

THE ROSKILL REPORT

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

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

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

A. Good Points

Other important and non-controversial recommendations include:

- a. The need for a new organisation to deal with all functions of detection, investigation and prosecution of serious fraud to be examined.
- b. A case controller to be responsible for the control of a serious case from discovery until the verdict.
- c. Better preparation of cases to be required with early appointment of prosecuting counsel to advise on the investigation and, later, conduct the case.
- d. Many recommendations for speeding up the hearing of cases, designed to clarify the points at issue and to reduce time-wasting and prolixity including the use of visual aids.
- e. Better training for lawyers, Judges and court administrators involved in fraud cases, with barristers automatically learning accountancy so that they can understand a balance sheet.

B. Debatable Points

More controversial suggestions include the following:

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

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

- b. Abolition of the right of peremptory jury challenge in fraud cases. This may be a good point and it has been raised in the House of Commons as a general issue. Is it advisable to deal with it solely for fraud cases?
- c. The establishment of a "Fraud Trials Tribunal" for complex fraud cases, following application to the High Court. Abolition of jury trials for such cases is bound to be controversial because it abolishes, even in a small number of cases, the right to have a jury trial. There is a dissenting opinion on the Committee which may be influential but, on balance, we would support the proposal.

C. The Acknowledged Gap

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

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

Conclusion

Time limits

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

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

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

J. Booth
HARTLEY BOOTH

David Hobson
DAVID HOBSON

PRIME MINISTER

FRAUD

I would suggest three extra points on this:

- (i) there should be another meeting of Ministers before Roskill is published;
- (ii) the announcement of extra resources for fraud investigation should be made at the same time as Roskill is published;
- (iii) also when Roskill is published, the Government should announce that it has accepted at least the first of its recommendations, namely:

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

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

DN

(DAVID NORGROVE)

17 December 1985

DA.02