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

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

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

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

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

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



TPM



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

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

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

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

*Handwritten signature of Nigel Lawson*

NIGEL LAWSON

