way were inadmissible in criminal proceedings unless it had been provided voluntarily after the suspect had been cautioned. Although there may be an inconsistency in such an arrangement, it could represent a workable compromise between conferring on the SFO powers which have hitherto been used mainly for regulatory purposes and the preservation of the fundamental right to silence. Such a compromise might help to avoid the Parliamentary opposition that could result from any proposal to remove the right to silence in a criminal investigation and to avoid re-opening the debates which surround the Police and Criminal Evidence Act.

16. The Companies Act provisions are in large measure reflected in the Financial Services Bill currently before Parliament. Clause 92 authorises the Secretary of State to require a person whose affairs are to be investigated, or anyone connected to that person (within the wide definition in the clause), to attend and answer questions. Anyone, whether or not connected to the person under investigation,

.../may be

may be required to produce documents and to provide explanations of them. A failure to comply will constitute an offence punishable by a fine or imprisonment. Statements made during such investigations under clause 92 will be admissible in evidence. Clause 147, on insider dealing, contains similar provisions without any limitation on the persons who may be required to produce relevant information or otherwise to assist (although it provides that offenders will be treated as if guilty of contempt of court rather than for a fine or imprisonment as such). This may provide an acceptable model for the SFO, directed at persons connected with the body being investigated. Indeed, there might be criticism if the powers available for the pursuit of serious fraud cases were inferior to those that, by the time the Criminal Justice Bill is debated, will be enacted for insider dealing.

Information from other bodies

17. Information which may assist in the investigation of suspected offences may be held under an undertaking of confidentiality by other bodies. This is likely to fall into three categories:

i. information held by private bodies, such as banks, the Stock Exchange, investment companies, or other financial organisations;

ii. information held by public bodies such as Inland Revenue or Customs and Excise, the DTI or the Bank of England; and

iii. information held subject to legal privilege.

18. All of the relevant legislation provides an exemption for the last category so that the investigator may not require the disclosure of information held by a legal adviser on behalf of his client subject to professional privilege, and it would seem right to retain this exemption in the case of SFO investigations. (PACE's absolute prohibition on police access to legally privileged material was made in the belief that the courts would in any case rule such material inadmissible.) Both the Companies Act and the Financial Services Bill

.../contain

contain provisions for the investigator to require a bank to provide information relating to the accounts of bodies or individuals where such information is necessary for the purpose of the investigation. It would seem appropriate to give a similar power to the SFO, subject to the safeguard that this information should be used only for the purpose for which it was obtained. The Bank of England should be permitted to pass on information to the SFO for the purpose of an investigation, subject to the same safeguard.

19. The Inland Revenue hold information on the tax affairs of individuals and organisations which is treated with strict confidentiality. That information may be disclosed to third parties only with the taxpayer's consent or in such other cases (which are very few) as may be authorised by law. One such authorisation concerns disclosure "for the purposes of a prosecution relating to an Inland Revenue offence". Where the Serious Fraud Office has grounds for suspecting that an offence against the Inland Revenue has been committed by a particular person or persons and they request information which is likely to be of relevance to the investigation of that offence, then the Inland Revenue could, under the existing law, make such information available. Occasions are likely to occur in practice where the Serious Fraud Office concludes that it should not, in the event, prosecute the fraud on the Revenue which has been investigated. But the Office may still wish to make use of confidential taxpayer information supplied to it for the investigation and prosecution of another offence. There may be some doubt about the admissibility of the taxpayer information in such circumstances (see, for example, Section 78 PACE 1984) and it is desirable to put the matter beyond doubt by legislating explicitly for the bilateral exchange of information between the Inland Revenue and the Serious Fraud Office. The legislation should make it clear that:-

a. access to Inland Revenue information runs in respect of the particular case under investigation; and

b. it is for use for the immediate purposes of the SFO itself (which include the investigation and prosecution of non-Revenue offences).

20. Information held by Customs and Excise is not subject to a statutory obligation, and there is case law permitting disclosure on authority of a court when this would be in the public interest. Generally Customs and Excise will disclose information in comparable circumstances without the need for application to the court. This would include disclosure to the SFO in connection with the investigation of an offence.

Transmission of information to other agencies

21. The SFO should, we recommend, be able not only to obtain information from other bodies but also to pass information it had obtained in its investigations to other supervisory agencies. S.449 of the Companies Act provides that information obtained by the Secretary of State through the exercise of his powers under the Act may not be disclosed, except to a competent authority (which is defined in this section) unless this is required for criminal proceedings or for certain other specified purposes. It would be desirable to provide the SFO with a right to disclose such information to similar competent authorities (both in this country including appropriate government departments, and in other countries which had a legitimate interest in the investigations), and to extend the definition to include, for example, professional supervisory bodies such as the Law Society, where evidence of professional misconduct comes to light, the Securities and Investments Board, self-regulating agencies and the Bank of England (in its regulatory capacity) where evidence of impropriety is discovered. However, where this was done for a purpose other than criminal proceedings, the passing on of information obtained from a financial supervisor would be subject to that supervisor's approval, and confidential taxpayer information received from the Inland Revenue would not be available to be passed over by the SFO to other agencies. (Complications may arise over obtaining information from foreign governments who object to it being

.../used

used for revenue purposes; this aspect will need further consideration.) A body receiving information from the SFO should be able to pass it on to other agencies in so far as that is consistent with the rules government that body's use of its own information. Arrangements for exchange of information on the lines discussed in this and the three preceding paragraphs should extend to the corresponding agencies in Scotland and Northern Ireland.

Availability of SFO Powers to Others

22. There are two type of circumstances in which it could be advantageous to confer SFO investigatory powers on people who were not themselves members of its staff:

i. where individuals, such a private accountants, are contracted by the SFO to assist in an investigation; and

ii. where police officers are involved in the investigation in collaboration with the SFO.

23. In the former case the view might be taken that private individuals who are under contract to the SFO to work on its behalf are in effect co-opted into the SFO to carry out a function which would otherwise be undertaken by a full-time member of the SFO. Consequently it would seem right to authorise the head of the SFO to confer similar investigatory powers on such persons for the purpose of the investigations on which they are engaged

24. H Committee specifically envisaged the delegation of SFO powers to police officers. This raises different considerations. It is unlikely that police officers will be deployed interchangeably with lawyers, accountants or others on the staff of the SFO because their professional skills are different, but there may be situations in which they will be part of a team which is, for example, questioning individuals and it would seem odd if SFO investigators could require witnesses to answer their questions but police officers could not.

.../Mistakes

Mistakes and confusion about which powers were being used to question a witness could moreover lead to legal challenges to the validity of evidence. On the other hand, to confer SFO powers on police officers would raise a number of difficulties. It may appear inconsistent to allow a disparity in powers between police officers and SFO investigators, but if this were resolved by conferring SFO powers on the police in these cases, it might create a similar disparity between police powers in serious fraud investigations and their powers in other, perhaps more serious types of offence, which would not be easy to justify and where it is accepted that the police should not have the power to require answers to their questions.

Those directly involved in fraud investigations doubt if confusion over the powers of the SFO and police will in practice arise, and it is also possible that, given SFO powers, the question of police accountability might not be easy to resolve as the responsibility of chief officers for police officers exercising non-police powers might not be straightforward. The police themselves, having regard to these difficulties, think it preferable that their officers conducting a fraud investigation should not exercise the powers which are proposed for the SFO. They believe their existing arrangements for obtaining necessary information are satisfactory, and they are anxious to avoid proposals which might re-open the debate on police powers. They do not believe it would be appropriate for a police officer to be able to exercise a power to require persons to answer questions and they believe that co-operation between the police and the SFO will be most effective if SFO staff with their experience as accountants, DTI investigators, or lawyers exercise SFO powers derived from the Companies Act, while police exercise police powers. Some Departments represented on the working group would, for these reasons, recommend Ministers to reconsider the question and take the vview that it would in practice be better not to mingle SFO and police powers. (The point is not one on which it seems necessary to make express statutory provision.)

Conclusion

25. It is proposed that:

.../i. in obtaining

i. in obtaining access to documents, the SFO should have a power to order the production of relevant material where it thinks there is good reason to do so, and a power to request a magistrate to issue a search warrant where such documents are not produced or where an order for their production is not practicable;

ii. in obtaining information from individuals, the SFO should have a power to require individuals to attend before it, to answer questions and provide explanations of any documents they have been ordered to produce; [such information, however, when obtained orally should not be admissible as evidence in proceedings against the person who supplied it unless it has been made voluntarily following a caution;]

iii. in obtaining information held by private bodies, the SFO should have a power to require private bodies such as banks to provide information relevant to the organisation or individuals under investigation;

iv. provision should be made to permit the SFO and Inland Revenue to exchange information in cases where fraud against Inland Revenue is suspected, and that such information should be available to the police involved in the investigation;

v. these powers should be directed at persons or bodies engaged in trade or business or carrying on professional activities, and at the officers and employees, past and present, of those bodies, and at others who may hold information relevant to the affairs of the organisation under investigation;

vi. a failure to produce documents etc. when ordered to do so, or a refusal to appear and answer questions should be an offence;

.../vii the SFO

vii. the SFO should have no power to require the production of information held subject to legal privilege;

viii the SFO should be authorised to disclose information obtained in the course of its investigations to specified competent authorities, including professional supervisory bodies, although for information obtained from a financial supervisor which is not being passed on for the purposes of criminal proceedings, this would be subject to the approval of that financial supervisor;

ix. the head of the SFO should be authorised to confer investigatory powers on persons who are not members of its staff (in practice, these would be private individuals contracted to the SFO to assist in an investigation);

x. [SFO investigatory powers should not, in practice, be available to police officers].

Square brackets indicate matters on which the working group are unable to make a unanimous recommendation.

Signed on behalf of the working group

W J BOHAN

14 July 1986

ANNEX A

WORKING GROUP OF OFFICIALS

Membership

WJ Bohan Esq	Home Office (Chairman)
PRH Allen Esq	HM Customs and Excise
D Bentley Esq	Home Office
J Charkham Esq	Bank of England
G Clark Esq	Department of Trade and Industry
P Hall Esq	HM Treasury
A Harding Esq	Home Office
P Jenkins Esq	Treasury Solicitor's Department
Mrs PM Newman	Northern Ireland Office
DLC Peretz	HM Treasury
JB Shepherd Esq	Inland Revenue
D Steel Esq	Department of Trade and Industry
J Wood Esq	Office of the Director of Public Prosecutions
SJ Wooler Esq	Law Officers' Department
JR Woolman Esq	Department of Trade and Industry
RJ Baxter Esq	Home Office (Secretariat)
T Wilkie Esq	Home Office (Secretariat)

E.R.

ROSKILL REPORT: ARRANGED QUESTION

To ask the Secretary of State for the Home Department what conclusions have been reached on the Report of the Fraud Trials Committee.

DRAFT REPLY

The Report of the Fraud Trials Committee chaired by Lord Roskill was published in January. Since then we have been considering it actively, with the benefit of debates in both Houses, and comments on the White Paper on Criminal Justice. We have decided to take action on a wide range of the Report's recommendations, and shall be bringing before the House proposals to that end in the forthcoming Criminal Justice Bill.

2. First, in the light of the study by my rt hon Friend the Chief Secretary to the Treasury which I announced on 13 February, we shall establish a Serious Fraud Office. The new Office will operate under the superintendence of my rt hon Friend the Attorney General, and in the closest collaboration with the police. It will be charged with investigating and prosecuting the most serious and complex frauds, replacing the existing arrangements for coordination through the Fraud Investigation Group. Members of the new Office will have a range of relevant professional skills and qualifications. They will have the powers they need, including those now exercised by the Director of Public Prosecutions in relation to prosecutions, and powers for obtaining access to documents and information, but not police powers of search, arrest and detention.

3. Second, we propose to remove the restrictions imposed by recent case law on the use of the charge of conspiracy to defraud. The Roskill Report identified these as a source of concern, because in some cases they prevented the prosecution of the charges which most

/fully reflected

E.R.

fully reflected the seriousness of the fraud and carried adequate maximum penalties. I therefore referred the matter to the Criminal Law Revision Committee for urgent advice. Their report, which will be published shortly, recommends the restoration of the full ambit of the common law charge, and I propose to accept that recommendation.

4. Third, in line with recommendations of the Roskill Report, we shall be proposing changes in the law to make it easier for a wide range of documents to be admitted in evidence, and to provide for a procedure under which evidence can be taken from witnesses resident abroad. These changes will apply in all criminal proceedings, not just fraud.

5. Fourth, we shall streamline court procedures in fraud cases. We accept the Roskill Committee's argument that in cases where serious or complex charges of fraud are pending, there are good grounds for the Crown Court becoming seized of the matter as early as possible. We shall therefore be coming forward with a procedure under which, as Roskill recommended, the prosecutor would be able to issue a certificate transferring such cases to the Crown Court without the need for committal proceedings. The defendant would have the right to apply to a Crown Court judge for discharge on the ground that there was no case to answer. We shall also propose that in suitable fraud cases the judge should be able to order that there should be a preparatory hearing, at which the matters agreed and those at issue could be identified and clarified before the jury was called in. These hearings would take broadly the form envisaged by the Committee, and would be formally part of the trial. To help in clarifying the issues, the defendant would be obliged to disclose in outline the nature of his case, but to prevent the disclosed outline from becoming the focus of the trial it would be made available only to the prosecutor and the judge, as was suggested in a note of dissent to the report.

6. Fifth, as I announced in reply to a Private Notice Question from the rt hon Member for Manchester Gorton on 9 July, we accept the Committee's recommendation that peremptory challenge of jurors should be abolished.

/7. The

FOR.

7. The readier admissibility of documents, including charts and other visual aids, and the institution of preparatory hearings at which the issues can be clarified and simplified should do much to tackle the difficulties which jurors sometimes encounter in understanding the evidence in complex fraud cases. I have not closed my mind to the idea of a special tribunal to replace the jury in such cases, and share the concern which led the Committee to recommend change on these lines. But I should prefer to let the other measures designed to ease the task of the juror take their course before contemplating so radical a change.

8. In this and other respects we shall want to evaluate very carefully the effects of the charges made in the light of the Roskill report. We shall also be considering whether there would be advantage in establishing formal arrangements for assessing collaboration between the Serious Fraud Office and the police. But I am not persuaded that the creation of a new body outside Government with a continuing advisory role would bring benefits which would justify its costs. We therefore do not propose to pursue the Committee's idea of a standing Fraud Commission.

9. If unchecked, fraud can do great damage not only to its victims but to confidence in our commercial and financial institutions. The Roskill Committee performed a considerable service in highlighting weaknesses in the investigation and prosecution of fraud, and the arrangements for bringing cases to trial. Many of its recommendations were directed at practitioners outside Government, and bore on professional attitudes and practices. But our acceptance of the great majority of those which do fall to Government, and our commitment to legislation, are evidence of our determination to take stern action against fraud.

PRIME MINISTER

SERIOUS FRAUD OFFICE

I asked Robert Armstrong to probe the Attorney's conclusion, in his minute at Flag A below, that his office's added responsibilities of the Superintendents of the Crown Prosecution Service and the Serious Fraud Office do not call for the appointment of a Parliamentary Secretary to the Law Officers Department.

Sir Robert Armstrong has now discussed this with Mr. Michael Saunders, the Legal Secretary to the Law Officers. He confirmed that the Attorney and the Solicitor were clearly against asking for a Parliamentary Secretary. The Solicitor General obviously felt that he had spare capacity to take on more work than at present and would be happy to do so. Experience under a previous Administration suggested that a Parliamentary Secretary in the Law Officers' Department tended very much to be the fifth wheel on the coach: it tended to add to the work without relieving the Attorney General of any significant part of the responsibility.

Robert also told Mr. Saunders that he was concerned about the additional burden upon the Attorney General, who seemed to be making rather slow progress in recovering from major heart surgery last year. Mr Saunders said that the Attorney General's health and vigour seemed to have improved markedly in the last six weeks. Though he still tended to tire, his enthusiasm for the work had revived. He really thought that the Attorney General was well on the mend and we need not worry about his capacity to take on the work.

The Attorney also raises in his minute the possibility of additional lawyers in the Department. No need for you to react to that.

Shall I simply reply that you have noted the Attorney's conclusion that he does not need a Parliamentary Secretary?

N. L. Wicks
16 June 1986

CF - Do you want? CAS

10 DOWNING STREET

THE PRIME MINISTER

9 June 1986

Personal

Dear Nancy,

Thank you for your letter of 23 May about Lloyd's. I am glad to have your reassurance that Lloyd's problems should be clear by October. I do so much hope that you will be proved right!

Yours ever

Margaret

The Lord Kimball

CA

10 DOWNING STREET

PRIME MINISTER

DTI have seen Lord Kimball's letter. They think he may be over-optimistic, particularly because some of these things may not be finally within Lloyd's own control.

DAVID NORGROVE
6 June 1986

SUBJECT MASTER

CONFIDENTIAL

file LPO

cc BG ✓

10 DOWNING STREET

6 June 1986

From the Private Secretary

Dear Mike,

BIG BANG

The Prime Minister yesterday held a meeting to discuss the Big Bang on the basis of the note attached to your letter to me of 7 May and a note attached to John Footman's letter of 28 May. Present were your Secretary of State, the Chancellor of the Exchequer, the Governor of the Bank of England, Sir Peter Middleton, Mr. David Walker, Mr. John Caines and Professor Brian Griffiths.

The Chancellor of the Exchequer, opening the discussion, agreed with the Prime Minister that the Big Bang posed risks. Some things were bound to go wrong. But the changes were inevitable if the City was to maintain its competitiveness. The risks would not arise in relation to the City's ability to finance Government or industry; indeed, the greater depth of the markets and the stronger competitive pressures should help. Nor should the small investor be priced out of the market. Personal equity plans would help small investors and the clearers were now competing strenuously to win business from them. There would, however, be strong pressures on British-owned businesses from American and Japanese competition. There was a risk that people would move into less well regulated areas and particuar risks would arise during the period between the Big Bang and the time when the arrangements under the Financial Services Bill would come fully into effect in 1987. The supervisors would need to employ good people and to exercise great vigilance.

In discussion the following main points were made:-

(i) middle-sized British firms would probably be most at risk from increased competition. The Australians had sought to protect their domestic firms against overseas competition by imposing an additional capital requirement on foreign businesses. This was not, however, an acceptable

option in London. The authorities might need to use moral suasion during the period of adjustment and there was a clear need to put more pressure on the Japanese to ensure reciprocity. The increasingly global nature of the securities markets offered new opportunities to British firms even though their dominance of the domestic market was likely to be eroded;

(ii) the opportunities for fraud were a particular concern. The temptation to fraud, or to unethical behaviour, would be increased by the competitive pressures. It was encouraging that some institutions had begun to appoint "compliance directors";

(iii) the increasing scale of risks carried off balance sheet by financial institutions was a concern which the Bank was seeking to meet by requiring capital to be allocated against those risks. The American and Japanese regulatory authorities were likely to follow suit;

(iv) the more closely banks were regulated the more business would move into the capital markets. This placed an increasing weight on international co-operation amongst supervisors and regulators;

(v) the SIB had not at present managed to attract top quality staff;

(vi) it would be important to take every opportunity to point to the benefits to the wider economy of the changes in the City. There was a risk that people would only look at the high salaries and the deal-making;

(vii) it was a matter for concern that the Roskill recommendation for dispensing with juries in complicated fraud cases seemed likely now to be rejected;

(viii) the Neale Report on Lloyds was not now likely to be ready until September. It was possible that there would be recommendations requiring legislation;

(ix) as had happened with Lloyds, there was a risk that problems would come to public notice after passage of the Financial Services Bill, discrediting it, even though the problems themselves had their origins before the new system had been put in place.

The Department of Trade and Industry, with the Bank of England, would need to be vigilant to close any gaps in the regulatory framework and to keep it up to date as the financial markets changed.

BF/ The Prime Minister would be grateful for a further report on the state of preparations for the Big Bang to be circulated around the middle of September.

I am copying this letter to Rachel Lomax (H.M. Treasury) and John Footman (Bank of England).

Yours,

David.

DAVID NORGROVE

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

JU457
Secretary of State for Trade and Industry

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

5 June 1986

CONFIDENTIAL

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

Dear David,

LLOYD'S

With your letter of 29 May you enclosed a copy of Lord Kimball's letter to the Prime Minister.

It was interesting to note his comments on Lloyd's problems and his expectation that by October all will be well. Given his position as an external member of the Council of Lloyd's, and member of its Investigations Committee, we have no particular reason to doubt what he says. However, we think it quite likely that events will show him to have been over-optimistic about the speed with which the various matters will progress. Moreover one should not, perhaps, entirely ignore factors which may be outside Lloyd's direct control.

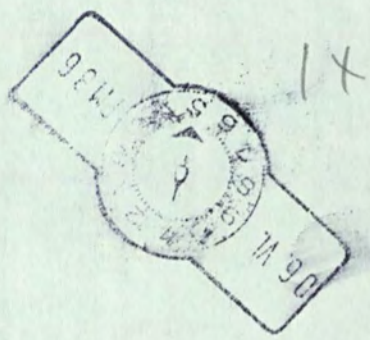
There are no particular points which we would wish the Prime Minister to make in reply.

I am copying this letter to Rachel Lomax (Treasury) and Michael Saunders (Law Officers' Dept).

Yours ever,
Michael

MICHAEL GILBERTSON
Private Secretary

Econ Pol
Gowtek
PT3



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COMMERCIAL IN CONFIDENCE

2 PPS

01-405 7641 EXT. 936.6584/6417

Communications on this subject should be addressed to
The Legal Secretary
Attorney General's Chambers

ATTORNEY GENERAL'S CHAMBERS
LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE
LONDON, W.C.2

4 June 1986

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

Dear David

LLOYDS

I am responding on behalf of Michael Saunders to your letter of 29th May to Michael Gilbertson. There are no points which this Department would wish the Prime Minister to make in her reply.

A copy of this letter goes to Rachel Lomax (HM Treasury) and Michael Gilbertson (DTI).

Yours sincerely

Stephen Wooler

S J WOOLER

Econ Pol
Gouker
PT 3

cc B/yP

10 DOWNING STREET

Prime Minister

I have sent the Policy Unit's note to the other participants to serve as an agenda.

DRV
4/6.

CONFIDENTIAL file DA

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

4 June 1986

BIG BANG

This note by the No.10 Policy Unit may help to provide an agenda for the meeting tomorrow afternoon on the Big Bang.

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

(David Norgrove)

Mrs. Rachel Lomax,
HM Treasury.

CONFIDENTIAL

10 DOWNING STREET

Mr Norgrove. pa

Agreed with Stark. RTA will discuss with AG. He reasons/procedural soundness of this conclusion. He will report.

NLW
4.3

cc BL/MP

PRIME MINISTER 3 June 1986

BIG BANG

The meeting on Thursday is an opportunity to question those directly concerned with stage-managing Big Bang. If Big Bang goes off successfully, it will be seen as a showpiece for Government policy on deregulation and increased competition; if it leads to scandals and liquidations, it will be labelled the unacceptable face of unpopular capitalism.

The key questions to discuss are:

Commissions

Will changes in commissions deter the small investor? Will there be over-the-counter sales to the general public?

Cost of Capital

What are the effects on the City's ability to raise funds for industry and Government?

Boom and Bust

Will we see boom and then bust? Are there too many players (eg in gilt-edged market)? Can we expect failures from bad judgment? Will high salaries plus fierce competition from the Americans and Japanese induce firms to take excessive risk?

Fraud

Will there be more embarrassing fraud cases? Are Chinese walls strong enough to prevent scandals? Following FIG and Roskill are we at last on top of fraud?

Regulation

Have we got the regulatory régime right? Do we have too much bureaucracy? Is SIB hiring the right kind of staff? Are there any major gaps?

Technology

Will the technology be ready? Is there a shortage of IT staff in the City?

Ownership

What kind of firms are likely to be successful post Big Bang? Will US and Japanese firms dominate the City?

BGC

Big Bang occurs on 27 October. Its first test will be BGC privatisation on 21 November. What is the risk that the start of dealings in privatised BGC shares will be more than the infant system can handle?

BRIAN GRIFFITHS

David Willetts

DAVID WILLETTS

COMMERCIAL IN CONFIDENCE

file

JD3AMF BM

10 DOWNING STREET

From the Private Secretary

ack

29 May 1986

LLOYD'S

The Prime Minister discussed Lloyd's affairs with Lord Kimball very briefly in the House of Lords ten days or so ago. The letter attached is the result.

I should be grateful to know whether there are any particular points you or others to whom this letter is copied would wish the Prime Minister to make in a reply.

I am copying this letter to Rachel Lomax (HM Treasury) and Michael Saunders (Law Officers' Department).

(David Norgrove)

Michael Gilbertson, Esq.,
Department of Trade and Industry

COMMERCIAL IN CONFIDENCE

cc BG
cc B/YP

TELEPHONE
01-601 4444

BANK OF ENGLAND
LONDON EC2R 8AH

28 May 1986

David Norgrove Esq
Private Secretary to the
Prime Minister
10 Downing Street
LONDON
SW1A 2AL

Dear David

BIG BANG: MEETING ON 5 JUNE

I enclose the note on preparations for the Big Bang requested in your letter of 14 April, and prepared against the meeting now rescheduled for 5 June.

I am sending copies of this letter and enclosure to Tony Kuczys (HMT) and John Mogg (Department of Trade and Industry).

Yours ever

John

J R E Footman
Private Secretary
to the Governor

PREPARATIONS FOR BIG BANG - MARKET OPERATIONS

Note by the Bank of England

This note assesses the preparedness of the markets for Big Bang, which is due to take place on 27 October this year. It distinguishes between, on the one hand, the infrastructure of trading, settlement and monitoring arrangements provided by the Stock Exchange and the Bank of England, and on the other, the trading arrangements of individual firms.

SUMMARY

* Big Bang reforms require major changes to the Stock Exchange's market support and surveillance systems, to service dual capacity trading, to provide new forms of investor protection and to supervise new-style SE members;

* the Stock Exchange is responding by building upon and enhancing existing systems for price and trade dissemination, settlement and surveillance. In the gilts market, new settlement and supervisory systems are being constructed by the Stock Exchange and the Bank of England;

* the Stock Exchange and their external monitors have expressed confidence that their essential market systems will be operational on 27 October but there is very little slack in the timetable;

* takeovers/mergers involving SE members are only now being completed. New managements are grappling with complex corporate reorganisations while attempting to plan ahead and modify existing systems or instal the new systems needed for Big Bang;

* the state of preparedness of SE firms appears mixed. Participants in the new gilt-edged market are for the most part likely to be ready in time. Among other securities firms, some are well advanced, both as to management systems and technology, but for a few it will be a close run thing;

* if a few firms, however important, cannot meet the timetable, this should not affect the efficiency of market operations, although the firms themselves will obviously sustain commercial losses.

THE MARKET INFRASTRUCTURE

1 To implement the Big Bang reforms, the Stock Exchange has to introduce new computer systems to support dual capacity trading and new techniques of investor protection, both to replace those provided by single capacity, and also to anticipate its obligations under the Financial Services legislation. The participation of financial conglomerates as members will place new demands on the Exchange's financial supervisors. In the gilt-edged market, two projects will mainly involve the Bank of England; the settlement of transactions and the prudential supervision of gilt-edged market makers.

2 The Exchange is adopting what it considers to be a relatively low risk strategy by building upon its existing systems, rather than attempting a clean sweep on Big Bang day. The cost will nonetheless be high; over the past two years, the Exchange has incurred capital and development expenditure of £42 mn, and will spend a further £38 mn in the next twelve months. Even these changes are only steps in a wider process of modernisation of the Exchange's facilities especially in the direction of trading support and information systems, automated execution of transactions and computerised surveillance techniques.

3 The Stock Exchange's programme falls under three main headings: trading support (the display of quotes and last trade reports on SEAQ); clearing and settlement (TALISMAN); and surveillance (of markets and firms, with data being fed from SEAQ and TALISMAN). The Exchange have hired an external consultancy firm to monitor progress in relation to quality of work, budgets, and timetables. Regular reports are given on this subject to the DTI and the Bank at the SE Monitoring Group.

4 The Exchange, supported by their consultants, remain confident that the Big Bang timetable for its own projects will be met, although there is still a great deal of work to be done. The SEAQ project is reported to be close to plan: the aim is to begin user trials in July. The system has to go fully live on 27 October without fail. The TALISMAN settlement system was

slightly behind its August schedule, but this now appears to have been made up. The surveillance project has been split into three phases: essential monitoring facilities will be in place on 27 October, though not all computerised. Computerisation of less vital facilities will follow.

5 This fairly reassuring picture does not, of course, rule out accidents or system failures. In the past two months there have been failures of electronics systems which caused part of the Exchange's market facilities to be out of operation for a period. Inevitably there may be other failures and teething problems when the new systems come on stream. Nevertheless on balance, the Exchange are more concerned about the state of readiness of their members' technical systems than about their own.

6 The Stock Exchange is also co-operating with the Bank in setting up and running a service for the book entry settlement of gilt-edged transactions, through the Central Gilts Office (CGO). Phase 1, which came into operation on schedule at the beginning of 1986, largely replaces clerical systems, and allows stock to be transferred in book entry form between jobbers and other participants at the centre of the market. A second phase aims to introduce a system of "assured payments" through settlement banks nominated by members of the CGO service. This will be important for the smooth functioning of the new gilt-edged market, and is to be implemented by 27 October. Development of the project is running broadly to schedule; trialling with members is due to take place in July and August. There are, however, some difficult negotiations in train with the banks on the legal basis for assured payments, and these have yet to be concluded.

7 In its role as prudential supervisor of the market makers in the new gilt-edged market, the Bank of England is constructing a computer system which will collect and process daily returns from them. The volume and regularity of these reports mean that computerisation is the most effective way of handling the data. This project is running to schedule: trialling is due to take place in July and August, and the system will be ready in good time for October.

THE MARKET PARTICIPANTS

8 Since agreement was reached on Stock Exchange reforms, there has been a succession of anticipatory mergers, takeovers and corporate restructurings in the UK financial sector. Where existing Stock Exchange member firms were involved, these corporate moves could only begin to be consummated after 1 March 1986, when SE rules to permit outside ownership of member firms and corporate membership came into effect. (Up to that date, stakes in SE member firms were limited to 29.9%.) Many mergers cannot, however, be fully completed before 27 October because jobbing and broking activities will have to remain separate until then - even when conducted within the same firm. As a result, the managerial and corporate reorganisations needed are only now being implemented.

9 Newly-created managements face the physical task of integrating, housing and equipping their various activities, and the cultural problems of bringing together units which have functioned and have been managed independently hitherto. These changes are taking place against a background in which the shape of markets after October 1986 is difficult to predict; the switch from single to dual capacity in the Stock Exchange cannot be phased in gradually. Dual capacity experience is limited mainly to firms which have traded off-market in domestic and international securities, or which have US connections. In constructing their internal systems for monitoring risk and performance, some managements may have been waiting until the SIB's prudential and business guidelines have become clearer, but member firms are by now aware of the Stock Exchange's draft rulebook and financial guidelines, which are being brought in line with provisional SIB rules.

10 It is difficult to generalise about the preparedness of Stock Exchange member firms, in large part because of their diverse circumstances. Prior to 1 March, there were a little over 200 member firms, most of them stockbrokers. Over 20 firms are now in the process of being taken over by UK clearing and merchant banks, a further 13 by US commercial and investment banks, and

nearly 40 by a mixture of UK and foreign firms covering a wide range of financial (and occasionally non-financial) activities. This leaves rather more than one hundred SE firms which remain independent. Finally, there will be a number of firms, mainly large international securities houses, which will be entering the Exchange either in their own right or by creating new firms (Lloyds Bank will also enter through this latter route).

11 Since most firms are already members of the Stock Exchange, they will be familiar with the Exchange's present financial reporting requirements, and will have internal reporting and audit systems to match. These will have to be remoulded, however, to fit in with extensive changes being made in the Exchange's financial regulations; and firms' internal systems will have to reflect their new corporate structures. On the technology front, firms need to be geared up to receive the SEAQ display, and to have on-line links to the Exchange for inputting market makers' quotes and trade reports. The more ambitious firms are in the process of integrating these links with their own in-house computer systems. On the settlement side, firms will not be linked on-line to the Exchange, but will be expected to provide computer readable records of all bargains struck. A large number of firms are computerising their "back-office" activities, either by means of custom-made systems, or through bought-in systems. Some are joining bureaux or pooling resources with other firms.

12 The Bank is well placed to see these preparations in the case of participants in the gilt edged market, through its involvement in planning the new market. Firms which wished to become committed market makers were invited to outline their plans to the Bank about a year ago. Our policy was not to restrict numbers, but rather to accept all those who could demonstrate adequate financial and managerial capacity to perform the various market functions. As a result there are to be 28 gilt-edged market makers, compared with eight jobbers at present.

13 The firms in the gilt-edged market come from a wide variety of backgrounds, and they consequently face many of the organisational problems described above. Unlike the firms specialising in

equities, however, those in the gilt-edged market were given an early and clear picture of the market structure and of their obligations to the supervisors. A year ago, following wide consultations with prospective participants, and study of the US government securities market, we published a paper setting out in detail the nature of the dealing and supervisory relationship that we expect to have with the market makers and other central participants in the gilt-edged market. Some firms are well advanced with their plans. Others are not as well advanced - eg, on computer systems - but expect to be ready in time for Big Bang, even if with partly manual systems. It is impossible to be certain that they will all in fact be ready, but we retain the option of refusing to begin dealing on Big Bang day with any whose preparations seem to us to be seriously deficient. There is no particular group of prospective participants which at this stage stands out as being particularly well (or badly) prepared.

14 Outside the gilt market, Stock Exchange firms led by banks have now sorted out the broad organisational structure of their securities operations, although in terms of designing their overall control systems for these activities, the position is more patchy. Arrangements for internal audit are inevitably rather less advanced than other organisational changes: it is not feasible to audit a system until it is fully designed and operational. However, most banks already have well established internal audit functions, and there seems no difficulty in principle in extending their ambit.

15 The large international houses (some of which also intend to seek banking licences in due course) have considerable dual capacity experience; their computer and risk management systems are likely to be highly advanced and commensurate with their range and level of financial activities. Such firms will, of course, need to make their systems compatible with those of the Exchange, but there is no reason to doubt that they will in general be ready for Big Bang. Where SE firms have been taken over by non-banks the picture is much less clear, although in the majority of cases it is likely that they will continue to function fairly independently (eg where the new parent is a fund manager).

Consequently the adjustment problems facing this group pre-Big Bang will be fairly simple. The operations of these firms, and also of those remaining totally independent are likely to remain relatively straightforward (very few will become market makers, for example). In addition, they are tending to rely mainly on technology approved or installed by the Exchange.

16 Overall, therefore, the preparedness of Stock Exchange member firms for Big Bang is rather mixed. Notwithstanding action by the Stock Exchange to spur the laggards, some firms may still find themselves unready to operate the new systems on 27 October. This is more likely to be among the larger firms which have opted for ambitious systems. Nevertheless it does not seem at all likely that this will be on a scale to prejudice the overall market operations following Big Bang.

R2715

HOUSE OF LORDS

23rd May, 1986

Dear Margaret,

Lloyd's

After our discussion on Monday night, I promised to let you know when the last of the problems at Lloyd's would be finished. I realise the urgent political need to finalise the clearing up of the Society.

The Neale Inquiry into Investor Protection at Lloyd's is out of our hands, but the Department of Trade & Industry have given him a late summer date for his report. There is no delay on Lloyd's' part - I confirm all his inquiries have been dealt with immediately.

There are three remaining problems. "Baby Syndicates" no longer exist and they are not one of the three. The Byelaws were issued in December 1985, compliance with the Byelaws is checked continuously as part of the Inspection procedures in the Regulatory Services, and in fact the inquiry into Sir Peter Green's problems did not criticise his small syndicate which had been brought into line with the regulations before they were Byelaws. The list of all syndicates was published in April and this fact can be checked by any member of the public.

Sir Peter's affairs are still a problem but not on the scale hinted at in the press. The Investigations Committee meets on Wednesday 28th May to consider the full Report. The actual amount of money not accounted for to his names in an operation of over £34m is £180,000. Everything he did was to benefit his names - his less than candid approach was because of problems with the Inland Revenue, now settled. In my opinion the Report will be sent to all his names and this will mean that it will be published. Lloyd's can only clear this problem by a full and frank disclosure. I hope this will happen in June to be dead and buried by the end of the month.

/...

23rd May, 1986

Bellew, Parry & Raven, which was sent to the Director of Public Prosecutions by the Investigations Committee on March 29th, will take the following course - administrative suspension in June and public laying of Lloyd's Disciplinary charges early in July.

That leaves the P.C.W. Names, their losses and allegations of fraud. Progress with this settlement is better than is appreciated outside. Alan Lord, Lloyd's new Chief Executive, has given this top priority. Names will have to pay their proven losses (a loss that would stand up in a Court of Law) none of these will drive names into bankruptcy. The unproven but estimated future liabilities will be carried by the Society and Members Agents, Brokers and professional firms are all showing reliable signs of shouldering their share of the burden, as a result of the positive and firm leadership by Lloyd's' Chairman, Peter Miller. There is an overwhelming desire to get this problem out of the way.

In answer to your question - when would Lloyd's problems be clear ? In my opinion, October 1986 and I will let you know immediately if there is any sign of failure to meet this date.

Yours ever

Jamie

The Lord Kimball

The Rt. Hon. Margaret Thatcher, M.P.,
10, Downing Street,
LONDON S.W.1.

Subject as Ops master

CONFIDENTIAL

File 116

10 DOWNING STREET

THE PRIME MINISTER

Personal Minute
No. M7/86

THE LORD PRESIDENT OF THE COUNCIL

In your minute of 8 May reporting H Committee's conclusions on the proposals for a Serious Fraud Office you reserved my position on the machinery of government aspects and in particular the question of which Minister should be responsible for the new organisation. I have sought advice from Sir Robert Armstrong on this matter, and am inclined to accept the recommendation in the Chief Secretary's paper to H Committee (H(86)20) that the SFO should be the responsibility of the Attorney General, but as a Department separate from the DPP's Department. This seems to me to provide just the right relationship between the Attorney General and the SFO in relation to the handling of individual cases and therefore the right form of accountability to Parliament.

Sir Robert Armstrong has, however, drawn my attention to two aspects that might need further consideration. The first is the cumulative effect of adding the SFO to the Attorney General's administrative and management burden at a time when the Crown Prosecution Service is yet to come into full operation. I understand that the possible need to consider adding a Parliamentary Secretary to the Law Officers' Department has been suggested in this context. Before taking a final decision, therefore, I should like the Attorney General to consider in more detail the administrative and

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management implications of giving him responsibility for the SFO, and in particular whether he considers he would need a Parliamentary Secretary to support his management responsibilities.

The second consideration is a slight risk that adding to the Law Officers' responsibilities in this way would give some encouragement to speculation about a Ministry of Justice. It might be necessary at some stage to consider reviewing the implications of such a move. But it would be a major undertaking and I do not consider it needs any detailed work at this stage.

I am sending a copy of this minute to members of H Committee, the Attorney General and the Minister of State, Privy Council Office and to Sir Robert Armstrong.

Margaret Thatcher

23 May 1986

NSPN.

MR NORGROVE

22 May 1986

ROSKILL REPORT: SERIOUS FRAUD OFFICE

We agree that there is no credible alternative to placing responsibility for the Serious Fraud Office on the Attorney General. It also seems to be the only way in which police co-operation with it can be willingly secured.

A. Resources

It is doubtful whether the present resources and office facilities available to the Attorney General are adequate, irrespective of this relatively minor increase in his department's workload, which already includes some responsibility for serious fraud now handled by the DPP. If, as is thought likely, his support facilities are stretched already, they should be reviewed and the necessary resources provided. With increasing legal issues facing the Government and the advent of the new Prosecution Service, it is essential that the Government's legal advice should be maintained at a high level.

B. No "Ministry of Justice"

The proposal to put a Serious Fraud Office with the Attorney General's Office should be allowed to stand on its own merits without wider consideration of the creation of a Ministry of

Justice. But if Robert Armstrong is seriously suggesting this (paragraphs 5, 8 and 9) we note:

1. The term "Ministry of Justice" is on the face of it contrary to the British constitution. Justice is the domain of the courts. Ministries are the province of the executive.

2. The creation of a Ministry which would have some or all of the functions presently done by the Attorney's Department, the Home Office and the Lord Chancellor's Department, would be a costly Wilsonesque horror without obvious scope for savings, considerable scope for Civil Service expansion, predictable loss of public confidence, and likely to destroy tradition without any public demand or attraction.

3. But a modest and speedy review of the management of the Law Officers Department is timely and will prove useful.

Conclusion

We recommend that the draft minute should be supported, but feel that the last sentence of the second paragraph should be redrafted as follows:

"Before taking a final decision, therefore, I should like the Attorney General to consider in more detail the administrative and management implications of giving him

responsibility for the SFO, in addition to his present and increasing prosecution responsibilities, and also whether he considers he would need a Parliamentary Secretary to support his management responsibilities."

We strongly oppose any further discussion of establishing a Ministry of Justice.

David Hobson — Hartley Booth.

DAVID HOBSON HARTLEY BOOTH

CC BG

Prime Minister

If you agree with this a minute for your signature is attached.

DRN MF 21/5.

Ref. A086/1492

PRIME MINISTER

Roskill Report: Serious Fraud Office

Mr Norgrove's minute of 12 May asked me to consider and advise you on the machinery of government aspects of the proposal for a Serious Fraud Office (SFO).

Background

2. As reported in the Lord President's minute of 8 May, the SFO would be set up to investigate and prosecute the most serious fraud cases (maybe 100 out of the 20,000 fraud prosecutions that are brought each year). The SFO itself would be staffed by lawyers, accountants and others with expertise in investigating company fraud. Because of constitutional and other difficulties, members of the police force would not be brought directly into the SFO, which would be part of the Civil Service as such; but a group of police officers would be permanently located with the SFO and would be under the day-to-day direction of the Director of the SFO, who could delegate SFO powers to these police officers in individual cases. It is not yet fully certain, however, that the police will find these arrangements acceptable. Their involvement with the SFO is a crucial element in achieving the closer co-ordination in tackling fraud that setting up the SFO is intended to bring about. Decisions on machinery of government aspects can therefore only be provisional pending the outcome of the Home Secretary's further discussion with the police about the proposed arrangements.

RTAAAY

The Attorney General

3. On the assumption that the police would find the proposals acceptable, the Chief Secretary's paper to H Committee proposed that the SFO should be accountable to the Attorney General, but as a Department separate from the Department of the Director of Public Prosecutions (DPP).

4. The case for placing the SFO under the Attorney General's control in this way is clear:

a. responsibility for a new prosecuting authority fits naturally with the Attorney's long-standing responsibility for the DPP's Department and now for the Crown Prosecution Service (CPS), which comes into full operation from October 1986;

b. it is also a natural development from the present less formal Fraud Investigation Group (FIG) co-ordination arrangements, under which the FIG Controller has been a member of the DPP's Department;

c. the creation of the SFO as a Department separate from the Law Officers' Department, but acting under the Attorney General's superintendance (as with the DPP), would allow some distancing of Ministers from the handling of individual cases and therefore a more appropriate form of Parliamentary accountability than if the SFO were part of another Department such as the Department of Trade and Industry.

5. The implications of giving the Attorney General responsibility for the SFO are, however, substantial and merit careful consideration. I am concerned on two fronts: first the way in which administrative burdens on the Attorney General are being increased; and secondly the risk that we may be moving

steadily in the direction of a Ministry of Justice without any explicit examination of the case for doing so.

6. The Law Officer's Department as presently constituted is designed to support the Law Officers in their traditional function of the provision of legal advice to the Government. It has little capacity for administration and management, and in fact has no role in relation to the Attorney General's superintendance of the DPP's office (some 220 staff) and now the Crown Prosection Service (growing to some 3,500 staff), which reports directly to the Attorney through the Director. In straight manpower terms the SFO is a small addition by comparison with the CPS - some 30-40 lawyers and about as many supporting staff. But the individual cases handled by the SFO will be large and complex and likely to attract public attention, and handling the relationship between the SFO and the police can be expected to throw up issues requiring Ministerial involvement. In supporting the proposal that the Attorney General should have responsibility for the SFO, Department of Trade and Industry Ministers were most concerned that he should have proper organisational back-up to ensure that the new organisation operated effectively.

7. Against this background the Solicitor General has suggested that there might be a need to consider appointing a Parliamentary Secretary in the Law Officers' Department specifically to look after administration and management responsibilities. There is a precedent for this during the Labour Government 1974-79 (Mr Davidson). And the appointment of an additional Parliamentary Secretary would, on present numbers, still leave you with room to appoint one (but only one) more salaried Minister to the Government (inside or outside the Cabinet). It is also possible that there might need to be some increase in the number of officials employed in the Law Officers' Department. You may therefore want to ask the Attorney General to consider in more detail the arrangements he

would need to manage the SFO in addition to his existing responsibilities for the DPP and the CPS, and in particular whether he might need the support of a Parliamentary Secretary.

8. Placing the SFO under the superintendance of the Attorney General would not of itself imply a move towards a Ministry of Justice. Nor is it certain that it would be perceived as such. Most of the comments in recent years about the case for a Ministry of Justice have been focussed on alleged conflict between the Home Secretary's dual responsibilities for certain justice matters (eg magistrates courts) and for what may be termed "Ministry of the Interior" functions (eg police and prisons) and on the split of justice functions between the Home Secretary and the Lord Chancellor. Responsibility for prosecution functions has not been a major part of the debate and, as far as I am aware, giving the Attorney responsibility for the CPS has not been interpreted as a step towards a Ministry of Justice. But this is only now coming into operation and the further announcement in the near future of the Attorney General's responsibility for the SFO might just be seen as indicating a trend in that direction. There is also a political dimension in that the Alliance parties have in the past indicated some support for the idea.

9. The creation of a Ministry of Justice would of course be a major change in the machinery of government with considerable management and resource implications. Even a review of the implications on a contingency basis would be a sizeable task, since it would affect the responsibilities of several senior Ministers (Lord Chancellor, Home Secretary, Law Officers). I do not therefore suggest that you have such a review conducted at the present time. But you might want just to note the possibility, in case this increase in the Attorney General's responsibilities rekindles the Ministry of Justice debate.

Other Ministers

10. There are other Ministers to whom responsibility for the SFO could be allocated; but there are objections to all of them:

a. Secretary of State for Trade and Industry - many of the prosecutions might involve offices under legislation for which DTI has responsibility; but other Departments' responsibilities would be involved (eg Inland Revenue) and it would look odd for one line Department to bring prosecutions effectively on behalf of another. Distancing the Secretary of State from responsiblity for individual cases would also be more difficult if the SFO were part of the DTI, which would result in more detailed Parliamentary accountability and could provoke fears of political interference in the handling of individual cases, given the Secretary of State's responsibility for the financial services sector;

b. Home Secretary - this would run counter to the recent trend of transferring prosecuting powers from the police to the CPS. In any case the Home Office have no expertise either in investigating commercial fraud or in the conduct of prosecutions as such. More generally it might be seen as inappropriate for the Home Secretary to have responsiblity for prosecution work as well as for the police, prisons and the magistrates. And it could just as easily provoke speculation about a Ministry of Justice;

c. Lord Chancellor - this would similarly seem inappropriate, given his position as head of the judiciary; again the risk of speculation about a Ministry of Justice would be present.

11. More generally, the police are less likely to find acceptable the proposals for co-locating police officers with the SFO, if responsibility for it is given to a Minister other

than the Attorney General. As indicated earlier, involvement of the police in this way is essential to achieving the objectives of setting up the SFO.

12. One further option that I should mention would be to set up the SFO as a non-departmental public body sponsored by the Attorney General. This would reduce the Law Officers' responsibility for management of the SFO and should have no Ministry of Justice connotation. But I think it would lack public credibility if responsibility for the investigation and prosecution of the most important fraud cases were given to a quango rather than a Government Department. It has not attracted any support among Ministers who considered the proposal for an SFO and I do not recommend it.

Conclusion

13. Subject to the outcome of the Home Secretary's discussion with the police about the proposals for an SFO, I conclude that responsibiltiy for the SFO should be given to the Attorney General. There is no credible alternative. There is, however, no need for a final decision before the Home Secretary's discussion with the police confirm the acceptability of the SFO proposals. I suggest therefore in the meantime you might:

a. ask the Attorney General to consider the administrative and management implications of giving him responsiblity for the SFO in addition to the CPS, and in particular whether he would see a need for the appointment of a Parliamentary Secretary to support the Law Officers in this respect; and

b. note the slight risk of this being interpreted as a further, albeit small, step towards a Ministry of Justice and the possible need to conduct a review of the implications of such a development at some time in the future.

14. A draft minute that you might send to the Lord President of the Council is attached.

RA

ROBERT ARMSTRONG

20 May 1986

RTAAAY

CONFIDENTIAL

SLH

cc: Prof. Griffiths

10 DOWNING STREET

From the Private Secretary

12 May 1986

Dear Joan

The Prime Minister was grateful for the Lord President's minute of 8 May which reported H Committee's conclusions so far about the recommendations made in the Roskill Report.

The Prime Minister is content with the proposals described by the Lord President. She will consider now the machinery of government aspects of the proposal for a Serious Fraud Office (paragraph 3 of the Lord President's minute).

I am copying this letter to private secretaries to members of H Committee, Michael Saunders (Attorney General's Office), Paul Thomas (Minister of State's office, Privy Council Office) and Michael Stark (Cabinet Office).

Yours,

David.

DAVID NORGROVE

Miss Joan MacNaughton,
Lord President's Office

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10 DOWNING STREET

From the Private Secretary

SIR ROBERT ARMSTRONG

ROSKILL REPORT

You will have seen from my letter of today to the Lord President's Private Secretary that the Prime Minister is content with the proposals on the recommendations of the Roskill Report set out in the Lord President's minute of 8 May.

The Prime Minister would be grateful if you could now consider and advise on the machinery of government aspects of the proposal for a Serious Fraud Office (paragraphs 2 and 3 of the Lord President's minute).

DAVID NORGROVE
12 May 1986

CONFIDENTIAL

MR NORGROVE

9 May 1986

ROSKILL REPORT

We have seen the Lord President's minute dated 8 May. We are content with the way things are developing. David Hobson attends the meetings, providing Policy Unit input directly.

I am still very unhappy that the work following the production of this report has failed to address the underlying definition of fraud, and am still convinced this is a matter that should be referred to the Law Commission.

HARTLEY BOOTH

10 DOWNING STREET

Prime Minister

The Policy Unit are content with these proposals.

Agree

(i) that you are content, and ask RTA's advice on machinery of government aspects;

Yes

OR

(ii) call a meeting;

OR

(iii) are there particular points on which you would wish to comment in writing?

Not at present

DRN
9/5

PRIME MINISTER

ROSKILL REPORT

At your meetings before the Roskill Report was published you asked the Chief Secretary, Treasury, to review the recommendations for a unified fraud investigation and prosecution organisation, the Home Secretary to consider the recommendation for a Fraud Commission, and the changes in criminal law to be considered by H Committee. In the event it proved best for H Committee to take stock of progress across the board. We did this on 30 April and, in general, I think we are well on course to implement the bulk of Lord Roskill's recommendations and thereby demonstrate our concern to tackle serious fraud.

Unified organisation

2. The Chief Secretary, Treasury, explained that, while he was convinced of the need for a more unified organisation in dealing with serious fraud, the great difficulty lay in securing the participation of the police. Their initial reaction had been that a more streamlined organisation was unnecessary and that there were constitutional difficulties in police serving within an organisation that they did not control. They were also concerned that it might syphon off their best officers and thus weaken their more general effort against fraud. (Some 20,000 prosecutions for fraud are brought each year, while it is only envisaged that the unified organisation would tackle the 100 or so most serious ones.) The Chief Secretary had not been entirely convinced by all these arguments but he had recognised that the wholehearted co-operation of the police was vital. He had therefore looked for means of meeting their reservations without unduly reducing the impact and effectiveness of a new organisation, and he proposed the creation of a two-part organisation. This would consist of a Serious Fraud Office (SFO), which would be staffed by lawyers, accountants and others and possess prosecuting

powers analogous to those given to DTI inspectors under the Companies Act to require the production of books and papers. It would not, however, be given police powers of search, arrest and detention. This office would be co-located with a full-time group of police officers who would retain their normal powers and would remain under the command of their chief officers for disciplinary and other purposes. The controller of the SFO would be empowered to delegate SFO powers to the police in individual cases.

3. The Home Secretary thought that the police, while still sceptical about the proposal, could be persuaded to accept it if their involvement was handled with great care. The proposal received general support from the Committee as an ingenious solution to the problem, and there was no dissent. We therefore asked the Home Secretary to pursue the matter further with the police and do his best to ensure that they are brought round to accept the proposed scheme. I reserved your position on the machinery of government aspects and, in particular, the question of who should be the ministerial head of the new organisation.

A Fraud Commission

4. The Roskill Committee's recommendation was for an independent monitoring body which would be charged with studying and advising on the efficiency with which fraud cases were conducted. The Home Secretary doubted whether that was the right model but he had concluded, on balance, that there was a case for a temporary body, with a life of only five years, to oversee implementation of the Roskill recommendations as a whole. Some members doubted the strict necessity for such an organisation and, in particular, the Chief Secretary, Treasury, and the Minister of State, Privy Council Office, had some concern that we would be establishing a new quango without being sure that it was the most cost effective method of carrying out the activities proposed. On the other hand, presentational advantages were seen both in implementing

yet another Roskill recommendation and in being seen to put our practical response to the report under some degree of independent assessment.

5. The Lord Chancellor pointed out that a number of influential judges were known to be unenthusiastic about the proposal on the grounds that it might threaten judicial independence. He thought these fears unfounded but they nevertheless needed to be taken into account. We concluded that, for the present, we should reserve our position on this recommendation and that in the meantime the Home Secretary should talk to the judiciary to assess the extent of their opposition and to persuade them that their fears were groundless. A final decision need not be hurried, and perhaps it will best be taken when we are in a position to consider the presentation of our entire response to the report.

Criminal law and procedure

6. The Home Secretary also reported his conclusions on the remaining aspects of the report. The key recommendations in this area were the proposals for the prosecution to be able to dispense with committal proceedings and to transfer a case straight to the Crown Court; for preparatory hearings; and for advance disclosure of the defence case. The point you had made about the sensitivity of the last of these proposals was taken very fully into account. We concluded that the proposals were justified and should be implemented, but that they should be confined to serious fraud trials only and that the Home Secretary's proposal that he should take power to extend them by order to other trials should be dropped.

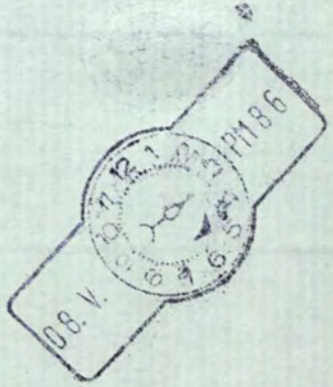
7. The other politically controversial aspect of the Roskill report is, of course, the recommendations on juries, and especially the suggestion that juries might be dispensed with in some cases. The Committee agreed with the Home Secretary that these issues

were best considered along with other Criminal Justice Bill points on juries, on which he is to put a paper to H next month.

8. There is clearly more work to be done, but it appears to me that we shall be able to make a very positive overall response to this Report. Although we need not take final decisions until the further work has been completed, I would be grateful to know if you have any comments on the way things are developing.

9. I am sending a copy of this minute to the members of H Committee, to the Attorney General, the Minister of State, Privy Council Office, and Sir Robert Armstrong.

Privy Council Office
8 May 1986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KBG
cc BUP

DEPARTMENT OF TRADE AND INDUSTRY
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GTN 215) .....
(Switchboard) 01-215 7877

Secretary of State for Trade and Industry

PS/

7 May 1986

BF To hold for meeting later in the month.

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

Dear David,

BIG BANG

Your letter of 14 April asks my Secretary of State for a note, in preparation for the Prime Minister's meeting on "Big Bang", on the Financial Services Bill and the state of preparedness of the SIB and other regulatory organisations.

... I attach a note approved by my Secretary of State. You will see that in addition to the Financial Services Bill we also cover the state of preparedness of The Stock Exchange itself on its new rule book and new technology.

I am copying this letter to Tony Kuczys (HM Treasury) and John Footman (Bank of England).

Yours ever,
Michael

MICHAEL GILBERTSON
Private Secretary

JF5BDY

999-1

CONFIDENTIAL

BIG BANG
Financial Services Bill

The Bill is expected to receive Royal Assent in October. It made fast progress in Committee, and has in general received widespread support. The most controversial outstanding issue was the status and powers of the designated agency (expected to be the Securities and Investments Board (SIB)). We have reached agreement with the Government's backbench members of the Committee on this by giving the Board statutory recognition in the Bill and giving it additional powers in relation to investigations and prosecutions. This should substantially ease the remaining stages in the Commons and the passage of the Bill in the Lords.

2 However congestion in the Lords programme means that there is little prospect of the Bill getting Royal Assent in July. The timetable for implementation is little affected by whether Royal Assent is in July or October. SIB is already publishing drafts of its rule book and organising itself to be ready to seek the transfer of powers to it as planned towards the end of 1986.

3 Ministers have made it clear that they welcome comment on the Bill; amendments need to be made to meet the constructive comments received which are mainly of a technical nature. With Report stage in the Commons likely to be agreed for June this will enable DTI Ministers to present the Lords with a Bill which has received extensive support in the House of Commons.

JF5BDX

Securities and Investments Board

4 The timing of the transfer of the Secretary of State's regulatory powers to SIB is in SIB's hands to a large extent. They need a rule book and monitoring and enforcement capability which in the view of the Secretary of State satisfies the criteria in the Financial Services Bill. SIB has published some consultative documents and draft rules for comment by the City and other interested parties; it plans to publish more over the coming months. In addition SIB has started to organise its monitoring, enforcement and computing operations. As of now preparations for the transfer of the Secretary of State's regulatory powers to SIB for early in 1987 are on course.

Self Regulating Organisations

5 Once SIB has received these powers the next step will be the recognition of self-regulating organisations (SROs), membership of which will give authorisation to carry on investment business. Here progress is not so well advanced. Several of the organisations are new and are only now starting to get themselves organised. They have a long way to go to be ready for recognition in the first part of next year. We are urging on them the necessity to make faster progress.

What pressure can we put on them?

The Stock Exchange

6 However, The Stock Exchange is much better placed. It already has a well developed rule book and arrangements for monitoring and enforcing it for its present trading system. The rules and enforcement procedures need major amendment to

cope with the new trading systems, but The Stock Exchange has been planning these for the last three years.

Big Bang

7 Ministers will recall that the "Big Bang" started from the "out of court" settlement of the restrictive trade practices case against The Stock Exchange in July 1983. Whilst The Stock Exchange's contribution to this settlement was then seen by some as rather slight, the proposed abolition of minimum commissions led rapidly to the acceptance of the need for radical changes in the way the equity and gilts markets operated. This will involve abolishing the present separation of jobbers and brokers and introducing dual capacity broker dealers who can deal direct with investors as well as making markets. This in turn has led to the main British participants needing massive injections of capital. Even the largest Stock Exchange firms were tiny by international standards; and the Exchange itself has needed to invest heavily in technology to underpin the new trading system.

8 A number of the reforms planned since July 1983 have already been put into effect; for example, some freeing of commissions, and the appointment of five lay members to the Council. With effect from 1 April, The Stock Exchange firms can be 100 per cent owned by outsiders. Thus, important as are the final unfixing of commissions and the introduction of the new trading system on 27 October 1986 ("Big Bang day"), they are the final stages of a process which has been going on for some time. This process has been monitored by the DTI and the Bank of England. (SIB are now associated with this monitoring.)

With what result?

Stock Exchange Rule Book

9 This monitoring has been concerned with the amendment of The Stock Exchange's rules and with its new technology. Its rule book needs to be completed before Big Bang and this project is on time; new rules on how to make markets, on coping with what for existing Stock Exchange firms will be new conflicts of interest and on standards of dealing with the public have been drafted and are being considered. The Bank of England have published proposals for regulating the primary market in gilts.

Technology

10 The other main issue is technology. The installation of new technology for dealing and settlement at The Stock Exchange is on schedule - just - but much remains to be done. The last time Mr Howard raised this with Sir Nicholas Goodison (in April) Sir Nicholas assured him yet again that they were on course to meet the Big Bang deadline Sir Nicholas repeated his concerns about the impact on The Exchange's computer systems of the changes proposed in the Budget on stamp duty.

What happens if it's not?

11 For the Exchange to have their new technology up and running by Big Bang may be a near run thing especially on the settlement side given the need to test systems and acclimatise staff to them. The modifications to the settlement system, Talisman, are expected to be in place by end-August (against a target of April) so there is little margin for further slippage. The Exchange also have a programme of system improvement. Where particular changes are likely to be later than Big Bang day The Exchange believes they can make alternative arrangements. The

Exchange have an independent firm of computer specialists auditing their progress regularly. Some Stock Exchange member firms are behind schedule for the installation of the Big Bang technology and training in their own firms. Four firms are said to be seriously late, one of which is of significant size.

12 Given the extent of the changes at The Stock Exchange it will be most surprising if there are no teething troubles after Big Bang. Systems will not function quite as expected and firms will get things wrong. Any problems would need to be resolved by The Stock Exchange Their first big test is likely to be the British Gas flotation in November.

13 There will be a gap between Big Bang and the coming into force in 1987 of the new regulatory system to be set up by the Financial Services Bill. This gap should not cause undue concern. The Stock Exchange's new rule book will be in force and will be binding on its members That rule book is being drawn up in the light of the Bill's requirements and SIB's draft rules. The new rule book should, therefore, from the start largely meet the standards which all the SROs will be required to meet in 1987 in order to obtain recognition under the Bill. The Stock Exchange is very mindful of its reputation as a regulatory body and has a large and experienced supervisory staff.

CONCLUSION:

14 Big Bang will entail fundamental changes in the way the equity and gilts markets are organised. Whilst much has been done in preparation for this, much remains to be done. As of now the necessary preparations for Big Bang and the Financial Services Bill are on course.

DEPARTMENT OF TRADE AND INDUSTRY JF5BDX

2 May 1986

ECON POL: Gower; Pt 3.

CBG

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Secretary of State for Trade and Industry

28 April 1986

The Rt Hon The Lord Hailsham of
St Marylebone PC CH FRS DL
House of Lords
LONDON
SW1A OAA

Dear Lord Chancellor,

FINANCIAL SERVICES BILL : SROs LIABILITY FOR DAMAGES

Thank you for your letter of 24 April. I am most grateful to you for considering this issue so quickly and for agreeing that the Financial Services Bill should give SROs and their officers immunity from damages. I certainly agree with you that the immunity should be confined to actions for damages. It is important that investors and others should still have other remedies open to them. I also agree that the immunity should apply only to a recognised SRO's activities in authorising and regulating its members as required by the Bill. In drafting the amendment, we will ensure that both these points are kept in mind.

I am copying this letter to the Prime Minister, the Lord President, the Chancellor of the Exchequer, the Home Secretary, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Attorney General, the Chief Whip, the Governor of the Bank of England and Sir Robert Armstrong.

Yours sincerely,

PP PAUL CHANNON

(Approved by the Secretary of State and signed in his absence)

DW1BCZ

999-1

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10 DOWNING STREET

From the Private Secretary

28 April 1986

Dear Mike,

FINANCIAL SERVICES BILL:
STATUS AND POWERS OF THE DESIGNATED AGENCY

The Prime Minister has seen the Attorney General's letter to your Secretary of State of 25 April which discussed the proposal that the SIB should be allowed certain powers to bring prosecutions.

The Prime Minister, as you know, shared the Attorney General's doubts about the proposal. She is now prepared, albeit reluctantly, to agree to the proposals.

I am copying this letter to Joan MacNaughton (Lord President's Office), Richard Stoate (Lord Chancellor's Office), Stephen Boys Smith (Home Office), Rachel Lomax (H M Treasury), David Morris (Lord Privy Seal's Office), Andrew Lansley (Chancellor of the Duchy of Lancaster's Office), Iain Jack (Lord Advocate's Department), Murdo Maclean (Chief Whip's Office), the Private Secretary (Captain of the Gentleman at Arms), Paul Thomas (Minister of State, Privy Council Office), John Footman (Governor of the Bank of England), and Sir Robert Armstrong.

Yours

David,

DAVID NORGROVE

Michael Gilbertson, Esq.,
Department of Trade and Industry

CONFIDENTIAL

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SLH

cc PS Griffiths

10 DOWNING STREET

From the Private Secretary

28 April 1986

Dear Joan,

ROSKILL REPORT

The Prime Minister saw over the weekend the papers on the Roskill Report which are to be taken by H Committee this week.

The Prime Minister has noted the proposals for disclosure of the outline of the defence case mentioned in paragraph 12 of the memorandum by the Home Secretary (H(86)19). She commented that they could give dificulty because knowledge of the defence case could influence the examination of witnesses.

It would be helpful if this point could be covered in the report to the Prime Minister following the discussion at H.

Yours,

David.

DAVID NORGROVE

Miss Joan MacNaughton,
Lord President's Office

CONFIDENTIAL

CC BG

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

25 April 1986

The Rt Hon Paul Channon MP
Secretary of State for Trade and Industry
Department of Trade and Industry
1 Victoria Street
London
SW1H OET

Prime Minister!
Are you content that the SIB should be a prosecuting body, albeit reluctantly?
DEV 25/4.

Yes

Dear Secretary of State,

FINANCIAL SERVICES BILL: STATUS AND POWERS OF THE DESIGNATED AGENCY

Thank you for your letter of the 22nd April 1986.

I found the meeting with Michael Howard most helpful. In particular, he was able to explain in more detail the extent of the control which you and your Department will retain over the functions of the Securities and Investment Board (SIB) notwithstanding that it will be a private body. I was also pleased to learn that there will be no question of the prosecution functions being discharged through the self Regulating Organisations. This latter point effectively meets my concern on the question of how consistency of approach and policy in the decision whether to prosecute would be achieved.

I adhere to my original view that ordinarily the institution of criminal proceedings ought not to be discharged on a routine basis by a private body. But Michael was able to assure me that your proposals for imposing conditions and restrictions on any prosecution function which may be transferred would ensure a considerable degree of control over the prosecution policy and procedures of the SIB. I understand that your intention would be to effect the transfer of prosecuting powers on a gradual,

possibly offence by offence, basis to the SIB after appropriate consultation. In these circumstances I do not think it would be right for me to press an objection in principle. Assessment of whether such an extension of "self regulation" to include the power to prosecute will in fact command the necessary public confidence must be a matter for your judgement. Careful presentation will be needed to ensure that the public are aware that, despite SIB's private status, it is acceptable for it to have prosecution functions because the transfer of the power to prosecute to the SIB will be subject to the safeguards mentioned above.

I mentioned specifically the need to ensure that the SIB is adequately funded for the discharge of prosecution functions - something which can be expensive. Provided the SIB is not caught by section 17(6)(d) of the Prosecution of Offences Act 1985, it may be able to recover its costs in respect of prosecutions for indictable offences out of central funds. Otherwise, it will be responsible for its own costs. In any event, it will have to bear its own costs in respect of summary offences. I mention this point because it is undesirable in principle that decisions whether to prosecute should be constrained by budgetary considerations.

What Michael was able to tell me also went a long way to meeting my anxieties as to the adequacy of the accountability aspect of these arrangements. In view of all these factors, and in particular the burden which a substantial number of enforcement prosecutions would place upon your own resources, I am not minded to press my objections further.

I am copying this letter to the Prime Minister and other recipients of your letter.

L Pres C DL
LCO L Adv.
H Sec C Whips
C&E L Durham
LPS PCO

Yours sincerely
Stephen Wooler

Approved by the Attorney General and signed in his absence.

Econ Pol: Gower.

PE3

PRIME MINISTER

ROSKILL

H is to discuss on Wednesday the papers below. A report will then be made to you. But there is of course an opportunity for you now to indicate views to the Lord President if you wish.

The Policy Unit do not think there are any points you need make at this stage.

I hesitate to attempt a summary in this complicated area, but the main points from these papers seem to be as follows:

(i) the Home Secretary is against a permanent body to advise on practice and procedures as recommended by the Roskill Committee in the form of a Fraud Commission. He would intend to set up the Commission for five years only with a remit directly focussed on the monitoring and evaluation of the changes made following Roskill;

(ii) the Home Secretary is against extending to the police the powers enjoyed by the Secretary of State for Trade and Industry under Section 447 of the Companies Act: the police already have new powers under the Police and Criminal Evidence Act 1984;

(iii) the Home Secretary proposes a statutory presumption in favour of admitting documents unless in the judge's view it would be unjust to do so in the circumstances of the particular case; he proposes to apply the changes in the rules of evidence to criminal trials as well as to fraud cases;

(iv) he would like to acccept advance disclosure of the defence but only to the prosecutor and the judge and it should not be referred to during the trial without the consent of the defence or the leave of the judge (this is a variant suggested by Mr. Merricks).

(v) the Home Secretary thinks there is no need to take a position at this stage on the proposal for a tribunal in complex fraud cases but says his personal inclination is to concentrate on peremptory challenge and not to enact at this time the proposal for a tribunal.

The Chief Secretary was charged with looking at the proposal for a unified organisation. Officials recommended to him a fully unified organisation which would not in general have needed to seek police assistance. The Chief Secretary recommends against this because it would meet with resistance from the police service, it would need legislation allowing it substantial investigatory powers and it would look bureaucratic and cumbersome, among other things. He recommends instead the creation of a new Serious Fraud Office which would have prosecuting powers and powers to require the production of books and papers. But it would not be given police powers of search, arrest or detention. It would be staffed by a group of accountants, lawyers and others, and a full-time group of police officers would work alongside it and be co-located with it. The new office would be accountable to the Attorney General, but as a department separate from the DPP. It would probably have a staff of about 80 and the Law Officers Department would probably need to be strengthened - there has been talk of the need for an extra junior Minister.

The Chief Secretary thinks this would be easier to get off the ground and probably in practice more effective than a fully unified, separate organisation.

The Chief Secretary puts the gross cost of all the proposals at around £8 million but - unsurprisingly - thinks it should be possible for much of the expenditure to be absorbed within existing provision. However, he says he would be prepared to consider justified bids for modest additions.

DN

DN

25 April 1986

CONFIDENTIAL

CCBG

MR WIGGINS

cc PS/Mr Luce
PS/Sir Robert Armstrong
Mrs Chapman

pa

FINANCIAL SERVICES BILL

1. I promised to send you yesterday a note about the status of SIB in the light of the proposal to give it prosecuting powers. In the event I delayed sending it when I discovered that, following a meeting with Mr Howard, the Attorney-General will be writing today withdrawing the objections that he had raised in his letter of 21 April. The expected Ministerial meeting next week will presumably not therefore take place.

2. The classificiation/status issue remains of course. But given on the one hand the overriding importance that DTI Ministers have attached to maintaining the view that SIB is a private sector body and on the other the fact that prosecuting power is seen as a key element in removing backbenchers' opposition to the Bill I do not think that this is likely to be seen by Ministers as reason in itself for not proceeding with their proposals. I am, however, still attaching my note in case there is still a need for a meeting in the light of the more general concern expressed by the Prime Minister in David Norgrove's letter of 21 April.

R A C HEWES

25 April 1986.

COPY

c. Mr Langdon
Mr Norgrove (for information)

Mr Unwin

You will wish to see Mr Hewes' note below about the status of the SIB. As he notes, it appears that the substance of the issue on the SIB's powers of prosecution has been resolved, although there may still be some question about the precise way in which the powers are conferred (see his § 9). The Prime Minister raised the question whether it was appropriate for a private sector body to enjoy powers of prosecution; Mr Hewes' note in effect makes clear that the SIB is really a public body on most of the normal tests, exercising functions delegated to it by the Secretary of State and responsible to him and to Parliament. The real difference between it and other Quangos is that the Government has been careful to avoid exercising any control over its expenditure and particularly its salaries (whose levels Ministers would find hard to defend if they were responsible). If despite Ministerial control over appointments and powers, and its clear role in performing a public policy function, it is still to be asserted that SIB is in the "private sector", it would seem essential, even if anomalous in some respects, not to classify its gross expenditure as "public expenditure". Even if we admit SIB is a Quango it wd probably still be sensible to regard

as public expenditure only its net costs (i.e. net of licence fees etc received from market operators): with luck these shd be zero, i.e. the SIB will in effect be self-financing.

JW

25/5

MR WIGGINS, SECRETARIAT

cc PS/Mr Luce
PS/Sir Robert Armstrong
Mrs Chapman

FINANCIAL SERVICES BILL: STATUS AND POWERS OF THE DESIGNATED AGENCY

1. I have seen the recent Ministerial correspondence concerning the appropriateness of giving SIB prosecution powers. From our conversation this afternoon, I understand that Ministers may be meeting to discuss this further before the Report Stage due next Thursday. There are some further aspects that should be taken into account in any such discussion.

2. MG's interest in the matter is from the standpoint of the status of SIB: Treasury are also keenly interested in this aspect. The Government's policy, for well understood reasons, has always been that SIB should be a private sector body. In June 1985 Lord Gowrie (then the Minister responsible for quango policy) confirmed to Mr Tebbit (then Secretary of State for Trade and Industry) that SIB and MIB would not be NDPB's because they were being set up by the private sector.

3. It is not clear that in expressing that view he was actually aware that the Secretary of State (acting with the Governor of the Bank of England) would be appointing the board members of SIB: indeed it is only in preparing the Bill that DTI themselves have come to the view that all of the members should be Ministerial appointments.

4. Looked at now in the light of the Bill as drafted, I must confess to having some doubts about whether the private sector status of SIB can be logically sustained. As a body to which the Secretary of State may transfer some of his functions (and from which he may subsequently remove them) , to which the Secretary of State and the Governor have powers to appoint and dismiss all of the board members, and which is required to report annually to the Secretary of State and through him to Parliament, SIB has many of the essential characteristics of a NDPB.

5. The 'private sector' status was, however, just about sustainable on the grounds that it was not actually set up by statute as long as the accountability of Ministers for it was not seen as a major issue. In its passage through the House, this has of course now become a major issue and in March, when there was great pressure from backbenchers to make SIB a wholly statutory body, we explored this issue at length with DTI and Treasury. In the event the immediate pressure resulting from certain amendments was avoided.

6. The proposal that SIB should share the Secretary of State's prosecution powers, however, reopens that issue and I have to say I regard it as just about the final nail in the coffin of the 'private sector' argument. I read Mr Channon's letter

of 17 April as implying that there were examples of other private sector bodies to which specific prosecuting powers had been given by statute. His further letter of 22 April indicates that this is not the case. The examples quoted are merely instances of private sector organisations bringing private prosecutions as an individual is entitled to attempt to do where prosecuting powers are not exclusive to a Minister or some other prosecuting agency. What is proposed in this instance - that SIB should have exclusive prosecuting powers shared only with the Secretary of State and yet remain a private sector body - is without precedent.as far as I know.

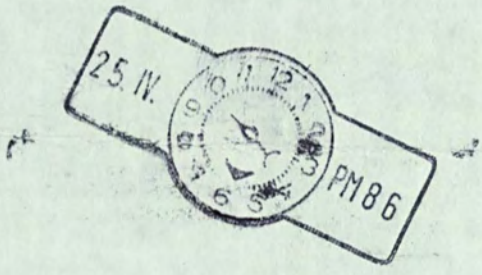
7. To complete the picture the Treasury were in March of the view that for accounting and statistical classification purposes SIB would in any case have to be classified to the public sector and therefore its gross expenditure treated as public expenditure. This view may subsequently have changed, but I have been unable today to contact anyone in Treasury involved in this matter to check.

8. I would stress that from MG's point of view this is not simply a matter of neat and tidy classification. The danger is that sooner or later - and perhaps during the Report Stage - all of these factors will be pulled together by the opposition. Ministers' repeated claims that SIB is a private sectory body, to which DTI Ministers have attached great importance, might then be shown to be logically indefensible from an analysis of SIB's powers and relationship with the Secretary of State.

9. To end on a helpful note, I have discussed informally with DTI an option that at least in relation to the prosecution powers avoids the current difficulty. This would be for the Bill to provide for prosecutions to be brought only by the Secretary of State or with his consent. If the current power was carefully framed, the SEcretary of State could give SIB prosecuting powers over appropriate categories of case without singling SIB out for exclusive prosecuting powers on the face of the BIll. The position as far as NDPB status is concerned would then revert to what it was in March - i.e. pretty illogical but just about defensible (subject to the Treasury classification point). It might also be a way of meeting the Attorney-General's concerns.

R A C HEWES

24 April 1986.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PM 86

FROM:

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

CCBG

HOUSE OF LORDS,
LONDON SW1A 0PW

Ponie Ministo 2

The Lord Chancellor agrees that the SROs should enjoy a limited immunity from damages.

24 April 1986

CONFIDENTIAL

(self-regulating organisations) DKV 25/4.

My dear Paul:

Financial Services Bill : SROs Liability for Damages

WILL REQUEST IF REQUIRED

Thank you for your letter of 22 April 1986. When your predecessor wrote to me on 7 November 1985 on immunity from liability for damages for the Securities and Investment Board (SIB), he made it clear that he would resist extending that exemption to self-regulating organisations (SROs) on the grounds that the latter, unlike the SIB, would not be exercising statutory functions. As you rightly point out, it was also then thought that the collapse of an SRO would be less disastrous for self-regulation than collapse of the SIB.

As a matter of principle, I still adhere to my view that the lesser the degree of Parliamentary accountability for a body, the greater the need for that body to remain subject to the disciplines of the ordinary law. As far as the SROs are concerned, Parliamentary accountability is at best indirect and, indeed, this would appear to be an intended feature of the self-regulatory system introduced by the Bill. Moreover, you have yourself observed that the SROs would not be exercising statutory powers.

/...2

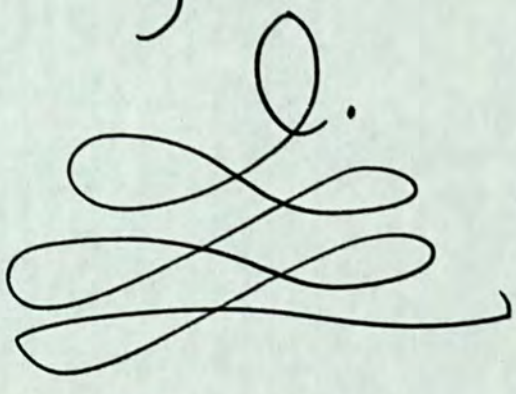
The Right Honourable
Paul Channon MP
Secretary of State for Trade
and Industry
Department of Trade and Industry
1-19 Victoria Street
London SW1H 0ET

I am nevertheless bound to take into account the considerable pressure which is now being exerted on you by potential SROs and their veiled threat that they will not perform the functions expected of them under the Bill, unless they are given some measure of immunity from liability for damages. I also assume that if the SROs will not co-operate, this will put the self-regulatory system in jeopardy.

It is only against this background that I would be prepared, albeit with considerable reluctance, to consider an immunity for officers and members of an SRO from liability for damages. Any such immunity should, in my view, be confined to actions for damages leaving aggrieved persons to pursue other remedies against an SRO such as an injunction, or application to quash a decision by way of judicial review. We should also be careful lest this immunity give protection in respect of the normal trading activities of members of an SRO. The only case for an immunity is in respect of the duties which an SRO will be expected to perform under Chapter III of Part II of the Bill i.e. the decisions of an SRO to admit or expel members or otherwise to enforce the rules referred to in clause 8. I trust that any immunity would be so confined.

I am copying this letter to the Prime Minister, the Lord President, the Chancellor of the Exchequer, the Home Secretary, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Attorney-General, the Chief Whip, the Governor of the Bank of England and Sir Robert Armstrong.

Yrs:



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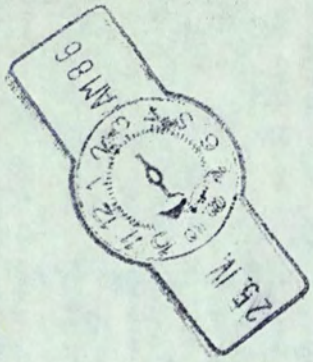

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23 April 1986

MR NORGROVE

FINANCIAL SERVICES BILL

SRO's LIABILITY FOR DAMAGES

Paul Channon puts forward a case in his letter to the Lord Chancellor for reasonable exemption from damages for SRO's.

The ability to persuade capable senior people to join SRO's governing bodies seems to be vital to their success. This is likely to be difficult if they run the risks of vexatious litigation and problems in getting insurance cover at a time when recourse to the Courts in respect of commercial transactions is becoming ever more frequent. The Courts are already clogged up with work. The requirement for compensation funds for investors provides safeguards for them.

We recommend that Paul Channon's case for extension of exemption from damages should be supported.

David Hobson

DAVID HOBSON

NBF7

23 April 1986

MR NORGROVE

FINANCIAL SERVICES BILL

STATUS AND POWERS OF THE DESIGNATED AGENCY

We have read Paul Channon's letter to the Attorney General on prosecution powers for the designated agency. We confirm our previous recommendation that these proposals merit support.

David Hobson

DAVID HOBSON

pps please

Lord Advocate's Chambers
Fielden House
10 Great College Street
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Telephone Direct Line 01-212 0515
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CONFIDENTIAL

The Rt Hon Paul Channon MP
Secretary of State for Trade and Industry
1 Victoria Street
LONDON SW1H 0ET

23 April 1986

FINANCIAL SERVICES BILL : STATUS AND POWERS OF THE DESIGNATED AGENCY

Thank you for copying to me your letter of 17 April to Nigel Lawson with your proposals for amending the Bill in light of the backbench amendments which were carried against the Government at Committee Stage. I have also seen the subsequent correspondence.

I note that you propose that the Secretary of State should be able to transfer to the Securities and Investments Board his power to prosecute for offences under the Bill. The Bill as introduced contained provisions reserving prosecutions in England, Wales and Northern Ireland to the Secretary of State, the DPP and the DPP for Northern Ireland. The Bill was silent as to prosecutions in Scotland which are, in accordance with the general law, the responsibility of the Lord Advocate acting either himself (in the case of a prosecution in the High Court of Justiciary) or through the procurator fiscal (in a sheriff court case).

I am glad to note from your letter that the proposal to give the SIB prosecution powers does not apply to Scotland, where prosecutions for offences under the Bill will be dealt with under the general law.

I am copying this letter to the Prime Minister, the Lord President, the Lord Chancellor, the Home Secretary, the Chancellor of the Exchequer, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Attorney General, the Chief Whip, Lord Denham, the Minister of State (Privy Council Office), the Governor of the Bank of England and Sir Robert Armstrong.

CAMERON OF LOCHBROOM

Econ Pol: Gower

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cc/G 2

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Secretary of State for Trade and Industry

22 April 1986

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

Dear Quintin,

FINANCIAL SERVICES BILL: SROS' LIABILITY FOR DAMAGES

A problem has arisen on this Bill about the liability of self-regulating organisations (SROs) for damages. Decisions will need to be taken quickly as we need to agree on the line to be taken on this issue when the Bill is considered on Report, which could be any time after 28 April.

As you know, the Bill provides that a designated agency shall not be liable for damages for anything done (or not done) in good faith in carrying out the functions transferred to it by a delegation order. This exemption applies to the Agency and its members, officers and staff. There is a similar exemption for the competent authority for listing purposes under Part IV of the Bill, but no exemption for recognised SROs, investment exchanges, clearing houses or professional bodies. In writing to you last autumn about the exemption for the designated agency, Leon Brittan explained that he intended to resist extending the exemption to recognised bodies on the grounds that they were not exercising statutory powers and that the collapse of such a body would be less disastrous than the collapse of a designated agency.

Contrary to our expectations, there has been no criticism of the exemption from liability for a designated agency. This exemption has been accepted as being necessary and desirable to enable the agency properly to perform its regulatory duties. There has, however, been increasing pressure to extend the exemption to recognised SROs. We successfully resisted an amendment to this effect in Committee but most of the new potential SROs had then barely started to consider the Bill. We have now had a combined

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approach from all the organisations which are expected to be candidates for recognition as SROs seeking an exemption on the lines of that given to a designated agency. They have supported their approach by sending me a legal opinion on the liabilities to which the organisations, their members and staff would be exposed if such an exemption were not granted. I enclose a copy of the letter and opinion. This approach is supported by the Governor of the Bank of England and Sir Kenneth Berrill. It is also winning increasing support in Parliament, including from our own backbenchers, and I am expecting to be pressed hard on it on Report.

I am very conscious of the need to be cautious about any extension of exemption from liability. But having considered the representations made to me, I have reluctantly come to the conclusion that in the interests of creating an effective supervisory system, an exemption should be given to recognised SROs similar to that granted to a designated agency. My reasons are as follows:-

(i) I am advised that the analysis in the legal opinion obtained by the SROs is broadly correct. The only caveat, on the law, as opposed to the weight to be given to various factors, is that the opinion does not consider whether a recognised SRO might not be subject only to public law remedies in the exercise of its functions under the Bill. Even so, the question of damages would remain just as acute. In an increasingly competitive market and with a growing number of international participants the risks are real ones. (We understand that the New York Stock Exchange has an average of 100 claims outstanding against it at any one time, even though it has never lost , or conceded a case. The US commodity and futures SROs, which were set up under more recent legislation than the NYSE, are exempted from liability). The writs issued against individual members of the LME governing body have demonstrated the vulnerability of individuals as well as of organisations. I also accept that adequate insurance cover can no longer be obtained, even by established regulators, let alone by new ones.

(ii) The success of our new arrangements for regulating investor business depends on having well-run SROs covering all the main types of investment business. This involves persuading first class people to serve as members of the governing bodies. It is clear from the SROs' letter that

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we are unlikely to achieve this objective unless we provide protection both for individuals and the organisations.

(iii) The functions which recognised SROs will perform under the Bill are very similar to those of an Agency. They will be responsible for authorising and regulating investment businesses and although, unlike an Agency, they will not be exercising statutory powers, they will be required, as a condition for recognition, to have and enforce rules which provide equivalent protection for investors. Supervisors can exercise their powers more effectively if they are not under constant threat of legal action. It is difficult to justify protecting one type of supervisor and not another doing a similar job. Also, we no longer think that we can give much weight to our argument about the collapse of an SRO. The collapse of a recognised SRO, although not, as disastrous as the collapse of an Agency, would still have very serious consequences for the regulatory system.

(iv) We want to encourage investment businesses to become members of SROs rather than to seek direct authorisation. There will, however, be a strong incentive to go to SIB if membership of an SRO, but not direct authorisation, exposes businesses to the risk of a surcharge to meet a successful claim for damages against the SRO, perhaps made by a competing firm.

I am satisfied that private investors would not suffer unduly if an exemption from liability were granted. Their first recourse in the event of loss will be against the investment business concerned. If the business is insolvent, there will be arrangements for compensation. As a condition for recognition, SROs will be required to have compensation arrangements which provide protection for investors equivalent to the Agency's arrangements. As you know, the SIB is planning to establish a fund which will meet at least 90 per cent of any claim from a private investor up to £30,000. The SROs' arrangements will have to match this provision. It is therefore only as a last resort that a private investor would need to recourse against the SRO itself.

As to accountability, the SROs will, as a condition of recognition, be required to have rules which provide protection for investors equivalent to that provided by the Agency's rules and to enforce those rules effectively. There must also be a proper balance on their governing bodies, including independent representation, to

ensure that the interests of investors are given due weight. The Agency can withdraw recognition or seek a compliance order if any of these requirements is not satisfied. I think that this will provide adequate safeguards if an exemption from liability for damages is given.

I apologise for the length of this letter but the issues are complex and I thought that it would be helpful if I set them out in full. If you find any difficulty with what is proposed, then Michael Howard or I would be glad to discuss the issues with you.

I am copying this letter (but not the enclosure) to the Prime Minister, the Lord President, the Chancellor of the Exchequer, the Home Secretary, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Attorney-General, the Chief Whip, the Governor of the Bank of England and Sir Robert Armstrong.

PAUL CHANNON

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Secretary of State for Trade and Industry

22 April 1986

1

CONFIDENTIAL

The Rt Hon Sir Michael Havers QC MP
Attorney General
Royal Courts of Justice
London
WC2A 2LL

Prime Minister
Any thoughts you would like to feed into Mr Howard's meeting with the A.G.
N.L.W
22.4

Dear Attorney,

FINANCIAL SERVICES BILL : STATUS AND POWERS OF THE DESIGNATED AGENCY

WILL REQUEST IF REQUIRED

Thank you for your letter of 21 April. I am grateful for your support for my proposal to be able to transfer to the Agency in full the Secretary of State's investigation powers. But you and the Prime Minister have expressed reservations about making it possible to transfer prosecution powers to the Agency.

It may be helpful if I spell out more fully what we have in mind in relation to prosecutions. First, I should make clear that we are only concerned with the designated agency, which will be a body exercising statutory powers and functions under the Bill. We are not concerned with transferring prosecution powers to The Stock Exchange or to the other bodies which hope to become self-regulating organisations. Although it would be possible under the Bill to have more than one designated agency, now that the Securities and Investments Board and the Marketing of Investments Board Organising Committee have decided to merge our confident expectation is that there will be only one agency.

Our proposals therefore envisage in practice that in England and Wales prosecutions for offences under the Bill would only be undertaken by the Secretary of State, the DPP and the agency. The DPP would continue to handle the more serious cases, as at present, but the Secretary of State could share part of his prosecution powers with the agency. He would of course be under no obligation to transfer any prosecution function to the agency, and would only share it to the extent that he was satisfied with the agency's

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ability to carry out the function satisfactorily. Thus the transfer might only relate to prosecutions for certain offences, such as the offence of carrying on investment business without authorisation (Clause 4) or the offence of supplying false or misleading information to the agency (Clause 156(1)). These offences are relatively straightforward to prosecute and relate directly to maintaining the integrity of the authorisation system. The provisions in the Bill would also enable him to impose conditions and restrictions on the agency's exercise of the powers. That could - and I think would - include a requirement that the Secretary of State would be able to step in and take over an individual case.

We could also require for certain offences or for certain offenders that the agency should seek the Secretary of State's consent in individual cases. We would not however want case by case consent to apply to all agency prosecutions because that would tend to duplicate effort. Once the agency had demonstrated its capability in a particular area we would want to leave that area to them, subject to the ability to call in individual cases if that seemed necessary.

I would naturally wish to consult you and colleagues on framing appropriate requirements when we come to prepare the delegation order for the agency after Royal Assent. I am sure it would be possible to reach agreement on sensible arrangements for agency prosecutions, which could be varied in the light of experience and the agency's developing expertise.

An alternative approach would be to set limits in the Bill on the extent to which the prosecution function would be transferred, but that would reduce flexibility and would I believe make the package of proposals more difficult to sell to those of our critics who consider that the agency would be best placed to undertake prosecutions.

The Securities and Investments Board has already begun to recruit in-house lawyers, and I am confident that as it builds up expertise in prosecutions, which is bound to be a gradual process, it will be able to do a more effective job because of the closer contact it will have with investment businesses, the knowledge and experience of its practitioners and the additional resources which it will be able to command. I do not underestimate the difficulty of recruiting and retaining within the Government Legal Service prosecutors of the quality and experience required for this specialised area.

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The Agency would be answerable to the Secretary of State and his ability - in consultation with you - to vary the requirements on agency prosecutions will ensure that he is answerable to Parliament for prosecution policy including promoting consistency of treatment. He would not however be answerable for the agency's decision to prosecute in individual cases except in those areas where he stipulated that his consent to individual prosecutions was required.

You also raise the question of separating the investigation and prosecution functions. Roskill saw advantages in combining these functions in serious fraud cases, and we see similar advantages in the financial services area. We consider that they will improve the speed and effectiveness of the regulatory system. The Agency will often have to conduct the investigation and decide whether regulatory action - in addition to or instead of prosuection - is needed. We want to avoid a second investigation by the DTI with a view to prosecution which would duplicate effort. If the agency were to prosecute too little or too often we could retrieve the functions for the Secretary of State.

The Prime Minister has also questioned whether it is appropriate to give a private sectory agency a prosecution role. Many offences are unrestricted, so that prosecutions may be mounted by any private individual. The Royal Society for the Protection of Animals, the National Society for the Prevention of Cruelty to Children, the Royal Society for the Protection of Birds and members of the National Viewers and Listeners Association are examples of private sector bodies which do exercise the right to bring private prosecutions. Moreover, the fact that the agency will be exercising statutory functions makes it different from a straightforward private sector body.

Not good analogies N.L.W.

There is a growing view that if the system is to be fully effective the agency should have the power to prosecute (as the Bank of England has under the Banking Act). If we resist that argument on the grounds that the agency is a private sector body the pressure to turn it into a public sector statutory commission will intensify.

The possibility of Agency prosecution is an integral part of the package which would ensure that we and our backbenchers present a united front against the attempts of the Opposition to overturn the basic approach we have adopted in the Bill.

Perhaps the best way forward would be for Michael Howard, who has taken the Bill through Committee, to discuss these issues with you; I understand a meeting has now been arranged for this Thursday.

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I am copying this to the Prime Minister and the other recipients of your letter.

Yours sincerely,

M.R. Gilbertson

PP PAUL CHANNON

[Approved by the Secretary of State and signed in his absence]

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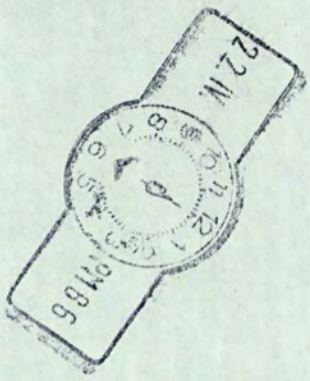

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ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

21 April 1986

The Rt Hon Paul Channon MP
Secretary of State for Trade and Industry
1 Victoria Street
LONDON S W 1

Dear Paul.

FINANCIAL SERVICES BILL : STATUS AND POWERS OF THE DESIGNATED AGENCY

Thank you for copying to me your letter of 17 April ✓ at Flag. to Nigel Lawson setting out your three proposals for amending the Financial Services Bill. This letter concerns the second and third of your proposals.

As to the third - investigation - I agree with you that the Secretary of State should be able to transfer his powers of investigation in full to the Securities and Investments Board.

I am less happy, however, about your proposal in relation to prosecutions, for these reasons:

1) I am doubtful whether the extension of "self-regulation" to include the power to prosecute would command public confidence. The institution of proceedings is essentially a public function and not one to be discharged on a routine basis by a private body. If a self-regulating agency showed a marked reluctance to prosecute, it would be difficult (because the primary responsibility would be clearly seen to be with that body) for other agencies to act without completely undermining confidence in the designated agency as a whole.

/2)

2) Considerable importance attaches to consistency of approach and policy in the decision whether to prosecute. The existence of a number of separate prosecuting authorities would make it much more difficult to achieve that consistency. Moreover, the conferring of prosecution powers on the designated agencies would make them responsible both for investigation and prosecution. This is inconsistent with the general policy which underlies the establishment of the Crown Prosecution Service under which the prosecution function is separated from that of investigation. It is unlikely that each agency would have its own "in-house" lawyers and thus would rely on private practitioners who would stand in a solicitor/client relationship to the designated agency.

3) If, as the Bill appears presently to contemplate, the Secretary of State has primary responsibility for prosecutions, he would be accountable at least for prosecution policy. He is unlikely to be willing to answer for individual decisions. There would seem to be a risk that accountability would be lost under the present proposals.

For these reasons I would be most reluctant to see the Bill enacted in a form which gave the Secretary of State's power to prosecute to a designated Agency.

I am copying this letter to the Prime Minister, the Lord President, the Lord Chancellor, the Home Secretary, the Chancellor of the Exchequer, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Lord Advocate, the Chief Whip, Lord Denham, the Minister of State (Privy Council

/Office),

Office), the Governor of the Bank of England and Sir Robert Armstrong.

Yours ever Michael.

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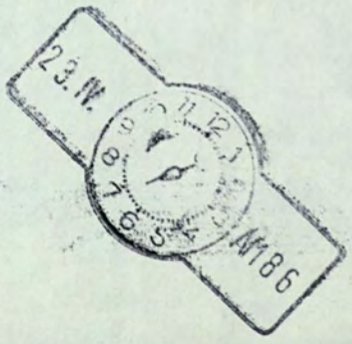

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10 DOWNING STREET

From the Private Secretary

21 April 1986

Dear Mike,

FINANCIAL SERVICES BILL: STATUS AND POWERS OF THE DESIGNATED AGENCY

The Prime Minister has seen your Secretary of State's letter of 17 April to the Chancellor of the Exchequer which set out his proposals on how to deal with various Backbench amendments which were carried against the Government during the Committee Stage of the Financial Services Bill.

The Prime Minister believes that the changes proposed to the position of the designated Agency are potentially fundamental, especially as they would create a new prosecuting body. The Prime Minister asks whether there are any other private bodies which enjoy prosecuting powers.

I am copying this letter to the Private Secretaries to the Lord President, the Lord Chancellor, the Home Secretary, the Attorney-General, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Lord Advocate, the Chief Whip, Lord Denham, the Minister of State (Privy Council Office), the Governor of the Bank of England and Sir Robert Armstrong.

Yours,

David

DAVID NORGROVE

Michael Gilbertson, Esq.,
Department of Trade and Industry

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CC PSy

CABINET OFFICE,
WHITEHALL, LONDON SW1A 2AS

Chancellor of the Duchy of Lancaster

Tel No: 233 3299
7471

21 April 1986

Michael Gilbertson Esq
Private Secretary to the
Secretary of State for
Trade and Industry
Department of Trade and Industry
1-19 Victoria Street
LONDON
SW1H 0ET

NBPM.

Dear Mike,

FINANCIAL SERVICES BILL: STATUS AND POWERS OF THE DESIGNATED AGENCY

with ON orin PM's Box

The Chancellor of the Duchy has seen a copy of your Secretary of State's letter of 17 April to the Chancellor of the Exchequer.

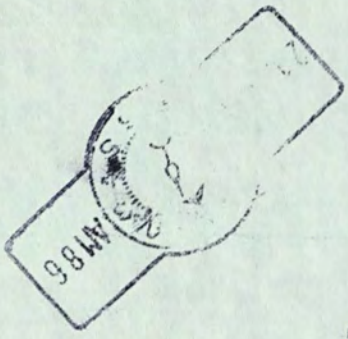
The Chancellor of the Duchy is content with the proposed amendments to the Financial Services Bill as set out in your Secretary of State's letter.

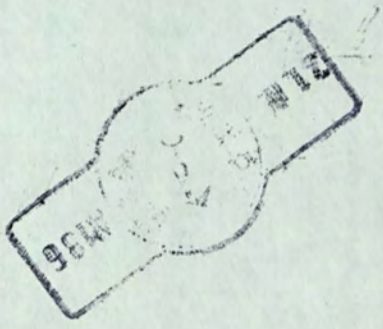
I am sending a copy of this letter to the private secretaries to the Prime Minister, the Lord President, the Lord Chancellor, the Home Secretary, the Attorney-General, the Lord Privy Seal, the Lord Advocate, the Chief Whip, Lord Denham, the Minister of State (Privy Council Office), the Governor of the Bank of England and Sir Robert Armstrong.

Yours sincerely,

Andrew Lansley

ANDREW LANSLEY
Private Secretary





Prime Minister 2

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It should be possible for you ~~to~~ to chair another meeting on Roskill early in May. The Boyd points can be picked up then. DN

MR NORGROVE

18 April 1986 19/4.

ROSKILL REPORT: UNIFIED FRAUD ORGANISATION

I attended a meeting chaired by John MacGregor yesterday to discuss a unified organisation to investigate and prosecute serious fraud. The Solicitor General attended, together with David Mellor (Home Office) and Michael Howard (DTI) and a number of officials including Peter Middleton.

It looks as if the decision will be to establish an organisation (Serious Frauds Office, or SFO) under the supervision of the Attorney General in the same relationship to him as the DPP; ie it would be independent of the DPP.

The main problem has been the unwillingness of the police to form part of any unified organisation; it is therefore likely to be suggested that police officers seconded to the organisation should be kept under police control. They would work in the same building as the rest of the staff, and it was suggested that the head of the SFO might be given powers to authorise specific police officers to exercise additional investigative powers on specific assignments (comparable with DTI powers) subject possibly to the Attorney General's approval.

Various details of interchange of information, and the powers that will be needed by the new organisation, remain to be settled bilaterally. It now looks as if proposals to maintain the thrust of Roskill will be brought forward by John MacGregor. This should enable a much greater part of the investigative and prosecution powers to be handled by professionals than has been the case hitherto. Having all the resources in one office should make for speedier and more efficient work.

The legal recommendations are being dealt with separately under Home Office control, and recommendations are being drafted to go to H Committee.

The Treasury have further work to do on evaluating the resource implications of these proposals.

David Hobson

DAVID HOBSON

MR NORGROVE 18 April 1986

NATIONAL FRAUD SQUAD

I add this note to that of David Hobson, at the request of Brian, in order to make a few checklist points.

1. Have the Treasury appreciated that the Attorney General's Office in the High Court is antediluvian? While I agree with the decision of John MacGregor's Committee, which is described in David's note, there will be resource implications as the Attorney General's Office must be brought up to date. This is an additional point to the one made by Patrick Mayhew, that perhaps a Parliamentary Secretary should be appointed.

2. Whilst it is clear that the Committee believe the police should have a minimal rôle and have also solved the structural problem of how the police should be involved, and I would support their solution, there are two aspects of the police involvement that should be given further thought.

On the one hand, one should ask how much police work is really needed at all, except to produce both records of previous convictions and also confidential police files, particularly on related offences. This intelligence liaison is the only police function that must be performed. Consequently, it can be argued that very few

police officers will be needed. Interviewing and arresting can well be performed by officials.

On the other hand, the experience of the serious fraud squad could be invaluable in improving the investigation of less serious fraud throughout the country. Secondly, serious fraud may be linked to other serious crime, and intelligence should help other police investigations.

3. The title 'National Fraud Squad' is deceptive. It sounds as if it is the police 'squad' and a move towards a national police service. Both these words 'squad' and 'national' should be given further thought.

4. May I emphasise the point that Police are so expensive with their various emoluments, allowances and training that many accountants are now cheaper if they are on the payroll, as well as being better qualified on serious fraud matters.

5. There is allowance made for in the discussions for the ad hoc services of accountants and lawyers. It is important that the best services of any necessary profession be available. Civil Service pay rules should be examined so as to find some way to permit payment reward or honour for an 'outstanding' expert.

HARTLEY BOOTH

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PRIME MINISTER

FINANCIAL SERVICES BILL: STATUS AND POWERS OF THE DESIGNATED AGENCY

Mr Channon's letter, below, makes proposals on Backbench amendments to the Financial Services Bill which were carried against the Government during Committee stage.

The aim of these amendments was to make the Securities and Investment Board (SIB) more like the American SEC. Mr Channon now proposes to give the SIB statutory recognition, to make it possible for the SIB to prosecute for less complex or serious cases, and to allow it to have investigative powers. But it would remain a private body, the Secretary of State would not be bound to give those powers to the SIB (he could later give them to another body if he chose, or he could choose not to delegate them), and it would not become another SEC (which may or may not be an advantage).

The Policy Unit believe these proposals seem likely to improve the efficiency of the SIB to a minor extent.

I draw this to your attention because this is potentially an important shift if the Secretary of State does in the end delegate the powers which the Bill would enable him to, but there seems no need for you to intervene.

This is a fundamental change - especially as it creates a new prosecuting body. Do these any other private bodies with prosecuting powers? no

Margot Hamilton
Duty Clerk

pp DAVID NORGROVE
18 April 1986

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Secretary of State for Trade and Industry

17 April 1986

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

Prime Minister

The proposals here would give the Securities and Investments Board (SIB) statutory recognition, make it a prosecuting authority for less complex or serious cases, and strengthen its investigative powers. But it would remain a private body

Dear Chancellor,

FINANCIAL SERVICES BILL: STATUS AND POWERS OF THE DESIGNATED AGENCY

We need to decide before Report Stage in the Commons how to deal with various backbench amendments which were carried against the Government during Committee Stage. These amendments were tabled by Anthony Nelson and Tim Smith. On the basis of conversations which Michael Howard has held with them, it appears that their support for the main provisions in the Bill would be secured if the Government bring forward amendments on the lines described below.

My first proposal concerns amendments passed to clause 96, which were intended to be the first steps towards turning the private sector designated Agency into a statutory commission set up under the Bill. We were able to defeat other steps designated to this end and it would be a key element in our understanding with Messrs Nelson and Smith that they would support the Government in resisting any attempt to reopen those issues or to create a statutory commission.

The modest concession I propose on Clause 96 would be to name the Securities and Investments Board in the Bill. If it appeared to meet the existing criteria in the Bill, it would be the only body to which the Secretary of State would be able to transfer his powers when the first delegation order is made. The Secretary of State would still have discretion as to the extent of the transfer. The Secretary of State would, moreover, be free to transfer powers to any body in any subsequent delegation order (which he would not be free to do under the Nelson/Smith amendments). Thus any power

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not included in the first order could be given to another body, as could any power which were resumed from SIB. (The Secretary of State would also have the hypothetical option of giving powers to another body in the first delegation order, if at that time the SIB did not appear to meet the criteria.)

... A copy of the draft amendment prepared by Counsel is attached.

This approach would confer statutory recognition on the SIB, but it would remain a private sector body and would not be a body created by the statute. This corresponds to the reality of the current situation since there is in practice little real prospect for an alternative body being in a position to seek powers in the first instance. The Secretary of State would also retain the option of keeping some or all of the powers. The provision would restore the option of giving some or all of the powers to a fresh body if SIB fails to continue to comply with the criteria set out in the Bill. That would reinforce the accountability of SIB and would also enable powers to be split between bodies if we were to decide that further developments in the marketplace or other reasons made this necessary. It was the elimination of this flexibility which led to the greatest concern at the implication of the amendment to Clause 96 which was carried in Standing Committee.

The other two amendments concern the extent to which the Secretary of State's powers may be transferred to a designated Agency. The first would enable the Securities and Investments Board to prosecute for offences under the Bill and the other would give the Board powers to investigate persons who are not authorised to carry on investment business.

The Bill as introduced reserved prosecutions (with one exception) to the Secretary of State, the DPP or the DPP for Northern Ireland. I now propose that the Secretary of State should be able to transfer his prosecution power to a designated Agency. This approach echoes the provisions for transferring the majority of his other powers in the Bill to an Agency. He should be able to transfer the prosecution power in whole or in part, and to make the transfer subject to whatever conditions or restrictions he may impose from time to time. Any powers transferred would be exercisable concurrently by the Secretary of State.

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Provided that the Agency is in due course able to satisfy us that it is capable of undertaking prosecutions, giving it this power would have considerable practical advantage. In many cases the Agency will be the first to detect that an offence has been committed and will also be able to decide whether to prosecute and/or take any regulatory action which may be needed to protect investors.

We envisage that the Agency would prosecute the more straightforward cases, particularly those relating to maintaining the integrity of the regulatory system. More complex or serious cases would be handled elsewhere, and there would have to be suitable arrangements for bringing in at an early stage the DTI or DPP (or the new Unified Fraud Organisation if we set that up).

I do not believe that the prosecution role is inconsistent with the private sector status of the agency: many offences can be prosecuted by private bodies. It is clear that there is a substantial body of opinion in favour of widening the agency's powers in this way.

I hope that the Attorney General in particular will agree that my proposals in this area are justified on their own merits. They are also part of the package designed to secure the support of Messrs Nelson and Smith.

The proposal would not of course apply to prosecutions in Scotland, which fall to the procurator fiscal.

The principal investigation powers in the Bill appear in Clause 92 and enable the Secretary of State to investigate the affairs of anyone (with minor exceptions) who is carrying on investment business. At present Clause 96(5) limits the extent to which these powers may be transferred to a designated Agency. Broadly speaking the Agency would only be able to investigate an authorised investment business and when doing so would not be able to obtain information from a third party unless he was also an authorised business or connected to such a business. I propose to remove these limitations so that it would be possible for the Secretary of State's power to be transferred in full to the Agency. This would make the powers easier to use in practice, avoiding duplication of effort between the Secretary of State and the Agency and making it possible to provide the Agency with investigation powers to back up the prosecution role I envisage for it.

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These proposals on prosecution and investigation powers do not extend the scope of the powers available under the Bill in any way: they are purely concerned with the distribution of those powers between the Secretary of State and the designated Agency. The proposals would make it possible for the powers to be fully transferred to the Agency, but the Secretary of State would retain discretion as to how far the powers should be transferred, and that transfer would require approval by both Houses of Parliament. In practice it may be sensible to transfer the powers in stages as the Agency builds up its expertise.

There is a risk that extending the list of powers which are capable of transfer to the Agency will strengthen the hand of the Opposition, who are arguing in favour of a public sector statutory commission. I believe we can meet that by pointing out that it is not uncommon for private bodies to be able to prosecute. My proposals would increase the effectiveness of the new regime under the Bill and should therefore help to secure support for it. Tony Nelson and Tim Smith have been canvassing support for their original approach, and I am convinced that if we can bring forward amendments which satisfy them we can expect a greater degree of support from the Conservative backbenchers on Report, which may in turn help us in the Lords.

I would like to be able to table the necessary amendments for Report Stage and I fear I must therefore ask for comments by lunchtime on Monday 21 April.

I am copying this letter to the Prime Minister, the Lord President, the Lord Chancellor, the Home Secretary, the Attorney-General, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Lord Advocate, the Chief Whip, Lord Denham, the Minister of State (Privy Council Office), the Governor of the Bank of England and Sir Robert Armstrong.

Yours sincerely,

Michael Gilbertson

PAUL CHANNON

[Approved by the Secretary of State and signed in his absence]

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1786 BOARD OF TRADE BICENTENARY

999-49

DRAFT AMENDMENT TO CLAUSE 96

After subsection (1) (as in the introduction, not the amended print), insert:

"(1)(A) The body to which functions are transferred by the first order made under subsection (1) above shall be the body known as The Securities and Investments Board Limited if it appears to the Secretary of State that it is able and willing to discharge them, that the requirements mentioned in paragraph (b) of that subsection are satisfied in the case of that body and that he is not precluded from making the order by the provisions of this section or Chapter XII of this part of this Act."

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[redacted]05 7641 Ext.

Communications on this subject should be addressed to
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

17 April 1986

Ms. Jill Rutter
Private Secretary to the Chief Secretary
to the Treasury
HM Treasury
Parliament Street
London
SW1P 3AG

Dear Jill,

ROSKILL REPORT: UNIFIED ORGANISATION

... I refer to our telephone conversation yesterday and enclose herewith the paper promised by the Solicitor General for consideration by the Chief Secretary's meeting today. We are sorry for the delay - the Solicitor General's other commitments prevented him from finalising it yesterday.

Copies of this letter together with two copies of the report go to Stephen Boys-Smith (Home Office), David Norgrove (no. 10), John Mogg (DTI), Richard Stoate (Lord Chancellor's Office), John Barlett (Bank of England), Catherine Brand (Inland Revenue), Lance Railton (Customs and Excise) and Michael Stark (Cabinet Office).

Yours sincerely

Stephen Wooler

S J WOOLER

enc.

CHIEF SECRETARY

CONFIDENTIAL

Relationship of a unified fraud unit to Attorney General

Note by Solicitor General

1. Paragraph 5.3(v) of the Report presented to Ministers by the Official Group suggested that a unified organisation should be "accountable to the Attorney General alongside the DPP". This Paper considers further the nature of the relationship which a unified organisation would have to the Attorney General. To a large extent that question will be governed by the form any new organisation takes. However, there will inevitably be comparison with the existing accountability of the Director of Public Prosecutions to the Attorney General. Accordingly this Paper first describes that relationship. Thereafter, it considers the relationship which would be appropriate in each of the following eventualities:

(a) If the new organisation were to constitute a Department in its own right; or

(b) If it constituted a new non-Departmental Public Body (quango) under the Attorney General's sponsorship; or

(c) If it formed part of or constituted a division within the Department of the Director of Public Prosecutions; or

(d) If it were to constitute a new Department with its permanent head reporting to the Attorney General on a "standard" Ministerial basis.

2. In theory there is a fifth option, which would be to place the new body within the Law Officers' Department but as a separate division. This has not been suggested by anybody. It would be wholly inconsistent with the present role of the Department and the Attorney General would not welcome such a move.

Finally, this note assesses the application of the propositions outlined above to the various proposals contained in the Treasury note on the 'task force' approach circulated on 14th April 1986.

3. Relationship of Director of Public Prosecutions to Attorney General

Successive Prosecutions of Offences Acts since the Office of Director of Public Prosectuions was first established have provided that he should ischarge his duties "under the superintendence of the Attorney General". That expression has never been judicially considered and what in practice it implies is merely derived from practice and usage. Historically it has meant responsibility for the overall efficiency of the DPP. To this extent the relationship is comparable with that of a chief constable to his police authority. But it goes further in that the Attorney General is regarded as being answerable for the general policy of the Director. As regards individual cases, it has been the practice of successive Directors to consult the Attorney General in relation to cases involving substantial questions of public interest. In recent years changes of attitude, both inside and outside Parliament, have required the Law Officers to become more ready to answer for the handling of individual cases than their predecessors.

4. Despite this increased answerability, the relationship between the Director and the Attorney General is not the traditional Permanent Secretary/Minister relationship. The decisions and executive acts of the Director and his staff are not those of the Attorney General in the way that those of an official are ordinarily attributable to his Minister. This relationship precludes the establishment of any institutional machinery in the LOD for exercising superintendence. Though the Director is accountable to the Attorney General, he is not accountable to the Legal Secretary - who indeed is junior to him in rank - nor is his Department in any sense an appendage of the LOD; it is, as it were, an entirely separate command sharing the Attorney General as its superintending Minister.

5. Possible arrangements

It is necessary to consider the three eventualities mentioned above:

(a) Unified organisation as a separate Department

Under this option the unified organisation would be separate from the DPP and would have its own separate legal status. The nature of the new unit's functions and the public concern presently surrounding the manner of their discharge suggest that Parliament would not be content with anything less than a clear line of accountability to Parliament through a Minister. On this assumption the appropriate relationship would be one which was identical to that now prevailing between the DPP and the Attorney General. This is precisely the arrangement which the Law Officers understood the Official Group to be recommending.

(b) Unified organisation as a non-Departmental Public body

A body constituted in this way would have its own legal status. Legislation would define the scope of its functions and powers as well as its structure including arrangements for accountability. These could be 'tailor made' for the particular body with the sponsoring Minister being given such powers of direction as seemed appropriate. Financing of such an organisation would be through the sponsoring Department.

6. The Health and Safety Executive is an example of an investigation and prosecuting authority so constituted. It is one of two bodies coporate (the other being the Health and Safety Commission) established by section 10 of the Health and Safety etc at Work etc Act 1974. Broadly speaking, the Commission has responsibility for policy matters and recommendations to relevant authority as to the exercise of regulatory powers. The Executive has responsibility for enforcement of relevant statutory provisions. It is directable by the Commission in all matters except enforcement action although the Commission may give such a direction if it is necessary for giving effect to

directions to the Commission from the Secretary of State. But in practice the Executive discharges its enforcement functions quite independently of the Commission or the Secretary of State who does not answer to Parliament for such matters.

The present policy of MPO is to discourage the establishment of quangos except where the objectives cannot be achieved by any other means. Considerable importance is attached to the provision of clear arrangements for accountability.

7. Responsibility on the part of the Attorney General for an additional Department or a quango might have resource and/or structural implications for the Law Officers Department. the burdens upon the Law Officers are already heavy. Parliament will expect meaningful accountability. The LOD has not yet felt the full effects of the establishment of the Crown Prosecution Service and it will take time to adapt the working relationship and practices with the Director to the greatly enhanced responsibility of the Attorney General. At the Ministerial meeting on the 9th April I expressed the view that the combined effect of these two additional responsibilities might be to necessitate the appointment of an additional junior Minister (a Parliamentary Secretary) as was done under the Labour administration. An alternative approach might be to endeavour to devise a slightly different arrangement whereby officials at the LOD could discharge some of the functions of the Attorney General in relation to the unified organisation. However, this would be difficult - especially if, as seems possible, the new unit were headed by an individual senior in rank to the Legal Secretary. And the responsibility of the Attorney General for matters falling within his jurisdiction is widely seen as being more personal than that of a Secretary of State.

(c) Unified organisation as part of DPP

There would be no change from the existing arrangements described earlier in this note. The functions of the unified organisation would simply be additional functions of the Director which he would discharge under the superintendence of the Attorney General. This is not the appropriate document in which to discuss the other difficulties which surround this option.

(d) Department reporting to the Attorney General on a "standard" Ministerial basis

This would present no constitutional difficulties. But it would entail direct responsibility and answerability on the part of the Attorney General for every case handled by the unified organisation. It is not a practical proposition and not one which has been contemplated by the Law Officers.

The attached chart shows how the Attorney General would stand in relation to the new body constituted in each of the above ways. Arrangements (a) and (d) have the same structural appearance because the essential difference is an internal one i.e. the nature of the relationships between the Minister and the permanent head.

8. Proposals considered by the Official Group

A unified investigation and prosecution organisation on the lines recommended in the report by the Official Group could be accommodated within any of the four possible arrangements canvassed above. However, practical and policy difficulties make (c) and (d) highly unattractive. Creation of a new quango would be politically unattractive. It might entail the creation of a controlling body with more than one member (the Health and Safety Executive comprises three members). Legislation which sought to establish a clearly defined relationship between a Minister and a prosecuting authority would undoubtedly prove controversial. There seem to be clear advantages in applying to the new organisation the

tried and tested formula of "under the superintendence of the Attorney General".

9. As regards the "task force" variant advocated by the Home Office, this would not involve the creation of any new institution but merely extend and to some extent formalise the present arrangements for co-operation. The only new function would be that of a secretariat or co-ordinator - to the extent that this function is not already discharged by the Controller of FIG. This step would hardly justify the creation of a new Department or body and the individual(s) who assumed this mantle would presumably remain attached to his parent Department (probably the DPP). This approach would leave respective Ministerial responsibilities unaffected. Whatever the presentational advantages, the reality would be that the secretariat or controller would be expected to achieve the increased efficiency sought by both Parliament and the public by means of influence and the issuing of directives unsupported by any authority. The Attorney General would not welcome what appears to be increased responsibility without the necessary powers.

10. A second variant which has been suggested involves the creation of a Serious Fraud Office and a dedicated force of police officers, possibly known as the National Fraud Squad. This is necessarily a half-way house. The Serious Fraud Office could be constituted under any of the four arrangements canvassed earlier. But the same arguments are applicable to this body as were mentioned in the context of a fully unified fraud and prosecution organisation. Thus, the balance of advantage seems to lie in establishing the Serious Fraud Office as a new Department discharging its functions under the superintendence

of the Attorney General. But the associated police body would not be accountable to or answerable to the Attorney General. Some accountability might be achieved by creating a body within the police service to discharge the functions of the Chief Constables Committees which at present exist to oversee the activities of Regional Crime Squads.

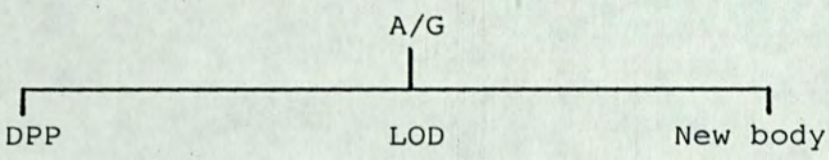
11. Conclusion

The Attorney General believes that our needs can best in practice be met by a variant of arrangement (a). A Serious Fraud Office whose Head would be "under the superintendence of the Attorney General" would have as part of its investigative armour a dedicated force of police officers, possibly known as the National Fraud Squad. These would not be accountable to the Attorney General but the constitutional position of police officers would be reflected by preserving their relationship with their chief constables, while power of direction would be given to a senior police officer himself forming part of the new organisation and expected to co-operate very closely with its Head. It is for consideration how accountability for this arm of the organisation should be achieved.

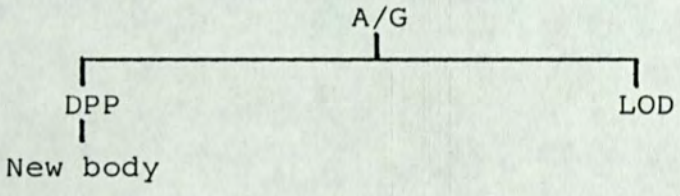
17 April 1986

ARRANGEMENTS FOR NEW FRAUD BODY UNDER ATTORNEY GENERAL

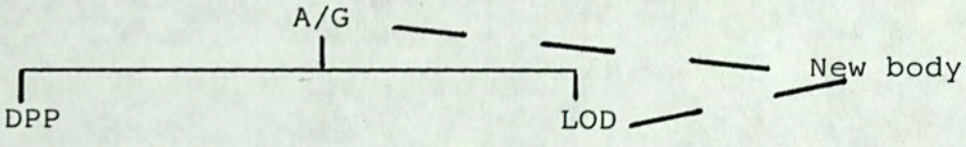
NEW DEPARTMENT
(Arrangements (a) or (d))

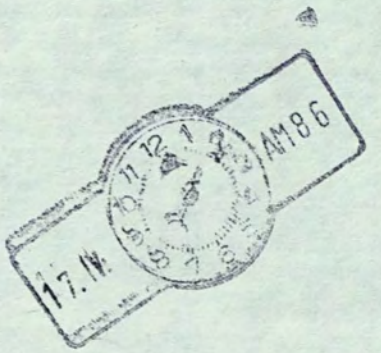


PART OF DPP
(Arrangement (c))



NON-DEPARTMENTAL PUBLIC BODY
(Arrangement (b))

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NDPA at this stage.

Treasury Chambers, Parliament Street, SW1P 3AG

Stephen Boys-Smith Esq
Private Secretary
to the Home Secretary
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

Dear Stephen,

16 April 1986

SERIOUS FRAUD ORGANISATION

At the Chief Secretary's meeting last week Treasury officials were asked to produce two further papers. I attach these. One looks at the "task force" proposal, the other discusses the range of powers that a unified organisation would need in the legislation required to confer these.

I attach a copy of both papers for the Home Secretary plus two sets of spares.

These papers are to be discussed at the Chief Secretary's meeting tomorrow. There is a further paper on the agenda on the relationship of the unified organisation with the Attorney General's Department. The Solicitor General's office will be circulating the paper separately.

I am copying this letter, with two copies of the papers, to David Norgrove (No. 10), John Mogg (DTI), Michael Saunders (Law Officers' Department), Richard Stoate, (Lord Chancellor's Office), John Bartlett (Bank of England), Catherine Brand, (Inland Revenue), Lance Railton, (Customs and Excise) and Michael Stark, (Cabinet Office).

Yours,

Jill

JILL RUTTER
Private Secretary

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POWERS FOR TACKLING SERIOUS FRAUD

Note by the Treasury

This paper discusses the powers that would need to be made available to a new unified organisation created to tackle serious fraud cases. It also considers what legislation would be needed with the task force proposal, and variant of it, discussed in a parallel paper.

2. The bodies which are now concerned with investigating commercial fraud have a wide range of powers. Police powers have recently been codified in the Police and Criminal Evidence Act 1984, which provides detailed procedures and safeguards for the exercise of powers of search, arrest etc. Other Government Departments concerned with fraud possess powers specifically related to their functions. In particular there is the power contained in Section 447 of the Companies Act 1985, which entitles the Department of Trade and Industry to inspect books and require explanations.

3. If the representatives of the various agencies (police, DTI, DPP etc) are co-operating together, as in the FIG arrangements or in a form of task force that preserves the connection between the individual officer and his line of accountability to his Department or chief officer, these powers are available to individual members of the group. Therefore special legislation is not needed as long as the constraint, that particular powers can only be exercised when one of the appropriate group members is available, is accepted. Under the FIG arrangements powers are exercised in this manner without difficulty. All that might be required is legislation to allow free passage of information to and within the task force - for example tax information in cases where the Inland Revenue are involved, or information held by financial supervisors. Legislation would need to provide for this to be a two way process.

4. If, however, it is decided to establish a new organisation, the members of which are accountable to the Head of the organisation and not to their parent bodies, then it will be

necessary for the officers concerned to operate under powers given to the new organisation, and to cease to possess the powers of any organisation with which they might previously have been associated. This applies whether those working in the new organisation are permanent career staff or staff on temporary secondment from other organisations. If people on secondment are accountable while on secondment to the Head of the new organisation, not to their former organisation, they would have to be regarded as operating as members of the new organisation.

5. What powers would a new organisation need? The powers to be made available to the unified organisation should be those required to enable it to perform its task. The powers now available to existing agencies clearly provide a useful precedent but may need some improvement. This does not however mean that it will need all the powers held by all the agencies. Some of these are too specific. Some would be unnecessary. And there is considerable overlap between the powers of the various agencies.

6. The precise powers to be given to the new organisation would need careful study, and refining before instructions were drafted for Parliamentary Counsel. The following paragraphs set out broadly the powers that a new organisation would need to be effective, and the safeguards which might be necessary to prevent their abuse.

Prosecution powers

7. The new unit would have to be made a prosecuting authority in its own right, for the reasons given in paragraphs 2.6-2.8 of the main report by the official group.

Investigation powers

8. The new organisation would need a central core of investigation powers similar to those now held by the police. This would include the following:-

(i) **Entry, search and seizure with a warrant.**

Under present police powers, a constable may apply to a JP for a warrant to search premises. It permits him to seize and retain the evidence. The police

must give the JP reasonable grounds for believing that evidence of a serious arrestable offence will be found on the premises. In the case of confidential material, the constable can apply to a circuit judge for a production order or search warrant. A production order application must be heard inter-partes. But if the police believe it is important not to alert the suspect, they can apply for a search warrant ex-parte.

(ii) **Entry and search without a warrant.**

A police officer may enter and search premises occupied or controlled by a person who has been arrested to look for evidence of an arrestable offence. He may also seize such evidence. He may seize anything in any premises where he is present lawfully which has been obtained as the result of or as evidence of an offence, and whose seizure is necessary to prevent it being concealed lost, damaged, altered or destroyed. He must have reasonable grounds for believing that the articles are stolen or constitute evidence. He may also require information stored in a computer to be produced in a legible form in which it can be taken away, if he has reasonable grounds for believing that such information will constitute evidence of an offence.

(iii) **Arrest**

This would include the arrest of absconding debtors (on the precedent of Section 565 of the Companies Act 1985 and Section 194 of the Insolvency Act 1985).

(iv) **Search on arrest.**

(v) **Detention.**

A suspect can be detained by the police for a maximum of 36 hours in police custody, and a further 60 hours under a Magistrates Court warrant up to a maximum of 96 hours.

(vi) **Questioning of detained persons.**

The police may question a suspect before charge in detention. He must, however, be cautioned, and told he has a right to legal advice and to have someone notified of his whereabouts. A police superintendent does, however, have the power to defer the latter two rights for up to 36 hours if he has reasonable grounds for believing that this is necessary to prevent interference with evidence, the alerting of accomplices or hinderance in recovering property obtained as a result of a serious arrestable offence.

(vii) **Search of persons before arrest.**

A police constable may search a person or a vehicle in a public place, provided he has reasonable grounds for suspecting that he will find stolen articles. The new organisation should probably have this power, but it is likely to be of marginal use.

9. In addition to these police powers of search and arrest, a unified organisation would also need to be given the equivalent of **DTI powers under Section 447 of the Companies Act 1985.** These would enable the new organisation:-

(a) To require a company or other body corporate to produce its books and papers for examination where there was <u>good reason</u> to do so. This power would have to be extended to cover building societies and financial institutions which are not within the ambit of the Companies Act 1985, as well as to individuals and unicorporated bodies such as partnerships.

(b) To require any person in possession of the books and papers or any past or present officer or employee of the company or other body to provide an explanation of them; and

(c) Require a statement from a person required to produce books and papers as to their whereabouts if they could

not be produced. The power to require statements should extend to a power to require a statement from anyone who is believed to have relevant information (and not just a power to require statements to amplify books and papers) on the precedent of clause 92(3) of the Financial Services Bill.

10. The new organisation would also need powers to require the production of records by banks similar to those in Section 452 (iii) of the Companies Act 1985. This section enables the Secretary of State to require a bank to reveal papers relating to an institution under examination under Section 447. Some variant of this power, and powers under the Bankers' Books Evidence Act to seek access through a court to entries, relevant to ongoing proceedings, in banks' records, would be needed.

11. The unified organisation's search and entry powers (see para 7 (i) and (ii) above) would have to be extended to cover circumstances where there are reasonable grounds for believing that books and papers of which production has not been made when required were to be found on such premises. It would be necessary to provide for information obtained, both documents and explanations, to be used in relevant criminal proceedings, and in order to enable the unified organisation to discharge its functions.

12. The unified organisation should also be given the powers of an inspector appointed under Section 431 or 432 of the Companies Act 1985. These include powers to investigate group companies, and to take evidence on oath from officers, agents and other persons in possession of information about the affairs of companies under investigation, with recourse to the Court in default.

Disclosure powers

13. Powers would also have to be given to the various investigatory agencies, and to supervisory bodies, empowering them to disclose information to the new body. A reciprocal power would also be necessary. Legislation to permit the free flow of information would be needed even with the task force approach.

14. In the case of supervisory information, this should not be too controversial, since disclosure of confidential eg bank information, is already permitted "with a view to the institution of, or otherwise for the purposes of any criminal proceedings".

15. Much more difficult, however, would be disclosure of information about the tax affairs of individuals and companies by the Revenue departments. Although clearly necessary, if the Revenue departments are to be involved in the unified organisation, the purpose to which this information can be used by the unified organisation would have to be tightly circumscribed to investigation of the particular case in hand. It would have to be made clear that general fishing expeditions into the Revenue's files are not permitted. Safeguards would also be needed to ensure that supervisory information from financial institutions does not reach the Revenue departments via the new organisation.

Miscellaneous Powers

16. The following list of further possible powers for a new organisation is illustrative rather than comprehensive.

(i) **Extension of powers to seek production orders and search warrants.**

Under the Drug Trafficking Offences Bill, a constable can apply for these in cases where there are reasonable grounds to suspect that a person has carried on or has benefitted from drug trafficking, even though the suspicion cannot be attached to a particular offence. Such a wider power may be useful to the new body; this will depend at what stage it is brought into an investigation.

(ii) It might be useful to have a parallel power to that in Clause 23 of the Drug Trafficking Offences Bill, whereby the High Court, on the application of the prosecuting authority (ie the unified organisation), can require a Government Department to disclose material which the High Court deems necessary. This might be useful in cases where the High Court is

satisfied that there are reasonable grounds for believing the material constitutes evidence of a serious arrestable offence.

(iii) **Distraint of goods.**

Under the Drug Trafficking Offences Bill (Clause 6) the High Court can prohibit the transfer or disposal of property of a person against whom proceedings had begun for a drug trafficking offence. It would be useful to permit the new organisation as a prosecuting authority to seek distraint orders on the goods of people involved in serious fraud cases, against whom proceedings have begun, and confiscation orders on conviction. These wider powers were canvassed in respect of a range of crimes in the Criminal Justice White Paper. But the Government has not yet made firm proposals. It will be necessary to form a view on reactions to the proposed power applicable to the proceeds of drugs offences before a firm recommendation on fraud and other crimes can be made. Unfortunately, in many cases action of this kind will be bound to be taken too late, as the assets will have been removed out of the jurisdiction. As a result, a power to petition the court for the appointment of a provisional liquidator or receiver will be necessary (on the model of sections 440 and 532 of the Companies Act 1985).

(iv) **Revenue powers.**

It is likely that certain specific powers possessed by the Revenue Departments would also be useful, for the investigation of cases with a revenue aspect.

Safeguards

17. Legislation would also need to provide safeguards to match these powers. If the unified organisation were responsible to the Attorney General, he will be accountable to Parliament for its overall policy and management. Individual members of the public will be able to seek redress from the courts for particular

acts where they believe they have suffered a wrong. But on top of this, particular powers would need to carry specific safeguards, as they now do in the legislation governing the individual agencies.

18. There would need to be provisions for complaints and discipline. The officers of the new organisation will not be subject either to the police discipline and complaints arrangements or to the Ombudsman. Having wider powers than those available to police officers, and having these powers specifically for the investigation of criminal offences, points in the direction of using the police disciplinery code - or designing a code modelled on it - and using the Police Complaints Authority. Setting up separate arrangements and a separate complaints authority would seem cumbersome. The disciplinary code would presumably be on the police basis of requiring a standard of proof beyond reasonable doubt, rather than the Civil Service standard of balance of probabilities.

Difficulties raised by such legislation

19. Although all these powers are available at present to the various agencies concerned, the combination in a single organisation would be unique. Moreover Parliament has recently legislated on the appropriate powers required for investigating criminal offences, in the Police and Criminal Evidence Act. While it is possible to justify wider powers for Government Departments who have supervisory and regulatory functions in addition to the investigation of criminal offences, the logic of applying them to a new body whose sole purpose is the investigation of fraud could be more difficult. Although there is likely to be considerable sympathy in principle for providing full powers for the investigation of fraud, attention might be focussed upon the differences between them and the powers provided against other forms of crime in the Police and Criminal Evidence Act. There are particular problems in this respect with Section 447 powers, which sits ill for example with the position argued in the Police and Criminal Evidence Act on such matters as the right to silence when being questioned by the police and on the requirement to obtain court authority before seizing documents. It would be necessary to make the case for special arrangements

on grounds of the special character and complexity of the offences.

20. It might help presentationally to frame the legislation by cross reference to existing legislation, rather than setting out the powers in full. But in the final analysis much would depend on the political climate at the time, and the extent to which confering powers on a small specialist unit, for use in major fraud cases, were seen as a different matter from giving powers to the police for use more generally.

Powers needed for a task force, and other variants

21. As noted in paragraph 3, with a task force approach legislation could perhaps be limited to what is needed to provide for the necessary passage of information, as set out in paragraphs 13-15 above. The other variant discussed in the parallel paper would require legislation also to give the new organisation the equivalent of DTI powers (paragraphs 9-12), but not police powers - since police officers acting in support would be able to rely on their existing powers.

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STRENGTHENING INVESTIGATION AND PROSECUTION OF FRAUD: A TASK FORCE APPROACH

Note by the Treasury

The Chief Secretary, at his meeting on 9 April, asked officials to examine an alternative to the creation of a fully unified serious fraud organisation: the so called "task force" approach. This is described in more detail in the attached paper by the Home Office, which was discussed by officials at a meeting of the official group on 11 April. The present paper reflects that discussion.

2. In essence the proposal involves creating a permanent task force of police officers, DPP and DTI officials (and possibly Inland Revenue and Customs officials as well), to tackle serious and complex cases of fraud. Since individual members would technically remain part of their parent bodies, it is suggested they would continue to be able to exercise their existing powers - greatly reducing the new legislation needed.

3. The advantages claimed for the task force approach are:

(a) that it would build on FIG, and could cover a wider range of fraud cases than the proposed unified fraud organisation;

(b) that it would avoid the demarcation problems between a small, separate Fraud Investigation Service and the existing agencies (eg fraud conspiracies can involve other serious crime such as drugs trafficking, blackmail or crimes of violence);

(c) that the members of the task force would find it easier to obtain information informally, or call in extra resources from their parent agency than if they were institutionally separate. They would also be able to exercise the powers of their own organisations without major special legislation.

4. The Director of the Task Force - presumably a member of

the DPP's staff - would continue to be responsible for all cases that meet the FIG criteria. He would decide, case by case, whether a case should be tackled by the full time task force, or by the looser FIG co-operation arrangements.

5. There are various questions about the arguments for this approach, its practicability, and the extent to which it could deliver the advantages of a unified organisation.

(i) In practice, how great a degree of central direction, and accountability could there be? Could a task force secure the advantages as set out, for example, in paragraph 3.11 of the officials' report. Or would the Head of the task force have inadequate control over resources or decision taking.

(ii) Without legislation, what inhibitions would there be to the passage of information to such a task force, and between the parties within it?

(iii) Would it provide a good basis for recruiting high quality staff from outside the public sector?

(iv) Would it avoid creating new demarcation lines between the way different FIG cases are handled?

6. The following paragraphs look at these questions in turn, and suggest possible solutions to problems that are identified. The paper then goes on to discuss a possible variant, which could reduce some of the difficulties.

Degree of central management and accountability

7. There is a range of possibilities. At one extreme a "task force" might in fact be little different from the current loose FIG co-operation arrangements - perhaps with a facility for individuals concerned to be co-located when work on a particular case became especially intense, working under the guidance of a Controller. At the other extreme there might be a body of police, DTI and DPP staff permanently assigned (seconded in all but name), to work at a single location under the management

and direction of a Controller from the DPP's department.

8. The extent to which these different possible arrangements are judged acceptable depends on the weight given to the central Roskill criticism of present arrangements. Those who believe that the current arrangements would work well, given greater resources and implementation of some of Roskill's other recommendations, see little difficulty in settling for an arrangement structurally similar to the present FIG system. Those of us who attach considerable weight to the need for integrated management, accountability and control would only be satisfied with an arrangement at the other extreme: that is a task force of full time, assigned, police officers and officials under the clear direction and command of the controller. Whatever the precise arrangement, it would no doubt help to have some kind of steering committee of representatives from the various participating bodies.

9. An arrangement of that kind, however, runs up against a number of problems:-

(i) The police draw a distinction between command, control and direction of police officers. They see no difficulty with <u>direction</u> being exercised by a task force controller (or case controller) - as they say it is at present under the FIG arrangements by the controller of FIG. But it would be difficult for a Chief Constable who in law can be held personally liable for the actions of his officers to relinquish "command" or "control" to a civil service task force controller. We are advised this could also raise constitutional issues. But the police could, they believe, assign officers on a case by case basis; and might therefore consider the possibility of individual officers being assigned to a group of task force cases on a more or less full time basis, so long as it was accepted that command and control rested ultimately with the chief constable.

(ii) DTI officials exercise section 447 powers under the Companies Act on the basis of an authorisation given for a particular case (because the test of "good reason" has to be applied to a particular set of circumstances). An extension of an enquiry to another company would require separate authorisation. These authorisations are made by a senior DTI official acting in effect as the Secretary of State (and with all major cases normally referred to Ministers). The Secretary of State is of course accountable to Parliament for the exercise of these powers. It would be of questionable propriety for DTI officials to exercise these Companies Act powers under the effective management and control of a task force Controller not subject to the supervision of the Secretary of State. Moreover, if these Companies Act powers were used in such a way as was held to involve an effective transfer or delegation, we are advised that they could be subject to legal challenge for improper use.

These considerations do not rule out a task force approach, but would only permit loose central control of such an operation.

(iii) Similar problems would arise in respect of **Customs** and **Inland Revenue** officials, if it were suggested that they should exercise Revenue or Customs powers other than under the management and control of their own departments.

10. There are, therefore, limits to how far we could in practice move in the direction of a truly integrated task force, with single management and control of the investigation and prosecution process, without new legislation. If the Controller's guidance became a power to direct and command, one would be approaching a unified organisation and stretching informal co-operation as a task force beyond the limits of existing law.

Inhibitions on passing information

11. It is accepted that with a task force approach it would still be appropriate to legislate, where necessary, to remove current inhibitions on the exchange of information relevant to major fraud cases. Since the task force would be composed of individuals from different legal entities it might also be necessary to legislate to permit information to pass within the task force.

(i) The circumstances in which **Revenue information** can be made available are limited at present. It is possible under existing law to disclose confidential taxpayer information "for the purposes of any prosecution for an offence relating to Inland Revenue". This is not sufficient to enable such information to be made available for use in the investigation and prosecution of otherkinds of frauds even where these co-exist in the same case. Legislation would therefore be needed to enable Inland Revenue information to be pooled so as to permit an integrated approach to tackle fraud whatever the organisational form of the new body. In the earlier report, it was envisaged this legislation would be framed in relation to a new unified organisation. With a task force, it would presumably be necesary to open the gateway in respect of suspected serious fraud cases. This might be to the Controller of the task force (presumably in the DPP's office) and to individual police officers or DTI officials named by him. Making revenue information available to police officers could, however, be a different matter to making such information available to a new unified organisation. (The Drugs Trafficking Bill includes a procedure for giving police access to confidential taxpayer information for purposes which include the investigation of suggested drugs offences. Such access is made conditional upon securing the approval of the High Court on a case by case basis; it incorporates a discretion for the court to impose

a limitation on what is to be disclosed to the police so as to protect the confidentiality of innocent third parties.)

(ii) Comparable arrangements might be adopted for the release of information from **prudential supervisors** - the Bank of England, SIB, and so on.

(iii) The **police** are already able to make information available (including for example the results of surveillance activities) to the DPP, DTI and Revenue Departments for the prevention, detection and prosecution of crime.

Outside Recruitment

12. It would still be necessary to recruit new and high quality staff - largely lawyers and accountants - from the private sector. In principle these could be brought in, on secondment if necessary, to any of the constituent bodies of a task force - the police, the DTI, or the DPP's department.

13. In practice, however, we would want to make it clear that they were being recruited to the task force, as part of a new attack on serious fraud. To this end it would seem sensible to envisage a central core of staff - lawyers, accountants, and others - being built up in the DPP's department. Such staff would not however have police or DTI powers, and that would be a disadvantage. It is arguable whether these arrangements would be more or less effective in attracting able people than a small separate organisation. So far as the police are concerned it has been suggested that serving policemen would not be likely to welcome transfer or full time secondment to a separate organisation.

More integrated treatment of different kinds of FIG case

14. There is a continuous spectrum of fraud cases - from cases at present handled by the police on their own, through to the few serious and complex cases of financial/commercial fraud that the official group saw being tackled by a new unified organisation.

There are cases that are handled best by the police alone; there are serious cases where it is sensible for the prosecuting authority to be involved in directing the case from an early stage; and there are cases where it would help also to call on the powers, knowledge and expertise of other bodies - the DTI, the Revenue Departments, and so on,.

15. At present there is, essentially, a four tiered approach:

(i) FIG cases that involve the DPP, the police and the DTI;

(ii) cases that meet the FIG criteria, but in practice require co-operation only between the police and DPP;

(iii) fraud cases that do not meet the FIG criteria, but where it is nevertheless decided to bring in the DPP's office at an early stage; and

(iv) cases handled entirely by the police (or DTI, Inland Revenue, or Customs as the case may be).

16. The so called three tier approach, with the proposed unified organisation, involves decisions on handling being made mainly on the single criterion of what procedure, degree of co-operation and unified case management is judged best for each case. In practice a unified organisation handling 20-40 cases would probably take most if not all cases in category (i) above, and some in category (ii). For other category (ii) cases the distinction with category (iii) would disappear. One disadvantage, at least of presentation, is that cases meeting the FIG criteria (assuming these criteria were retained) would then be handled in two different ways. Another is that a new institutional boundary between the handling of different cases is established, where none exists at present.

17. A task force would avoid this second problem. And with a task force - as with any other approach - it would be possible, if desired, to retain the current division, and FIG criteria,

by making the task force controller responsible for both category (i) and category (ii) cases. He would then decide in each case whether to use the full time task force; or something more like current FIG co-operation arrangements.

A possible variant

18. To recapitulate, it can be argued that a task force approach has certain advantages over a unified organisation, certainly if it provides a route to avoid complicated and arguably contentious legislation. Taking the points in the preceding paragraphs in reverse order:

- Arguably, it provides a simpler route to avoiding the criticism that the handling of some cases meeting the FIG criteria would be "downgraded"; and it avoids institutionalising divisions between a new organisation and existing structures.

- It should still be possible to recruit outside expertise, probably by building up a central core for the task force in the DPP's office.

- Legislation to permit transfer of information would be more complicated without a new organisation to refer to; but a possible solution is suggested.

- Other legislation on powers would be avoided. Individual officials and officers would continue to rely on existing powers.

19. But paragraphs 7-10 spell out a major difficulty. For legal and other reasons it would be difficult to achieve the kind of full time integrated task force, with single management and accountability, needed to meet the central Roskill criticism of current arrangements - certainly if the full force of that criticism is accepted.

20. A possible variant has been suggested, that would meet some of these difficulties. It is a half way house between a full blooded unified organisation, and a task force. It would involve:-

(i) Legislation to establish a new Serious Fraud Office - probably, but not necessarily, separate from the DPP's department - accountable to the Attorney-General. This office would have the DPP's prosecuting powers, and be given the equivalent of the DTI's Company's Act investigatory powers. There would be the additional advantage, in taking fresh legislation, that these powers could be extended to apply to non-incorporated businesses (including building societies, partnerships, etc) as well as to Companies Act bodies.

(ii) There would be no major legislation in respect of police powers. Instead the new office would rely on police officers whenever search, arrest or other police powers were required. (The legislation envisaged under (i) might however permit the Controller of the Serious Fraud Office to delegate his powers to nominated police officers, where necessary.)

(iii) The creation within the police service of a full time group, to assist the Serious Fraud Office. The two organisations would be co-located.

21. It has been suggested that it might be possible to develop something on the lines of (iii) in an evolutionary way within the police service, by building on the present Metropolitan and City Police Fraud Department (MCPFD). One option might involve little more, from the police point of view, than giving that Department a more national title, to reflect the role it plays; nominating some officers within it as the full time investigating arm of the new Serious Fraud Office; and locating the new SFO in the same building. It would be important however to have a full time group of assigned police officers for this purpose, who were at the effective disposal of the Head of the SFO, and subject to his guidance.

22. Legislation on information flows would also be needed, as in paragraph 10 above. Recruitment from the private sector would be to the SFO. And it would be possible within this arrangement for the SFO to be responsible for all cases that met the FIG criteria: it could handle both cases where the investigation was carried out by full time, dedicated, police officers from the National Fraud Squad; and cases where investigation was carried out by other officers or police forces.

23. This variant is of course a half way house. It would involve more legislation than the pure "task force" approach: but would not involve extending police powers, and corresponding safeguards, to a new organisation. It does not involve the unacceptable procedure of DTI officials exercising powers of their Secretary of State while under the management and control of another party.

24. It would still be possible to bring in the Revenue Departments on cases with interlinked revenue and non-revenue aspects to the extent of legislating for the freer flow of information. But since the SFO would lack its own investigatory powers, while the Revenue Departments would retain theirs, it is harder to envisage the complete integration of effort in such cases that would be possible within a fully unified organisation - though Revenue Departments could still no doubt be involved on an ad hoc basis.

25. It would not create the single strong management, control and accountability for pursuit of serious fraud cases that Roskill calls for, and that many believe to be essential. But it would be a clear advance on current arrangements.

Summary

26. The task force proposal depends on informal co-operation. The Head of the task force, who would be the representative of the DPP, would not formally control the decisions taken by the members of the task force. Arguably this need not amount to much. It is the basis of the present FIG arrangements. But flexibility carries a price in terms of formal management and accountability structures. The further one moves from the present

informal co-operation arrangements towards giving the Head of the task force real management power and responsibility, the greater the need to legislate to regularise the position of DTI and other officials working under him. It would be difficult to create the kind of integrated task force with single management and accountability that would fully meet the Roskill criticism of present arrangements.

27. An alternative to be considered, would involve legislating to create a Serious Fraud Office that could exercise the equivalent of DTI powers to require information, but which would continue to rely on the police where their powers of search, arrest, and detention were needed. This has the additional advantage of opening the way to extend the use of these powers to organisations other than those mentioned in the Companies Act. A dedicated fraud group could be created, within the police service, and co-located with the Serious Fraud Office. This would represent a half way house between a fully unified organisation and the FIG arrangements, carrying with it some of the advantages and some of the disadvantages of each.

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10 April 1986

OFFICIAL GROUP TO REVIEW A
UNIFIED FRAUD INVESTIGATION
AND PROSECUTION ORGANISATION

STRENGTHENING INVESTIGATION AND PROSECUTION ARRANGEMENTS:
AN ALTERNATIVE SCHEME

Note by the Home Office

To assist the Group's consideration of matters remitted to it by the Chief Secretary after discussion of the Group's report yesterday with certain Ministerial colleagues and officials, this note outlines a scheme for the investigation and prosecution of serious fraud cases falling within the FIG guidelines which seeks to realise the advantages envisaged by the Roskill Committee and this Group by building on and strengthening the existing FIG arrangements without sacrificing their present flexibility. It has necessarily been prepared in haste, and has therefore not been the subject of consultation (formal or informal) with the police or any of the other agencies concerned. We hope that the Group will accept it on that basis as an aid to discussion.

Scope

2. The Group have recommended, for reasons explained in our report - the validity of which this note does not dispute - that a unified organisation of the kind there proposed should handle only a small number of serious and complex cases, comprising 20%-40% of the current FIG caseload. Originally the FIG arrangements had been designed to tackle the most difficult fraud cases; but the Group have proposed that a unified organisation should take the pick of these cases. That carries a risk of relegating FIG to second-class status within a three-tier system which, far from simplifying and unifying arrangements criticised as fragmented, would add to their complexity and create new lines of organisational demarcation. The alternative put forward in this note is that a new scheme should cover all cases to which the FIG arrangements now apply, but should be capable of operating flexibly in a number of different modes in accordance with the requirements of a particular case: some would call for handling entirely in-house by a team including investigators assigned on a long-term basis; others could be adequately dealt with under more ad hoc arrangements. A scheme on these lines could incorporate many of the advantages which the Group saw as flowing from the setting up of a unified organisation of the kind we originally recommended: in particular, co-location of staff and the provision of extra professional and other resources.

A task force

3. Although we would wish the Group, initially at least, to examine the substance of the ideas in this note rather than questions of

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terminology, it may be helpful to say that the concept put forward is in essence that of a task force which brings together a number of people from a range of agencies to exercise their various skills and legal powers in a common task. The arrangements for assigning staff to it could **legally** be as flexible as convenience required, provided that **administratively** arrangements could be made to secure the commitment of the essential minimum of core staff from all the agencies principally concerned. It is inherent in the concept that such a task force would have no separate powers, but its members would bring with them the powers of their parent agencies. These points are dealt with further below.

Manpower, management and accountability

4. A cadre of staff would need to be drawn from the DPP's Department, the DTI and the police. So far as the police are concerned, it would be desirable to work out arrangements involving a commitment in principle to the assignment of some minimum number of officers to the task force, without the complexities of secondment and the problems it would cause over possession of police powers and over the application of complaints and discipline procedures. Such arrangements could satisfy the wish of chief officers that police officers should in the final analysis remain under their command and control; but in carrying out their investigations they would need to operate as an integral part of the task force (as its other members would) under the overall direction of its head. The status of the head is to be considered further by the Law Officers' Department, it having been agreed by Ministers that accountability should lie to the Attorney General. The Group's recommendation for a steering committee to oversee the arrangements would still be applicable.

Powers

5. The Home Office is concerned over the difficulty of explaining and justifying to Parliament the unique combination of powers which the Group have envisaged conferring on every member of the staff of a unified organisation as such. If the members of a task force on the lines here proposed collaborate effectively, it should be sufficient if **each** of the powers required for the proper investigation and prosecution of a particular case is possessed by at least **one** of the team working on it. If this approach is adopted, we avoid the problems involved in devising for all the staff of a unified organisation a disciplinary and complaints procedure no less stringent than that which applies to the police. (Would the jurisdisction of the independent Police Complaints Authority have to be extended to the unified organisation as a whole, or would some equivalent body have to be created ?)

6. Some provision (distinct from those relating to powers in the strict sense) must in any event be made enabling the Inland Revenue (and ? the Bank of England, SIB, etc) to share information with other agencies investigating serious fraud. But the Group have so far made no specific recommendation on the form that such a provision should take; and it would not be sensible to maintain our original proposal for a unified organisation solely or mainly because it might make such a provision easier to formulate.

Home Office

10 April 1986

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cc. B.G.

10 DOWNING STREET

14 April 1986

From the Private Secretary

BIG BANG

The Prime Minister thinks it would be helpful for your Secretary of State, the Chancellor and the Governor to meet to take stock of the preparations for the Big Bang.

As the basis for this meeting I should be grateful if you could arrange for a note on the present position and the prospects. This might cover among other things the position reached on the Financial Services Bill and the state of preparedness of the SIB and other regulatory organisations.

The Prime Minister would also I think be grateful if the Bank of England could prepare a note on the position reached by the financial institutions themselves in preparing for the Big Bang, in terms for example of the necessary technology (there have been several newspaper articles on this recently), risk management and audit controls.

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It would be helpful if notes covering these and any other points could be circulated by the end of the month.

I am copying this letter to Tony Kuczys (HM Treasury) and John Footman (Bank of England).

David Norgrove

John Mogg Esq
Department of Trade and Industry

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JB

PRIME MINISTER 11 April 1986

BIG BANG: A PROGRESS REPORT

Big Bang takes place on 27 October. Then, the Stock Exchange abandons its two major restrictive practices:

(i) fixed commissions - the cartel agreement on charges for trading securities; and

(ii) single capacity - the rigid division between brokers (trading for customers on an agency basis) and jobbers (trading as principals on their own account).

The other main restriction - preventing banks and foreign institutions from being members of the Exchange - was abandoned on 1 March.

The Big Bang will produce major structural changes in the UK securities industry, involving the way markets work, the players in the markets, the amount of risk they are prepared to take, and the regulatory framework of the industry.

Changes in the City as a result of Big Bang

Negotiated Commissions: The charges for buying and selling securities will be freely negotiated between the parties involved, and not fixed by the SE. The fixed commission cartel was the foundation of the old City arrangements. When

Cecil Parkinson removed it, all the other changes had to follow.

Dual Capacity: Individual security firms will be able to trade both on their own behalf and on behalf of their customers. This is a consequence of commissions being driven so low that firms will need a further source of income. Stockmarket firms will instead make their profits on the gap between the prices at which they buy and sell stock (their turn).

Ownership: Dual capacity in turn means more risk for stockbrokers, because firms may be holding large amounts of stock and hence exposed to big price changes. So they need more capital from outside. In the run-up to Big Bang, banks, financial conglomerates and foreign banks and security firms have bought up stockholders to join the SE. Already over two-thirds of SE turnover is in the hands of firms owned by banks (British banks account for about one-third).

Unbundling of Services: Fixed commissions subsidised certain services (research, price information, comment) for which there were no direct charges. Competition will force firms to unbundle their services and charge each item separately to reflect full cost. This gives investors greater choice, and will improve efficiency.

Statutory Regulation: The Financial Services Bill proposes a statutory framework for all investment business. But we are trying to keep some of the traditional British approach - the

lawyers will not take over completely. Instead, the Securities Investment Board and the six Self-Regulatory Organisations will be private bodies staffed by practitioners, though with statutory duties delegated to them.

The Issues

The key questions are:

- Will changes in commissions deter the small investor?
- What are the effects on the City's ability to raise funds for industry and Government?
- Will we see boom and then bust?
- Will there be more embarrassing fraud cases?
- Have we got the regulatory régime right?
- Will the technology be ready?

Commissions and the Small Man

At the moment, commissions are fixed as a percentage of the value of a transaction, though with some tapering. Excluding VAT and Stamp Duty, the commission on a straightforward share transaction is something like this:

Value of Transaction	Commission (approx)
£1,000	£15
£10,000	£150
£10m	£21,000

But there is hardly any difference in the cost to a City firm of buying £10 million of ICI shares for the Pru or £1,000 of ICI shares for a popular capitalist. If anything, the small transaction is more expensive, as several such transactions often have to be added together before approaching a jobber. So there is a hidden subsidy to the small man which will be competed away. Brokerage costs for the big investor will fall enormously, but for small transactions they might rise in the short term to about £30.

This looks rather odd for a Government trying to encourage popular capitalism. But we can expect the situation to right itself in two ways:

i. Some of the organisations buying into the SE have big retail networks (the clearers, for example). They will want to offer direct share-dealing services at their high street branches at a modest price.

ii. Electronic broking will cut costs.

We can expect a cheaper, no frills service aimed at the small investor to develop.

Funds for Industry and Government

The City's job is to make it easier for the rest of us to raise funds. Increased turnover means increased liquidity for those stocks traded more actively. Investors benefit. But this - together with reduced fees charged by the institutions - should also help companies and government raise capital on better terms.

Twenty eight firms have been admitted by the Bank of England as primary dealers in the gilts market: this gives them privileges (eg a direct dealing relationship with the Bank, borrowing facilities, etc) as well as responsibilities (to make a continuous and effective market under all conditions). This is an enormous number - we must expect a shake-out. We may well find more turbulence in gilts prices than we experienced before.

Boom and Bust?

The last major deregulation in the City was in banking - Competition and Credit Controls in 1971. It was followed by the property boom of 1972-73, the market collapse of 1974, and then the fringe bank crisis of 1974-75. Might not something similar happen following the deregulation of the securities industry?

1986 is different from 1971 for two major reasons:

i. In 1971 there was not an adequate framework of banking supervision. We have learnt from our mistakes. In a sense, Johnson Matthey came at just the right time. It gave a jolt to our bank supervision arrangements shortly before Big Bang. The Financial Services Bill also fills a gap.

ii. Monetary conditions are much tighter.

This does not mean that there might not be individual financial failures as a result of bad commercial decisions; but we do not expect a systemic problem.

Fraud

Under the old system, the separation of brokers from jobbers was a method of investor protection: because the broker did not deal off his own account, the investor was always assured of the best price. Under the new system, firms will run their own book, act as brokers for clients, and manage funds in a fiduciary capacity: the result is an opportunity to dump losses on clients.

The Financial Services Bill deals with this problem in two ways: by disclosure of information to ensure the "best execution price"; and the duty, where there is a conflict of interest, to put their customers first. But in a bear market when profits are squeezed other firms will be under great pressure to pass losses on to the client.

City conglomerates are erecting Chinese Walls to divide up their businesses (though City cynics say that every Chinese Wall has a creeper trailing over it). The US attempts to deal with the problem through the Glass-Steagall Act, which separates the securities business from banking. Japan has a similar law. It must be open to question as to whether we shall some day, after a nasty scandal, be forced in the same direction.

Have we got the new Regulatory Bodies right?

Mr Nelson's amendment making the SIB the only body which can regulate the securities industry did little to change the Financial Services Bill. His other amendments, however, would have made the SIB a conventional government agency - with its budget, staffing and powers under full departmental control. This would have alienated the practitioners whose co-operation is vital if SIB is not to become an adversarial regulatory agency like the SEC. It would also bring all SIB's staff and expenditure within Treasury constraints - and we would probably lose the services of practitioners like Sir Martin Jacomb and Mr Mark Weinberg.

Resisting Mr Nelson's amendments does not mean a weaker regulatory system - on the contrary, it distances Ministers from the day-to-day surveillance of the financial markets, yet requires full accountability to Minister (and Parliament) that "an adequate level of protection" for investors is constantly maintained.

Big Bang is on 27 October 1986, but the Financial Services Act doesn't come into operation until various dates in 1987. The delay could create dangers. There will be a period when competition and risks increase, especially if there is a bear market because, say, Labour is ahead in the polls. DTI could, if pressed, bring forward the administrative arrangements - though it would be a rush, and mistakes might be made.

Will technology and systems be installed by 27 October?

Big Bang requires companies to install new electronic settlement systems which also provide information regarding their positions and margins. Some City firms are in trouble over their technological preparations. Either they will not be able to be active players immediately following Big Bang; or, if they are active, they might find profitability being eroded quickly without realising it. There is a risk literally of wires getting crossed and the system breaking down.

Conclusions

1. Big Bang extends competition to the securities industry. Competition will produce tangible benefits for borrowers and lenders.

2. But increased competition involves increased risks. These are likely to be greatest in the equity markets: in the gilts market, the Bank is monitoring risk-taking very carefully.

3. The regulatory bodies have as much potential power as the SEC - but remain practitioner-based rather than extensions of central government.

4. Because of the post-Big Bang delay in implementing regulation, the failure of some firms to install technology, and the inevitable risks of adapting to a new environment, the first 6-9 months look like being turbulent.

5. The outcome depends critically on the part the SIB choose to play - which in turn comes down to their staffing. It may be opportune to call for a report, including their plans for expansion, method, recruitment and funding.

BRIAN GRIFFITHS

DAVID WILLETTS

Gron Pol: Gower.

PRIME MINISTER

BIG BANG

You asked before Easter for a note setting out details of the changes which would happen with the Big Bang. A note from Brian Griffiths and David Willetts below explains the position.

You also thought it would be worth considering a seminar to be held either here or at the Bank which would be attended by people from the Government and the City to talk about the Big Bang.

I have discussed this with Bernard. We are both doubtful about it. The main lines of the regulatory framework have already been decided. The Financial Services Bill is going through the House, and it would be very undesirable for an impression to be given that you or other members of the Government had any doubts about its effectiveness. And unless the seminar produced new ideas or proposals for changes to the regulatory framework or other ideas to forestall problems after the Big Bang it could too easily give the appearance of concern without action, or as if you were simply wanting to inform yourself about what was likely to happen.

But there is equally a risk that departments now have their eyes firmly on the trees which have been planted, not on the shape of the wood they will produce. One possibility would be to commission a paper from the Treasury, Department of Trade and Industry and Bank of England which would be a situation report on how the Financial Services Bill is likely to come out, the state of preparation of the SIB and the other regulatory organisations, and how well the banks and brokers will themselves be prepared by 27 October (e.g. on technology). This could lead to a stock taking meeting with the Chancellor, the Governor and Mr. Channon.

Agree to commission a paper as the basis for a meeting? Yes please MT

DN

(DAVID NORGROVE)

11 April 1986

CC/SG

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

NJGN

2 April 1986

Dear Stephen,

ROSKILL REPORT: UNIFIED ORGANISATION

will request if required

As agreed at the Chief Secretary's meeting on 13 February (at which the Home Office was represented by your Parliamentary Under Secretary), the Treasury-chaired interdepartmental working group of officials has produced a report on the case for a unified organisation to tackle cases of serious fraud. The Chief Secretary has asked me to circulate the Chairman's note and the officials' report which will be discussed at the meeting arranged for 3pm on Wednesday 9 April, at which the Home Office will be represented by Mr Mellor.

I attach a copy of the officials' report for the Home Secretary plus two spare copies. Copies have also been issued to those officials who attended the officials' working group.

I am copying this letter, with two copies of the report, to David Norgrove (No. 10), John Mogg (DTI), Michael Saunders (Law Officers Department), Richard Stoate (Lord Chancellor's Office), John Bartlett (Bank of England), Catherine Brand (Inland Revenue), Lance Railton (Customs and Excise) and Michael Stark (Cabinet Office).

Yours sincerely,

Jill Rutter

JILL RUTTER
Private Secretary

ECON. POLICY

Gowon Report

PL-3

OFFICIAL GROUP TO REVIEW A UNIFIED FRAUD INVESTIGATION AND PROSECUTION ORGANISATION

Note by the Chairman

I attach the report of the interdepartmental group I have been chairing over the last few weeks.

2. Inevitably, in the time available we have had to cut a lot of corners. Some aspects would have repaid deeper investigation. But we have examined the issues we were asked to look at, with two exceptions. First, we have a little more work to do on the question of what specific powers would need to be available to a new unified organisation. Meanwhile the relevant paragraphs (paragraphs 2.32 to 2.37) of the report are in fairly general terms. Second, we have had to defer looking at the question of resources devoted to fraud until the Home Office group, which is looking at other aspects of Roskill, has got further with its work.

3. The conclusions are summarised in Section 5. With the exception of the police representatives, whose views are set out separately in Annex F, all members of the group believe that the balance of advantage lies in seeking to establish a new unified organisation for dealing with cases of serious fraud. But there are arguments both ways. There are also some difficult questions about the form and responsibilities a new organisation should take.

4. We have found some difficulty in identifying and agreeing the reasons for the delays that occur at present in some cases. Many, certainly, are the almost unavoidable result of the complicated process of accumulating useable evidence, and should be eased if other Roskill recommendations are implemented. Others result from the fact that a prosecuting Counsel is often only instructed at a relatively late stage in the process, and this can lead to a delay as he reads himself in. (There is a suggestion for improving this situation, in the context of a unified

organisation, in paragraph 3.15 of the report). And some dela[redacted] result from natural staff turnover. Resource limitations are also a factor.

5. But the police apart, there is general agreement that at least some delays and inefficiencies result from the lack of a unified approach. The FIG co-operation arrangements are a considerable improvement on previous practice. But they do not involve the Revenue Departments, and this has meant in the Lloyds case, for example, that separate Inland Revenue and FIG investigations have been carried out in parallel: and that it has been difficult to use information gathered on one investigation in the other. This is clearly inefficient. It also seems highly probable that some of the reasons given for delays - unexpected departure or retirement of key officers, or as cases are moved from the police to DPP's office - would be avoided if a single body were managerially responsible, and accountable, for the whole process. The fact that in some cases the police and DPP's office appear to have different views of the reasons for past delays would seem to confirm this view.

6. A new organisation would also be able to develop special expertise. And it might prove more effective in attracting high quality staff.

7. Despite the advantages, however, I believe it would be a mistake to go ahead if there were doubts about receiving full, continuing and active co-operation from the other bodies, that would continue to have an interest in handling fraud cases. In this context, the police representatives on my group indicated that despite their reservations about the concept, they would certainly give such co-operation if a decision were taken to go ahead. It is crucially important that, for example, there should be no reluctance about passing cases over whether from the Police, DTI or Revenue Departments, where a unified approach was appropriate. It is also important that the new organisation, whose resources would be limited, should be able to seek assistance from police forces on those occasions (for example, for some

cases outside London, or where there was a heavy surveillance requirement) when it would be helpful.

8. Turning to the form of organisation:-

(a) It is essential to the concept that it encompasses both investigation and prosecution. It should also handle cases now dealt with by the Revenue Departments, where there are closely linked revenue and non-revenue aspects;

(b) on balance it seems best that it should be a relatively small body, dealing only with the 20-40 cases of large and complex, financial and commercial fraud current at any time. This does have drawbacks, both operational and presentational (see paragraph 2.15 of the report), and will increase the dependence on co-operation from others. But I believe it provides the best option if the aim is to to get an effective operation going quickly; and in practice it would handle all the really significant cases, of the sort that have led to recent concern;

(c) The arguments point to the body being accountable to the Attorney General, alongside the DPP - although there is a case for situating it in the DTI.

9. An appropriate name might be the Serious Fraud Office.

D L C PERETZ

2 April 1986

REVIEW OF FRAUD INVESTIGATION AND PROSECUTION

Report of an Interdepartmental Working Group

Contents

Annexes

1. INTRODUCTION

Origins of Review

1.1 For a number of years there has been concern that financial fraud is increasing and often goes unpunished. Public concern has more recently been heightened by a few major cases, such as Lloyds, where apparent wrongdoers seemingly have not been brought to book.

1.2 In 1978 this concern led to the setting up of a Working Party, chaired by the then Deputy Director of Public Prosecutions, to review the arrangements for investigating and prosecuting fraud and the roles and interrelationships of the relevant authorities. This recommended additional police powers and extra manpower for both police and prosecuting lawyers. In 1979 the then Attorney General appointed a working group to examine the Working Party's proposals for improving co-ordination and the detection, investigation and prosecution of fraud. A pilot scheme for ad hoc fraud investigation groups, drawn from the DPP, Department of Trade and Metropolitan Police, was set up in 1981, initially to deal with two major fraud cases. These ad hoc arrangements were reckoned to save about one third of the time taken on conventional enquiries.

1.3 These gradual developments were not considered sufficient and in early 1983 three reviews were established. The first concerned preventive and regulatory measures, and contributed towards the Financial Services Bill (although the latter to a large extent represented the implementation of Professor Gower's Review of Investor Protection).

1.4 The second review, by a Treasury chaired official committee,

considered the arrangements for identifying, investigating and prosecuting fraud. It recommended that a new fraud investigation and prosecution unit should be created, reporting either to the Secretary of State for Trade or the Attorney General (probably as part of the Department of the Director of Public Prosecutions - DPP). Partly because of the difficulties in proceeding in this way without legislation, Ministers decided on a different approach.

1.5 It was decided that the ad hoc arrangements for fraud investigation groups should be put on a permanent basis. From 1 January 1985 the Fraud Investigation Group (FIG) came into being within the DPP's Department. Staffed by 19 lawyers of the DPP with 3 accountants and 2 examiners seconded from the Department of Trade and Industry, the FIG assists early co-operation, in fraud investigation groups, between the DPP, DTI and police. Officers remain within their parent organisations and the Revenue departments are not included.

1.6 Currently FIG arrangements are formally being applied in about 100 cases of varying complexity (see paragraph 2.13 below); and FIG-type practices are being applied informally in many more. However, there is still dissatisfaction among some of those involved at the efficacy of arrangements which do not put the handling of a case, and the resources allocated to it, under one roof and under single direction. In his report on the first six months' operation of the FIG, the then Controller said that the conclusion reached by the Treasury chaired official committee, that a new fraud investigation and prosecution unit should be created, remained valid.

1.7 The third review led to the setting up of an independent committee of inquiry into the judicial process in fraud cases, chaired by Lord Roskill. It reported in December 1985. As well as making many recommendations about trials procedures, it recommended immediate study of the need for

a new unified fraud detection, investigation and prosecution organisation.

1.8 At the Prime Minister's meeting on 9 January it was agreed that the Roskill recommendations should be urgently pursued. In the House of Commons on 14 January the Home Secretary welcomed the report as the basis for early legislation and announced that the Chief Secretary would be reviewing the need for a unified organisation.

Terms of Reference

1.9 The Chief Secretary was invited by the Prime Minister to consider recommendations 1, 10, 11 and 12 of Lord Roskill's Committee. It was subsequently agreed on 13 February between the Chief Secretary and the Parliamentary Under Secretary of State (Home Office) that recommendation 12 (a career structure for police fraud squad officers) would be more appropriate for the Home Secretary's study and recommendation 7 more appropriate to the Chief Secretary's review (although the Home Secretary is studying all these recommendations in relation to the police, as well as the other Roskill recommendations).

1.10 The recommendations relevant to this review are, in full:

1. 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.

7. A "Case Controller" should be responsible for the control of a serious fraud case from the time of discovery until the verdict.

10. The resources devoted to the pursuit of fraud must be expanded as a matter of priority.

11. More expert accounting staff are likely to be needed in the DPP.

1.11 The remainder of recommendation 11, that "permanent qualified accounting staff should be attached to the police fraud squads", is being considered by the Home Office chaired interdepartmental group in the context of the other recommendations affecting police resources.

Structure of report

1.12 The Chief Secretary asked officials to assess the issues and report back by Easter 1986 (the membership of the official working group is set out at Annex A). In the rest of this report we examine first the various practical problems that would arise with establishing a unified organisation, and possible solutions to them. Our aim is to set out what such an organisation would look like. We then consider the arguments for and against establishing an organisation on the lines described. Finally, we consider the other particular issues listed in paragraph 1.10, except for recommendation 10 (resources) to which we will return when the Home Office group has got further with its work.

2. A UNIFIED ORGANISATION

Functions

2.1 Lord Roskill's Committee suggested that a unified organisation might be concerned with the detection, investigation and prosecution of fraud. This could mean that a single organisation would carry a case through from the stage at which suspicions first arose, to the decision on whether or not to prosecute and, if appropriate, to eventual conviction or acquittal.

2.2 **Detection** of fraud, at least in the sense of identification, typically results from the scrutiny of accounts (as is undertaken by auditors, Customs and Excise and the Inland Revenue); supervision of financial institutions by regulatory organisations; detailed investigation of possible criminal activities of many sorts by the police; insolvency investigations by DTI; complaints from investors and creditors; or the gathering and analysis of intelligence on suspicious and criminal financial activities. It is hard to see what role a new organisation could efficiently play in this process. Fraud is often first detected as a side effect of some other activity.

2.3 A case could be made for establishing a central fraud intelligence service, for collecting and coordinating intelligence about fraud on the lines of the new National Drugs Intelligence Unit. However, the serious and complex cases which would be considered by a unified organisation represent only a small proportion of those for which intelligence could be gathered. There would be a danger that the unified organisation would either be swamped by information about all sorts of fraud and general financial information, or be diverted from its main role of tackling serious cases. Moreover the Metropolitan Police already maintain a central fraud database. We conclude that a broadly

based fraud intelligence function should not form a part of a unified organisation.

2.4 While detection would not seem to form a natural part of the responsibilities of a new organisation, it is essential to the concept that it should combine **investigation** and **prosecution**.

2.5 Fraud investigation in England and Wales is at present undertaken by a wide range of agencies, including the 43 police forces, DTI, Inland Revenue, Customs and Excise and the DPP's FIG staff. Serious fraud investigations can involve many or all of those agencies. Although many investigations are conducted speedily, and where delays do occur there are many causes, including resource constraints, there is some evidence and a considerable weight of opinion that in some cases overlapping interests can cause some duplication of effort, and delay.

2.6 Lord Roskill's committee were particularly concerned that one individual, the "Case Controller", should be responsible for taking control of a case from the earliest moment a serious fraud is detected to the verdict, where appropriate. They also considered that prosecuting counsel should be involved with the investigation from the outset to avoid delay and the pursuit of unrewarding avenues of enquiry. The intention was to provide clear, uniform direction of investigations, in ways most helpful to the prosecution.

2.7 There are arguments against combining investigation and prosecution. In some circumstances it could make investigation less efficient: for example where the investigation requires a commitment of manpower beyond the resources of a self contained organisation, where if it had been handled by the police extra resources could have been drawn in. It is also argued that overseas police forces are more willing to co-operate with their opposite numbers in the UK.

2.8 Moreover, in taking forward the Crown Prosecution Service the Government has argued the merits of separating the two functions for the generality of crime. But at the same time the Government recognised that serious frauds need special treatment, by setting up the FIG arrangements which bring together investigators and prosecutors. Unifying investigation and prosecution within one organisation could therefore be presented as the logical development of existing policy so far as serious fraud is concerned. The Revenue Departments and DTI have also for many years successfully operated unified investigation and prosecution services.

Coverage and procedure for choosing cases

2.9 The second key question is what range of cases would best be handled by a unified organisation. This would determine its size, and the extent to which its activities affected the responsibilities of organisations currently responsible for investigating and prosecuting fraud. The great majority of the over 20,000 offenders prosecuted for fraud each year have not committed offences of a scale or complexity to justify special arrangements. The concern is with the pursuit of particularly complex cases of financial and commercial fraud.

2.10 We considered whether the criteria currently used for FIG cases would provide a basis for choosing cases for a unified organisation. To judge from the experience of the first year of the FIG arrangements, there may be less than 100 cases current at any one time which are sufficiently serious and complex to meet these criteria (a number of FIG-type cases are receiving similar treatment, but are not formally FIG cases).

2.11 The guidelines for identifying cases which might be suitable for FIG treatment are set out in Annex B. They mention frauds upon Government departments or local authorities;

large scale corruption; large shipping and currency offences; and frauds discovered by DTI inspectors. The Controller of FIG also has discretion whether to investigate cases with an international dimension; those involving nationalised industries and public limited companies; those connected with Lloyds, the Stock Exchange and other commercial exchanges; and other cases involving well-known, public figures.

2.12 An alternative approach would be to look to the guidance given in the Roskill report about serious and complex fraud cases which might be suitable for the proposed Fraud Trials Tribunal. The Roskill Committee thought that such cases are most likely to be found among frauds involving the Stock Exchange, Lloyds and commodities and financial futures markets, and perhaps among some Revenue and Customs cases. The suggested guidelines are reproduced at Annex C.

2.13 All such guidelines are inevitably imprecise. Moreover, it is not apparent that all cases which, for example, are suitable for FIG treatment would also be suitable for a unified investigation and prosecution organisation. FIG cases vary considerably in complexity and location - over half being located outside London. We have analysed the cases currently handled by FIG, and Annex D groups the cases by various criteria. Although it is hard to lay down hard and fast guidelines, we have concluded - guided by the DPP's experience - that of the 100 or so FIG cases there are perhaps 20 to 40 at any one time which are of such complexity and seriousness that they stand out from the others. It is these cases which would benefit most from handling by a unified organisation, because of the specialised skills and knowledge required to understand them and the team work necessary if they are to be pursued quickly and successfully.

2.14 The guidelines, by which these 20 to 40 cases might be identified, would be those potential FIG or Revenue cases involving financial and commercial frauds where over

£5 million was involved plus a few other very sensitive and complex, potential FIG or Revenue cases (for example, those with important international aspects, or involving senior public figures). Revenue cases would be included where there were linked revenue and non-revenue aspects. More detailed guidance about identifying cases might also be prepared in due course. Cases would be considered both in the light of the guidelines and the current workload of the unified organisation. Whether or not a more marginal case was handled by the unified organisation would therefore be influenced by the availability of resources. There might be a ceiling of 40 cases at any one time, not normally to be exceeded.

2.15 These guidelines have therefore been drawn up with a certain number of cases in mind. One result would be that the less complex majority of cases currently being handled by FIG arrangements would not be handled by the unified organisation. This means that in future investigation and prosecution could be carried out in three different ways; by the unified organisation; by existing agencies under FIG arrangements; and by existing agencies outside FIG arrangements.

2.16 This has the possible disadvantage of looking rather complicated. But in fact it would not be, and it should be possible to explain that the basic choice would be whether the case fell to the new organisation, or not. Where it did not, it would remain open to the bodies handling the case to use the FIG co-operation arrangements which have been developed; if they felt it would be helpful to do so. These arrangements might be available even for cases that did not meet the current FIG guidelines. The test would simply be the degree of co-operation that would be useful.

2.17 The Head of the unified organisation would select the cases to be handled. He would be able to refuse to accept any case if he thought that it was either totally unsuitable or that his organisation could not apply adequate resources to the case and that it would therefore be pursued more

effectively by other agencies. He would also need to be able to refer back cases to the originating agency, for example if, on consideration, it were less complex than originally thought. However, on each case he would consult the other parties with an interest in his decisions. And he might be guided in his selection policy by a committee meeting periodically. It might include the head of the Metropolitan and City Police Company Fraud Department, the Heads of the DTI, Inland Revenue and Customs and Excise Investigation Divisions, the Controller of FIG and the Head of the unified organisation. Close consultation and co-operation might avoid the need for the Head of the unified organisation to have a power to call in a case for handling by the unified organisation (similar to the DPP's power to call in a case for consideration). The power of the DPP to call in cases should not cause any practical problems for the unified organisation if both were accountable to the Attorney General.

2.18 Cases would be referred by investigatory agencies, such as the police, DTI, the Inland Revenue or Customs and by regulatory agencies, such as the Bank of England or the Securities and Investments Board (SIB) (acting in concert with the relevant self-regulating organisations (SROs), recognised investment exchanges (RIEs) or recognised professional bodies (RPBs)). They would take the first look at the issues. But the unified organisation would need to be consulted as early as practicable, so action could be taken before witnesses disappeared abroad, evidence was tampered with etc. Therefore cases should ideally be referred when the agency first had clear suspicions of major fraud. The correct parallel in police procedure would be when a decision to investigate a complaint or suspicion is first taken, not when it is decided to mount a full investigation. The latter depends upon evidence of major fraud, and this could be a considerable way into the investigation.

2.19 Of the 20 to 40 cases a year which the unified organisation might handle, only a handful would be likely to involve Revenue frauds or public sector corruption. The great majority would be commercial frauds arising in the London area. Because of this, and because an organisation dealing with that number of cases would be relatively small, the unified organisation would need to be situated in London.

2.20 Some cases would nevertheless require investigations outside London. In such circumstances it would seem reasonable for the unified organisation to request some assistance from other agencies. If this meant that a person from another agency became involved in a case, such a person would legally remain within his own organisation and operate under its powers (although means would have to be found in some cases to enable information to be passed to the unified organisation: see paragraphs 2.42 and 2.43 below). It might also be necessary for the unified organisation to pay for any major assistance.

2.21 It would also be necessary to ensure that the unified organisation had good international links - eg with Interpol - given the considerable foreign element in many major frauds.

2.22 A unified organisation on this scale would be free to concentrate on the really difficult and complex cases which have caused most public concern, such as Lloyds. Because the organisation would be smaller and handle fewer cases than under other options, it should cause less disruption to existing arrangements. As noted above (paragraph 2.16), some of these cases which were not serious and complex enough, or were judged unsuitable for the unified organisation, could continue to be handled under FIG-type co-operation arrangements, where this seemed a useful approach (this might involved using the arrangements for a wider range of cases than hitherto if that were thought useful).

Staffing and management

2.23 It is an advantage of going for an organisation with fairly narrow scope, as suggested above, that it would make it more manageable; and ease the task of getting it under way.

2.24 Staffing needs will of course have to reflect the complexity of the cases to be handled. Further detailed analysis of staffing requirements will need to be undertaken if it is decided to establish a unified organisation, but it appears that it might require a complement of perhaps 30-40 professional staff and investigating officers, and perhaps 60-80 staff all told.

2.25 It seems desirable to have a mixture of permanent staff (perhaps a half), and staff on short term contracts. In practice, but not necessarily in law, those on short term contracts would often be secondees. Some of the staff would come from Government Departments such as the DTI, Inland Revenue, Customs and Excise and the DPP's Department. Others would come from public sector bodies and regulatory agencies, such as the Bank of England and SIB. But it would also be desirable to attract staff from such private sector organisations as firms of City accountants and solicitors.

2.26 A further advantage of establishing a new organisation is that it might prove an attractive place of employment - both to permanent staff, and also to those on short term contracts, to the extent that the latter believed the work to be important and interesting and - for some - that a period of service would assist them in future private sector employment. That has certainly been the experience in the USA, with similar organisations. Nevertheless, it would clearly also be necessary to provide adequate levels of remuneration.

2.27 The staff of the new organisation would almost certainly be civil servants or be in a body subject to civil service controls. As such they would be subject to civil service rules about recruitment, pay, grading and so on. Although the market for people with appropriate financial, legal and accountancy qualifications is very competitive, there is evidence, from DTI for example, that in such situations these rules can be flexible enough to enable staff with the right skills and experience to be seconded. The Treasury therefore believes that it might be possible to provide rates of pay within existing rules which would attract good quality staff. For some secondees employment costs might be shared between the unified organisation and the seconding organisation.

2.28 All staff would formally be members of the unified organisation and would be regarded as acting under the direction of the Head of the unified organisation. To avoid legal confusion and conflicts of interest, and for the sake of uniformity and fairness, all staff should be equally subject to the organisation's procedures (including any code of conduct and complaints procedures) as long as they served with it. For those who transferred from other areas of the civil service, this should cause relatively few difficulties. For example, they would remain members of the Principal Civil Service Pension Scheme (PCSPS). However, for those transferring from elsewhere in the public sector, or from the private sector, the position would be more complicated.

2.29 For example, on the investigating side the unified organisation might expect to take on a short term contract some police officers, in effect seconded from forces in England and Wales. As with other members of the organisation's staff, they would be acting not as police officers, Customs Officers, DTI investigators etc but as members of the unified organisation and would be exercising the powers of the unified organisation, and be subject to its disciplinary and complaints procedures. In this they would be different from other police officers seconded for central service, and they would therefore have a special

status. It would not be appropriate for them to remain subject to the police disciplinary code. In this respect their position would be more like that of police officers seconded for overseas service. We envisage that, like the latter, assuming satisfactory service they would retain a right to revert to their parent force in the rank in which they left (or a higher rank, if promoted in their absence) and would be deemed to have served continuously in the police for pension purposes.

Cost

2.30 An organisation of the size described above (30 to 40 professional staff plus 30 to 40 supporting staff) would probably cost about £4 to 5 million a year. This might represent £2 million or so for the staff costs of its employees; perhaps £2 million or more for the costs of prosecuting Counsel who are not employees and of temporary assistance from other agencies; and the remainder for accommodation, computer services and general administrative expenditure.

2.31 But the figure of £4 to 5 million does not represent the net additional cost of the organisation itself. Against this figure has to be offset the fact that it would be undertaking work presently done by other bodies; that some additional resources may in any event be required to deter and pursue fraud whether or not there were a unified organisation; and that the organisation might prove more cost effective in deterring and pursuing fraud than present arrangements. Further work to establish the gross and net additional costs of a unified organisation would be needed once it was clear what its precise form and functions would be.

Powers

2.32 A new unified organisation would have to possess adequate powers to carry out its functions effectively. These powers would need to cover investigation, arrest, protective measures

(such as the freezing of assets) and disclosure of information (a power to call in cases for handling by the unified organisation might also be needed if it were thought undesirable in principle to rely only on co-operation to select cases: see paragraph 2.17 above). There would be little point in setting up a unified organisation if it were not able to exercise powers at least no weaker than the relevant powers of the agency which had referred the case to it. But it would not need all the powers currently exerciseable by its constituent parts. Some of them are irrelevant to cases of fraud. A reasonable starting point is the powers provided by the Police and Criminal Evidence Act 1984. These powers would need to be supplemented by powers to seize papers and require evidence to be given, ie. powers similar to those of the DTI under Sections 432 and 447 of the Companies Act, and perhaps certain of the control powers, of access to documents and premises, exercised by the Customs & Excise, which go further than those available to the police. Another option, which could be simpler but more contentious, would be to base the powers of the unified organisation on those of Customs and Excise. In any event there would also have to be powers under the Taxes Management Acts to obtain personal tax information, and a new power to enable it to be made freely available within the organisation and perhaps also to be passed on in certain circumstances (see paragraph 2.44 below). The powers presently available to the various agencies, and the group's recommendations for a new unified organisation, are set out in more detail at Annex E.

2.33 It is never easy to persuade Parliament to grant wide ranging investigatory powers, still less when they are concentrated in one organisation. It will, however, be helpful that the proposed new organisation will have a strictly defined and narrow scope covering only major financial fraud. It will also be necessary to provide adequate safeguards (see paragraphs 2.38 to 2.40 below). It will also be important how the new powers are presented in draft legislation.

2.34 We have considered a system whereby no powers would be given specifically to the unified organisation. A power possessed by a particular agency would be exerciseable on behalf of the new organisation only by an officer from that agency, who would retain the authority to use those powers by virtue of remaining a member of his home agency. We have, however, rejected this as inefficient and as incompatible, both legally and practically, with the unified character of the organisation. We have also examined whether it would be appropriate for a particular power - eg one possessed by the Inland Revenue or Customs & Excise - to be exerciseable only with the authority of that department or through a court order.

2.35 Prevailing public and political attitudes will determine the ease with which it will be possible to give effective powers to the new organisation. In a sense, the unified organisation and its powers stand or fall together. If the idea of a unified organisation is accepted, it would be reasonable to expect that Parliament would give it the powers it needed. Ideally, it would be given a tailor-made set of powers to suit its particular purposes.

2.36 In some circumstances, there would be attractions in drawing attention in this way to the powers to be given to the new organisation. A similar option would involve listing the powers it would have, but confining the list to powers already enjoyed by other agencies. But it should also be possible to grant powers by reference to other pieces of legislation, merely conferring powers originally given, for example, to the police or Customs & Excise, on the unified organisation. The last mentioned option might be less contentious; and might produce a shorter Bill than the other options, which could make its drafting and Parliamentary handling easier.

2.37 By taking this option it might also be possible to provide some flexibility in the range of powers to be given to the unified organisation. The main powers would probably be applied by the primary legislation used to establish a unified organisation; but it might also be possible to allow a selection from the general powers granted by various Acts to be applied to the unified organisation by secondary legislation. Secondary legislation was used to apply the Police and Criminal Evidence Act 1984 to Customs and Excise. In that instance the statutory instrument was subject to negative resolution, perhaps because Customs and Excise already enjoyed similar powers. If greater safeguards were required in the case of the unified organisation, in some circumstances the statutory instrument could be subject to affirmative resolution. Such an approach might enable the Government to make relatively minor additions or modifications to the powers of the unified organisation - to correct faults in the list of powers originally thought necessary or to respond to developments in legal practice - without requiring further primary legislation.

Safeguards

2.38 The acceptability of the new organisation will also hinge to a degree on whether effective safeguards can be devised.

2.39 All the constituent agencies have their own codes of conduct. It would, however, be invidious if officers seconded to the new organisation were to be governed by different codes in performing the same duties as their colleagues. We therefore think that a code of conduct, probably with statutory backing, should be devised for the new organisation. It should draw on the existing police code of conduct, expanded as necessary, and on other codes, to cover the discharge of powers not enjoyed by the police.

2.40 The Attorney General would be answerable to Parliament for the conduct of the new organisation, and actions by it. We do not consider the PCA to be an appropriate safeguard in the case of criminal investigations and prosecution (just as the PCA is excluded from the DPP's Department). We do, however, consider that there will be a need for a complaints procedure. This would cover the conduct of the organisations' officers in exercising their powers. It would not of course deal with the merits of decisions whether or not to prosecute, in respect of which the courts provide ample safeguards. We envisage also that the right to claim damages would be available to aggrieved parties.

Information and Relationship with Regulatory Bodies

2.41 One particular aspect that could give rise to difficulties is the **passage of information** between the new organisation and the other agencies likely to have knowledge relevant to cases it handles.

2.42 The inclusion of Revenue cases within the unified organisation's ambit and the passing of information between the Revenue Departments and the unified organisation could involve particular difficulties. But these should not be insuperable. For example, concern has been expressed that some of those with important information (eg banks) would be very worried about the possibility of the Revenue Departments obtaining - via the banking supervisors and the new organisation - tax information unrelated to the particular case under investigation, and might be unwilling to provide information at all. To counter such fears it might be laid down that such information could only be used in pursuit of the organisation's functions of investigating and prosecuting major fraud; and could only be passed to third parties (eg the Inland Revenue) with the consent of the originator. Such a restriction might, however, require amendment of the Attorney General's guidelines on the disclosure of unused material to the defence.

2.43 The other side of the coin is a concern that information obtained by the Inland Revenue about individuals' tax affairs might have to be made freely available to the unified organisation, and then passed on to other agencies. It is a long standing principle that the Revenue do not pass details of individuals' tax affairs to other departments, or to Ministers. However, it would be necessary to ensure that the Inland Revenue were able to supply all the information necessary to pursue cases adequately, certainly where there was a tax fraud aspect. Having set up the unified organisation to pursue and deter fraud it would clearly be unacceptable if such a case could not be completed successfully for want of information held by the Revenue. If necessary, safeguards could be introduced. For example it could be stipulated that Revenue information would be supplied only in respect of nominated cases, and perhaps only for specified purposes of the unified organisation, and perhaps only with a court order. Under the proposals in the Drug Trafficking Offences Bill the police will be able to go to court in camera to apply for an order requiring the Inland Revenue to release information about the tax affairs of people under investigation for drug trafficking offences.

2.44 The unified organisation will also need close links with **regulatory bodies** in the financial sector, ie the Bank of England in respect of banks, the Building Societies Commission and Registry of Friendly Societies, the SIB and SROs to be set up under the Financial Services Bill, and the DTI in respect of insurance companies. Cases of serious financial fraud may well first come to light through regulatory enquiries. The Bank of England and the DTI are already empowered to pass supervisory information to the relevant authorities in furtherance of criminal proceedings. Similar powers are proposed for the Building Societies Commission and the SIB. Supervisors will, however, need to be able to communicate information to the new unit at the point at which they become suspicious, rather than waiting until they have solid evidence. New powers will be necessary. Similarly, the new unit may need powers to pass information to supervisory bodies in cases where this will assist it

or them to perform their respective functions. The circumstances in which information can be passed in either direction should be tightly circumscribed, so as not to endanger the willingness of institutions to confide in their supervisors.

2.45 Supervision of financial institutions is, however, a function distinct from the investigation and prosecution of financial fraud. So, for example, we do not envisage that the unified organisation would prepare the sort of reports on company activities currently published by DTI (if such a report were required it would have to be prepared by DTI after the prosecution, under Section 432 of the Companies Act). Whilst therefore there should be a two-way flow of information between supervisors and the new unit, we do not think they should be more closely integrated into it. Some machinery may, however, be needed to ensure continuing co-operation, a point we return to in paragraph 2.56 below.

Accountability and Ministerial Responsibility

2.46 When the possibility of establishing a unified organisation was examined in 1983 the question of how such an organisation should be accountable to Parliament was left unresolved. The two main options were direct accountability to the Secretary of State for Trade - as he then was - (the unified organisation being a unit of DTI) or accountability to the Attorney General acting in an independent capacity (the unified organisation forming part of the DPP's Department).

2.47 The argument then was complicated by the fact that legislation was seen only as a distant possibility, so the unified organisation would have had to operate under existing powers. This meant that the constitutional attractions of placing responsibility with the DPP and the Attorney General had to be weighed against the difficulty that explicit permission from the Secretary of State for Trade would have been necessary every time Companies Act powers to require the production of financial documents were used. Moreover, under existing law only DTI officers can exercise the powers under section 447 of the Companies Act 1985 to require the production of books and papers.

2.48 However, now that legislation is envisaged some of these difficulties can be overcome. As indicated at the Prime Minister's meeting on 9 January, the DTI would see no difficulties about equipping the new organisation with powers similar to those available to the Department under section 447 of the Companies Act. As discussed above, it might also enjoy powers currently available to the Police and Revenue Departments.

2.49 Consequently there are less difficulties now with the option of making the unified organisation **accountable to the Attorney General acting in an independent capacity**. The case for this course is strengthened by the undesirability of a Minister acting in a departmental capacity being answerable to Parliament for decisions on prosecutions. Although the Customs and Excise, Inland Revenue and DTI do prosecute in many cases, outside the specialised tax and revenue field it is normal practice for Departments with responsibility for prosecutions to restrict these to their very limited and specialised fields. And in those areas, it is not normal for Ministers to answer questions in Parliament on particular cases.

2.50 Even when consent to undertake proceedings for offences is vested in a Minister of an administrative department it is almost always the case that the Attorney General or the DPP are also named as having the power to prosecute or give consent. They can thereby exercise some influence over the prosecution policy of the Department. Moreover, the Attorney General nominates Counsel, is consulted on certain cases and through the DPP can call in any criminal case for consideration. He alone has the power to terminate any prosecution brought by a Department by entering a nolle prosequi (this power is, however, exercised only in exceptional circumstances; it is more common for prosecutions to be terminated by the formal offering of no evidence by the prosecution).

2.51 The cases to be dealt with by a unified organisation do

not belong to a limited and specialised field in the same sense as those cases falling to a Revenue Department, for example. The offences in major fraud cases will range across criminal law and may also give rise to civil actions. There could be unease, or strong opposition, in Parliament and in legal circles if the ultimate responsibility for prosecutions were vested in anyone other than the Attorney General. It is generally accepted that the Attorney General has a special, independent, constitutional role in relation to the enforcement of the criminal law and decisions as to whether or not a prosecution is in the public interest.

2.52 It is also relevant that the location of a unified organisation alongside the DPP's Department would make it easier to build upon the current FIG arrangements (the permanent FIG staff report to the DPP, as does the new Crown Prosecution Service).

2.53 The other possibility would be for a unified organisation to be a **unit of the DTI**, reporting, perhaps through the Permanent Secretary, to the Secretary of State. This would build upon existing DTI responsibilities for investigating and prosecuting certain commercial frauds under various statutes. It would provide natural links with DTI's regulatory activities in the UK and their contacts overseas. It might also profit from DTI's links with the accountancy profession and experience of secondment of accountants to Government, and could in some respects make it easier to introduce the new arrangements in advance of legislation.

2.54 But under this arrangement there would be the risk of suspicion of political interference in decisions on investigation and prosecution. There would be bound to be criticism from the opposition and commentators on these grounds. And although locating a unit within the DTI would remove the need for legislation giving it the DTI's powers to mount Companies Act enquiries, and the DTI prosecutors and investigators could be responsible to the Attorney General for operational decisions, it would still need additional powers to deal with Revenue aspects of cases and to handle certain functions currently undertaken by the police.

2.55 On balance our general conclusion is that the best option would be to make the unified organisation accountable to the Attorney General, alongside the DPP's Department. Legislation will be needed in any event, and this can be used to equip the organisation with the necessary powers, from the DTI and elsewhere.

2.56 Wherever it was located, however, it would also be important for there to continue to be close co-operation between all the bodies concerned if serious fraud is to be tackled effectively and efficiently. It might help to create some kind of steering committee for the organisation, with representatives from the other organisations with an interest in cases. This would be a development of the Committee mentioned in paragraph 2.17 above. Such a steering committee might with advantage include representatives from the main supervisory agencies - at least the Bank of England and SIB.

Timetable for Implementation

2.57 A new organisation could not formally get underway before enactment of appropriate legislation. This would probably be the 1986-87 Criminal Justice Bill. This might not have Royal Assent until, say, the autumn of 1987, and many of its provisions might not come into force until 1988.

2.58 Because of the need to have appropriate powers, both to obtain information and to disclose it as appropriate, the unified organisation could not operate before the relevant provisions came into effect. However, it would be possible to begin to set up the organisation, obtain accommodation, recruit staff etc, beforehand.

2.59 It would probably take at least a year to complete the organisational preparations. Allowing for this, and the preparation and passage of the necessary legislation, it seems unlikely that the unified organisation could commence operations before April 1988.

3. CASE FOR AND AGAINST ESTABLISHING A NEW ORGANISATION

3.1 The preceding paragraphs discuss what a unified organisation would look like if one were set up. In short, we think the best form of organisation would have the following characteristics:-

(i) It would be responsible for both the investigation and prosecution of serious and complicated cases of financial fraud, but not for detection.

(ii) It would be responsible only for handling the small number (perhaps 20-40 at any one time) of really serious and complicated cases, leaving other cases to be handled where they are at present - using the FIG co-operation procedures where appropriate.

(iii) It would handle the very small number of Inland Revenue cases (and even smaller number of Customs cases) where there were closely linked revenue and non-revenue aspects.

(iv) It follows that the organisation itself would be a relatively small and manageable one.

(v) It should be accountable to the Attorney General, probably as a new agency in parallel to the DPP.

(vi) The main powers available at present to the organisations responsible for investigating and prosecuting such cases would have to be transferred to the new organisation, with matching safeguards.

3.2 For present purposes we assume that the alternatives are to proceed with establishing an organisation on these lines; to extend the coverage of such an organisation to all FIG cases; or to maintain existing arrangements, perhaps developing and intensifying the FIG co-operation arrangements to some extent.

Arguments Against

3.3 There are several arguments for not establishing a new organisation on the lines described.

3.4 First, there is the case for keeping prosecution and investigation separate. The argument of substance is that prosecuting lawyers need to be detached from the investigative process, in order to make an objective assessment of whether a prosecution can be brought successfully. It is also argued that presentationally it might be difficult to reconcile the proposal for combining investigation and prosecution functions with the setting up this year of the independent Crown Prosecution Service, which will have the effect of separating the two functions for the generality of crime. It is, however, relevant that the current FIG co-operation arrangements for cases of financial fraud were established at much the same time as the decision to proceed with the Crown Prosecution Service, and explicitly recognised the value and importance, in cases of financial fraud, of bringing prosecution lawyers in at an early stage in the investigation process. In this, complex fraud cases have been recognised to be different from the generality of crimes. The fraudsters' are often particularly sophisticated criminals, and the precise nature of their frauds may be difficult to detect. The concept of bringing prosecution lawyers in at an early stage is designed to allow investigations, which can otherwise go wide and be very time-consuming, to be directed at those specific areas thought to be important if a successful prosecution is to be mounted.

3.5 Second, there is the difficulty that nowadays many criminal activities involve an element of financial fraud. It can be argued that it would be wrong to separate the fraud element out, and give it to the new organisation, leaving the police to investigate other aspects. We think this is largely a matter of getting the right procedures for choosing cases to be handled by the new organisation. The concentration recommended above on the few really major cases of complex fraud should help in this respect. Cases involving fraud, but where the crimes were for the most part non-financial, should normally be left to be handled by the police, using FIG co-operation arrangements if appropriate.

3.6 Third, there is the difficulty of asking Parliament to provide a new organisation with sufficient powers. This is mainly a question of providing powers equivalent to those of other organisations, rather than creating entirely new ones. Even so there could clearly be parliamentary difficulties: something which would depend on the climate of opinion at the time. Permitting information to be passed to and from the Inland Revenue raises some particularly difficult issues, but clearly it would have to be possible, at least for the limited range of cases where there was an element of fraud on the Revenue.

3.7 Fourth, it has been suggested that a new organisation could find difficulties of co-operation with some existing bodies, such as the police and regulatory agencies. It would certainly be important to establish machinery for ensuring continued co-operation, on the lines proposed above. It would also help in this respect for the organisation to be a small one, handling a limited number of cases. For this means that its creation would be more likely to be seen as a piece of machinery designed to help existing bodies handle certain cases, rather than to take their responsibilities or resources away from them. It would also in practice make continuing co-operation essential, as cases were referred to the new body, and no doubt on occasion referred back to the originating agency - for example if it became clear that only the tax aspects of some particular case were worth pursuing.

3.8 Fifth, there are the consequences of the creation of a new organisation for the police - given the responsibility of Chief Officers of police for the investigation of crime within their force's area - and in particular for the City of London police force which is most closely involved in the kind of case that it would handle. There could also be some concern that establishing a new unified organisation for fraud could in due course set a precedent for similar developments in other areas of crime. While that is clearly possible, if the organisation proved successful, we believe that complex financial fraud does call for a special range and concentration of expertise, not so necessary in other areas of crime.

3.9 Finally it has been pointed out that one advantage of present arrangements, that will be lost for those cases handled by a unified organisation, is the present level of flexibility in the resources that can be devoted to particular cases. For example, at present the police can at short notice switch very large resources to any case being handled under the FIG arrangements, if it becomes urgent to do so. And they can apply expertise gained in areas other than major fraud. This is the other side of the coin to the advantages of having dedicated resources. This point also suggests the need for the unified organisation to continue to co-operate closely with other agencies. We believe it should be permitted to ask for short term assistance in some circumstances. Major calls for assistance could, however, prove difficult because of existing comitments within the organisations whose help was required.

Arguments in favour of a unified organisation

3.10 At his meeting with the Prime Minister on 31 December 1985 Lord Roskill made clear his criticism of present arrangements. He said that:-

"His Committee had concluded that the authorities were fighting fraud with a machine that was seriously inadequate. The services for investigation and prosecution of fraud were far too fragmented. 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."

3.11 The essential argument for a unified organisation is that it would be more efficient than existing arrangements. It would be clearly accountable for all stages of the process, removing any rivalries between those agencies at present involved in the cases it would handle. There would be no possibility of attributing responsibility for delays and inefficiencies to others. It should reduce delays and inefficiencies that can arise as cases are handed from one organisation to another. It would also give each case single direction through all its stages from investigation to eventual prosecution, with those responsible for mounting a prosecution able to help direct the investigation from the outset.

3.12 We have found it difficult to establish what proportion of inefficiencies and delays in cases at present can be put down to organisational factors. The police believe that most if not all delays can be attributed to other causes - some inevitable, some that may be removed by implementing other Roskill recommendations, and some due to resource limitations.

3.13 Such investigations can vary greatly in length, from a few weeks to over a year. Since late 1983 the average time taken by the Metropolitan police to investigate serious fraud cases has been 4½ to 5 months, and 8 to 9 months for the City of London police. But these figures are influenced

by a number of very lengthy cases (such as the Lloyds cases, which have been running for over 3 years). The majority of police investigations in London and the provinces take less than 4 months. Investigations by government departments such as DTI and Inland Revenue also show major variations; those by the Inland Revenue, for example, vary from 6 months to 18 months. And further police enquiries may have to await the DPP's analysis of the results of such DTI investigations.

3.14 Some delays have been caused by changes in the investigating personnel. The DPP considers that in the first 15 months of FIG operations there have been 7 cases in which there have been such delays, averaging a couple of months. A unified organisation clearly could not avoid all personnel changes; but with broadly the same team taking a case through from the outset to its completion there should be greater continuity, and less risk of breaks in attention to the case. Single accountability would also help.

3.15 There can also be an interval between completion of an investigation and a decision whether or not to prosecute, for instance while the prosecution authority reconsiders the case. The police consider this to be a major factor. The DPP have at present identified delays at that stage of from 6 weeks to 6 months in 5 per cent of cases during the first 15 months of FIG operations. Often the cause of interruptions at this stage is the time it takes for an appropriate prosecuting counsel to become free and to read his way into a case. A unified organisation would not in itself help here: presumably cases would still be conducted by independent prosecuting Counsel. It has been suggested to us that there might be scope within the context of a unified organisation for using a barrister employed by the organisation - particularly where he was a practising barrister on a short-term contract - in support of independent Counsel in conducting the case. This raises some fundamental issues of legal practice, but might merit further consideration.

3.16 A further cause of inefficiency, for example in the Lloyds context, is that because the Revenue Departments are not part of the FIG arrangements there can be overlapping investigations, with information gathered in one not readily available in the other. A unified organisation with powers to conduct the revenue aspects of cases as well as non-revenue aspects would avoid overlaps, duplications and inconvenient and inefficient methods of operation.

3.17 It should also help to improve management and direction of the work in a number of other ways:-

(i) The organisation's resources would be dedicated, not, as at present under the FIG arrangements, subject to sudden removal to deal with quite different matters. (But there would be a corresponding lack of flexibility, see paragraph 3.9)

(ii) The various branches of the unit would be located together, and a wide range of skills and expertise (accounting, legal, investigatory, etc) would be available in-house. This should help to promote common aims and a team spirit.

(iii) The organisation would develop highly specialised investigatory knowledge and skills in pursuing complex financial fraud, in a way that would not be possible in a less specialised organisation.

(iv) Its status might help to attract the high quality staff that are needed from the private sector.

(v) Legislation would remove some of the restrictions on passage of information from one organisation to another, which can at present sometimes hinder investigation.

In a variety of ways, therefore, it seems that productivity ought to be increased.

3.18 Some of the delays and inefficiencies that occur with present

arrangements are caused by difficulties in obtaining evidence; some might be resolved by providing more staff; but some may be due to organisational features (even though the FIG co-operation arrangements mark a considerable improvement on earlier practice, and the police argue that they are already co-operating fully on cases with the other interested agencies). Most of us believe that a new organisation on the lines described above, given good management and adequate resources, would provide a significant improvement in both speed and effectiveness of tackling major cases of complex financial fraud.

Conclusion

3.19 Due weight must be given to the arguments against establishing a unified organisation. But none of them, in our view, raises insuperable difficulties. It will be essential to have legislation to give the new organisation sufficient powers; and for it to be given adequate resources and good management. If these conditions are met, then with the exception of the police - who believe that many of the difficulties experienced in complex fraud cases are largely outside the control of the investigators and do not reflect organisational problems, that such problems as could be tackled would best be left to closer co-operation within FIG arrangements, and that the creation of a unified organisation could raise constitutional difficulties (see Annex F) - we believe the balance of advantage lies with going ahead, with an organisation on the lines suggested in Section 2 above.

4. OTHER ISSUES

4.1 The previous sections have considered the likely characteristics of a unified organisation and case for and against establishing one. This leaves a number of other miscellaneous issues we have been asked to look at. We will have to return to the question of resources devoted to the pursuit and deterrence of fraud in a further report, once the report of the Home Office group is available. The present section considers the need for case controllers (recommendation 7) and for more accountants (recommendation 11).

Case Controllers

4.2 The Roskill Committee's views on the use of case controllers were set out in paragraphs 2.65 and 2.66 of their report. They considered that, in future, from the time a serious fraud was detected, one person from one of the organisations concerned with fraud should take control of the case until it ended. "He should be responsible for directing the initial investigation process and employing suitable accountancy and legal services from the start; briefing prosecuting counsel early on, and at all times ensuring that there is close co-operation between them; protecting documents against destruction or removal; sifting the evidence and detecting the gaps which need to be filled; arranging for witnesses' statements; sorting, filing and numbering the exhibits in an orderly way so that they are reduced to manageable proportions; preparing, in conjunction with counsel, simplified charts and schedules and for visual displays in court; always with a view to the ultimate presentation of the case in court and making it ready for trial quickly. Changes of a Case Controller in the middle of a case should not take place. Jointly with the prosecuting counsel who is briefed in the case, the Case Controller would be answerable for any defects which arise in the preparation and presentation of the case and any unnecessary delays."

4.3 Much of this seems eminently sensible. Indeed case controllers, or something analogous, have been used by the FIG, DTI and the Revenue Departments for some while. And where the police are in the lead in a case a senior police officer has overall supervision of that case (in consultation with the DPP as necessary).

4.4 There are at present certain differences between organisations in the particular type of person whom they appoint as case controller. For example, in FIG cases the officer who fulfils the case controller's duties is a lawyer. The DPP sees many of the judgements he makes as requiring professional legal knowledge. On the other hand, in the Revenue Departments the person in charge of the case tends to have a different background, as tax inspector and/or investigator, administrator etc.

4.5 These differences probably reflect in large part both the different organisational histories of the various departments (lawyers taking the lead in DPP, tax inspectors in tax investigations, and so on). It is not clear that in the case of an organisation undertaking investigation and prosecution, and in which legal and accountancy experts were fully involved from the start of a case, it would be desirable to stipulate in advance the precise qualifications necessary to be a case controller.

4.6 Indeed to try and lay down hard and fast rules about the category of people who would have the lead responsibility for cases within the unified organisation could be detrimental to its chances of success. If the organisation is to succeed in attracting good quality staff it will need to be seen to offer relatively equal opportunities to skilled and motivated people whether their background is in the law, accountancy or investigation. The main requirements would seem to be an ability to be an effective investigator where needs be, to understand prosecution procedures and what is needed to mount a successful case, and a facility for

managing people, of varying skills and backgrounds, and their work, effectively.

4.7 There is therefore general agreement with the principle of appointing case controllers to take charge of the investigation and prosecution of all serious fraud cases. The case controller would come from the body with overall responsibility for the investigation (ie the police, DTI etc for cases which fell outside the FIG and unified organisation arrangements). Where a body is responsible both for detecting and investigating a particular fraud it may be possible to appoint a case controller as soon as there are clear suspicions of serious fraud. For cases referred to the unified organisation the appointment of a case controller within the unified organisation would have to await formal acceptance of the case. However, the intention is that initial suspicions of serious fraud should be put to the unified organisation as soon as possible.

Accountants

4.8 The Roskill committee were also especially concerned that adequate accounting advice should be readily available to the police and the DPP. The questions as to whether permanent accounting staff should be attached to police fraud squads, and more external accounting advice made available to the police, are being addressed by the Home Office chaired group considering the Roskill recommendations. But there is also the question of the accountancy resources available to the DPP. For this purpose we include the unified organisation, if one were established.

4.9 There is no doubt that the involvement of skilled accountants with professional experience outside the Civil Service is essential to the successful investigation and prosecution of many serious and complex fraud cases. Complicated, and often misleading, financial records have to be examined and understood. The Inland Revenue and DTI have considerable experience of using full-time accountants both as advisers

and investigators; and most DTI Companies Investigation Branch and Insolvency Service investigators have considerable accountancy experience. The DPP are also increasingly seeking accountancy advice, and so far 3 permanent accountants have been attached to the FIG.

4.10 The unified organisation would require professional accountants as well as investigators who had accountancy training (even if they were not fully qualified accountants). The number of professional accountants required would depend on the nature of the cases referred to the organisation. The DPP's analysis of current FIG cases suggests that the FIG would employ professional accountants in about half of the cases that would go to the unified organisation. Three or four senior and very experienced professional accountants supported by five or six less experienced people might be needed on the basis that each senior accountant could reasonably be expected to supervise 4 or 5 cases provided he had adequate support from the less experienced assistants, who would do the detailed investigation work. Consequently, the organisation might require from 8 to 10 professional accountants overall.

4.11 Initial estimates by the DPP suggest that perhaps a dozen accountants would also be required for serious cases which would still be handled by the FIG and for other fraud cases.

4.12 It therefore appears that the unified organisation and the DPP would need up to 20 or so permanent, professional accountants. Some of these posts might be filled by transfers from elsewhere in the public sector (eg DTI or the Inland Revenue) or by existing DPP staff. However, it is likely that many will have to be recruited from the private sector.

4.13 The unified organisation would also on occasion need to call upon the services of outside accountancy firms. At present the DTI's Companies Investigation Branch often call upon the assistance of leading chartered accountants when investigating a major case or where a public figure is involved.

5. CONCLUSIONS

5.1 We were asked to look at recommendations 1, 7, 10 and 11 of the Roskill report.

5.2 We agree with the recommendation (no 7) that case controllers should be appointed to see through all serious fraud cases from the beginning of the investigation to the verdict. We also agree that more expert accounting staff are required in the DPP (recommendation 11). These two issues are discussed in section 4. We will return to the question of resources (recommendation No 10) when the Home Office group has got further with its work.

5.3 The bulk of this report is concerned with the Roskill Committee's proposal for an urgent examination of the need for a new unified organisation responsible for all stages of the pursuit of serious fraud cases. Section 2 examines in detail a variety of practical problems that would have to be faced in setting up such an organisation, and develops possible solutions. What emerges is a preferred form for an organisation, with the following characteristics:-

(i) It would be responsible for investigation and prosecution of serious and complex cases of financial fraud, but not the initial detection and identification.

(ii) It would handle only a small number of serious and complex, financial and commercial cases, where a unified attack using a range of skills is most justified. Around 20-40 cases current at any one time fall into this category. These would include a small number of Inland Revenue and Customs cases where there are closely linked non-revenue aspects. The FIG co-operation arrangements could continue to be used for other cases where appropriate.

(iii) A "steering committee" of representatives of the police and other agencies concerned is suggested, to advise criteria for the choice of cases, and ensure co-operation between the new body and the other agencies.

(iv) It would be a relatively small organisation. It would need strong management, and to be adequately staffed. Perhaps there would be a total of 30-40 professional staff in all, though this would need further consideration. It would be important to attract the right kind of staff (accountants and lawyers) from the private sector, as well as from elsewhere in the public sector. The total cost might be around £4 million to £5 million a year, but some of this should be offset by savings elsewhere.

(v) It would be accountable to the Attorney General, alongside the DPP.

(vi) Legislation would be needed to provide for the transfer of appropriate powers (and corresponding safeguards), and to permit exchange of information with the other bodies concerned.

5.4 Section 3 sets out the arguments for and against establishing such an organisation. There are difficulties, but although the police have considerable reservations we do not believe any of them to be insuperable. There would also be significant advantages. In particular there would be the gains from having a single organisation accountable for all stages of a case, from investigation to verdict; from the unified management of resources; from the specialised expertise that would be developed; and from the elimination of some of the delays and inefficiencies that can occur at present as cases are passed from one organisation to another as particular aspects are investigated and as cases progress from investigation to prosecution. On balance, with the exception of the police representatives, we think that for the range of serious and complex cases we have in mind the advantages outweigh the disadvantages. The police reservations are set out fully in Annex F.

THE MEMBERS OF THE WORKING GROUP

The working group set up in response to the Chief Secretary's request to officials (as described in paragraph 1.12 of the Report) comprised the following:

Chairman:	Mr D L C Peretz	- HM Treasury
Members:	Mr P R H Allen	- HM Customs & Excise
	Mr K Teller	- HM Customs & Excise
	Mr J Wood	- Director of Public Prosecutions
	Mr W J Bohan	- Home Office
	Mr D Hugo	- Inland Revenue
	Mr J B Shepherd	- Inland Revenue
	Mr S Wooler	- Law Officers Department
	Mr C W Dyment	- Lord Chancellor's Department
	Mr A A Duguid	- Department of Trade and Industry
	Mr D Hobson	- No 10 Policy Unit
	Mr J P Charkham	- Bank of England
	Mr M Buck	- Chief Constable, Northamptonshire Police
	Mr J A Dellow	- Assistant Commissioner, Metropolitan Police
	Mr G Hosker	- Treasury Solicitors Department
	Mr A Wilson	- HM Treasury
	Mr M A Hall	- HM Treasury

The following also attended meetings:

	Mr R H Lawrence	- HM Customs & Excise
	Mr D G Williams	- Director of Public Prosecutions
	Mrs S Street	- Home Office
	Mrs L Pallett	- Home Office
	Mr J R Wollman	- Department of Trade and Industry
	Mr O Kelly	- Commissioner of Police, City of London
	Miss C E C Sinclair	- HM Treasury
Secretariat:	Mr P S Hall (from 17/2/86)	- HM Treasury
	Mr R J T Watts (to 17/2/86)	- HM Treasury

ANNEX B

CURRENT FIG GUIDELINES

(extracts from text of Home Office Circular No.16/1985 to Chief Officers of Police concerning the investigation of fraud, dated 15 February 1985)

5. The provisions of this Circular do not remove the need, expressed in the DPP's letter of October 1981, for Chief Officers, where appropriate, to seek legal advice early in the course of the investigation of a suspected fraud where full FIG handling is not considered appropriate...

Purpose of FIG

8. The two major objectives of FIG will be first, to ensure speedy investigation and institution of proceedings in those cases where that course is justified and second, early identification of those cases where an investigation is unlikely to result in criminal proceedings so that the investigation may be discontinued and valuable manpower and other resources deployed to other investigations. It will be an essential function of FIG, and a matter over which the Controller will exercise close supervision, to avoid wastage of time on minor offences, minor offenders, blind alleys and peripheral matters.

Identification of a FIG case

9. The initial complaint may be made to DTI, less commonly to the DPP and, probably in the majority of cases, to the police. Not all cases of fraud will require FIG handling but the following paragraphs describe the type of case encountered by the police where FIG is likely to be the appropriate means of taking the investigations forward. This list is by no means intended to be exclusive but rather to serve as a guide to the sort of fraud complaint where FIG should be considered from the outset. Where there is any doubt about the

need for FIG handling the fraud complaint should be referred without delay to the head of the force Fraud Squad or to the ACC (Crime) as appropriate. If there is doubt, error in favour of a FIG should be made, at least at the outset but, of course, this list is concerned only with cases meeting criteria of substance, complexity and importance. The following types of fraud may be suitable for FIG treatment:

(i) upon Government Departments and local authorities, for example VAT-related fraud;

(ii) which include large scale corruption; and

(iii) involving large shipping and currency offences.

Frauds discovered by Inspectors appointed pursuant to section 109 of the Companies Act 1967 or section 165 of the Companies Act 1948, and reported by them to DTI in the latter case, will also be referred by the Department to the Controller of FIG.

10. The following types of fraud case should also be reported to the Controller of FIG so that he may exercise his discretion whether they should be investigated by FIG:

(i) upon Governments of other countries;

(ii) with an international dimension;

(iii) involving nationalised industries and public limited companies (eg British Leyland, Rolls Royce);

(iv) by persons connected with Lloyds of London, the Stock Exchange and other Commercial Exchanges; and

(v) involving well-known public figures (eg Members of Parliament, captains of industry).

Reporting of FIG cases

11. As soon as the police, DTI or DPP have made a preliminary judgement that the case is worthy of FIG investigation the Controller should be consulted....The Controller will convene a meeting at the earliest convenient time inviting representatives of the police and DTI and arranging for a DPP lawyer and FIG accountant to attend...

At this meeting the decision will be taken whether FIG is the appropriate manner of investigation...where FIG is ruled out at this stage, the Chief Officer should nonetheless consult the DPP as described in paragraph 5 above wherever necessary. Should further investigation suggest that FIG investigation is necessary, the case should be referred back to the Controller. In cases reported to the DPP pursuant to section 41 of the Companies Act 1967, the Controller will immediately liase with the Inspectors through the Inspector of Companies with a view to deciding lines of enquiry.

Investigation by FIG

12. As soon as possible after the decision to investigate by way of FIG has been made and once all parties have had an opportunity to consider what paperwork there may be, a further meeting will be held to determine the future direction of the investigation. In urgent cases, where immediate police investigation is required, this meeting may be dispensed with.

13. ...It may be found early in the police investigation that a request to DTI for an inspection under section 109 of the 1967 Act is desirable. Should this be so, the Controller will consult directly with the Inspector of Companies at DTI and ask for an early and speedy inspection so that the police investigation is not delayed.

14. When the enquiry has been completed a decision will be made whether or not to prosecute. AS the DPP's lawyers will have extensive knowledge of the case and as it will have become clear in many instances before completion of the police investigation that proceedings will be taken, it is hoped that the papers will be in a form enabling them to be served upon the defendants soon after proceedings have been instituted. It is likely that as the investigation proceeds there will have been discussions as to the appropriate charges to be preferred against the defendants.

Consultation with Counsel and other specialist advisers

15. The DPP will not normally consult Counsel before committal for trial but inevitably there will be cases of such magnitude, complexity and importance that Counsel will need to be consulted. Every effort will be made to ensure that Counsel's advice is obtained speedily and the Attorney General will nominate Counsel who are not only experienced in this field but who are known to be available to deal with the particular case expeditiously....

Police participation in FIG

16. Police officers will not be attached permanently as an integral part of FIG but, as before, will operate under the operational supervision of their Chief Officer in full co-operation with the new Unit. This arrangement has been agreed in recognition of each Chief Officer's individual responsibility to investigate crime within his area and the need for police officers involved in a fraud enquiry to retain their powers as constable: a constable holds office under the Crown and in law cannot be subject to direction as to the exercise of those powers.

17. Where referral of a fraud complaint in his force area has given rise to a FIG investigation, the Chief Officer will make appropriate arrangements to provide sufficient officers to take forward the enquiry on the lines and at the speed agreed with the Controller at the meeting described in paragraph 13 above. In selecting officers for such a task, Chief Officers will wish to bear in mind the particular skills required for such investigations and the need to develop a body of expertise within their force. A balance is required: it would clearly not be conducive to the concept of FIG for officers totally unfamiliar with the investigation of fraud to be deployed on such cases but equally Chief Officers may wish to include on a case some officers relatively inexperienced in the investigation of fraud who could benefit from such experience and use it to the longer-term advantage of the force.

18. As the FIG office will be based in London, no problems are anticipated in communications with the Metropolitan and City Police Company Fraud Branch. Geographical distance is however a consideration for cases occurring outside London. Clearly police investigation will be carried out locally in the force area where the fraud is alleged to have occurred. It is however vital for close co-operation to be maintained and in order to effect this in cases outside London the DPP will expect his lawyers to visit from time to time the police station where the enquiry is based. It is also expected in the majority of cases that the FIG accountant will base his investigation of financial records at the local police station. The DTI will similarly arrange for their officers to visit the police station as and when necessary. Police travel outside the force area is therefore likely to be confined to that necessitated by their enquiries and to meetings in London with the Controller to discuss progress on the case where these cannot be held locally.

ANNEX C

ROSKILL REPORT GUIDELINES ON COMPLEX FRAUDS

"A complex fraud case is not necessarily one in which enormous sums of money are involved, or one in which the documentation is copious, or the list of witnesses long, although it would be normal if some - if not all - of these ingredients were present.

It is fraud in which the dishonesty is buried in a series of inter-related transactions, most frequently in a market offering highly-specialised services, or in areas of high-finance involving (for example) manipulation of the ownership of companies.

The complexity lies in the fact that the markets, or areas of business, operate according to concepts which bear no obvious similarity to anything in the general experience of most members of the public, and are governed by rules, and conducted in a language, learned only after prolonged study by those involved. A factor which often adds much complication and difficulty is the use of a network of companies and bank accounts overseas which conduct business in currencies other than sterling.

The frauds are usually committed by people who are acknowledged experts in their field and it is often their very expertise which enables them to identify and exploit a flaw in the system, and to add further complications so as to avoid detection or hinder investigation.

The concept of the market must be understood before the fundamental dishonesty of the fraudulent transaction can be recognised. To explain or to understand such market concepts in "classroom" conditions represents a very considerable intellectual challenge, to which only the exceptional could rise.

The sub-group of crime is likely to be found in frauds upon or involving the Stock Exchange, Lloyds of London, and the commodities and financial futures markets. Geographically, such institutions are located within the boundaries of the City of London, but because

of the convenience of modern communications it can, and does, happen that frauds in which these institutions are used take place in venues throughout the country and overseas. Some frauds on the Revenue and Customs and Excise may also include some of the features described above."

Source: Annex on page 153 of the Fraud Trials Committee Report (the Roskill Report).

1784/011

ANNEX D

ANALYSIS OF FIG CASES BY THE DPP

Definition : Cases of substance, complexity and importance in which one or more of the factors listed in Appendix B (paras 9 and 10) are present.
There were 88 such cases at 4 March 1985

Methodology : All cases were examined under the following heads:

1 Sum at risk
2 Max. number of police so far engaged
3 Whether accountants engaged
4 Whether counsel engaged
5 Whether DTI, revenue or other Government department, or agency involved
6 Locality
7 Identity of police force
8 Type of fraud
9 Venue of trial

Results:

1. In 17 cases the sum at risk was under £½ m.
In 17 cases the sum at risk was between £½ m and £1 m.
in 27 cases the sum at risk was between £1 m and £5 m
in 27 cases the sum at risk was over £5 m

2. The number of police engaged was as follows:

In 26 cases	2
in 29 cases	3 - 5
In 33 cases	Over 5

3. Accountants are engaged in 20 cases

4 Counsel are engaged in 59 cases

5 Other departments are involved in 36 cases

6 48 cases are located outside London

33 cases are located in London
7 cases are located in London and the provinces

7 43 cases are investigated by provincial forces
40 cases are investigated by Metropolitan and City
2 cases are jointly investigated
3 cases are investigated by other forces

8 43 cases were "City" frauds (investment, insurance, banking, shipping etc)
45 cases were "Non City" frauds (upon Government agencies, nationalised industries, large corporations, local authorities).

9 All cases if committed will be tried in the Crown Court

ANNEX E

POWERS OF A UNIFIED ORGANISATION

(to be circulated)

Annex F

POLICE RESERVATIONS

Note by Police Representatives on the Working Group

The Police have serious reservations, firstly with regard to the need for a unified organisation and secondly in regard to constitutional issues. Additionally there are several implementation problems which they feel will not be overcome with the ease suggested by others, and certainly not without damaging the residual police units committed to fraud investigation.

2. The Police Service recognises without reservation the need to speed up and effectively deal with complex fraud cases. In this regard it is in agreement with many of those recommendations in the Roskill Commission report that centre upon prosecution, pre-trial and trial procedures for it is in this area that they believe remedies can be found.

3. The Service acknowledges that there also exists delay in the investigation of some frauds but contend that such delays are largely outside the control of the investigators. They more often relate to witnesses and accused being beyond jurisdiction, to reluctance on behalf of witnesses to make definitive statements upon first and early contact with police, and to procedural difficulties in mutual assistance with foreign governments, prosecutors and police forces. The latter is now fully exploited by fraudsmen who see the advantage of introducing a foreign element into their frauds.

4. If improved effectiveness and rapidity are the objectives, the police service see no merit in addressing both investigation and prosecution together (other than in the FIG concept) and certainly not in pursuing the concept of a unified investigation and prosecution organisation. The same problems besetting investigators operating within their parent organisations will, it is contended, face investigators equally when operating within a unified unit.

5. It was recognised long before discussion took place about the concept of the Fraud Investigation Group that the demand for fraud investigation was out-stripping police resources and that there was a need to concentrate on essentials. Several new management and investigatory techniques were adopted, particularly within the Metropolitan and City Police Company Fraud Department, and over a period investigations were shortened very considerably with a consequential increase in the number of cases submitted to the DPP. This had the effect of over-burdening the resources of that Office and in some cases resulted in delay in the prosecution stage.

6. The police believe that further improved concentration of police and prosecution effort has resulted from the implementation of the FIG concept, and whilst police concede that the system is not yet perfect, it cannot agree with the DPP criticisms of it. His suggestion that it affords his office insufficient control over investigators and that the absence of co-location results in difficulties, police find hard to accept.

7. The police view is that before any move is made to what they see as an unnecessary additional investigatory unit, the current FIG arrangements should be allowed to run a proper course of evaluation, rectifying any procedural problems on the way.

8. Another major point made by the Police is the apparent illogicality of bringing together the role of the investigator and the prosecutor under one head for fraud at a time when considerable political and professional endeavour has been expended in separating the two roles in all other instances wherein police are investigators. The special nature of fraud per se seems to the police insufficient ground upon which to reverse such a fundamental principle. Indeed, in practical terms they consider there are other equally, if not more, complex crime investigations where such would never be considered.

9. One other issue which police consider to be of extreme importance is that of the constitutional position of the Commissioners of the Metropolis and for the City of London, and of Chief Constables in regard to command and control of their own officers. They oppose any arrangement whereby they would be required to surrender command of or lose the power of direction in the final analysis of any member of their Force in operational matters.

10. In addition to these main issues the police foresee many other difficulties of a mechanical nature in the implementation of a unified organisation. They agree that with greater or lesser effort many of these may be overcome or diluted. They are especially concerned about the residual damage that might be done to police fraud or commercial investigation units by the removal,permanently or upon secondment, of experienced police investigators. Most police units of this kind are structured in such a way as to provide mutual support for all manner of fraud investigation and to provide internal supervision, administration and discipline, the removal from which of seasoned and ranking investigators would, in the view of the police, create very damaging vacuums.

11. The police are concerned also about the ability of a unified organisation to contract and expand to fit demand; this is especially so in regard to expansion. They feel that the idea that a unified organisation could refuse cases when its quota was reached, and refer them to the appropriate police unit, would be quite wrong, not least because such a police unit might well have had its expertise diluted by the very act of servicing the unified organisation. The alternative of police forces providing additional officers for secondment from within finite resources at times of pressure upon the unified organisation is no more attractive to them, it being pointed out that once a special organisation has been set up Chief Officers' views on priorities would be differently angled.

12. The police believe that the objectives being sought through unified investigation could be achieved much more economically and as effectively by the appointment of a Fraud Commission (as recommended by Roskill at paragraph 2.49) to monitor the investigation of those serious and complex frauds which cause public concern.

13. Given suitable powers, the Fraud Commission could have the ability to knock departmental heads together when there is a perceived lack of co-operation or co-ordination, or when there has been inordinate delay. The police would have no objection to such scrutiny.

14. As suggested by Roskill, the Fraud Commission could also be responsible for ironing out the present in-built procedural delays and for investigating legislative changes where necessary.

15. This arrangement would avoid the formidable constitutional, legislative and expensive organisational changes which will be met in pursuing the proposals for unified investigation made elsewhere in this paper.

10 DOWNING STREET

From the Private Secretary

24 March 1986

The Prime Minister was grateful to see a copy of the First Annual Report of the Fraud Investigation Group, which you sent with your letter to Mark Addison of 12 March.

I am copying this letter to William Fittall (Home Office).

(David Norgrove)

Stephen Wooler, Esq.,
Law Officers' Department.

PERSONAL AND CONFIDENTIAL

File

Sir Robert Armstrong.
Apologies for having lingered over this. We have now arranged a meeting of Ministers at 17.30 on Thursday 5 June on the Big Bang, which will cover some of these concerns. You are welcome to come if you wish.
N.L.W.
27.5

Top copy returned 27/5.

Ref. A086/883

MR WICKS

I do not know whether you are having the same experience, but I am finding, among people who work outside the City of London but whose activities bring them into touch in some degree with the City, that there is increasing disquiet about the things that people think are going on in the City. I do not just mean the levels of remuneration; a lot of people, including some from inside the City, think that that is a bubble which will be pricked in a year or two. They think more about the way in which corners are being cut and money is being made in ways that are at the least bordering on the unscrupulous. It tends to be summed up by the people saying that they doubt whether it really is good enough any more to leave the policing of the City to self-regulation.

2. I am afraid that all this is pretty vague and unspecific; but I find it sufficiently prevalent to be concerned.

RA

ROBERT ARMSTRONG

17 March 1986

PERSONAL AND CONFIDENTIAL

010

01-405 7641 Ext.

Communications on this subject should be addressed to
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

12 March 1986

Mark Addison Esq
Private Secretary to the
Prime Minister
10 Downing Street
London SW1

Prime Minister
Nicely written and
worth reading.
DGV
18/3

Dear Mark,

... The Attorney General has asked me to forward to you a copy of the First Annual Report of the Fraud Investigation Group. If you consider that it will be of interest to the Prime Minister, you will no doubt place it before her. Otherwise, it can be regarded as a useful source of defensive briefing as and when it may be required.

You may note the continuing pressure of the caseload upon the FIG and it seems inevitable that the position will have to be reviewed in the near future despite the increase in establishment announced last December. But it would be premature to initiate such a review in advance of the outcome of the deliberation of the Chief Secretary's Group considering the Roskill recommendation for the establishment of a unified prosecution and investigation unit. If that recommendation is adopted, FIG will cease to exist in its present form at least.

A copy of this letter goes to Bill Fittall.

Yours sincerely

Stephen Wooler

S J WOOLER

enc.

FRAUD INVESTIGATION GROUP

FIRST ANNUAL REPORT

Volume of Work

The Roskill Report and the Levi Report[1] have both recently stressed the significant increase in serious fraud in the last few years. The following tables show that the experience of the fraud divisions of the DPP in 1985 reflected the trend.

1. Number of cases reported to DPP :

1983	304
1984	408
1985	593

2. Number of cases committed for trial :

1983	25
1984	45
1985	93

During 1985, 150 prosecutions were begun. 55 trials on indictment were completed, of which 42 resulted in conviction, 13 in acquittal.[2]

It will be appreciated that the figures in the preceding sentence bear little relation to one another, since it is very rare

1 The Incidence, Reporting and Prevention of Commercial Fraud

2 A conviction for this purpose is defined as a case where a plea or verdict of guilty is entered upon one or more counts in respect of one or more defendants.

for a fraud case to be concluded within a year from the commencement of proceedings.

The words of my predecessor, John Wood in his report on the first six months of FIG remain true. It is far too soon to assess the effect the formation of FIG has upon criminal trials. In twelve months from now, however, a more informed appraisal may perhaps be possible.

The Cost of Fraud

Dr. Levi reported that recorded fraud has increased by an average of five per cent annually since 1980, and it seems a fair assumption that the "dark figure" of unrecorded fraud has not lagged behind.

The cost of fraud to the economy has been variously estimated and the present writer has too limited a view of the problem to make a useful contribution to the debate, but the fraud divisions were recently required to assess the total sums at risk in cases reported to them in 1985.[3]

Dr. Levi has demonstrated the difficulties inherent in such calculations. Indeed, an approximation is all that is possible. One reason is that in any sizable enterprise which has suffered heavy financial loss some proportion of that loss is due to non-criminal causes such as honest misjudgement, negligence or muddle. Again, one victim may prefer to attribute part at least of his loss to another's criminality than to his own failure of business acumen, while another may prefer to

3 "At risk" refers to sums unlawfully obtained or the subject of unlawful conspiracies or attempts to obtain.

conceal loss caused by fraud lest his reputation suffer. Or again, the scope and complexity of the victim's commercial operations may render him unable - however honest his intentions - to quantify the loss caused by fraud when the police are called in. At the end of a thorough investigation even with expert accounting assistance they in their turn are often reduced to an estimate pitched between appreciably different figures. Cases of corruption pose special problems. The size of the bribe is likely to be small compared to the contract in contemplation or even with the expected margin of profit. And if the work requires to be done, and is done with reasonable competence, how is the loss to be measured (in the absence of deliberate inflation of cost by the contractor)?

Nonetheless when all such qualifications have been entered it is currently estimated that the total sum at risk in fraud cases reported to the Director in 1985 was between £1,400 million and £1,600 million. Without inviting any conclusion to be drawn from the fact the writer can report that the total operational costs of the fraud divisions in the same year fell just under £1½ million.

Resources

A. Manpower

In language of commendable restraint my predecessor in his earlier report declared that his professional officers were carrying too great a case load, and warned that "efficiency will not be achieved where professional officers cannot give proper attention to their cases". His warning was sounded when the average case load of each professional officer in the fraud divisions was about thirty.

The importance of the professional officer of the DPP to the investigation and pursuit of serious fraud cases may perhaps be gathered from the fact that in all the fraud cases prosecuted by the Director (not merely in the FIG cases properly so-called) he acts as the "Case Controller". The comments under this heading in the Roskill Report precisely delineate the role and function of the professional officer from the moment that the Director assumes responsibility for the supervision of a fraud investigation.[4]

The average case load of the professional officer in these divisions is now about thirty-eight.

Even before the appearance of the Roskill Report ministers had publicly pledged the provision of nine more lawyers and support staff (to include three accountants) for FIG and the search for these reinforcements was put in hand. The planning and staffing requirements of the emergent Crown Prosecution Service however have severely depleted the numbers of suitable lawyers available and new staff for FIG have not been found as quickly as one would wish. Nonetheless three of the nine lawyers are now in post and an advertisement has recently been published calling for barristers and solicitors with at least four years experience in criminal work to join FIG on short-term contracts. A search within the Government service is being made for the three accountants and will be extended to the private sector if necessary.

On the accountancy side a very welcome addition to strength has been the arrival of two Examiners D (HEO) from the Insolvency Service.

4 Paragraphs 2.65 and 2.66

They will be joined by a third in April, and the fraud divisions would like to take this opportunity to express their appreciation of the unstinting co-operation and help which the Insolvency Service have given them by selecting and making available these Examiners.

Another development foreshadowed in John Wood's report has been the setting up of panels of senior accountants prepared to assist police in their investigations on a case-to-case basis at fees substantially lower than they could expect to earn in private practice. This scheme is already proving of value, and a number of current investigations in London and the provinces are benefitting from it.

Yet the need for three more accountants to serve full-time with FIG remains and should be satisfied as a matter of priority. The suggestion in the Roskill Report that "the adequacy of the accounting staff in post must be the subject of scrutiny by the Fraud Commission when it is in place" is one which only postpones indefinitely the solution of a problem which is already apparent, and urgently so.[5]

B. Equipment

Fraud lawyers and their supporting staff require more working space than their colleagues in other areas, because of the amount of paper generated by their cases and the need to house more secure cupboards and tables. The meeting of this basic demand poses problems for administrators, endeavouring to balance competing claims for accommodation. The recent move to Furnival Street has at least secured for the fraud divisions adequate room for their present staff, as well as for the reinforcements mentioned above. It has to be remembered, however,

5 Paragraph 2.74

that the recruitment of those additional members is designed to "reduce a case load that has been described as monstrous to one that can be described by the word 'tolerable'", in the words of Lord Mishcon in the House of Lords on 14 January.[6] If the significant increase in cases reported to the Director in recent years continues then the present accommodation will not be adequate for such additional staff as may quite soon be required.

The importance of adequate technical aids is being recognised and the fraud divisions are being dragged (to the undisguised relief of their members) into the contemporary world. Fax and telex have been installed, the microfiche is in full use, and various types of computer are on trial - the latter being required not merely for such purposes as case-tracking or the storage of information on known fraudsters but as an adjunct to the investigation process. The value of one's own computer in purely financial terms can be guessed from the fact that in one current investigation FIG has already paid over £5,000 for computerised schedules produced outside, and this in a case where further such schedules will be necessary as enquiries progress.

Training

Side by side with the procurement of adequate human and technical resources runs the need for effective training. Not the least of the many insights for which we are indebted to the Roskill Report is its insistence upon adequate training for all those involved in the investigation, preparation, presentation and trial of serious fraud cases.

6 Hansard (HL) 14 January, 1986, Vol.469, No.26, Col.989.

Two courses of basic training in accountancy have now taken place, conducted by Miss Jane Allan FCA of the Member Services Directorate of the Institute of Chartered Accountants in England and Wales. They were attended by lawyers and senior non-professional officers in the fraud divisions and by senior detective officers and this mix of students enhanced their practical value, which has been clear.

Various courses on the use of computers, both as investigative aids and as instruments of fraud, are under comparison and it is intended that the most suitable for FIG purposes will become part of the regular training programme of the fraud divisions. Such courses are not cheap but those who work in FIG fully endorse the comment in the Roskill Report that money spent on training is money well spent.

It has also been agreed that Mr David Baldwin CA who has rendered invaluable service to the Director in fraud investigations in recent years will conduct short training sessions for professional and non-professional staff later this year in the "modern effective techniques of presenting complex information to a lay audience such as visual display and projection systems" enjoined by the Roskill Report.[7]

Co-operation

The Roskill Report expressed the belief that (in dealing with serious fraud) there is "a degree of institutional reluctance among the organisations concerned to work fully and effectively together".[8] The present writer is glad to report that since becoming Controller of FIG he has experienced nothing of the kind. Whether full and active co-operation among the agencies involved is a phenomenon of recent

7 Paragraph 6.64

8 Paragraph 2.47

birth or not, it is now the norm. Indeed, it is quite certain that without it results would be markedly more discouraging. Given the pressure placed upon them by inadequate resources the members of FIG would wish me to place on record their appreciation of the willingness to work fully and effectively with them displayed by their colleagues in the police, DTI, and - less often only because less often involved - the revenue departments. This is not to claim that present methods are foolproof or to deny the need always to improve lines of communication and mutual support : it is the imputation of lack of will which is rejected.

The policy inaugurated by my predecessor of explaining the aims and problems of FIG by lectures, conferences and interviews with reputable journalists continues and has stimulated a sympathetic response from members of the business community. This has been particularly evident in the accountancy profession. The senior officers of the Institute of Chartered Accountants in England and Wales have volunteered to help with training courses tailored to our needs and have canvassed the possibility of senior accountants joining FIG for short-term contracts when retiring from their firms. In the last year there has also been a perceptibly more helpful approach by the profession to the vexed question of the reporting of suspected fraud to the authorities by outside auditors.

The Roskill Report

By far the most important and heartening development in the last year, however, has been the appearance of the Roskill Report. In the course of one's first reading the conviction grew that here at last was a masterly and comprehensive analysis of the problems that beset the investigation and prosecution of serious frauds.

As the first warm glow of Yuletide approval yielded to a colder appraisal in the bitter February just endured it was perhaps inevitable that some doubts would be raised.

For example, while the feasibility of a Fraud Unit is rightly even now under consideration a note of caution may be permitted. The picture of a hand-picked permanent body with enhanced powers of investigation, instant recourse to all relevant skills and talent, the narrow professional or departmental considerations of the past all swept away in the very act of its creation - this is a vision as entrancing as the Holy Grail, but before it is grasped the pilgrim will need to overcome formidable problems of scope, recruitment, powers, remuneration and control. The Fraud Commission appears even less likely (and it must be said worthy) of realisation.

Again, while the Director welcomes Recommendation 82 (the setting up of the Fraud Trials Tribunal), the controversy which it has already engendered raises the question whether the thorough and imaginative scheme of reform which the Report presents in its specific, evidential and procedural sections may be endangered by association.

Such a consequence would be deplorable. The proposals set out in Chapter 4 (Committal Proceedings), Chapter 5 (Rules of Evidence), Chapter 6 (Preparing for Trial), Chapter 7 (Composition of the Jury) and Chapter 9 (The Conduct of the Trial) contain such a compelling and realisable programme that its implementation - subject to one vital condition - must have a rapid influence upon the campaign against serious fraud.

Envoi

That condition is the early and sustained provision of adequate resources to the agencies concerned, FIG among them.

It is a precept of strategy that one reinforces success.

The Attorney General was kind enough to declare in the House of Commons on 12 January that, "So far FIG has been a great success story. Indeed it has been so successful that it is almost overwhelming".[9]

The figures quoted in the first section of this report lend substance to that claim, for they disclose that a unit whose resources were already overstretched at the beginning of 1985 yet succeeded in committing for trial in that year more than twice as many serious fraud cases as in 1984 while dealing with an inflow of cases nearly half as large again. Meanwhile the success rate in trials completed exceeded 70%. During 1985 not one extra lawyer or non-professional officer could be found for its staff, and there can be no doubt that a serious effect upon the health of more than one of those in post has resulted.

Dr. Levi has observed that, "Prosecutions for fraud are not self-generating: they require detailed investigation, case reports and preparation for trial. It follows logically that as long as case-loads are high and staff resources low, few cases can be prosecuted, however high the level of agency motivation to take fraudsters to court". Quite.

9 Hansard (HC) 13 January 1986, Vol.89, No.34, Col.770.

The Roskill Report being prefaced by a misapprehension of a verse from Psalm 84, perhaps FIG may close its first annual report by an appeal to the Sermon on the Mount.

> "By their fruits you shall know them.
> Do men gather grapes of thorns, or figs of thistles?"
>
> Matthew 7:16.

Dorian Williams.

D.G. WILLIAMS

Controller.


17. III.
AM 8 6

Prime Minister

to see.

N.L.W.

12.3.

MR. WICKS

The Prime Minister may wish to be aware that the egregious Brian Sedgemore used the opportunity of the debate on the City this afternoon to recycle all the old Oman stories. He went on to make a whole series of allegations about the National Westminster Bank and Attwoods with which I understand Mr. Thatcher is involved. He claimed that they had perpetrated a series of land frauds on somebody called a Mr. Callinan. I did not hear the beginning of this story so it is difficult to tell what the real nature of the allegations were. But of course they were peppered with Mr. Thatcher's name and with extreme allegations such as the National Westminster Bank and Attwoods and Mr. Thatcher want to see Mr. Callinan die a poor man etc etc etc. Michael Howard, who was winding up, was intending to make some general remarks about the misuse of Parliamentary privilege to smear people and the Press Office are taking the usual line on allegations of this kind.

I tried to let Mrs Thatcher know but he had left for Sunday.

TIM FLESHER

12 March 1986

EL3AYF

CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

10 March 1986

JUNK BONDS

The Prime Minister has seen your letter to me of 5 March. She was grateful for the report attached to it which discussed aspects of highly leveraged takeovers which are of particular concern to the Department of Trade and Industry.

Paragraph 19 of the attachment said that the DTI senior management would shortly be reviewing the broad relationship between the City and industry. The Prime Minister would be interested to see a report on this work in due course.

I am copying this letter to Philip Wynn Owen (Treasury) and John Bartlett (Bank of England).

(David Norgrove)

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

CONFIDENTIAL

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

Secretary of State for Trade and Industry

PS/

5 March 1986

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

Prime Minister

An interesting note. I shall ask for a report on the intriguing reference in paragraph 19, when it is ready.

DCV
7/3.

Dear David,

JUNK BONDS

In your letter of 29 January, you said that the Prime Minister would be interested to see the results of the work set in hand here on those aspects of highly leveraged takeovers of particular concern to this Department.

... I enclose the report on those issues which our officials have prepared and which has been endorsed by Ministers here.

As with the work undertaken in the Treasury and the Bank of England, our studies were prompted by reports of the tactics employed in leveraged takeover bids in the United States; and by indications - particularly the Elders/IXL bid for Allied Lyons - that leveraged takeovers might be catching on here.

The aspects identified as being of particular concern to the DTI are:-

a) Competition.

b) Investor protection, as regards the shareholders both of the bidder and of the target.

c) The substitution of debt for equity in the individual case (as distinct from the potential global problems identified by the Treasury and the Bank).

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1786 1986 BOARD OF TRADE BICENTENARY

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CONFIDENTIAL

Our conclusions are summarized at the beginning of the paper. Briefly, they are as follows:

i) Leveraged takeovers do not typically pose competition problems. Subsequent asset disposals may do. When they do, they should be examined rigorously under the mergers legislation.

ii) The relevant statutes, and the Takeover Code, seem adequately to protect the investors.

iii) the chances that a leveraged takeover may go wrong, and harm the interests of employees and third parties, may in a few cases justify Government intervention.

iv) The obvious means of intervention is reference to the Monopolies and Mergers Commission.

The competition policy issues will arise again in the course of the proposed review of competition law and policy, about which the Secretary of State wrote to colleagues on 20 February, and which is to be discussed in E(A) at the Prime Minister's request.

The paper also touches on the argument that the threat of a leveraged takeover may concentrate management attention too much on the short term; this is part of the wider question of the City and Industry which the Department will be considering separately.

I am copying this letter and attachment to Philip Wynn Owen (Treasury) and John Bartlett (Bank of England).

Yours ever,
Michael

MICHAEL GILBERTSON
Private Secretary

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LEVERAGED TAKEOVERS AND BUYOUTS

Summary of Conclusions

1. a) Leveraged takeovers do not themselves typically pose competition problems; but it will be necessary to make clear that subsequent asset disposals may be examined rigorously under the mergers legislation (Para. 6).

b) The interest of shareholders both of the bidder and of the target of a leveraged takeover seem to be adequately covered by statutory provisions and by the Takeover Code. (Para. 12).

c) The global effect of a series of large leveraged takeovers on bank lending and on financial markets generally could become a problem; but it would be one for the Treasury and the Bank of England, not the DTI (Para. 16).

d) The danger that a particular leveraged takeover may turn out badly and in doing so, bring adverse consequences for employees, third parties, and the local or national economy, may in rare cases justify Government intervention (Para. 17).

e) The obvious means of intervention is by reference to the MMC: but this has limitations, particularly in relation to management buyouts. (Para. 18).

f) There is no reason to rush into new decisions of general policy on leveraged takeovers ahead of the MMC report on Elders/Allied (Para. 18).

g) The alleged effect of the threat of leveraged takeovers in concentrating management attention on the short term is best addressed separately, as part of wider consideration of 'The City and Industry'. (Para. 19).

Introduction

2. There has been a flurry of interest in recent weeks/months in 'leveraged' or debt financed takeovers. The subject has become topical for several reasons. There have been in the last year or two a succession of spectacular takeover battles in the United States, some of them involving attempts by smaller companies, or individuall

'corporate raiders', to acquire much larger and better established companies. A favourite technieque has been to finance such acquisitions by the issue of bonds of less than investment quality ('junk bonds') secured in effect on the assets of the company created by the merger. On 8 January 1986 the US Federal Reserve Board stepped in, reputedly against the wishes of the US Administration, to restrict junk bond financing by limiting it to 50% of the purchase price where an acquisition is carried out through a 'shell' company.

3. The spate of very large merger proposals announced in the last weeks of 1985 - Imperial/United Biscuits; Hanson/Imperial; Elders/Allied; Argyll/Distillers, GEC/Plessey, - prompted speculation whether US-style takeover battles were coming here, though only in two cases - Elders/Allied and Argyll/Distillers - was 'leveraging' a factor. Merger activity has in fact been rising throughout 1984 and 1985, compared with the preceding years, and the increase has been heavily concentrated in the food, drink and tobacco and retailing sectors. The reasons for this are a matter for speculation, but one plausible suggestion is that in these sectors it has become difficult for a dynamic company to grow except by acquisition. It has also been suggested by some that increasing confidence that mergers will be referred to the MMC on competition grounds only has been seen as a green light to conglomerates to expand by acquisition.

Definition

4. A leveraged takeover might be defined as a takeover, financed largely by debt and creating a new company with a high 'gearing' (debt/equity) ratio. A more extreme definition would restrict the term to cases where the resulting gearing ratio is unsustainable so that the bidder would be committed from the start to selling off many of the assets of the company acquired. But most of the concerns voiced about leveraged takeovers are not confined to this exteme case. A leveraged buyout may be defined as the acquisition of a company, or part of a company, from the shareholders by the management, financed wholly or mainly by debt and producing a high gearing ratio.

Possible Areas of Concern

5. These can be summarised as follows:-

i) Competition.
ii) Investor protection.
iii) Substitution of debt financing for equity.

I. COMPETITION

6. So far as the possible restriction of competition is concerned, a leveraged takeover is no different from any other sort of merger. If it meets the statutory criteria, it can be referred to the MMC. There may be cases where the takeover is followed by disposals to third parties which themselves raise competition issues. These, too, can be examined under the competition legislation separately at the time. Sometimes disposal plans may be sufficiently well formulated for them to be considered at the time of the original takeover. But it is not practicable to insist at that stage on a complete statement of the bidder's disposal plans. A difficult situation might arise if the viability of the original takeover depended on a disposal to a particular third party which was then referred to the MMC. If such a development seemed possible, it would be important for OFT, or the Department, to make clear to the bidder from the outset that a reference of such a disposal was not ruled out. Whether a leveraged buyout falls within the terms of the mergers legislation will depend on exactly how it is structured. But it is unlikely to pose any competition problems; indeed, a management buyout often has the character of a de-merger.

II. INVESTOR PROTECTION

7. The conduct of leveraged takeovers in the USA has been alleged to be detrimental to the interests of shareholders both of the bidder and of the target. But there are important differences between the situation there and here, arising from:-

a) the provisions of company law

b) the Stock Exchange rules

c) The Takeover Code

d) the predominance of institutional shareholders

The particular points at which the interests of investors might come under threat are considered below:-

i) Threats to the Interests of Shareholders of the Bidder

8. If successful, a leveraged takeover results in a company with a high gearing ratio, at least for a time, and places the shareholders in a correspondingly exposed position. The following provisions appear to protect the interests of shareholders of the bidder who do not want to be put in this situation:-

a) In the case of a listed company, Stock Exchange rules require shareholders to be informed of any transaction under which assets are acquired representing 15% or more of the company's assets. When this figure is 25% or more, the approval of shareholders is required.

b) If the debt is in a form convertible into shares, S.80 of the Companies Act applies. Such securities can only be issued if the directors are authorised to do so by the company's articles or by a general meeting.

c) S.459 of the Companies Act enables a shareholder to apply to the court on the grounds that the company's affairs are being conducted in a way prejudicial to his interests.

These, and particularly a), seem to afford shareholders adequate protection. Where the institutions hold a significant proportion of the shares they are equipped to take a professional view of the gearing involved in the takeover, and exercise their rights as shareholders if they do not like it. This provides some protection for the interests of individual shareholders ill-equipped to make such assessments.

ii) Threats to the Interests of the Shareholders of the Target from the Actions of the Bidder

9. The shareholders of the target are not at risk if they accept a cash offer or sell in the market. They can only be forced to accept the bidder's paper if they are part of the residual 10% after 90% of shareholders have accepted. Even then, they have the option of accepting any alternative offer, even one which has lapsed. (S.428 of the Companies Act). And they can require the bidder to buy them out (S.429). The Financial Services Bill clarifies and strengthens the position of shareholders in this situation, which is in any case not peculiar to leveraged takeovers.

10. The other main safeguard for the shareholders of the target is the Takeover Code requirement that a bidder who has acquired a 30% holding must then buy out the rest at a fair price. There is no equivalent rule in the US, and much of the threat posed there by leveraged takeovers results from the bidder's ability to gain control through a partial offer. But it should be noted that protection in the UK is without statutory basis.

iii) Threats to the Interests of the Shareholders of the Target from the Actions of their own Directors

11. Defensive measures against unwanted bids have evolved rapidly in the US, largely in response to leveraged takeovers, though there

is no logical connection. Tactics include the sale of selected assets to a third party, to become effective if the bid succeeds; (poison pills). Some bids have been repelled by the target company repurchasing shares from the bidder at a high price (which may have been all the bidder intended). The UK's more restrictive rules about companies purchasing their own shares make such expectations harder to realise, and therefore less likely to be entertained. Stock Exchange rules (cf paragraph 8a above) apply to major disposals of assets.

12. The above safeguards, and the ability of institutional shareholders to use them effectively, seem capable of protecting London from the worst excesses seen in the US. The Financial Services Bill contains provisions which give statutory force to Listing Rules made by the Stock Exchange. The Takeover Code will remain on a non-statutory footing.

III. SUBSTITUTION OF DEBT FINANCING FOR EQUITY

13. Recent leveraged takeovers and buyouts in the USA have involved the creation of several billion dollars of new short term corporate debt each. In the UK, the recent spurt of merger activity has included bids which would each create more than £1bn of such debt here. The form for such debt however differs according to local custom and practice. In the US, 'junk bonds' have become common. Junk bond financing of takeovers has not developed in the UK, and this can be explained by institutional and legal differences between the situation here and in the United States. In particular, the restrictions on the investments permitted by a trustee, and the supervision arrangements for banks and building societies, effectively discourage the major institutions from investing in low grade corporate bonds, and it has not therefore been possible for a market in 'junk bonds' to develop. This is not likely to change quickly, though the leading exponent of 'junk bonds' in the US - Drexel, Burnham, Lambert - are said to be interested in starting a market in junk bonds in the UK.

14. Other forms of debt financing of takeovers are familiar in the UK, namely:-

i) the issue of loan stock, convertible into shares at a later date

ii) the offer of cash, some or all of which is borrowed by the bidder from banks.

15. Debt financing of takeovers, of any of these kinds, has given rise to concern on two distinct grounds:-

a) that a series of such takeovers might shift the overall balance of corporate financing in the UK away from equity and towards debt to an extent which might lead to over-exposure on the part of the banks involved, and de-stabilise financial markets more generally.

b) that in each individual case the gearing of the company formed by the merger will leave it too exposed if its trading experience proves less favourable than was assumed at the time of the bid, or interest rates rise. This might lead to decisions being taken under short term pressure, notably on asset sales, which might be against the company's long term interests; and even, in the extreme case, to the failure of the new company.

16. The first of these problems - the global one - seems to have been what prompted the Federal Reserve Board early last month to impose margin restrictions on junk bond financing. But if it is a problem, it is one for the Treasury and the Bank of England rather than for the DTI. Any tendency for banks to become over-exposed should be picked up by the improved bank supervision arrangements announced recently; and it would also be for the Bank and the Treasury to deal with any excessive expansion of corporate borrowing. (The 1984 reform of corporate taxation including the reduction of corporate tax to 35% will in any case have reduced the relative attraction of debt financing).

17. The possible consequences of over-gearing in the case of the company resulting from a particular merger include:-

i) forced sale of part of the business, over and above sales planned at the time of the bid

ii) closure, on short term financial grounds, of parts of the business currently unprofitable but thought to have long term potential

iii) scaling down of expenditure with long-term rather than short-term payoff - research, development, marketing, training, etc.

iv) rapid rundown of inventories, possibly with adverse consequences to suppliers or competitors

v) in the extreme case, liquidation, accompanied by distress sales of the various parts of the business.

There is a strong argument that it is not for the Government to intervene to protect the directors or the shareholders from the consequences of commercial misjudgment - or misfortune - of this kind. But there can also be adverse results for employees, suppliers, competitors, and for the local or even in some cases, the national economy which are more arguably a proper concern of Government. The decision to refer the Elders/Allied takeover proposal to the MMC was an implicit recognition that, in some cases at least, a high degree of leveraging may give rise to uncertainty about the prospects for the resulting company, and that in such cases there may be dangers other than to the directors and shareholders which justify intervention.

18. If it is accepted that leveraged takeovers can raise issues of proper concern to Government, because of the wider consequences if they go wrong, the question arises how the Government should intervene. The obvious answer, exemplified by Elders/Allied, is reference to the MMC. Any leveraged takeover large enough to give rise to wider concern will meet the assets criterion in the mergers legislation. But there are limitations:-

a) The MMC and OFT are geared primarily to handle issues of competition, though they can deal with any other aspect of the public interest which may arise on a merger. If, as a result of a series of leveraged takeovers, leveraging loomed almost as large as competition as a basis for concern about the public interest in merger cases, one might have to review the adequacy of the legal and institutional framework for dealing with such mergers.

b) The mergers legislation may not, except fortuitously, catch leveraged management buyouts. The Government has tended to look kindly on such buyouts as a way of breathing life into the sleepy corners of large companies, and enabling enterprising management to secure appropriate rewards. But a large leveraged buyout which goes wrong can have the same consequences as a leveraged takeover.

However, alternatives to reference to the MMC, whether they take the form of a separate procedure for case by case examination of leveraged takeovers and buyouts, or devising restrictions of general application on the permitted degree of leveraging, are unappealing. The MMC report on Elders/Allied can be expected to discuss the public interest aspects of leveraged takeovers in some depth; there seems no need to rush into new policy decisions on the subject in the meantime.

19. One final point which has been made about leveraged takeovers is that the ever-present threat of such a takeover, from a hitherto unknown predator, is likely to make management concentrate on measures designed to maintain a high share price in the short term, to the exclusion of planning for the longer term. But this is part of the wider question whether stock market pressure, and notably the pressures on the institutions to demonstrate good short term performance, make it harder for management in the UK than for some of our competititors, to devote financial resources and management time to longer term aspects of the business. This is a much wider question than leveraged takeovers. The Department's senior management will shortly be revewing the broad relationship between the City and industry, and the issue of short-term pressures can more appropriately be considered in that context.

DEPARTMENT OF TRADE AND INDUSTRY

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strongly held view was that this meant that no member state should operate aid schemes for this sector, and we pressed the Commission hard on this. I am pleased to say that by the middle of last year the remaining sectoral aid schemes in other member states had been terminated.

My hon. Friend the Minister for Trade will no doubt bask in the unanimous warmth which descended on him during this debate. I share the concern of the House that my hon. Friend should, bearing in mind the comments made by hon. Members this evening, take his remit with full vigour into the crucial discussions on an important industry.

Fraud Trials (Roskill Report)

Mr. Speaker: Before I call the Secretary of State for the Home Department, may I say that in this debate, as in the last, about a dozen right hon. and hon. Members wish to take part. At the beginning of the previous debate some of the speeches were unduly long which meant that some hon. Members who were called later had to compress their speeches into two or three minutes. I hope that in this debate there will be a fairer distribution of time.

7.1 pm

The Secretary of State for the Home Department (Mr. Douglas Hurd): In the month since the publication of the Roskill report there has been much interest in the media concerning its recommendations, and this debate gives the Government an opportunity to hear the views of Parliament. I am glad it has been possible to arrange early debates, both here and in the other place, because it fits exactly the structure of our response to this report, which is to consider, consult and conclude with care and speed. I do not intend to make a long speech this evening because this is an opportunity for the Government to listen rather than to pronounce. The Government will take full account of the views of this House before we reach a firm decision on a report which is important.

A will to listen does not mean a will to delay. We intend, in the next Session of Parliament, to introduce a criminal justice Bill which will seek improvements in many aspect of the criminal justice system and the powers of the courts. The Bill will be wide and substantial and the proposals following the Roskill report will be a crucial part of the Bill. A White Paper will be published shortly which will set out the proposed measures in greater detail.

We intend to create and seize every opportunity for stern action against fraud. We think this is crucial for the City and for the country so that private enterprise can flourish in a clean environment. It is crucial for public confidence, and our competitive position in international markets that the probity of our financial institutions, especially in the City, should be beyond doubt. Those who save and invest, whether grand or small, should be well protected by our law from dishonest practices, however complicated the transaction. We are determined that the pursuit and the bringing to justice of fraudsters should be carried out with commitment and skill. If our present instruments for cutting our fraud are blunt we must manufacture a new carefully directed scalpel.

The report is radical. Some of its recommendations have been criticised but no one has criticised the skill and thoroughness with which the Committee completed its task. On behalf of the Government, and the House I would like to thank the Committee for its work and record our immense admiration and sincere thanks to Lord Roskill and his colleagues for the major contribution which the report makes to the fight against fraud.

When one studies the subject in a wider prospective it is fair to say that the strategy adopted in 1983 is beginning to show results. The fraud investigation group has been established on a permanent basis for more than a year. This has been a successful attempt to reduce the fragmentation in the investigation and prosecution of complex fraud cases. We have to go further down that path. The report vindicates the 1983 decision to appoint a committee to look at the way in which fraudsters are caught and brought

[Mr. Douglas Hurd]

to justice. The Financial Services Bill, now before the House, contains measures which should substantially improve the effectiveness of self regulation within the financial markets. Early detection of irregularities can often prevent serious fraud and as with all crime, prevention is our first aim. If prevention fails then the machinery for dealing with fraud must be effective.

The legal profession may have doubts about altering some time-honoured ways. I have already learnt the deep suspicion with which many hon. Members who are members of the legal profession regard the suggestions for change. Those whose professions put them in the centre of financial transactions are perhaps less hesitant. Certainly Lord Roskill's Committee was not hesitant.

The Committee's message to the House and to the Government is that one cannot send a policeman on a bicycle to catch a runaway car. We have to equip those who chase fraud with the same speed already possessed by the fraudster. I do not doubt that there are valuable conclusions to be drawn from an examination of the present investigation and prosecution arrangements. If fraud is not effectively uncovered and detected then no procedural reforms of the law and later conduct of criminal proceedings, will deter the big fraud operators. At present responsibility for investigation and prosecution is shared by the police, the Director of Public Prosecutions, the Department of Trade and Industry and other agencies. From April the prosecution functions of the police will move to the Crown prosecution services in certain areas and from October throughout England and Wales. The co-operation between these major agencies has greatly improved in recent years and permanent Fraud Investigation Group arrangement are now in place.

FIG brings together the police and other investigators — accountants, interested Government Departments, counsel and members of the DPP's staff. One of the Director's lawyers exercises day-to-day supervision — acting almost as one of the "case controllers" which the report recommends. The aim of FIG is to concentrate on major frauds, although the categories are not closed, and to complete investigations quickly and to bring to an end inquiries which turn out to be fruitless. That is the present position.

Lord Roskill suggests that other arrangements are still too fragmented and he recommends an urgent inquiry into the possibility of a new unified organisation responsible for all the functions of detection, investigation and prosecution of serious fraud cases. My right hon. Friend the Chief Secretary to the Treasury is studying this most closely with other Ministers. He is also considering much of what the report has to say about the deployment of resources to combat fraud — that is probably the most artistic job for a Chief Secretary to undertake.

The Department of Trade and Industry and the office of the Director of Public Prosecutions have a provision for extra staff — the DTI for nearly 200 posts, which is a big increase, and the Director of Public Prosecutions for nine extra lawyers who will be assigned, full time, to fraud cases. I know my right hon. Friend the Chief Secretary's enquiry will be done briskly. I understand that he hopes to reach conclusions by early summer. If, as may well be, those conclusions require something extra in the criminal justice Bill we shall see to that.

The inquiry will, of course, have a bearing on the role of the police. Lord Roskill has some practical recommendations of immediate relevance to the police. The House is aware that I am carrying out an urgent review to assess the specific need for further increases in the resources in the establishment of the Metropolitan police. The fraud squad is part of that review, and I hope to complete it very shortly now.

The accounting advice which Lord Roskill thinks the police need is available through the fraud investigation group, and steps are being taken to recruit three additional accountants. On the initiative, which is welcome, of the accounting profession, a panel of experienced accountants in private practice has been set up in London to help the police and the Director on a case-to-case basis as necessary.

The Committee recommends also a career structure for officers in the fraud squad. Being a practical Committee, it recognises the difficulties in implementing the recommendation within a generalised service such as the police. The joint Metropolitan and City fraud squad is realistically the only squad of sufficient size — its strength is about 190 officers — to offer a practical opportunity to introduce a career structure. Both commissioners have now agreed to my request that they should examine the feasibility of a career structure for officers in the joint squad. Outside London, the Association of Chief Police Officers will consider the scope for second or subsequent periods of service in the fraud squad to build up the experience which officers accumulate. The association will report back to me.

Lord Roskill recommends better training for the police in fraud investigation and the Association of Chief Police Officers has agreed to review the training provision for fraud squad officers.

Sir Eldon Griffiths (Bury St. Edmunds): My right hon. Friend will be aware that in a complicated City fraud as many as 25,000 man hours of detective time will be expended. If some of the best detectives are brought into the fraud squad, as I believe they must be, that will have the consequence of removing experienced officers from other areas of detective work.

Mr. Hurd: That is right. That is one of the matters that will be in the two commissioners' minds as they undertake the exercise of considering a career structure.

I turn to the substantive law on which the Committee makes recommendations, especially the use of the common law charge of conspiracy to defraud, where there is clearly something amiss. With the agreement of the Chairman of the Criminal Law Revision Committee, Lord Justice Lawton, I have asked the Committee to produce a report with the following terms of reference:

> "To review the restrictions on the use of a charge of conspiracy to defraud in the light of the decision in Ayres [1984] AC 447 and subsequent cases and to consider whether these restrictions could be removed without causing injustice to defendants."

I have asked for urgent advice. In the relative excitement generated by proposals to reform the enforcement of the law, we must not neglect the need to ensure that the law itself is sensible and enforceable.

I shall not say much this evening on the Committee's proposal for a fraud commission. It would be a body within the existing machinery of Government with an independent chairman and it would monitor the pursuit of

fraud, inquire into major breakdowns, look into delays and publish an annual report. At this rather early stage I have much sympathy with the idea of a watchdog body of that sort but I shall be interested in any ideas that right hon. and hon. Members have about the proposal. Before reaching a conclusion, we shall set up a model of how such a commission would operate and then come to our conclusions upon it.

Our approach to the recommendations that touch on the jury system is still open and I shall listen with close attention to the views of the House. I have noted the views which were expressed in an excellent debate in another place. When we publish our White Paper on the Criminal Justice Bill, there will be a wider forum for consultation.

I shall put one or two considerations before the House that might focus the debate. The main recommendation is that a judge and two assessors should replace a jury in especially complex fraud trials. Naturally many questions arise. The right hon. Member for Manchester, Gorton (Mr. Kaufman) began to raise these questions on 14 January and expressed the belief that we cannot define complexity. I accept that that is a major issue. I do not think that the guidelines in the report could be translated easily into statute, but there might be no need for a rigid approach of that sort. One criterion which could have an honourable place if the idea of a tribunal took root is as follows

"the complexity lies in the fact that the markets or areas of business operate according to concepts which bear no obvious similarity to anything in the general experience of most members of the public".

What are the arguments for placing such cases beyond the jury system?

Mr. Robert Maclennan (Caithness and Sutherland): Does the Home Secretary agree that many complex crimes are quite beyond the comprehension and experience of the general public apart from fraud?

Mr. Hurd: Indeed. I understand that argument. I wish to make it clear that there is no feeling in the Government's mind that we should go beyond the Roskill report. I think that Lord Roskill advanced an argument for ring fencing in this area, but I would not want the element of truth in what the right hon. Member for Caithness and Sutherland (Mr. Maclennan) has said to lead us into considering doing away with jury trials for other types of offence, even though they might also be complex. It is the comprehension of the issues that is basic to the Roskill recommendation.

Mr. John Morris (Aberavon) *rose*——

Mr. Hurd: I shall make a little progress and then I shall be happy to allow the right hon. and learned Gentleman to intervene.

In a complex transaction, the final question may be whether the accused was a party to an illegal arrangement, but perhaps that cannot be decided fairly until the nature of the transaction is fully established and analysed. I think that juries can have serious difficulties in understanding the evidence in complex fraud cases, and understanding the relevant evidence is important to the doing of justice both to the innocent and the guilty.

The argument does not seem to hinge on the precise rate of acquittal in fraud trials. Instead, it is directed to whether the complexities of the proceedings may be leading to arbitrary rather than just verdicts. The Committee received anecdotal evidence to the effect that the difficulties of presenting the facts in complex cases may lead to decisions to proceed with lesser charges than might be justifiable in some cases. I think that the House would regard that as unacceptable.

Finally, I must have regard to the interests of all involved in the criminal justice system, not least the accused, in adopting mechanisms which reduce congestion and delay and dispose of cases with reasonable speed.

All these considerations are in favour of the Committee's conclusion on juries, but there are arguments against it, some of which appear in the powerful minority report of Mr. Merricks. No one doubts that major fraudsters deserve substantial periods of imprisonment, but in our system of open justice is it right that those who risk substantial terms of imprisonment should forfeit the right to be tried by a jury, not because their crime was more serious but because it was more intricate than the next man's? Would a tribunal remove some of the disciplines from counsel to present the case in a comprehensible manner? Might individuals lose their liberty for reasons which few of us could understand? If the real issue is dishonesty, are not ordinary people as good or better judges of the facts than experts in high finance? If the other reforms will simplify matters, is there a case for trying them out first?

The House might wish to pause to reflect on a point which I have not heard put before. If a tribunal were judged to be the fitting answer, as it might be, is it right that majority verdicts should prevail so that the judge might differ from the eventual verdict, having been outvoted by the two assessors?

Mr. John Morris: Will the Home Secretary address himself to the issue which was raised by the hon. Member for Caithness and Sutherland (Mr. Maclennan)? What is the argument for ring fencing fraud cases, which might include experiences outside the normal for a jury, as opposed to other complex cases which might also involve experiences outside the normal for a jury?

Mr. Hurd: I think that Lord Roskill would argue that there are a substantial number of complex fraud cases and sufficient for special provision to be reasonably argued. I believe that he would argue also that there would not be a sufficient number to justify special provision on other indictments, although occasionally such cases may occur. Nonetheless, they would not be of sufficient number to make necessary the introduction of special arrangements.

There are obviously strong and different views about this which cut across party lines. It seems to me that the legal profession is divided on the recommendation, and the financial professions are overwhelmingly in favour. I expect that this is the last occasion I shall be able or, indeed, shall want to tread a path down the middle.

I should like to end the analysis on this point. It would be wrong and unjust to the committee if we saw this as an attack by it on every person's right to a fair trial in our courts. The committee has made a careful and sensitive attempt to tackle the fundamental question of how to secure a sound verdict. I think that a sound verdict must be our objective. It is as much in the interest of the innocent defendant as it is in the interest of society to bring fraudsters to book. I hope therefore that we will have, as I am sure we shall, a reasonable and balanced debate on this point.

Dealing still with juries, the committee put forward views on the defence right of peremptory challenge and the

[Mr. Hurd]

prosecution right of standby. The distinction between this and the last point about complex fraud tribunals is that with the tribunal case, for the reasons which we have been discussing, discussion is confined to the relatively few cases of major fraud. When one is discussing what Lord Roskill had to say about peremptory challenge, it must be right to look at that more widely. There has been a lot of discussion, quite independent of fraud, on the merits of change both here and elsewhere. I do not need this evening to go over that discussion. I am quite sure that discussion cannot sensibly be dealt with for fraud cases alone. In the criminal justice White Paper, we will set out options for change. We shall not seek to abolish ancient rights lightly, but nor shall we hestitate to act if the preservation of the integrity of the jury system is in question.

These two jury matters have aroused high feelings, and that is quite right, but in my view they do not lie at the heart of the report. At the heart of the report are the radical proposals to reform the rules of evidence, including the easing of the gathering of evidence from abroad and the easing of the rules about documentary evidence. We have also here major procedural suggestions to formulise hearings preparatory to Crown court trial, and an associated obligation on the part of the defence to outline the nature of its case.

We find these recommendations immensely constructive and timely. We believe that their potential effect on most cases arising from fraud should not be lost sight of in hot argument over the mode of trial for a minority of particularly complex cases. Few people now believe in my experience that our rules of evidence have kept pace with the 20th century, and the reforms begun in the Police and Criminal Evidence Act 1984 to allow more documents to speak for themselves found favour with the Roskill committee. Let us now see whether we can go further, as he suggested. Let us also hope that some formalisation of the pre-trial reviews already operating in many Crown courts can clarify the issues to be put at the trial, and that a spirit of co-operation can prevail so that both parties are saved the laborious ritual of arguing matters of no consequence before patient jurors. Let us look particularly hard at the scope for participation in mutual assistance treaties with other countries to facilitate the tracing and conviction of those who perpetrate international fraud.

I have skimmed through these important proposals quite quickly, but I should like to make it clear that we welcome this batch of proposals warmly. We shall take account of views expressed today and of those which may yet be offered by the judiciary, practitioners and others with relevant experience. But we start from a position of willingness to legislate on the basis of these highly significant proposals at the earliest opportunity.

That is the spirit in which we approach the report. I hope that I have clarified some of the central themes. I hope that I have re-emphasised our stern approach to this subject and our willingness to think and act radically about it. The touchstones of our response are justice, efficiency and effectiveness in bringing to account the perpetrators of fraud. We shall carry through all the proposals in the report which pass those tests.

7.24 pm

Mr. Gerald Kaufman (Manchester, Gorton): The debate comes at at time when public concern about fraud is greater than it has ever been. A batch of unwholesome City scandals has justifiably aroused that concern. But, even without Johnson Matthey, without Lloyd's and without the unsavoury aromas surrounding Westland share dealings, the extent of fraud and its increasing dimensions would certainly justify the disquiet among all sections of the population and in all parts of the country, especially among the small savers, who can least bear the irrecoverable loss and even ruin that fraud inflicts.

Mr. Doitan Williams, the Assistant Director of Public Prosecutions, in a rare public announcement, has voiced the feelings of millions in describing fraud as

"a significant destructive factor in our national life."

In the outstanding report which we are debating this evening, Lord Roskill and his colleagues declare starkly: "in the United Kingdom, fraud is a growth industry".

The report goes on to warn:

"We hope that the gravity of this situation will not be underestimated. Fraud is posing a threat to London as a financial centre and to the considerable volume of invisible exports which represents a major factor in the economy of the country."

The sums involved are enormous. A few days ago it was reported in the press that a Home Office survey soon to be published estimates that the loss to the United Kingdom financial community from fraud runs annually at £750 million. Another study calculates that British companies are now being defrauded of £3 billion or more a year. A survey conducted by the accountants Ernst and Whinney has discovered that the average loss per company from fraud amounts to £6,156 a year, which again comes to around £3 billion nationally.

Let us be clear that these are not abstract losses which can easily be borne with a shrug. They are huge sums of money which could have been directed to constructive investment and to the creation of jobs. The extent of this plague of fraud is very wide. Fifty-six per cent. of companies feel that they have experienced fraud in the past, are experiencing it now or may be vulnerable to fraud in the future. Sixteen per cent. suspect that their companies may be a victim of fraud now, and only 1 per cent. of companies surveyed believe that fraud has decreased in the past five years. No fewer than 54 per cent. feel that it has increased. The latest crime statistics show that in the 12 months to September 1985 the increase in the crimes of fraud and forgery was 9·8 per cent. Among all categories of crime, this increase was second only to the 9·9 per cent. in robbery, and there were six times as many frauds as robberies. Those were only the crimes which were notified. Many more frauds are never brought to the attention of the authorities.

Even if all frauds were reported, the authorities are simply not equipped to deal adequately with them. For one thing, the pursuit of fraud is fragmented among far too many organisations whose co-ordination, where it exists at all, is often makeshift.

Between 1978 and 1985 the joint strength of the Metropolitan and City of London fraud squads itself was steadily rising. The Roskill report informs us that in 1983 the Metropolitan and City police company fraud department had its strength deliberately reduced by 10 per cent. because more officers were needed to combat street crimes and burglaries, a point to which the hon. Member for Bury St. Edmunds (Sir E. Griffiths) drew attention. Over the country as a whole, as the Roskill report points out, the strength of the fraud squads represents approximately 0·5 per cent.—one 200th—of total police manpower. For England and Wales, the fraud squad totals

fewer than 600. We should compare that with nearly 300 in Hong Kong, which has only one twelfth of our population and therefore proportionately six times as many police pursuing fraud. What is more, the London fraud squad personnel is constantly changing, and it is said that it is common for an officer to be promoted in the middle of a complicated case to traffic or diplomatic protection.

It is no wonder that Mr. Doiran Williams, the Assistant Director of Public Prosecutions whom I have already quoted and who controls the fraud investigation group, recently complained that all who work in the fraud divisions struggle with what he called a "quite monstrous case load". From start to finish, the process of pursuing fraud is bedevilled by a shortage of resources. To me, one of the most shocking revelations is to be found in paragraph 6.34 of the report, which says:

"It is important, in our view, for the judge who is studying a voluminous set of papers in a fraud case out of court to be able to dictate the crucial points in the case so that they can be set out in typewritten form for his later benefit. We understand that the secretarial facilities (typists, audio equipment) available to judges at the Central Criminal Court and elsewhere are seriously inadequate and make little or no allowance for this kind of work to be done. This is a matter of concern."

A matter of concern! I admire Lord Roskill's measured language. It is nothing short of a scandal. It is lamentable that a major report such as this has to be reduced to such de minimis recommendations as the recommendation that judges should be given adequate secretarial facilities. That is only one out of 112 recommendations in this definitive document.

It is a tribute to the thorough and thoughtful work of Lord Roskill and his colleagues that no more than a handful of the recommendations are controversial. My right hon. and learned Friend the Member for Aberavon (Mr. Morris) will, with his special expertise, discuss many of these matters if he catches your eye, Mr. Deputy Speaker. Those which give rise to some concern and which I feel should be mentioned now include recommendation 58, which says:

"The law should be altered so that the defence are required to outline in writing the nature of their case at the preparatory hearing stage."

This suggestion is made the more worrying by recommendation 59(i), which says:

"The prosecution and the judge should be entitled to comment at the trial, and the jury should be entitled to take account of and draw any appropriate inference from the defendant's failure to disclose a particular line of defence on which he relies at the trial."

Mr. Gerald Bermingham (St. Helens, South): Does my right hon. Friend agree that it would be highly prejudicial and completely contrary to the whole of our judicial system if, in a case in which the defence did not discover its line of defence until after the preparatory hearing, adverse comments could be made at the trial?

Mr. Kaufman: My hon. Friend has a legal experience that is denied to me. I accept and am impressed by what he says. My view, as a non-lawyer, when I read the report was that this provision was potentially dangerously prejudicial and I hope that it will be examined with great care before the Government contemplate proceeding with it.

I am also worried by recommendation 78, which is that the defendant's right of peremptory challenge of the jury would be abolished together with the prosecution's right to stand by for the Crown. That needs the most gingerly consideration.

The recommendation that has aroused the greatest controversy is 82, to which the Home Secretary referred, and which states:

"For complex fraud cases falling within certain Guidelines, trial by a judge and two lay members should replace trial by judge and jury."

I have already said, and I shall plainly say again now, that this recommendation is not acceptable to the Opposition. We want fraudsters to be convicted and we want them to be punished. We would like the worst to be punished in an exemplary way, but we believe that they should be fairly punished after being fairly tried and clearly found guilty.

One of the things that worries us most is the concept which is introduced by the majority procedure on the proposed tribunal of reasoned acquittal. The concept of reasoned acquittal is a very dangerous innovation, and I very much hope that it will not be proceeded with. Our objections are best summed up in the note of dissent by Mr. Walter Merricks, which are published at the end of the report. He refers to the constitutional argument advanced by Lord Devlin, among others, that the right to jury trial has become so much of an institution that it has become more or less a convention of the constitution that citizens should not be liable to more than a limited term of imprisonment otherwise than on a jury verdict. He said:

The burden is on those who wish to alter the system of jury trial, not simply because that is the present system, but because the right of the citizen not to be liable to incarceration for a lengthy period (the maximum sentence for conspiracy to defraud is life imprisonment) other than on a jury verdict has become a civic right which should only be dislodged for good cause."

The Home Secretary has said that the problem of definition of complex cases is difficult. The report draws attention to the fact that, last year, in Hong Kong, these difficulties were revealed and had to be discussed when it was there proposed to try complex commercial crimes without a jury.

Moreover, as Mr. Merricks says, there is little or no evidence to suggest that complexity is a deterrent to prosecution. Figures for 1983 provided by the Director of Public Prosecutions show that, out of 71 cases in which it was decided not to prosecute, only one failure to prosecute was due to complexity. It seems that, in that case, cost was just as important. There is a danger that, with no incentive to simplify, trial before only a judge and expert lay members would involve more complexities, not fewer, and that that would work to the disadvantage of the accused as well as to the bewilderment of the public.

Even more worrying is the possibility of the removal of the right to a jury trial being extended from fraud cases to others. The Roskill report states frankly:

"We realise that if our recommendations are adopted in fraud cases it would be logical for some of them to apply in all criminal cases . . . we have been careful to ensure that we were not proposing changes in law and procedure which we would not be prepared to see applied to other types of criminal case."

In Monday's debate in the other place, for the Home Office, Lord Glenarthur rather assuringly said:

"I should make it clear that we do not consider this recommendation"—

to dispense with a jury in complex fraud cases—

"to have any application wider than the complex fraud cases which the committee had in mind."—[*Official Report, House of Lords,* 10 February 1986; Vol. 471, c. 72.]

That was not the impression given by the Home Secretary in his statement last month when he said:

"Some of the recommendations may well be applicable in other sectors of the criminal law besides fraud."—[*Official Report,* 14 January 1986; Vol. 89, c. 928.]

Mr. Hurd *rose*——

Mr. Kaufman: I may save the right hon. Gentleman making an intervention, but if he wishes to make it I shall give way. Tonight, he appeared to have shifted from that stance towards that given by Lord Glenarthur. If so, it is welcome and the right hon. Gentleman need not rise from his relaxed position to reiterate it. Whatever assurances we receive, I believe we should heed the important warning in the joint statement issued by the Criminal Bar Association and the Law Society Criminal Law Committee. The warning they give is of great importance:

"History shows that constitutional changes based upon particular problems are seldom correct and often regretted."

Mr. Hurd: I am sure that the right hon. Gentleman is aware that the report itself makes it clear that, although some of its other recommendations might be applied to sectors outside fraud, that one was argued simply on the basis of complexe fraud. That has always been my position.

Mr. Kaufman: I am glad that the right hon. Gentleman has said that. I had the privilege—I shall not go so far as to say the pleasure, although I do not mean that as a criticism of the literary style — of reading the report from beginning to end. Of course, I saw that. I also saw the two quotations which I felt it right to make. The committee did not make any caveat or exclusion in paragraph 1.5 when it said:

"if our recommendations are adopted in fraud cases it would be logical for some of them to apply in all criminal cases . . . we have been careful to ensure that we were not proposing changes in law and procedure which we would not be prepared to see applied to other types of criminal case."

It is important to get it clear because we are opposed to the Government proceeding along that path. We do not believe that it is a proper and acceptable change. If they do so, it is very important indeed for it to be made clear that it is a unique change even though my right hon. and learned Friend the Member for Aberavon (Mr. Morris) has already intimated in an intervention that it would be illogical.

Mr. Richard Hickmet (Glanford and Scunthorpe): Whether or not the recommendation about jury trials is confined to complex fraud cases, no doubt the right hon. Gentleman will be concerned with the final sentence in paragraph 8.22:

"Society appears to have an attachment to jury trial which is emotional or sentimental rather than logical."

Mr. Kaufman: I accept that completely. There is logic to a jury trial, but in a democracy based upon consent emotion and sentiment have an important place. I warn the Conservative party that far too often it makes the mistake of pursuing the path of tidy logic against possibly fuzzy public sentiment. Fuzzy public sentiment is important in a consenting democracy.

Mr. Hickmet: The right hon. Gentleman has made precisely the point which I was endeavouring to put to him. The statement in that paragraph is extremely dangerous. I agree with the manner in which the right hon. Gentleman has analysed it and despatched it. It is a most dangerous statement with which I hope the Home Secretary does not agree.

Mr. Kaufman: Then we are pals together and that is all right.

I sum up my argument at this stage by advising the Government to steer clear of that proposal. If they do, I believe that they will have the support of most hon. Members on both sides of the House.

Mr. Ivan Lawrence (Burton): Since he is as concerned as everyone else that the system should not be unfair, has the right hon. Gentleman considered the possibility that some accused people in very complex fraud trials involving, for example, city institutions may be worried that juries may not be able to understand the matter and may think that a special tribunal could understand it? In very complicated trials, might there not be an argument, for the protection of the innocent individual, that he should be able to choose, if he wished, a specialist tribunal in which he had more confidence than a jury? Has the right hon. Gentleman considered that and has he ruled out all possibilities of having a special tribunal even in such circumstances?

Mr. Kaufman: If I were to go to trial for any offence, I am sure that I would cast around and try to decide the best way to be acquitted. But we do not base jury trial on subjective approaches in individual cases. I wonder whether, before his trial started, Mr. Ponting believed that he would be tried fairly by a jury. I wonder too if he believed that when it was decided, rightly in my view, by the Government to make available the extremely complex document the "crown jewels" for the jury to consider. The jury considered it and came to a conclusion with which I agree. Hon. Members may make an ex parte judgment, but we are considering the general question of the rightness of jury trials in cases where people are liable to long terms of imprisonment. On that I do not wish to depart from the views that I have put to the House. The proportion of my speech on those matters has been lengthened by the interventions, but I do not regret that.

There are dozens — scores indeed — of the Roskill recommendations which can usefully be implemented by the Government with the support of the Labour party and no doubt with the support of Conservative Members. For example, it is plainly absurd that the pursuit of fraud should be split among 47 organisations, co-ordinated imperfectly where it is co-ordinated at all.

I welcome especially the recommendations to examine the creation of a new unified organisation responsible for all the functions of detection, investigation and prosecution of serious fraud and, meanwhile at any rate, the establishment of a fraud commission. The recommended appointment of a case controller for each serious fraud case maks obvious sense, as does the provision of more expert accounting staff for the Director of Public Prosecutions and police fraud squads.

We also support nomination of a trial judge at an early stage after transfer or committal to a Crown court and the provision of adequate time for the judge to familiarise himself with the case before the preparatory hearing. Again, speaking as a layman and referring back to the passage about secretarial facilities for judges, I am astounded that such facilities are not already available. It shows the makeshift way in which we approach justice.

Above all, recommendation 10 goes to the heart of the whole problem. Without the Government's commitment to that recommendation they might as well not have asked Lord Roskill to do this essential and painstaking job. The recommendation states:

"The resources devoted to the pursuit of fraud must be expanded as a matter of priority."

That sounds elementary, but resources will be provided only if the determination exists to provide them. It must be said that far too often the determination to pursue fraud has not been evident. *The Economist* has drawn attention to what it calls the "lack of determination". It stated that, in 1983, 323 reports of alleged company fraud were reported to the Director of Public Prosecutions but only 47 were prosecuted. There are other failures, too. The Roskill report deplores what it calls:

"the reluctance of individual police fraud squads to seek assistance from other fraud squads because the requesting force would be required to pay for the help given."

In Manchester we are complaining because we have had to pay £400,000 out of our rates to finance security round a trial which we did not ask to be held in Manchester. That financially prudent consideration—the reluctance of a requesting force to pay for help given—was not evident during the miners' strike when police forces spent £200 million, if not more, on exactly that kind of mutual assistance.

Again, *The Times*—pre-Wapping—quoted the Roskill report's estimate that the cost of a complex fraud trial is £500,000, stated that the Director of Public Prosecutions or the tax authorities were reluctant to press cases which cost so much unless they can safely predict conviction on serious charges. No such financial meticulousness has governed other decisions to prosecute. Only recently and at great expense there have been the trials of miners from Orgreave and Nottingham. The Orgreave trials cost taxpayers £500,000, and those in Nottingham cost a cool £1,500,000. Yet they ended, not in failure, but a complete fiasco. The position may be more satisfactory if the Government pursued guilty fraudsters with a fraction of the zeal with which they have pursued miners who have been shown to be innocent.

Although fraud is a disgraceful crime which bleeds individuals, small savers, companies and the economy of vast sums, it is still more socially acceptable and genteel —a nicer crime—than burglary, robbery or theft, all of which are rightly pursued by the police with great zeal, although, regrettably, with varying degrees of success. During the period of the Government, for every one person sent to jail for Inland Revenue fraud, 20 have been sent to jail for social security benefit fraud. It is no wonder that Mr. Walter Merricks calls for prison sentences for unscrupulous operators, both to deter fraud and to reassure the public that double standards are not being applied.

There is a strange whiff of those double standards in a circular issued to chief officers of police by the Home Office last February, and I should be grateful if the Minister would explain that when he replies. The circular, which is printed in the Roskill report, states:

"The following types of fraud case should also be reported to the Controller of FIG so that he may exercise his discretion whether they should be investigated by FIG."

He gives five categories where that procedure should apply. The fourth relates to people connected with Lloyd's of London, the stock exchange and other commercial exchanges, and the fifth involves well-known public figures — for example, Members of Parliament and captains of industry. Why is it believed that such people require special treatment before an investigation is authorised?

The Solicitor-General (Sir Patrick Mayhew): The right hon. Gentleman has unwittingly perpetrated or contributed to a widespread misunderstanding that prosecutions are initiated by the Government. He compared the zeal, or lack of it, with which the Government prosecute fraudsters with that with which they prosecute miners. does he except that, in the case of the Director of Public Prosecutions, a prosecution is initiated on the director's independent judgment—he is supervised by the Attorney-General, but there is no Government involvement — and that the miners' prosecutions were initiated by a county prosecuting solicitor at the instance of the chief officer of police? I hope that the right hon. Gentleman will acknowledge that important distinction.

Mr. Kaufman: I have known the Solicitor-General for many years, and his integrity is absolute. I always accept what he says, but he misunderstands what I am seeking to say, and, indeed, what other people believe. Obviously, I know that the Government do not instigate prosecutions. Recent cases prove that, if anything could. The Solicitor-General acts independently, and resents it if there is any intrusion on his independence. On the other hand, there is what the judge who sentenced Sarah Tisdall called the "climate of the times". There is also the climate created by Ministers, such as the right hon. and learned Member for Richmond, Yorks (Mr. Brittan), who was Home Secretary when the trials were pending and called for heavy sentences on men who had still to be tried. That was prejudicial to those trials. Therefore, what the Solicitor-General said does not in any way contravene what I have said.

My point is borne out by a leading article in *The Times* which was published at the same time as the Bill—pre-Wapping. It states about the failure of the detection and prosecution system to bring most of the major professional fraudsters to court:

"In social terms that has led to a suspicion that the rich and well-connected can get away with it."

The Times knows a bit about the rich and well connected. At the same time, the *Financial Times* warned even more emphatically at the conclusion of a leading article, that

"the idea that white collar crime is somehow different is not one that society as a whole can tolerate."

Mr. Doiran Williams states of fraud:

"It is divisive in terms of class because where the law enforcement agencies fail—for whatever compelling reason—to prosecute those whose conduct has been demonstrably and grossly dishonest, the cry goes up that 'there is one law for them and another for us'."

It is extremely important that society should recognise that fraud is a crime more serious and more damaging than most others, but which is not pursued with the zeal and relentlessness that it should be. That is what the Roskill report is all about. That is why, with the exceptions that I have mentioned, we in the Labour party believe that the recommendations in the Roskill report form a firm basis for speedy action, and that the public is looking to Parliament for that speedy action.

7.57 pm

Mr. Mark Carlisle (Warrington, South): I hope that the right hon. Member for Manchester, Gorton (Mr. Kaufman) will forgive me if I do not follow his latter remarks, but I wish to be brief. Many of the recommendations of the Roskill report go far beyond athe ambit of serious fraud crimes, and it is a vital report.

We are right to be worried about fraud. The feeling that major fraud may go undetected, unprosecuted or

[Mr. Mark Carlisle]

unpunished would do immense damage to the international standing of our institutions, and it worries many people greatly. We are also right to be worried about what is happening at present in the investigation, prosecution and trial of cases. We should be worried that many people seem to disappear to other countries before we have an opportunity to bring them to trial, that some cases may not be brought to trial because of delay and their complexity and that there is delay in bringing cases to trial. Above all, we should be worried about the length, complexity and expense of trials.

I believe that Lord Roskill is right when he says that the present system is inadequate to bring the perpetrators of fraud effectively and expeditiously to trial, and that the opportunities to create delay and abuse within the system are too great to be acceptable. I suggest that the test against which this report should be judged is to ask whether its proposals reduce complexity. Do they reduce delay, or the length and expense of trials? Do they ensure expedition and efficiency? Those are the tests against which I propose to judge this report. I believe that those are the aims of many of the Roskill recommendations.

It is inevitable that there has been much public comment on the proposals on juries, and I shall state my views on that later.

I welcome particularly the proposals on pre-prosecution. It is important for counsel to be involved at an early stage, and on a full-time basis, if delay is to be avoided. I say that as someone who is in chambers where there are a fair number of Treasury counsel. I have seen the piles of paper which they are required to look through out of court hours, having been involved in other cases during the day. That is one of the practical problems that lead to delay.

I welcome Lord Roskill's proposals on committal proceedings. Fraud committal proceedings are expensive. They cause delay. I believe that they are largely unnecessary, and they can, by delay, be the subject of abuse.

For many years, most committals have been by means of paper committals. That system has worked well, but the time has come to look at the whole question of the right to full committal proceedings. If we are serious in our attempt to accept those recommendations which are aimed at reducing delay and complexity, and at speeding up the system, the replacement of committals by the system of a transfer certificate, with the right of application for discharge by the defendant through the trial judge, with or without the right of some form of limited cross-examination, is a sensible proposal which we should be willing to accept.

The proposals about evidence are even more important. I commend to my right hon. Friend the Home Secretary the speech made my Lord Griffiths in another place. Frankly, I see no reason why the judge should not have the power to allow copies of documents, rather than originals, to be introduced. I see no reason why documents should not be allowed in certain cases to be evidence of the truth of the contents, without the necessity of calling the maker.

I believe that our rules of evidence are outmoded and that we, as lawyers, should not be unwilling to review these rules and change them where necessary. It is important that we should be able to get evidence from abroad taken on commission in cases of international crimes, as the report recommends. I believe that the proposals on evidence will go a long way towards meeting the proposals on mounting a prosecution and proving a fraud, and will help to shorten substantially, and thereby reduce, the complexity and nature of trials.

Most important of all are those proposals in chapter 6 of the report, beginning with pre-trial review. A pre-trial review is often of little value, and might well be described as a farce. It takes place before a judge, who is not the judge who will try the case, and usually with different counsel from those who will be involved in the case. The system must be improved if we are to use it as a means of simplifying the subsequent trial. The proposals by Lord Roskill go a long way towards that end.

Proper preparatory work, which is fairly remunerative is needed. I believe—I disagree with what the right hon. Member for Gorton said, although I agree with much of what he said about the report itself—that we have to accept the proposals in the report on the disclosure at an early stage of the outline of the case for the defence. That is not such a radical recommendation as might be thought. We have been doing that for some years with alibi defence and, so far as I know, we have done so without concern. If we are serious about tackling the problems of delay and complexity which the report has identified, we must be prepared to accept some radical departures from certain rules that we have accepted in the past as right for the conduct of criminal trials.

I welcome the proposals on the requirement to disclose the outline of the defence and the requirement for the defendant to admit facts in advance. If that is achieved, trials can be shortened and simplified, and the things that concern many of us in the report need not be considered. If the proposals that I have mentioned so far are implemented, they will go to the heart of the problem and do more than anything else to simplify, speed up and shorten the trial procedure, and thus ensure that justice is done.

I deal now with the comments on juries. I should not be sorry to see the peremptory challenge disappear. For the first 10 years of my life at the Bar I did not know whether that existed. I never heard it used on circuit, where I believe I was involved in a substantial junior criminal practice. The fashion of challenging juries came about after I went to the Old Bailey. I know that I express a minority view, and that many of my colleagues believe that they should have the right to challenge juries, but I have always stuck firmly to the view that although one has a right to be tried by one's peers, one does not have the right to select who those peers will be.

I have no doubt that while it is right and proper that defence counsel, so long as the power exists, should use the right of challenge, and should be responsible for using it, in the interests of their clients, the fact is that it can be used to tip the balance in favour of the defendant in an unreasonable way. I should not be sorry to see it go.

Finally, I turn to a more fundamental proposal—that to change the mode of trial. I agree with almost everything that was said by the right hon. Member for Gorton, although he was a bit unfair to the committee, because the report makes it clear that the proposal is limited to complex fraud trials.

I commend to hon. Members the debate on this matter in the other House. It is interesting to note that the law lords seemed to favour the abolition of trial by jury, and

that the one layman who spoke did so passionately in favour of retaining trial by jury. The arguments set out in the Roskill report do not justify a change of this nature.

The right hon. Member for Gorton referred to the paper published by the criminal law committee of the Law Society and the Criminal Bar Association, which said that to do away with juries would raise grave constitutional issues. I do not believe that the case for ignoring those grave constitutional issues is made out in the report. I prefer the arguments advanced by Mr. Walter Merricks in his note of dissent. The evidence of those who were involved, both on the side of the prosecution and of the defence, the police and others, was in favour of retaining juries. I do not like the idea of changing the system so that people are sent to prison for long periods without first going through the accepted method of trial which we have always used.

I suggest to my right hon. Friend the Home Secretary that it is unnecessary at this stage to pursue that recommendation. I believe that there is no evidence that juries are not working. There is certainly no serious evidence that they unduly acquit. I do not believe that there is any evidence that cases are not being brought to trial because of their complexity, as the right hon. Member for Gorton said. The real objection to jurors in these fraud cases is the unbearable strain imposed on jurors by the length and complexity of the case that they are asked to try.

I believe that, sensibly used, the report's other recommendations will lead to greater simplification and understanding of the issues involved and shorter trials. I think, therefore that one objection to the continuation of jury trial—the unbearable strain on juries, as trials of between four months and six months in the Old Bailey make clear—and the raison d'etre for the recommendation to abolish juries are removed.

I was delighted at the tenor of the speech by my right hon. Friend the Home Secretary. I hope that he is willing to be bold with regard to the other proposals. I hope that he will stand up to the objections that may be made by members of my profession, although we must obviously look at the details. I hope also that he will turn his face against the proposal to do away with juries as a means of trial.

8.11 pm

Mr. Robert Maclennan (Caithness and Sutherland): The prevalence of financial fraud is deeply worrying. It is important to the good name of our City and financial institutions that all possible steps are taken to minimise its impact and to detect and punish the perpetrators in an exemplary fashion. The Roskill report is welcome because the committee has authoritatively and speedily brought forward extremely practical suggestions which, if implemented, will do a great deal to remove public anxiety that fraudsters can slip through the net of our criminal justice system.

The Roskill committee produced a large number of proposals which the House should welcome. I wholly agree with the right hon. and learned Member for Warrington, South (Mr. Carlisle) about the importance of properly handling pre-trial procedures. As I agree with him, it is not necessary for me to comment in detail on the bulk of those points.

I warn against the Secretary of State paying too much attention to the opening statements of the Roskill committee. Perhaps understandably for the progenitors of such an authoritative report, the members of the Roskill committee sought to have the Government treat all the proposals as though they were interdependent and could not be viewed in isolation without damaging the effectiveness of the report. Page 2 of the report states:

> "It follows that substantial alteration of any of our proposals may do damage to the structure of the whole."

I hope that the Government will not flinch from the task of rejecting some of the report's major proposals on those grounds. There is no doubt that the House would agree with Lord Roskill's general perception that, if self-regulatory mechanisms are abused, the law must deliver swift and sure retribution.

The Government have not so far had regard to the need to increase the resources of those responsible for the detection of fraud. The Home Secretary suggested that he was proceeding in a somewhat leisurely way to deal with the requests of the Metropolitan police for an increase in resources and establishment numbers. The right hon. Member for Manchester, Gorton (Mr. Kaufman) dealt at some length with the resources issue. It is not necessary for me to delay the debate by doing more than adopting the arguments he deployed about the lack of police resources. The Home Secretary shakes his head. I hope that that does not mean that he considers that resources are adequate.

Mr. Hurd: The bottleneck is not at the first or police stage. That is why it is especially important that the Department of Trade and Industry and the Director of Public Prosecutions have been able to announce substantial increases in their staff.

Mr. Maclellan: I have no doubt that there is a bottleneck such as the right hon. Gentleman describes and that there should be staff increases. I think that many members of the police force, at all levels, would strongly disagree with the right hon. Gentleman's somewhat complacent view about the capacity of police fraud squads to tackle the problems. I hope that the Home Secretary will not take refuge in that. I recognise that there are public expenditure implications and that the right hon. Gentleman will have to persuade his colleagues that it is necessary to meet these charges if we are to take seriously his claim to be tackling the problem. No doubt, we shall wish to return on another occasion to the resources issue.

The report raises major issues of principle with respect to criminal procedure. It proposes that there should be pre-trial disclosure of the case of the defence. I disagree with the right hon. Member for Gorton. I believe that the committee put forward a strong argument that there is a case for much more openness about the nature — although not the evidence that will be led — of the defence. This aspect of the criminal law should be reviewed in the round. Unfortunately, consideration of these sensible proposals has been set back by the monumentally silly recommendation in 1972 by the Criminal Law Revision Committee that accused persons must disclose their offence at the police station. If disclosure is to take place, it should be only after the defendant has seen in writing how the prosecution has put its case and after he has had access to proper legal advice. It follows that the prosecution must be required to set out its case in an intelligible way, with a proper and particularised narrative, not just a formal indictment and a pile of statements by witnesses.

[Mr. Maclennan]

There must be other safeguards. If one goes down this route, it will be necessary to ensure that the prosecution has only a limited right to amend its case. On the other hand, the defence should have an unlimited right to amend its case, although it would then risk adverse comments about inconsistency. There would also have to be safeguards to ensure that the prosecution could not nobble defence witnesses whose identity had been revealed by the written statement of case.

I am hostile to the idea of the Government embarking upon this important reform in fraud cases alone. The Roskill Commission said that before implementation this question should be looked at more widely.

I shall deal next with the right of peremptory challenge of jurors. I am not persuaded that it should be abandoned in fraud cases. I understood the Home Secretary to say that the Crown prosecution service will conduct a general survey of the practice of peremptory challenge in all criminal cases. A cautious approach would lead to an appraisal of the evidence and to an examination of the use of peremptory challenge and whether or not it ought to be retained. That must be a necessary precursor to any change in the law. There is no reason for fraud cases to be treated in a different way from other cases.

If the right of peremptory challenge were to be removed, there would inevitably be pressure for the prolonged cross-examination and investigation of potential jurors to determine whether they should be excluded for cause. That risk will have to be considered by the Government. In practice, peremptory challenge allows defendants to feel that they have a certain say in the determination of the jury panel, and it prevents most of the argument and resentment that would otherwise occur. It is not a wholly rational system, but it seems to work. A considerable onus is placed upon those who seek to displace it to demonstrate that it does not work. That is what the Crown prosecution service will seek to determine in its objective appraisal of the evidence.

I shall now deal with what is undoubtedly the most controversial part of the recommendations: the right of an accused person to trial by jury. The arguments were best summarised in Mr. Merricks' minority report. His arguments are extremely compelling. Both the Social Democratic party and the Liberal party are strongly opposed to the abandonment of trial by jury in complex fraud cases. I hope that the Government will resist the recommendations, for reasons that I shall seek to deploy.

Juries, though inexpert, are not necessarily more stupid than judges, lawyers, accountants and bankers. Counsel's task is to seek to explain the issues to the jury in a manner that enables it to reach a correct conclusion. That task is not beyond counsel. It was not demonstrated to the Roskill Commission that the task is beyond their capacity. It is notable that the evidence led by those who are most closely associated with fraud trials—barristers and solictors—was overwhelmingly against the view that juries reach the wrong decision. I make also a Scottish point, that in Scotland juries try all cases, however complex, without even the benefit of an opening statement. They have to pick up the case as it is put to them. Juries represent the popular, democratic element in the administration of justice. Without juries, the criminal law becomes a closed affair for experts.

Mr. Richard Ottaway (Nottingham, North): If the hon. Gentleman were to be transported to Canada, where he would be entitled to choose between either trail by jury or trial by a judge and assessors if he were charged with commercial fraud, of which he knew he was innocent, would he prefer to be tried by a jury that did not understand the issues or by a judge and assessors who did understand them?

Mr. Maclennan: That point was dealt with effectively by the right hon. Member for Gorton. I do not believe that trial by experts is necessarily in the interests of the accused. If a crime of dishonesty has been committed, that is not essentially a technical question. Although the facts may be complex it can easily be assessed by the ordinary man or woman. The system has served us well.

Mr. Lawrence: Of course a jury can understand all the complexities of a fraud trial, but it takes much longer to inform a jury of those complexities than it takes to inform a tribunal. Does the hon. Gentleman think that very substantial savings in time and therefore in delay could be made if a tribunal was available in some circumstances for very long and complex fraud trials?

Mr. Maclennan: No, I do not. The right hon. and learned Member for Warrington, South dealt effectively with that argument. He pointed out that if the other recommendations of the Roskill Commission were to be adopted—namely, pre-trial procedures, the involvement of counsel at an early stage, and a narrowing down of the issues, which is why it is important to look at the statement of the case for the defence — it should be possible greatly to limit the length of a trial. Furthermore, the Roskill Commission is perfectly frank about the fact that relatively few cases continue for many months. That does not mean that the time cases take in the courts is acceptable. The length of many of them is unacceptable. There is the problem of witnesses who have a sharp recollection of events having to be called after a case has dragged on for months. Justice is not served by the prolongation of trials. I think that the problem of the prolongation of trials and the difficulties for juries must be tackled before the case reaches that stage.

I was dealing with a wider point—the importance of the role of the jury. I believe that the jury legitimises the exercise by the state of the power to deprive citizens of their liberty for prolonged periods. On rare occasions it can also stand between the citizen and the law and acquit where common morality, decency or sense say one thing and the law says another. I think that that is rather a difficult concept for law-makers to accept, but I think that there have been cases in the memory of the House where that has happened. Having said that, I recognise that those cases place great burdens upon the jury. I think that the judge should have the right to ask the jurors if they consider that the issues are such that they would find it difficult to come to a conclusion and if they wish to withdraw. There should be literacy tests in cases where there is likely to be documentary evidence. We should also look at the possibility of extending the use of special verdicts, asking a jury to answer specific questions, for example, whether the defendant is dishonest instead of whether he is guilty or not guilty.

On the central issue of whether we should adopt the suggestion of a judge and two expert assessors, in my view the Roskill Committee did not make the case that the

present system leads to miscarriages of justice or to prosecutions not being successfully brought. It was rightly pointed out that there was only anecdotal evidence and that the overwhelming majority of those who were closely associated with the trials believe that juries came to the right view, or, at least, an understandable view.

The constitutional issue to which Mr. Merricks attached great importance is one to which the alliance parties also attach great importance. The right to elect for a trial by jury in any allegation of dishonesty is one that we should not proceed to dismantle. Let it be clear that dishonesty is an element in many cases other than fraud and, if one steps down that road, the logic of proceeding beyond fraud trials to others will, I am afraid, be pressed by those who wish to tighten the screws of the criminal justice system.

The problem of the definition of a complex case has not been satisfactorily resolved by the Roskill report. Mr. Merricks' rather powerful example of the public incomprehension which would follow in denying the right to a trial by jury to a man who has stolen £1 million by the use of a computer and allowing it to a man who has stolen £1 million from a bank by the use of a gun is one which should be in the Government's mind. I hope that the Government will also bear in mind the probability, indeed virtual certainty, that if a fraud tribunal were established there would be an appeal against its findings. I think that where reasons are given it would be very easy to erect an appeal. That process would lead to a prolongation of the trial which would be opposed to the general thrust of the report.

I think that this has been a most valuable report and that the overwhelming number of its recommendations should be implemented with all possible speed. The importance of the jury has been re-emphasised in public perception as a result of the two Official Secrets Act prosecutions—the Ponting case and the Cyprus secrets trial. I do not believe that the House would be right to accept any proposal to abandon something which has been a fundamental protection of our citizens' rights for centuries.

Several Hon. Members *rose*——

Mr. Deputy Speaker (Mr. Harold Walker): I remind the House of Mr. Speaker's plea for brief speeches.

8.35 pm

Sir Ian Percival (Southport): I hope to respond immediately to that plea. The House owes an enormous debt to Lord Roskill and his colleagues for the time and expertise put into producing the report. We also owe a considerable debt to Mr. Walter Merricks. I say that not merely because he is my wife's nephew, but for two other reasons. I once made a dissenting report and I know what it means to do that. The second and the main reason is that I agree with so much of what he says. He will know that that has not always been the case.

I want to concentrate on making one point arising from the report. The two principal features in the report are pre-trial preparation and whether we should do away with juries in fraud cases. They are intimately bound up with one another. I think that there are constitutional and philosophical reasons for keeping jury trials in cases where the consequences may be serious for the accused. I also think that there are both emotional and logical reasons for keeping juries in such cases. However, there is an even better, and practical, reason why we should not try to implement that recommendation at the moment. That is the fundamental reason put forward by the Roskill committee for abolishing juries, namely the complexity of certain fraud trials. Looking at it practically, one of the major reasons why cases are so complicated when they get to trial is that they have not been properly prepared. I do not say that as a criticism of anybody involved. At every stage, those who have to prepare the trials are having to overcome practical obstacles that would defeat most people. It is a miracle that some of the cases come to trial in as orderly fashion as they do.

I want to support with all the emphasis that I can the recommendation that we should look urgently at preparations for trial—all pre-trial stages—and here we have a large number of positive recommendations. I doubt whether everybody would agree with every one of them but I am sure that everybody would agree that that is what we have to look at first. I believe that the Criminal Bar Association also has some further proposals in that area.

My plea to my right hon. and hon. Friends on the Front Bench is to concentrate on that part of the report and get on with it, with all the assistance possible. I am sure that both sides of the profession will give their help. A lot of advice might also be obtained from the accountants, many of whom are now specialising in doing the groundwork in preparing cases for a fraud trial. Let us see how far we can get in simplifying the trial itself before we contemplate doing away with what, after all, has been regarded in this country for a very long time, as one of the principal safeguards of the liberty of the subject. I do not say that that tradition can justify sticking with one system forever in all cases, but it should make us slow in abolishing it and especially abolishing it in any kind of trial where the consequences for the accused on being found guilty may be very serious.

My plea to my right hon. and hon. Friends is get on with it. I am not just supporting the recommendations concerning pre-trial matters. My plea is let us get on with them, with considering and implementing imprisonment, we can make in pre-trial preparation just as quickly as possible. The beauty of it is that hardly any of that needs legislation. All that it needs is the will to get on with it. Let us leave other considerations about juries until we have tackled this first and done something about it.

8.39 pm

Mr. Gerald Bermingham (St. Helens, South): I have one slight advantage in these matters because I have prepared trials in the past and have trials prepared for me in the present. There is a world of difference between looking at a set of papers that have been prepared for one and a set of papers that one has prepared oneself. The basis behind any prosecution is the quality of preparation, which is why I endorse almost everything that the right hon. and learned Member for Southport (Sir I. Percival) has said. He is so right. The difficulty with fraud trials, whether one defends or prosecutes, is the way in which they are prepared and presented. It takes just a little effort and careful constructive thought to assemble the evidence in a format easily understood by anybody.

I can take a simple example from experience. About 10 years ago, a series of fraud trials were prepared by the office of the Director of Public Prosecutions, concerning the quality of scrap going into steel works. When the first case eventually came to trial, there were mounds of paper

[Mr. Gerald Bermingham]

about a mile high. I had the job of preparing the defence and all I did was stand on a bridge and watch a scrap train going by underneath. I realised that one could see the quality of the scrap in the wagons, with tyres sticking up, and various bits and lumps. I then went to look at a mound of scrap in a British Steel Corporation scrap yard. I saw on that mound of scrap, which had been bought and paid for, all the things that were being complained about in the case. In other words, the British Steel Corporation had been buying what was described as fraudulent. The trial collapsed simply because the defence prepared its case by going to have a look.

That example involved allegations about millions of pounds. if those who prepared prosecutions took similar simple steps, the most complex case could be reduced to the most simple terms, and cases could be so much more straightforward. Such preparation would take increased resources, increased manpower in the DPP office and the police force involving employment of counsel and solicitors at an early stage and the creation of a team. All those matters are in the Roskill report and can be implemented straight away.

Roskill has many gems in it, but unfortunately it also has a few flawed stones. The flawed stones come in recommendations 57 to 61 and the later recommendations about the right of disclosure. I take issue with the right hon. and learned Member for Warrington, South (Mr. Carlisle) who said that we have had alibi disclosure for some years. That is a different matter because an alibi is merely somebody saying "I was not there." The mischief that was overcome by the creation of the rules about the disclosure of alibi was that of the suddenly sprung witness. The defence is, "I was not there. I am not part of this affair."

Mr. Hickmet: Or, "I was somewhere else."

Mr. Bermingham: I agree with the hon. Gentleman. However, if the Roskill recommendations are implemented, the defence will be called upon to disclose the whole nature of the defence case. That will effectively remove the right of silence. We shall again begin to turn the format of a trial into something approaching the French system of proof of defence. If the prosecution knows what the defence will say, it will target its opening statement and witnesses towards the defence case.

We then have the appalling suggestion—I put it as bluntly as that—that the prosecution and the judge, in almost a team effort, can comment on the failure to disclose. All of us who have been involved in trials, whether on the prosecution or the defence side, know only too well that it is something said, perhaps by a witness, that may open up new lines of defence, ones that had not been canvassed or thought of before the trial began. If that becomes the principal line of defence, are the judge and the prosecution to comment and seek to discredit on the basis that it had not been anticipated? How often has one seen a witness statement that looked perfect and damning, but when the witness stood in the witness box, he failed to live up to the words that he had written on the paper?

We are talking about human beings giving evidence, not about computerised paper exercises. To remove the right to silence, as the Roskill proposals would, and to begin to shift the onus away from the prosecution proving its case towards the defence establishing its case and proving it, would go to the heart of the system of British justice which says that it is for the prosecution to prove its case.

In this Chamber, I do not have to remind many of the right hon. and hon. Members present that it was not until the end of the last century that the defendant was even allowed to speak in his defence. It is only in the past 80 years that he has had the right to say something. Very often, the defendant says nothing. However, if we implement the Roskill recommendation, we shall start down the road of the defence having to be proved.

Many right hon. and hon. Members wish to speak, so I shall be as brief as possible. I take on board and agree with everything that has been said about retaining the right to challenge and the right to a jury trial. It does not need to be said again by me. The fundamental rights in our system should remain. However, I draw the Government's attention to recommendation 41, which suggests that fair and adequate remuneration should be paid to those involved in such work. This may be the first time that this subject comes to the Floor of the House. I declare my own interest in this matter as a practising member of the Bar.

Perhaps the hon. Member for Putney (Mr. Mellor) might have a word in the ears of the Solicitor-General, the Attorney-General and the Lord Chancellor and point out that even Mr. Roskill thinks that lawyers properly paid might help the service, and that applies generally and not just to complex fraud trials. I have taken the opportunity to raise that matter, which is a burning issue. The quality of those who either prosecute or defend, who prepare either for the prosecution or the defence leads to the quality of justice that we have had in this country for so many years. It would be a sad and sorry day when those skilled and able in these sectors felt it necessary to leave the profession because they could not afford to make ends meet.

Justice is sometimes expensive. By and large, these recommendations should set us on the road to even better quality justice. However, some of the recommendations should be cast aside because they will not enhance the quality of justice.

8.49 pm

Mr. Patrick Ground (Feltham and Heston): I agree with those hon. Members who have said that most of the Roskill recommendations in the first six chapters of the report should be implemented. I especially mention the proposal for a fraud commission, case controllers and the importance of legal advice at an early stage of the investigation.

There is much scope for sensible relaxations of the rules of evidence and for greater measures of disclosure. I agree with the comments on that matter of my right hon. and learned Friend the Member for Warrington, South (Mr. Carlisle). The position mentioned by the hon. Member for St. Helens, South (Mr. Bermingham), could be coped with within the proposals. The right hon. Member for Manchester, Gorton (Mr. Kaufman) referred to better facilities for judges. I remind my right hon. Friend the Secretary of State of what was said by Lord Edmund-Davies in the debate in the other place about facilities for juries, which is especially important when considering jury trials.

Lord Devlin said that the right to trial by jury has come to be regarded as a constitutional right for trials on serious criminal charges. Recently, several leading judges have

suggested that jury trials should be restricted in cases of less serious crime. Lord Roskill suggests a substantial restriction at the serious end of the criminal scale. I agree with the hon. Member for Caithness and Sutherland (Mr. Maclennan) that the majority of people in Britain believe that juries bring a valuable element of good sense and human experience to the legal system. That is generally appreciated throughout the country.

If a major change is to be made to the jury system, such a change should not be made as a result of a side wind in this report, but as a result of a thorough investigation ranging across the board of jury trials. It would be wrong of the Government to seek to restrict jury trials on the basis of a report on fraud.

There are more serious and detailed reasons in the report that should lead the Government not to accept the recommendations in relation to juries. The only research in the report is mentioned in paragraph 8.11, which shows that

"in almost six cases out of seven there was no serious complaint about the jury's verdict from most of the participants contacted. None of the questionable acquittals in their sample of cases involved complex fraud and very few were the result of lengthy or involved trials."

Regarding the operation of the jury system in fraud cases, paragraph 8.12 of the report states:

"We think that, in general, the public believes that juries provide a satisfactory method of trial and this view is held by many of our witnesses."

Another factor to be considered is the number of trials that fall in the category defined in the Roskill report. It is clear from paragraph 8.3 that there are relatively few cases involved. It states:

"In the five years from 1979 to 1983 there was a yearly average of 26 fraud trials each lasting for longer than 20 working days . . . The longest single fraud trial lasted 137 working days."

The number of trials and the length of cases are inadequate to justify a radical change in the jury system, especially when the perception of the performance of juries is that generally they work satisfactorily.

We have sometimes received complaints about judges and lawyers, but the number of complaints by members of the public, who have served on juries, about their experience of the length and hardship of trials is small in relation to other complaints about the LEGAL system. That demonstrates the fact that far from being overwhelmed by the so-called hardships mentioned in the report, most members of the public who are required on jury service, even on long trials, treat them as a duty of citizenship and a contribution that they are willing to make to the administration of justice.

8.56 pm

Mr. Richard Hickmet (Glanford and Scunthorpe): If the proposals in the report are adopted, they will represent a fundamental overhaul of court room procedure designed to improve investigation, preparation and presentation of fraud cases. Issues will be more readily identified through the pre-trial review procedure. Presentation of cases will be clearer and more easy to understand and rules of evidence will be modernised and made more effective. Trials will be shorter and will come to the Crown court more quickly.

However, I have grave misgivings about the recommendations about the jury system. Jurors in all criminal cases should be able to read, write, and to be numerate, let alone speak English. That proposition is so self-evident that no justification is needed. However, it is a remarkable thing that in fraud cases it is not unusual when the jury is empanelled to discover that some jurors cannot read.

Apart from the welcome recommendations on the literacy and numeracy of jurers, the report contains a detailed attack on the jury system. It attacks not only the challenging of jurers by counsel, but the hearing of complex fraud trials by juries and other general matters. Perhaps the system of challenging juries has been abused. It is not unusual for counsel to give the impression that they are challenging jurors simply to obtain a jury that is weighted more towards the acquittal of the defendant than a just verdict.

The report makes a comprehensive attack on the jury system and then seeks to say that, for the reasons set out in the report and because complex fraud trials are difficult for jurors to follow, trials which fall within certain guidelines should no longer be tried by judge and jury, only by judge and two lay assessors in the form of a fraud trials tribunal. We should welcome the fact that Mr. Walter Merricks was a member of the commission and produced his minority report.

Lord Justice Roskill said that trial by a jury selected at random is a major contributing factor in preventing fraud cases from being brought to trial. He said that the difficulty of presenting a complex case often results in a decision to opt for a less serious charge. There is no evidence for those two propositions. There is no evidence to show that a jury cannot understand a complex financial fraud case if it does not know the background, let alone the dishonest elements.

The minority report shows that, in 1983, of the 179 cases referred to the fraud division of the Director of Public Prosecutions for a decision on prosecution, only one case was not prosecuted on the grounds of complexity. That occurred on the advice of independent counsel and was an intellectual property case. Of the yearly average of 10 long fraud cases tried at the Old Bailey between 1979 and 1983, almost none was a complex fraud case that would be covered by the guidelines. There were carbon paper frauds, Spanish villa frauds and estate agent frauds, none of which could be defined as complex fraud cases.

The thrust of the Commission's recommendations is to reform procedure, presentation and rules of evidence so that that type of case can be understood by a jury. It is illogical to make those recommendations, and then to say, "But the jury system in those cases should be removed in any event." We are told that defendants are no longer tried by juries selected at random because of the exclusions and that, accordingly, those who fill the jury box are not a true cross-section of the public. It is my impression that the vast majority of people are not doctors, Members of Parliament, policemen or clergymen. The vast number of people who enter jury boxes represent society as a whole.

The report also argues that because the vast majority of legal cases in England and Wales are heard by skilled people, whether in the magistrates' courts, county courts, Queen's Bench courts or even in front of the 60 specialist tribunals, including those on immigration and social benefits, it is sentimental or illogical to retain jury trials in the Crown court. That is an extraordinary proposition. How many of those tribunals have the power to send a man to prison for life or, indeed, for more than one year? Not one. How many of those tribunals, with the exception of magistrates' courts, have the power to find a man guilty

[Mr. Richard Hickmet]

of a criminal offence? Not one. How many defendants at the magistrates' courts, when given the choice, opt for trial before the magistrates' court rather than trial by jury? That represents many hundreds of thousands of cases each year.

The report makes serious and damaging attacks on juries. It is essential, as Mr. Merricks said in his minority report, that the general public, as represented by the jury system and the press, should be able to understand complex fraud cases. The challenge to the criminal justice system must be to make such cases understandable to the general public and the press. No man should be sent to prison for a period of up to life imprisonment without being tried by a jury. As Mr. Merricks said powerfully, why should a man have the right to trial by jury because he commits an armed robbery with a sawn-off shotgun and steals £1 million, whereas if he used a computer to carry out a complex fraud, that right could be removed? I welcome the report's recommendations about the investigation and presentation of cases but I hope that my right hon. Friend will reject the suggestion that jury trials in those case should be removed.

Mr. Speaker: Unhappily, my request for short speeches was not followed—one Back Bench speech lasted for no fewer than 25 minutes. If the hon. Members now waiting to be called will speak for five minutes each, I will be able to call all of them.

9.6 pm

Mr. Derek Spencer (Leicester, South): I wish to make five points. The first concerns committal proceedings. The Psalmist said:

"One day in my courts is better than a thousand."

However, when I sat through 80 days of committal proceedings at the Lambeth magistrates' court, I felt that one day in court was like a thousand. The way in which contemporary committal proceedings are conducted is, for the most part, entirely futile. They are expensive and I support the Roskill committee and the Royal Commission on Criminal Procedure in saying goodbye to all that.

My second point concerns the desirability of investigation and co-ordination. Without doubt it is desirable. In the Richmond Rendezvous case part of the inquiry was conducted by officers of the Customs and Excise who dealt with the value added tax aspects of the case. The remainder of the case was dealt with by officers from the Inland Revenue who dealt with PAYE and Schedule D. There were two investigating officers, two sets of solicitors and two sets of instructions. Each party arranged themselves on opposite sides of my table and glowered at each other with professional jealousy. It is time to end all that.

My third point related to the abolition of jury trial. In a sentence I would say to the Government, "Forget about abolishing jury trial and forget it straight away."

My fourth point concerns the conduct of the trial. This is where the most speedy action can be taken. There is much that the judges can do by displaying an aggresive attitude during pre-trial reviews. Severance in appropriate cases works wonders. I am convinced that we must compel disclosure by the defence of their defence. We have abolished trial by combat, but perpetuate trial by ambush. There is nothing to justify the prolongation of the right to silence into the trial. That is consistent neither with common sense nor morality.

My fifth point relates to extradition. Many of the problems of fraud concern extradition. Mr. Pepperel, in the London and County bank case, was extradited from West Germany, and Mr. Caplan so used the judicial process in America that the energetic efforts of the Director of Public Prosecutions were not able to bring him back to this country. That is regrettable, but unfortunately it happened.

Although the report raises many points of law, the most important point is a political point that requires action, and we ignore that at our peril.

9.9 pm

Mr. Ivan Lawrence (Burton): The Roskill report is splendid, but I have strong reservations about it. Mainly this is because Roskill allocates too much of the blame for fraud to the current procedure for conducting fraud trials and so suggests remedies which are quite unnecesarily radical.

Since more people are convicted in fraud trials than for most other offences, it ought not to be the trial procedure that causes concern. What worries people is that City swindlers go abroad and cannot be extradited back to England, that dishonest City men are given immunity from prosecution if they give evidence before internal, self-regulating City institutions' own tribunals and that some fraudsters never come to trial because the resources of police manpower, accountancy, expertise and investigative procedures are inadequate to bring them to justice.

Tackling the extradition law and strengthening powers of investigation, establishing a fraud investigation group, and making available more police, legal and accountancy resources for the pursuit of the fraudulent is where the emphasis should lie.

Roskill's proposals for the improvement of investigation, preparation, presentation at court, training, and staffing resources are desirable and most welcome.

We must pause for deep thought over Roskill's proposals to take fraud out of the criminal justice system as we know it—a system which is designed to secure the conviction of the guilty by fair means and the acquittal of the innocent.

If we are panicked into doing anything which undermines our trust in the legal system as being just, we threaten one of the most important pillars of our society.

I am not sure how useful some of the Roskill recommendations will be. I do not feel strongly about paper committals, but the proposals go in the opposite direction to that which many of us had said should happen —we should use committal proceedings far more to ensure that inadequate cases are thrown out before time and money are wasted further up the ladder.

Pre-trial reviews—the so-called tea parties—are a notorious waste of time and will only work if the legal aid fund becomes so generous that the trial barrister can be guaranteed to attend and the list office can ensure that the trial judge is present. Both are somewhat optimistic expectations.

In a fraud trial, someone is deceived by a false representation into doing something that is against his or her interests. That is often the central element of all sorts of other criminal offences—rape, treason, tax evasion, and bilking a fare or a restaurant bill. Fraud cases are not always the most complex. There are treason, drug and even murder cases where the competence of a jury of ordinary people can be taxed.

How long will it be before what Roskill proposes for fraud will be extended to other complex cases of deception? If the law does not so develop, why not?

Where will be the logic of requiring the disclosure of the defence in one case rather than another? *Justice* in a commentary upon Roskill puts it this way:

"Why should a defendant accused of deceiving an insurance company into wrongly parting with money be obliged to disclose his defence but not the defendant who has deceived a restaurateur into parting with a meal for which he does not intend to pay or a women into consenting to sexual relations for favours which he does not intend to provide?"

The law must apply evenly and it will not so apply if some of the Roskill proposals are implemented. It will become distorted.

I come to juries. The peremptory challenge may be irritating, although only in cases where there are a large number of defendants can it be used to tailor a jury. To abolish it, will cause all sorts of problems. We are already moving towards tailored juries with jury vetting and a kind of voire dire. If the safety valve of the peremptory challenge goes, there will be more and more challenges for cause in terrorist or gangland trials and the limitations of the challenge for cause will be exposed. There will be pressure for it to be extended. we shall be sliding down the slippery slope to the crazy United States system of jury selection before we know it. How then will the jury system have been improved?

There is another reason. Trials only progress with the co-operation of the accused. They believe the system to be fair because they can challenge a juryman without reason. Deprive a defendant of that right and he will feel frustrated and railroaded by a court which, so he may think, has rigged the jury against him. If the police are allowed to vet the jury, that will be an active fear. For the sake of five minutes delay in court time, some trials will become much more difficult to conduct.

We must think longer and clearer about the abolition of trial by jury in complex fraud cases than about anything else. I share most of the views that have been expressed by colleagues on both sides of the House against abolition and I shall not repeat them.

However, I do recognise the attractiveness of the proposal for special tribunals for they will speed up proceedings. A jury may very well understand a fraud trial, but the point is that it will take many days to explain the balance sheet and all the procedures so that they do understand it. A special tribunal would be able to work overnight, understand the case and despatch the trial with greater speed. Furthermore, innocent people might well welcome specialist tribunals rather than a jury in a complex case. The standards of probity involved in City institutions might not be readily understood by the ordinary man in the street. Such defendants might prefer to have a special tribunal.

I would rather that juries stay as they are. If we do give way to pressure to have such tribunals may I suggest that the Government should set up a pilot scheme for such tribunals which should operate for two years. A defendant should have the option of such a tribunal. If it were shown to produce satisfactory results for innocent defendants, the objections to the abolition of the jury from those who are worried that it would produce a procedure weighted against the accused would be dispelled.

Finally, there is no point in catching fraudsters and convicting them if there is no deterrent in the sentence they receive. *Justice* states:

"Sentences are far too lenient and the proceeds of crime are rarely recovered. Fraud, like other varieties of criminal conduct, will only diminish once those who perpetrate it realise that no profit is to be gained from it."

The Roskill report was not empowered to consider the consequences of conviction. Should we not at the very least be strengthening the powers of the court so that they may confiscate the defendant's property which could be reasonably attributable to the proceeds of fraud? That is what the Hodgson committee recommended and that is what the Government are currently implementing in its Drug Trafficking Offences Bill. We should also do the same in fraud cases.

9.17 pm

Mr. Richard Ottaway (Nottingham, North): I shall be brief. May I draw the Home Secretary's attention to the section of the report which calls for organisation reform in combating fraud. The report rightly points out that there is great fragmentation in the co-ordination against the drive against criminal fraudsters.

The report calls for a single unified organisation which will detect, investigate, and prosecute under one roof. That is a recommendation that should be taken on board. However, if that course of action should prove to be impossible, I think that the report's recommendation that a fraud commission should be established to monitor the fight against fraud would result in co-ordination.

The difficulty of obtaining evidence from overseas is not dealt with in the report. I should like to float the idea of an international subpoena. At present getting witnesses from overseas is a costly, time-consuming business, but an international subpoena would have some merit.

One of the difficulties of this type of debate is that it attracts the hon. Members who are here tonight, all of whom are lawyers. This reminds me of a saying of Charles de Gaulle, "If you want to drain a swamp don't ask the frogs for their opinion." I am in a minority of one tonight. The Roskill report questioned whether it was appropriate to retain juries or whether there was another more suitable process. Would trials with a judge and assessors be fairer and shorter? I think trials would be shorter if one had a judge and assessors as illustrated by an example in the report. A trial under the Exchange Control Act 1947, conducted by the City magistrates, was considered by the counsel for both sides to have been three or four times shorter than it would otherwise have been. I was pleased to hear that the chairman of the Criminal Bar Association at a Back-Bench committee meeting also agreed that trials would be shorter if there was a judge and assessors.

Whether fraud trials would be fairer without a jury is a question which causes me, as someone who is especially interested in these issues, the greatest difficulty. As the report states, about 2·2 million accused are tried each year by magistrates, and 90 per cent. of those who appear before magistrates plead guilty. That leaves about 200,000 a year who are tried by magistrates, having pleaded not guilty. We must bear in mind that magistrates have the power to impose fines of up to £50,000, and in some instances to impose one-year sentences of imprisonment. These facts illustrate that suitably qualified individuals can make judgments that are accepted by society. They illustrate also that juries are not enirely necessary.

Can juries determine honesty? They can do so only if they understand the questions that are before them. Reference has not been made to the report produced by the

[Mr. Richard Ottaway]

applied psychology unit of Cambridge, which comes to the conclusion that honesty is the most difficult question for juries to resolve on complex trials. It states:

"laymen experience difficulty in understanding and retaining unfamiliar and complex information over 20 days."

How do I, as someone who is particularly interested in civil liberties, face this difficult issue? If there is difficulty in determining honesty and a jury experiences problems with the complex issues that are before it, it is an even greater breach of an individual's right to be tried by 12 jurors who do not understand the evidence than to be tried by a tribunal, or judge and two assessors, which does. To my surprise, I find that I have no objection to trial by a tribunal of judge and two assessors.

I take on board the suggestion that a choice be given to defendants. Such a scheme has been put into effect in Canada, where I understand that the majority of defendants opt for trial by judge and assessors. If someone is innocent and he is charged with a commercial fraud, I am sure that he would far rather be tried by a judge and assessors, who understand completely all the issues with which they are presented, than by a jury which has only a hazy understanding of them.

When my right hon. Friend the Home Secretary considers the combined force of the lawyers' lobby in Parliament, which I believe is nearly 100 strong, and the weight of the Opposition, including the thunderous weight of the alliance, I believe that their opinions could force the Government into accepting the proposition that we cannot abandon jury trials, but I believe that a satisfactory compromise would be to give defendants a choice in the method of trial.

9.24 pm

Mr. Kenneth Hind (Lancashire, West): The Roskill report has many good features, but it contains one or two conclusions with which I disagree, and I wish briefly to explain why.

First, I urge my right hon. Friend the Home Secretary and his ministerial team to reject the idea of abolishing jury trial for serious fraud cases. There is no evidence that juries are failing in their duty to grasp the problems and the facts in a complex fraud trial. Jurors are probably the best people to grasp the concept of honesty or dishonesty.

The major problem that we are facing lies in the preparation of cases and the putting of them before the courts. In that context, the report deals fully and adequately with simplifying the issues so that a jury may deal with them more properly. The research of Baldwin and McConville in 1979 showed that none of the perverse verdicts that they recorded were associated with fraud cases. Frauds show no higher or lower levels of convictions or acquittals than any other type of case, and to argue that they are too complex to be dealt with by juries is to fail to understand that juries deal with cases equally as complex day after day in our courts.

The second point is on the abolition of peremptory challenge to juries. I take the view that this is one thing that we should set aside. We should keep the peremptory challenge. In fraud cases, above all, it is better to retain it, for the simple reason that a juror who cannot read the oath is not able to grasp the complexities of the balance sheet or documentation. We will finish up going down the road of the ridiculous performance in the American courts, where they spend as much time empanelling the jury as they do in opening the case.

Mr. Lawrence: More.

Mr. Hind: As my hon. and learned Friend the Member for Burton (Mr. Lawrence) says, probably a lot more.

I urge my hon. Friend the Home Secretary to be very careful when he tampers with the right of silence of a defendant as we know it. The disclosure of the defence should be done extremely carefully, and not until all the prosecution case is made available. I would undertake that only with a great deal of reservation, and it has to be very carefully thought out.

I welcome the fraud commission proposal. Perhaps my right hon. Friend will consider placing a duty upon auditors of public companies not only to audit the books but to report any irregularities to the police or to the DTI. This will lead to the introduction of further investigations in fraud cases.

Bearing those facts in mind, I think that this is a good report. I welcome it. It will lead to a much more cogent and sensible approach to the problems of fraud.

9.26 pm

Mr. Nicholas Lyell (Mid-Bedfordshire): There are so many good features of the Roskill report that I hope the Government will not find themselves tempted to obscure their value or jeopardise their implementation by accepting, at least at this stage, the proposal to abolish juries for complex fraud cases.

The key features start with investigation. We must, in my view, establish a team of investigators, with proper qualifications, and a long-term career structure. The understanding of the patterns of behaviour in fraud, the kind of documentation to be mastered, the nature of the opportunities for fraud in different fields — insurance investment, commodity trading and the long firm fraud — can be mastered only by matching the expertise of the fraudster with equivalent experience in the investigator. The staff of such a corps of investigators must have time to build up a rapport with those responsible for self-regulation in the markets in question. This can be done only if they remain in their profession, not merely for tours of duty for two or three years, as so often happens at present, but for long periods equivalent to those undertaken by professional accountants, lawyers, tax inspectors or customs officials specialising in particular fields.

The Roskill report rightly refers to the vast amount of documentation to be found in some cases. I know from my own experience in large commercial cases that this need not be as daunting as it seems, provided that one is used to it and knows what to look for.

I have dwelt at some length on the investigation aspect because I believe that it is the single most important factor in solving our present problems. The creation of a team of the necessary size, with an adequate career structure, will involve changes in a number of Departments, including the DPP's department, the Department of Trade and Industry and the City and Metropolitan fraud squads.

We must recognise that many of the valuable recommendations in the Roskill report involve radical change, from which we must not shrink. This is where I

fear that taking the juries away at the same time will make it much more difficult, and greatly increase the reluctance to implement those necessary changes.

I support the requirements for pleadings and disclosure of the defence, the requirement for the nature of the defence to be disclosed in writing after the prosecution case has also been set out in writing, and after proper legal advice, with the sanction of adverse comment by both prosecutor and judge if it is not properly done. I support the recommendations for changes in the committal proceedings procedures. There should be an opportunity, following a properly pleaded case by the prosecution, supported by sworn statements, to make a submission of no case to answer, but it should come before the trial judge at the preliminary hearings. We can consider the possibility of limited cross-examination, but I believe that the days of the long and turgid committal proceedings are past.

I support the changing of the rules of evidence so that there is a rebuttable presumption that documents, especially documents and bank books from overseas, can be treated as evidence of the truth of their contents unless the contrary is shown. These are all radical changes and they will take persuasion, as some of the careful speeches of Opposition Members have shown.

As for peremptory challenge, we should reflect for a moment. The new prosecution service is about to begin. It will give us an opportunity to see more carefully in practice how the system works. I think that we should be careful before abolishing peremptory challenge, but there might be a case for limiting its numbers in many handed trials—trials with several defendants. I hope that we shall take the opportunity to see how it works for a year or two with the new prosecution service before we seek to make changes.

With regard to the prpoposal to abolish the jury in complex fraud cases, my plea is that we should stay our hand at least until we have had a chance to see how these other very proper but radical reforms, which I support, take effect. I do not believe that any hon. Member would deny that the right of jury trial for serious criminal offences is one of the fundamental constitutional rights of the British citizen. We should be extremely cautious about removing it. It is the right of the ordinary citizen, whatever his trade or calling, to be judged in serious criminal cases, not by experts, professionals and specialists, but by other ordinary citizens. They should be able to read and write, and I believe that we can overcome those problems almost within the present rules, but we should not move too rapidly to a system of judge and assessors alone.

I do not close my mind to the possibility of jury reform. We should think seriously about allowing a defendant to opt for a trial by a fraud tribunal, but before we ever think of abolishing the jury, we should first put right what we know is wrong. We should, for a period at least, put before our juries cases which have been properly investigated, have been properly prepared and are properly presented, with evidence properly admissible and summings-up properly carried out. We should then see whether the ordinary citizen, doing his duty as a juror as he sees fit, can match the standards that we are entitled to expect of him. I believe that he will. Unless he is shown to be unable to do so, we should not move any further at this stage.

9.33 pm

Mr. John Morris (Aberavon): I join in the tributes that have been paid to Lord Roskill and his committee. They have laboured long and hard. We should be grateful to them and all of those who man our great and important committees.

The report is strong on conclusions but, on some issues, exceedingly short on evidence. Argument cannot be replaced by mere assertion. Running through the report is the feeling that the committee did not believe much in the jury system, but believed that it was an anomaly. I suspect that the committee got off on the wrong foot with the vague invitation tendered to give evidence. It said:

> "The prevalent disquiet, whether justified or not, with the present system of jury trials for what have come to be called 'serious fraud cases' is well known and has led to the setting up of the Committee."

I am not aware of any such significant disquiet, but I am aware of deep disquiet about fraud itself and ensuring that the guilty are convicted. The people one talks to may not want to change the jury system, but they think that something is wrong because in the last few years there has been an enormous growth in fraud. All is not well in the City; the City itself is anxious to clear up the matter and to restore its good name. All is not well with many of the great financial institutions. The stench keeps coming to the surface.

My right hon. Friend the Member for Manchester, Gorton (Mr. Kaufman) has mentioned the recent assessment of the Home Office that fraud losses are about £750 million a year. That has been unhappily the only growth industry in the last few years. That is what we have to face.

I welcome the broad thrust of the report. All hon. Members who have spoken will support any steps compatible with a sense of justice and fairness which would ensure that wrongdoers were brought speedily to justice. If criminals, particularly those who are now described by the new word "fraudsters", become more sophisticated, then, in the words of General Booth, "Why should the devil have all the best tunes?" I support in principle any measure to combat and prove the crime of fraud.

I read the words of the noble Lord Glenarthur in the debate in another place on Monday that the objectives were, first, justice, and, secondly, efficiency. One should not forget that justice comes first. The administration of justice should not be fragmented.

As regards investigation and prosecution, the real question is whether the Government—this applies to all Governments—have provided the resources to combat the prevalent crime of fraud or whether the Treasury gets away with its victories in saving candle ends. I welcome what the Home Secretary said tonight.

It is monstrous that the career structure of the police is such that usually it allows only three years for anyone to be part of a fraud squad, as though knowledge and expertise in that subject could be acquired on a short course. We have been told that one force is afraid to bring in another force because it would have to pay for the expertise it borrowed. That, too, is a matter of concern.

A Crown prosecuting service is being set up. Is not the real need to bring under the same roof all of the 46 or 47 organisations which have a responsibility for prosecuting fraud? Is it right that we should contemplate the Inland Revenue, Customs and Excise and the Department of

[Mr. John Morris]

Health and Social Security each having its own empire to defend? Why should not all three come under the roof of a new and enhanced Crown prosecuting service? The first step has been taken about the fraud investigation group of which some of us have professional experience.

Both Lord Glenarthur and the Home Secretary announced the immediate establishment under the Chief Secretary of an examination of the need for recommendation 1 for a unified organisation. The present systems have grown up like Topsy, and many of us have experience of internal Whitehall fighting. I wish the Chief Secretary well. I suspect that the genuine reason for setting up the examination is to have ammunition so that heads can be knocked together in the establishment of a unified service. I am not confident that in three years' time we shall have made great progress with the unified service, knowing how each empire will fight for its existence. However, it is a noble aim, and I hope that we succeed.

I welcome the proposal for more continuity of counsel and judges, and for the early employment of counsel. However, I must warn the House that we have divorced those who investigate in the police from those who are responsible for prosecuting. Therefore, although I welcome the early employment of counsel, I fear that its inclusion as part of an investigating team should be watched with care. Surely the function of counsel is to advise on evidence, to ensure that cul-de-sacs are not unnecessarily entered, and to separate the wheat from the chaff. We should not blind ourselves, unless we have ensured that counsel does not exceed that role, given what we have done and lauded regarding the generality of prosecutions.

I welcome the Lord Chancellor's reference of the difficulties in the substantive law to the Criminal Law Revision Committee. As, in practice, most serious fraud cases seem to be committed to the Crown court, I would welcome the end of committal proceedings in this area, especially if it results in the speedier bringing to trial of those charged. I am not absolutely sure whether the committee has gone the right way in rejecting a voluntary bill of indictment because whether it is done by a transfer certificate or a voluntary bill, it is important that the matter be considered judicially at some stage. I am confident that we can achieve that one way or the other, and assist in speeding up trials.

Pre-trial reviews lie at the heart both of saving money and of achieving greater efficiency. Some praise has been given to what has been done already, but I generally regard pre-trial reviews as puny. People who count in the subsequent trial do not attend, and judges are not given sufficient time to study the papers. Frequently they receive them only the night before. Unless one provides the resources, the judicial time and the financial inducement to ensure that at least some of those responsible for the subsequent trial attend, pre-trial reviews are almost a complete waste of time. I hope that the Treasury will take it to heart that if a pre-trial review is done properly, and if the resources are provided, money can be saved. I am confident of that. I find the present pre-trial reviews grotesque.

Those who draft indictments must adopt a robust approach, and limit the number of indictments, defendants and counts by severance, and the ground to be covered. When one knows that at the end of the day, whether one proves the whole area of wrongdoing, or only part of it to satisfy some of the counts, the sentence will not be substantially different, it is time for a more robust approach from those responsible for preparing cases and for skilled, experienced judges, who should be given time to prepare at the pre-trial stage, to ensure efficiency and not to lose any sense of justice. If we can get the pre-trial review right and can provide the resources then we will be well on the way towards achieving a great deal of the report's aims.

I mention quickly the rules of evidence. Here, in an age when copying documents is part and parcel of our daily lives, we should bring up to date, our rules of evidence. Then I would welcome all that can be done by way of flexibility in presenting the case, whether it be oral, written, or visual aids. These are part of the ordinary scene, and juries should be given every assistance in that way.

I am concerned about the proposal with respect to the duty of the defence to disclose its case. It is difficult to see how the principle of the onus of proof remaining on the Crown can be maintained inviolate, without affecting the defendant's right of silence. The Crown will concentrate not on proving its case, but on demolishing the disclosed defence.

I fear also that the recommendation regarding a jury and its abolition is a stalking horse compared with the real aim of rejecting and breeching the right of silence, which many have been trying to do since at least 1972, and have failed so far.

I believe that this matter is fundamental. We should not throw the baby out with the bath water, because it would mean a fundamental change in our trials, and be the first serious breech of the right of silence.

I would not lose a great deal of sleep on pre-emptory challenge. We should develop in its place the American system of showing cause, and instead of the five minutes that are now lost on challenges we would soon have a growth industry of five days. I find it difficult to understand how this has come within the purview of the report.

It is proposed to abolish juries in complex fraud cases. The jury is the best instrument so far devised over the centuries to examine and reach a conclusion on the issue of honesty. I would prefer to be judged by 12 randomly selected persons rather than by two or three wise men conditioned by the standards of the well-heeled world from which they come. The superior courts believe that sometimes juries have difficulties and they have to spell out the definitions of dishonesty. Juries reach their conclusions on their own gut feelings.

There is not time to put all the arguments against the abolition of juries, but I shall quote Blackstone's wise words in volume four of his "Commentaries on the Laws of England". He said:

"But the founders of the English law have, with excellent forecast, contrived that no man should be called to answer for any serious crime . . . and the truth of every accusation . . . should be confirmed by the unanimous suffrage of his equals and neighbours, indifferently chosen and superior to all suspicion. So that the liberties of England cannot but subsist so long as this palladium remains sacred and inviolate, not only from open attacks, which none will be so hardy as to make"—

he had not thought of Roskill then—

"but also from all secret machinations, which may sap and undermine it, by introducing new and arbitrary methods of trial . . . And however convenient that may appear at first, as doubtless all arbitrary powers, well executed, are the most

convenient, yet let it be remembered that delays and a little inconvenience in the forms of justice are the price that all free nations must pay for their liberty in more substantial matters . . . and that though begun in trifles the precedent may gradually increase and spread to the utter disease of juries".

Blackstone was right then, and he would be right now. I hope that the Government will pause and consider.

9.50 pm

The Parliamentary Under-Secretary of State for the Home Department (Mr. David Mellor): My right hon. Friend the Home Secretary said in opening the debate that the Government were resolved to act on the recommendations of the Roskill report, but that the precise form of action would depend on a number of factors, not least what the House had to say. We have had a marvellously compact debate, in which many hon. Members have been able to give their views. We shall certainly take all those views seriously even though, in deference to the need to have as many contributions as possible, I shall not be able to answer all the points.

We are agreed on two things. First, fraud is a serious matter about which more must be done. If one needed any proof, that will be provided in a study soon to be published which was partly funded by the Home Office and carried out by Dr. Levi at University college, Cardiff. It reveals, among a number of interesting points, that since 1980 recorded commercial fraud has increased by an average of 5 per cent. annually and that commercial fraud reported to the London fraud squad represents almost three times the total cost of all property crime in London, and in 1984 accounted for £687 million.

Secondly, I think we are all agreed that the Roskill report is a major achievement and should be acted upon. The Government are resolved to do that. Inevitably, although what happens in court is not the only element —nor necessarily the most important element—in Lord Roskill's report, most attention has focussed on what happens in court in fraud trials. I shall, therefore, consider that aspect.

I agree with my hon. Friend the Member for Glanford and Scunthorpe (Mr. Hickmet) that what Roskill proposed was nothing less than a fundamental overhaul of courtroom procedure. That is certainly right and welcome. I am glad that most of the committee's detailed recommendations to improve and speed up our trial system commend themselves to both sides of the House.

Inevitably, controversy has centred on two proposals: first, the fraud trial tribunal; and, secondly, the pre-trial review procedure. I shall deal with the second proposal first. My right hon. and learned Friend the Member for Warrington, South (Mr. Carlisle), in what I think I can say with the assent of the House was a typically wise speech, said that our present pre-trial procedure needed firming up. Other hon. Members, especially those with experience of the courts, pointed out that the pre-trial review procedure, which has no statutory basis, is treated as a warm-up in which understudies participate and is not taken to be as serious an element in the trial as Lord Roskill, as most hon. Members who have spoken, and as the judges, think it should be.

In a recent judgment in the case of Hutchinson, Lord Justice Watkins said:

"The review"—

meaning, of course, the pre-trial review—

"is now in common usage and has proved to be, when properly conducted, and when prosecution and defence co-operate to the maximum expectation, of great assistance to the court and to the administration. It assists in highlighting the issues involved in a trial and has the effect quite often of shortening the length of it. But it does not have the force of law. It is not recognised by statute or regulation . . . Many judges and practitioners would welcome the review having the force of law."

Those sentiments have been reinforced tonight.

Some hon. Members have spoken against the recommendations, including Opposition Front Bench spokesmen and the hon. Member for St. Helens, South (Mr. Bermingham). However, as my right hon. and learned Friend the Member for Warrington, South pointed out, the alibi notice provides that a defendant is obliged to serve notice of an alibi on the prosecution. If he does not do so, the alibi may not normally be admitted at the trial. Furthermore, even if, relying on the right to silence, a defendant declines to give evidence, he has to put his case to prosecution witnesses.

All that is being said for the pre-trial review is that the defendant should put his case at an earlier stage, but after the prosecution has disclosed its case to him. Under section 81 of the Police and Criminal Evidence Act 1984, the defence must also give advance notice of the substance of expert evidence. Those who dissent from this proposition cannot have it both ways. By all means be opposed to the fraud trial tribunal and to the removal of juries from serious fraud cases, but if juries are to be retained in complicated fraud cases, let us at least do the maximum that we possibly can to ensure that the issues are capable of being put clearly and of being understood.

The way that this can best be achieved is by having a proper pre-trial review, when what can be agreed is agreed and put out of the way, and when what cannot be agreed is clearly understood, so that the prosecution can make the statement that Lord Roskill recommends. Then everybody will know where he is. If the purpose of juries is to determine honesty, they must be given a fair chance to do so by having the issues put squarely before them.

I do not wish to satirise the Opposition Front Bench, but if their agreement with Roskill comes down only to the easy bits concerning more secretarial facilities for judges, that is a cop out. If the Opposition oppose the fraud trial tribunal, they must say clearly what they mean. We must improve the procedure in fraud cases so that the major and farsighted reform of the law of evidence proposed by Roskill can be implemented. It will then be easier to reject the fraud trial tribunal option.

The Government have an open mind; no decision has been taken. However, it is interesting to note that after my right hon. Friend the Home Secretary had invited the House to give its opinion, 12 good men and true delivered their verdict on the fraud trial tribunal. Although there may have been equivocation — unusual for him — in the advice given by my hon. and learned Friend for Burton (Mr. Lawrence), they delivered a majority verdict of 11 to 1 against the fraud trial tribunal. Even if that jury was heavily vetted in favour of paid up members of the lawyers trade union, nevertheless the message was clear. I appreciated the Welsh eloquence of the right hon. and learned Member for Aberavon (Mr. Morris) who defended juries. He reminded me of that other great Welsh lawyer, Lord Elwyn-Jones, in whose chambers I began my unprepossessing legal career. When he was called upon to explain the number of acquittals in Wales he said, "Well, Welsh juries are against crime, but they are not dogmatic about it."

[Mr. David Mellor]

Most of the attention has been focused upon what happens in court, but I suspect that a great deal of the real interest lies in what happens before one reaches court. Therefore, we must ensure that we get better at finding out when fraud is taking place. That is not easy, because, by its nature, fraud is covert. When we investigate fraud, we must ensure that arrangements are made that will have the maximum chance of identifying the evidence, and that it is possible to sift through it in such a way that a case can be brought to bear against malefactors. It is not without note, therefore, that Roskill made major recommendations about a unified organisation. Those recommendations have serious implications, not least because, as the right hon. and learned Member for Aberavon reminded us, the House has taken steps to separate investigation from prosecution. Any backtracking will require serious consideration. Indeed, these questions will be thoroughly considered by a committee chaired by my right hon. Friend the Chief Secretary to the Treasury.

We fully acknowledge that more resources are needed. One hundred and ninety five new posts at the Department of Trade and Industry have been created. There are more accountants for the fraud investigation group, which is itself new. We take Roskill seriously, as the House will soon see.

It being Ten o'clock, the motion for the Adjournment of the House lapsed, without Question put.

Unemployment (Doncaster)

Motion made, and Question proposed, That this House do now adjourn—*[Mr. Neubert.]*

10 pm

Mr. Michael Welsh (Doncaster, North): The subject I am raising in the Adjournment debate is the unemployment problem in Doncaster metropolitan borough area following the closure of Youngs Seafoods and other undertakings. Before I start, may I welcome the new Parliamentary Under-Secretary to the Front Bench. I hope that he enjoys it. They do say, I do not know if it is true, that success comes to Ministers who take cognisance of the people who move Adjournment debates and try to help them.

Unemployment is not new to me. The pit I worked at was closed about 16 years ago and only last year the workshops in my own village were closed, with 400 young people put out of work. Both of those were profitable. It seems strange that we close profitable undertakings in south Yorkshire, but that is what happened.

In tonight's debate I should like to speak about different issues from those of my own village. There are two particular areas in my constituency which cause me great and special concern—the mining community of Askern and the township of Thorne. I understand that the employment statistics are not readily available for those communities, and I accept that. Even if they were, they would not reveal the hard facts of those who suffer the indignity of unemployment. However, what is on record is the appalling level of unemployment in the Doncaster travel-to-work area of which those two communities are a part. In that area there are more than 20,500 people unemployed and, unfortunately, the local job centres have only 238 vacancies advertised. At the same time, the skillcentre in Doncaster has been closed. When you were a Minister, Mr. Deputy Speaker, you had the privilege of opening it. They have closed that, so we cannot even have trades people in Doncaster which is a great pity. Fifty jobs were advertised at the Queensgate job centre and 500 people turned up for those jobs. There were not enough forms for them to fill in. Not only that, but the jobs were only for 13 hours a week, part time. Therefore, one can see the problem in Doncaster and that the people there want the opportunity to work but find it very difficult to obtain it. In Thorne the local authorities tried to get the exact figure of unemployment. It has been put as high as 50 per cent. in that small township. That is deplorable.

Before coal reserves were discovered in the south Yorkshire mining village of Askern, its claim to fame was the mineral springs from which people believed they could receive a cure or treatment for their ailments. What we need is treatment for the ailment of unemployment. The local colliery has been saved from closure, and we all hope that it will have a long and secure future. Next door to the colliery is the Coalite and Chemical Company Limited. It has a processing plant which produces chemical by-products from coal and the smokeless fuel known as coalite. Because the company owns other plants similar to Askern, it has decided to close that plant. This means a loss of 300 jobs in a small mining village.

The reason given for the closure is that demand for the product has fallen off considerably. This is yet another spin-off from the hard-line attitude taken by the Government towards local authority expenditure. One of

PERSONAL

(32) EC

10 DOWNING STREET

From the Principal Private Secretary

12 February 1986

FINANCIAL SERVICES BILL

I have shown the Prime Minister your letter of 7 February about Mr. Howard's role in relation to the Financial Services Bill.

In the light of your Secretary of State's advice, the Prime Minister accepts that Mr. Howard should continue his involvement in the Bill. However, she believes it important that should an amendment affecting Lloyd's be taken, it should be made clear immediately that Mr. Howard would not deal with it.

The Prime Minister has now signed the letters to Mr. Mitchell and Mr. Gould.

I am sending copies of this letter to Sir Robert Armstrong and Sir Brian Hayes.

(N.L. Wicks)

JA

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

PERSONAL

E.R.

PRIME MINISTER

FINANCIAL SERVICES BILL

You suggested below that the letters to Mr Mitchell and Mr Gould should be amended to include the point that if any matter about Lloyd's came to be included in the Financial Services Bill, a Minister other than Mr Howard would deal with the clauses concerned.

I wonder whether it would be right to include this point in the letters. To do so:-

(1) would undercut the Government's line that it is quite proper for Mr Howard to deal with this Bill. To indicate, in advance, that there are certain matters which could arise under it with which he could not deal could well strengthen Opposition arguments that he should drop all responsibility for the Bill.

(2) might further stimulate the Opposition to table clauses dealing with Lloyd's in the knowledge that a Minister other than Mr Howard (probably Mr Butcher) would deal with it.

None of this is to argue that the DTI should not make clear immediately a Lloyd's amendment is tabled that Mr Howard will not deal with it. But the disadvantages of doing this in advance look to be considerable.

I wonder therefore whether you might wish to sign the two letters as originally drafted?

N.L.W.

N L Wicks
11 February 1986

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COVERING CONFIDENTIAL

CCBG.

Prime Minister 4

The Chief Secretary's study group is beginning work in thorough style.

DLS 10/2

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

7 February 1986

Dear Stephen

ROSKILL REPORT

I WILL REQUEST IF REQUIRED

I wrote to you on 21 January setting out proposals for taking forward an examination of the need for a unified organisation responsible for the detection, investigation and prosecution of serious fraud cases.

An interdepartmental group of officials has now met and produced the attached paper seeking to identify the main issues which need to be considered. The Chief Secretary proposes to hold a meeting with Ministerial colleagues on the basis of that paper to provide a steer for further work of the official group. We shall be in touch in the next day or two to arrange an early meeting.

I am copying this letter to David Norgrove (No.10), John Mogg (DTI), Michael Saunders (Law Officers Department), Richard Stoate (Lord Chancellor's Office), John Bartlett (Bank of England), Catherine Brand (Inland Revenue), Lance Railton (Customs and Excise) and Michael Stark (Cabinet Office).

Yours sincerely

Richard Broadbent

R J BROADBENT
Private Secretary

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CONFIDENTIAL

DETECTION, INVESTIGATION AND PROSECUTION OF FRAUD : PRINCIPAL ISSUES

This paper seeks confirmation from Ministers that it correctly identifies the main issues, and such preliminary guidance on those issues as Ministers feel able to give.

A. Scope of the Chief Secretary's remit

2. The Prime Minister's meeting on 9 January invited the Chief Secretary to consider Lord Roskill's proposal for a unified organisation for the detection, investigation and prosecution of fraud, with the aid of an interdepartmental working party of officials, and to report.

3. The Chief Secretary was also invited to consider the following recommendations of Lord Roskill's Committee:

> Recommendation 10 - "the resources devoted to the pursuit of fraud must be expanded"
>
> Recommendation 11 - "more expert accounting staff is likely to be needed in the DPP; permanent qualified accounting staff should be attached to the police fraud squads"
>
> Recommendation 12 - "provision of a career structure for officers in the fraud squads is required".

4. The Home Secretary was also invited to examine these recommendations, in relation to the police; and to prepare a paper on the proposed Fraud Commission. All the other Roskill recommendations are to be considered by a group of officials under Home Office chairmanship.

> Recommendation 7 - "a "Case Controller" should be responsible for the control of a serious fraud case from the time of discovery until the verdict" would appear

to fall more naturally to the Chief Secretary's group; and Recommendation 12 to the Home Secretary's study of police aspects. There is a case for agreeing this minor reallocation of work.

B. Pros and cons of a unified organisation

5. Lord Roskill made clear his criticisms of present arrangements to the Prime Minister at their meeting on 31 December 1985. He said that:

> "His 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.

He went on to say:

> "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."

Arguments in favour:

(a) The main arguments are managerial. Unlike the FIG arrangements for co-ordinating the work of different agencies, a unified organisation would have:

- the efficiency of co-location of the various branches of the unit.

- dedicated resources, not subject to sudden removal to deal with quite different matters.

- unified management.

- availability in house of a wide range of skills.

Other advantages would be:

(b) Fewer problems of non-communication between the various agencies.

(c) Less delay at the outset, caused in the past, and still to some degree, by the need for successive stages of investigation by different agencies.

(d) Higher profile organisation should attract good staff and demonstrate strength of Government determination to root out fraud.

Arguments against

(a) Whilst greater confidence and continuity flow from the availability of dedicated resources, flexibility is lost in that rapid strengthening to meet special needs is more difficult.

(b) The Police see difficulties in seconding police officers if this means they are not under the ultimate police control.

(c) Creating a separate unit may make co-operation with the individual agencies more difficult.

C. What functions would a unified organisation have?

- Detection

Difficult. Evidence for suspecting major fraud is discovered through a variety of channels - e.g. auditors, supervisors, complaints to the police, insolvency investigations, Revenue Departments. Whilst a new body would need to establish channels to these sources of

information, it could not take on their functions.

- **Investigation**

Subject to pros and cons under Section B above.

- **Prosecution**

This might be seen to run against the establishment of an independent Crown Prosecution Service : but how much of a problem in practice; given the small, highly specialised range of cases? And to have prosecution separate could lead to considerable delay and inefficiency.

6. But in principle it is possible to envisage either a combined prosecution and investigation body or an investigation body alone, which left prosecutions to the existing prosecuting authorities.

D. Coverage of New Organisation

7. It seems neither feasible nor desirable that the new organisation should have responsibility for all cases of fraud or corruption. Coverage might be restricted to:

(i) Roskill guidelines for a "complex fraud case" which would justify trial by judge with assessors (page 153), ie frauds involving the Stock Exchange, Lloyds, and commodities and futures markets (+ banks + tax?), or

(ii) Existing FIG guidelines (para 2.28), ie frauds upon Govt departments or local authorities, large scale corruption, shipping and currency offences, frauds discovered by DTI inspectors. Controller has discretion whether to investigate cases connected with Lloyds, Stock Exchange, other Commercial Exchanges and frauds with an international dimension.

8. Can an estimate be made of the number of cases it is envisaged the new organisation will handle each year?

9. It is also important to decide at which point - when there is prima facie evidence of grounds for prosecution, or sooner? - and by what mechanism cases are referred to in the new unit.

E. Composition of new organisation

10. The existing investigating and prosecuting agencies are listed at Annex A. The present FIG arrangements are described in para 2.26 of the Roskill report, summarised at Annex B.

11. Ideally the new organisation would be manned by a combination of permanent staff, to supply continuity, and secondees from the various agencies and from outside.

12. Particular questions to be addressed:-

(a) **The role of the police**

Police officers co-operate closely with FIG but continue under the operational supervision of their Chief Officer. Roskill makes clear (para 2.46) that he envisages the new unit possessing "investigation officers" and writes of its "police function" (para 2.47).

One could envisage police officers on secondment working within the new organisation to a civil service or legal head. Or would it be preferable to allocate responsibility for investigations to a specialist corps of career investigators forming an integral part of the new organisation?

(b) **Position of the Revenue Departments**

The question needs to be addressed of whether, for the limited kinds of complex cases in question, the investigating and prosecuting functions of the Revenue departments should be brought under the umbrella of the new organisation. And whether, or to what degree, it

should have access to tax information about individuals and companies in cases of actual or suspected serious financial fraud.

(c) **Secondments from the private sector**

Roskill recommends that lawyers and accountants might be drawn from the private sector on short service appointments. Annex C sets out the position on pay and conditions of such appointments.

F. Powers

13. Paragraphs 2.32 to 2.43 of the Roskill report cover the present investigation powers of the various agencies (summarised at Annex D).

14. If a new unified unit were created, it would need to be given statutory powers in its own right.

- How draconian could or need these be? Should they, for instance, encompass all the powers of the individual agencies? Would powers as wide as those of Customs & Excise be politically acceptable?

- Would it be acceptable to give police powers to a non-police body? Or DTI inspectors' powers to an authority which may well not be responsible to the Secretary of State (see para 16(i) below).

15. Presumably some mix of existing powers would be needed, so that the new body could be more effective than most, if not all, the individual agencies acting singly.

G. Accountability of New Organisation

15. The question of accountability proved to be contentious when the possibility of a unified organisation was last examined in 1983-84.

16. Two main possibilities have been so far considered, but there might be others:-

(i) <u>Direct accountability to Ministers</u>
In 1983 the option was considered of a unit in the DTI responsible through the Permanent

Secretary to the Secretary of State. But Ministerial involvement would inevitably leave open the suspicion of political interference in decisions on prosecutions and investigations. Is a compromise possible with Ministerial control but a duty to consult the Attorney and DPP in public interest aspects of prosecution?

(ii) Accountability to Attorney General acting in independent capacity

In 1983 the possibility was considered of a unit forming part of the DPP's Department and responsible ultimately to the Attorney General. One problem then envisaged was that such a unit would not enjoy the wider powers available to DTI to require a company to produce books and papers. The Prime Minister's meeting on 9 January 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. It might also be possible to establish a self-standing organisation reporting annually to Parliament, for which the Attorney-General would ultimately answer to Parliament, but with a lesser degree of accountability than he has for the DPP.

17. It will also be necessary to consider the relationship of the new organisation with the proposed new Fraud Commission.

18. Are their any other options that should be explored?

H. Resources

19. Any resource implications - over and above those already

announced by the Solicitor General and the Secretary of State for Trade and Industry - will have to be clearly identified. Lord Roskill points out that a unified organisation could help avoid unnecessary overlap. There is no presumption that such an organisation would need net extra resources; but this would depend on its coverage and functions.

20. Roskill's recommendations for accelerated pre-trial procedures would be likely to increase costs. In due course the Chief Secretary's group will wish to consider the resource implications of all the other studies referred to in para 3 above, so that a comprehensive picture can be presented to H Committee.

I. Miscellaneous questions

(a) The proposals made in 1983 were made within the framework of existing legislation. The present inquiry is not so constrained. But the report will have to identify clearly where its recommendations require statutory changes.

(b) Role of accounting staff (recommendation 11).

(c) "Case controllers" (recommendation 7).

(d) Relationship with financial supervisors.

J. Remit of official group

21. Are Ministers content that the official group should prepare a report:-

(a) Setting out a blue-print for the unified organisation which they regard as most likely to be effective;

(b) Weighing the arguments for and against such an organisation as a basis for a decision on whether or not to go ahead.

(c) Examining the other recommendations of Roskill falling within the Chief Secretary's remit, and

(d) Clearly identifying resource implications of all recommendations arising from Roskill put to H Committee.

H M Treasury
January 1986

Annex A - Existing Investigating and Prosecuting Agencies

(i) the Police - serious fraud offences handled by fraud squads within each of 43 police forces in England and Wales. Prosecutions will be handled by new Crown Prosecution Service

(ii) the DPP is a public official, answerable to the Attorney General, required "to institute, undertake or carry on criminal proceedings in any case which appears to him to be of importance or difficulty or which for any other reason requires his intervention". The Prosecution of Offences Act 1985 places upon the DPP the duty to take over the conduct of all criminal proceedings instituted by the police through the Crown Prosecution Service

(iii) DTI has its own investigations staff and brings its own prosecutions arising from insolvency proceedings, breaches of companies legislation and financial services legislation. It has 54 professional investigators and 15 prosecuting solicitors (planned to rise over next two years to 86 and 21 respectively)

(iv) Inland Revenue has own investigation staff and conducts its own prosecutions of tax fraud. Revenue has power to negotiate a settlement or seek civil penalty proceedings as alternative to prosecution. [100 investigations staff and prosecuting solicitors]

(v) Customs and Excise Locally based units deal with investigation of fraud. The department, one of the major prosecuting authorities, will remain outside the Crown Prosecution Service. [400 investigations staff and 48 prosecuting solicitors with supporting staff]

(vi) FIG [Investigations staff of 3 seconded accountants and 16 prosecuting lawyers with support staff].

Annex B - Fraud Investigations Group

The Fraud Investigation Group (FIG) came into being on 1 January 1985 within the Department of the Director of Public Prosecutions. FIG is headed by a Controller who reports to the Director and through him to the Attorney General. The Group is staffed by 16 prosecuting lawyers with the support of three accountants seconded from the Department of Trade and Industry.

FIG is essentially a device to help the DPP, the police and the DTI to cooperate at an early stage, and to pool resources, on particular cases. DTI and police officers cooperating with DPP on a particular case continue to function within their own organisational structure and location. The Revenue Departments remain outside the arrangements.

ANNEX C

Pay, Terms and conditions for short term Civil Service appointments

There are a number of possibilities within the Civil Service pay system for securing the services of people who possess the required knowledge and special experience on short-term appointments. The most common are:

(i) Higher starting pay, where a person with exceptionally relevant qualifications and experience can be offered appointment above the minimum of a scale. Experience indicates that the upper end of scales may be sufficient to attract suitable candidates where the lower ends would not.

(ii) Special appointment on 'market rate' or personal terms; salary generally will be above the rate for the grade and negotiated with the individual taking account of all the relevant factors.

(iii) Secondment arrangements. Many organisations are willing to co-operate with secondments to mutual advantage, once a suitable person has been identified. Departments have delegated authority to arrange their own inward secondments provided they do not reimburse more than the rate for the grade plus 20 per cent for superannuation etc costs, employers NI and VAT. If it is possible to go outside these limits, if there is sufficient reason to do so, but that requires prior Treasury approval.

In all the above cases we start from the position that the normal Civil Service rate for the job would be acceptable. Where it is clear that it would not then a degree of flexibility is allowed. This is not necessarily intended to secure the best and most highly qualified candidate for any particular job; rather it enables someone who can do the job adequately to be recruited even though they need to be paid more than is provided for by the normal rules.

Short term appointments should not extend beyond 5 years without renewal. The Civil Service Commission should be associated with each case as it arises.

Annex D - Existing Investigative Powers of Various Agencies

DTI Powers under Companies Act 1985

S.447 - power to require a company to produce books or papers to DTI officials (without public announcement). Present or past officers of the company may be required to explain entries in books and papers.

S.721 - enables the DTI, the DPP and the police to make application to a High Court judge for an order authorising inspection (but not seizure) of books and papers.

Inland Revenue Powers under Taxes Management Act 1970

S.20(c) - power to enter premises and seize documents on application to Circuit Judge.

S.21 - power to require information or documents from taxpayers.

S.23 - power to require information or documents from 3rd Party.

Customs and Excise Powers under the Customs and Excise Management Act 1979 and the VAT Act 1983 provide Customs officers with powers of entry and search and powers of arrest.

Police and Criminal Evidence Act 1984 which came into force on 1 Janaury 1986 enables police for first time to obtain a warrant to search premises for evidence of fraud.

PERSONAL

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Secretary of State for Trade and Industry

7 February 1986

Nigel Wicks Esq
Principal Private Secretary
to the Prime Minister
10 Downing Street
LONDON SW1

Dear Nigel,

FINANCIAL SERVICES BILL

Thank you for your letter of 3 February to John Mogg about Michael Howard's role in relation to the Financial Services Bill.

2 My Secretary of State has reviewed the question of Mr Howard's continued involvement in the Bill, as the Prime Minister has requested, and he has also discussed it with Mr Howard. My Secretary of State is very strongly of the view that Mr Howard should remain in charge of the Bill. This is for two reasons. First, there is absolutely no question of any genuine conflict of interest: Mr Howard's interest in the inclusion or exclusion of Lloyd's from the Bill is no more a personal interest than that of any other member of the Standing Committee in the inclusion of an area of investment, like life assurance or unit trusts, in which he may have put money; and the out-turn of the contracts which Mr Howard wrote before he ceased underwriting on joining the Government will depend on ordinary commercial factors over which he has no control. So the conflict of interest issue simply does not arise.

JF5AWX

PERSONAL

3 The second reason relates to the politics of the situation. If there had been a case on grounds of political expediency for taking Mr Howard out of the firing line (and my Secretary of State does not think there ever was), the time to have done it was at the very outset, when the question first arose. To resist the unreasonable demands of the Opposition until now, when the clamour is dying down, but then cave in to them would be to get the worst of all worlds. It would not merely be inconsistent but would suggest that, for whatever reason, the Government is on the run and no longer able to stand by its decisions when the going is rough. My Secretary of State feels that this would be quite the wrong signal to give, and that the right course is to stick to the line we have properly and consistently taken throughout.

4 He therefore does not consider that the letters to Austin Mitchell and Bryan Gould, (drafts submitted under cover of my letter of 27 January to Mark Addison) require further amendment.

5 Mr Howard has been sharing the Committee work with Mr Butcher. Although there is no reason of propriety why Mr Howard should not deal with an amendment concerning Lloyd's, my Secretary of State considers that it would be best for Mr Butcher to handle such amendments, and the work will be shared out on this basis.

6 I note that Sir Robert Armstrong will be informing Sir Brian Hayes of a problem relating to Lloyd's that affects another member of the Government. I understand that Sir Robert has not yet been able to do so but that he has told Sir Brian that the matter does not in any way affect consideration of Mr Howard's role.

7 I am sending copies of this letter to Sir Robert Armstrong and Sir Brian Hayes.

Yours ever,

Michael

MICHAEL GILBERTSON
Private Secretary

JF5AWX

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10 DOWNING STREET

From the Principal Private Secretary

3 February 1986

FINANCIAL SERVICES BILL

The Prime Minister has been reflecting further about Mr. Michael Howard's role in relation to the Financial Services Bill in the light of the letters from Mr. Bryan Gould MP of 16 January and Mr. Austin Mitchell MP of 17 January.

You will recall that the Prime Minister was, initially, reluctant for Mr. Howard to be involved in the Financial Services Bill in view of his earlier involvement with Lloyds, but she was persuaded by your former Secretary of State that he should take a leading role in piloting this Bill through the Commons.

The Prime Minister would now like Mr. Channon to review the politics of Mr. Howard's continued involvement in the Bill. She would like your Secretary of State's views on whether it is worth the risk of allowing criticism of Mr. Howard's involvement to rumble on. One alternative course, and there may be others, is to put some other Minister (not a member of Lloyds) in charge of the Bill, though she well recognises that the Department would be caused great difficulties in its management of the Bill if Mr. Howard's place were taken by another Minister. A particular point which your Secretary of State will no doubt wish to consider is the possibility that should the Bill's long title permit, the Opposition may table a clause affecting Lloyds. Is it the plan that Mr. Howard would deal with that clause?

The Prime Minister would be grateful for your Secretary of State's urgent advice on these matters. Meanwhile we are not despatching the Prime Minister's reply to the letters from Mr. Gould and Mr. Mitchell.

Finally, your Secretary of State ought to be aware that there is a particular problem relating to Lloyds affecting another member of the Government, of which Sir Robert Armstrong will be informing Sir Brian Hayes.

I am sending copies of this letter to Sir Robert Armstrong and Sir Brian Hayes.

N. L. Wicks

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

E.R.

PERSONAL

(RAMAEL)

DRAFT LETTER FROM NIGEL WICKS TO JOHN MOGG, DTI

RAMAEL

FINANCIAL SERVICES BILL

The Prime Minister has been reflecting further about Mr. Michael Howard's role in relation to the Financial Services Bill in the light of the letters from Mr. Bryan Gould MP and Mr. Austin Mitchel MP. You will recall that the Prime Minister was, initially, reluctant for Mr. Howard to be involved in the Financial Services Bill in view of his earlier involvement with Lloyds, but she was persuaded by your former Secretary of State that he should take a leading role in piloting this Bill through the Commons.

Mr Channon

The Prime Minister would now like ~~your new Secretary of State~~ to review the politics of Mr. Howard's continued involvement in the Bill. She would like your Secretary of State's views on whether it is worth the risk of allowing criticism of Mr. Howard's involvement to rumble on. The alternative course is to put some other Minister (not a member of Lloyds) in charge of the Bill, though she well recognises that the Department would be caused great difficulties in its management of the Bill if Mr. Howard's place were taken by another Minister. The Prime Minister would be grateful for your Secretary of State's urgent advice on this matter.

Meanwhile we are not despatching the Prime Minister's reply to the letters from Mr. Gould and Mr. Mitchell.

E.R.

Finally, your Secretary of State ought to be aware that there is a particular problem relating to Lloyds affecting another member of the Government, of which Sir Robert Armstrong will be informing Sir Brian Hayes.

I am sending copies of this letter to Sir Robert Armstrong and Sir Brian Hayes.

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bc BG

10 DOWNING STREET

From the Private Secretary

3 February 1986

Thank you for your letter of 30 January about the timetable for considering the Roskill Report.

In the light of what you say, the Prime Minister accepts that proposals for legislation on this Report should be brought to H by the end of April, and that the Chief Secretary's conclusions should come forward in the same timescale.

I am copying this letter to Richard Broadbent (Chief Secretary's Office), Joan MacNaughton (Lord President's Office), John Mogg (Department of Trade and Industry), 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).

(David Norgrove)

Stephen Boys Smith, Esq.,
Home Office

BM

PART Two ends:-

NLW to PM 31/1/86

PART Three begins:-

DN to HMT 3/2/86

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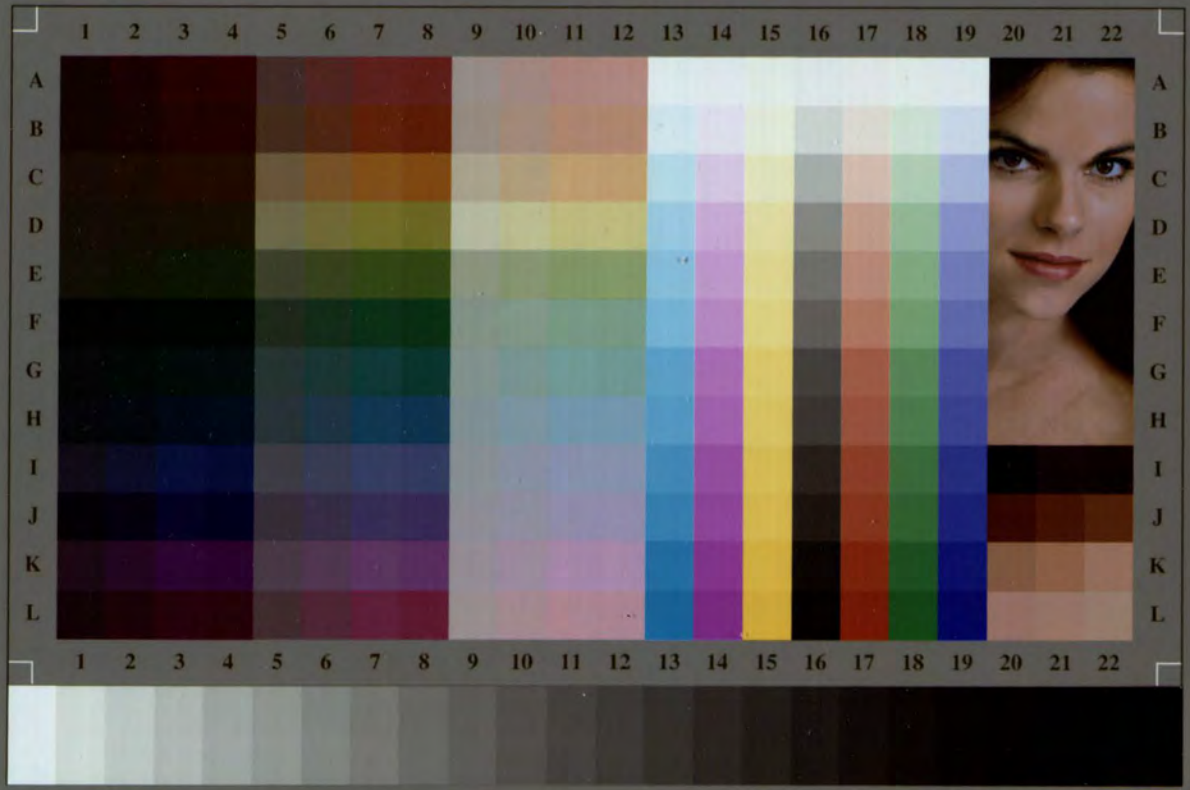

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