E.R.

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10

PRIME MINISTER

JMB AND ANSBACHER

You are meeting tomorrow morning at 9 am to discuss this with the Chancellor and Attorney General. You have in your folder:

- briefing by the Policy Unit (Flag A);

- Nigel Wicks' minute to you for your meeting last Friday with the Chancellor (Flag B);

- paper by the Chancellor (Flag C).

The Chancellor has asked strongly that no one except you, the Attorney and me should see the paper or attend the meeting. The Policy Unit contested this request but accepted after discussion that they should not see the paper tonight. I undertook to ask you whether you wanted the Policy Unit to attend the meeting in spite of the Chancellor's wishes. Could you please let the Duty Clerk know tomorrow morning or tell Caroline when she comes up to see you first thing?

I too have not yet seen the paper, in my case because I am following your instructions on going home.

Three points on the issue itself:

(i) The Chancellor sees it as an advantage that further questions would be easier to fend off once a Companies Act enquiry was announced. But, if true, the Opposition would say that is precisely why the enquiry was decided upon. If the enquiry then produced inconclusive results they would crow still more loudly.

(ii) What are the questions which the Chancellor believes he will find it so difficult to answer?

SECRET

(iii) A Companies Act enquiry into a bank may be unprecedented. (The Treasury are checking this in view of your doubts.) People might well also find out that the Governor did not want it. This new development might be seen by many people as the Government moving on to the Bank's turf. The Government would then be more closely associated with any future problems in the City, and some of the blame would rub off on to it. If the Companies Act enquiries go ahead, the Chancellor's proposals on banking supervision would need to be all the better to be able to provide a defensible position for the Government.

The Treasury are preparing for a meeting on banking supervision itself. No date has yet been fixed. I have urged them to get on quickly with the paper which will be needed. If you continue to have strong doubts at the end of tomorrow's meeting, you could conclude that a delay will make a decision in favour of an enquiry more difficult, but that you will make up your mind on the Chancellor's proposal when you are able to put it in the wider context of banking supervision.

DLN

(DAVID NORGROVE)
3 September 1985

SRWAHU

LR3.14

9.

COVERING SECRET AND COMMERCIAL IN CONFIDENCE

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

3 September 1985

David Norgrove Esq
10 Downing Street
LONDON SW1

Dear David,

JMB AND ANSBACHER

... I attach a memorandum by the Chancellor, as a basis for tomorrow morning's discussion with the Prime Minister and the Attorney General.

A copy has also gone to the Attorney General.

Yours ever
Rachel

RACHEL LOMAX
Principal Private Secretary

SECRET AND COMMERCIAL IN CONFIDENCE

D. Norgrove
Spare Pr

Ansbacher and Johnson Matthey Bankers

Note by the Chancellor of the Exchequer

This note is intended as a basis for discussion of whether there should be Companies Act inquiries into the affairs of Ansbacher and JMB respectively.

Ansbacher

The following is a brief chronology of events:-

January 1985: Press stories of difficulties at Ansbacher. Ansbacher extricates itself from recent loss-making acquisition of Wall Street securities firm (Laidlaw Adams and Peck). Charles Williams succeeded unexpectedly as Group Managing Director by Richard Fenhalls.

April 1985: Williams becomes Labour life peer. Press story that (Belgian - based) Groupe Pargesa/Bruxelles Lambert, who have 29.9% stake in Ansbacher will have to underwrite a rescue rights issue 3 times as large (£35m?) - as previously anticipated (S/Times 7 April).

17 May: Bank supervisors telephone Treasury officials to warn that Ansbacher will announce a rights issue on 21 May which would reveal near-insolvency (to be fully underwritten by GP/BL). Losses attributed by Bank to Laidlaw acquisiton (see above) and to a commodity dealing subsidiary. I was informed.

21 May: Announcement of £35.6m rights issue, and £31.4m loss in year ended 31 March. Ansbacher circular to shareholders notes questions about interim profit of £1.35m declared in September

1984: committee of Fenhalls and Vercambre (both arrivals to the board since the interim dividend) appointed to review circumstances in which interim dividend came to be paid. (In the event rights issue leaves GP/BL with 75% of Ansbacher.)

24 July: Ansbacher circular (Annex 1) to shareholders reports Fenhalls' and Vercambre's conclusions - that the board had not been in a position to form a true and fair view of Ansbacher's consolidated position (a substantial loss) at the time of the interim dividend. The Board had been provided by Williams with a summary assessment which was deficient and over-optimistic. But found no motive of personal gain on the part of any past or present director connected with the interim dividend and concluded it would be in Ansbacher's best interests to let matters rest.

25/28 July: Press interest with political overtones.

30 July: Ansbacher AGM.

2 August: At Attorney General's request (via DPP), Fraud Squad asked to see Governor about Ansbacher.

6 August: Solicitor-General meets Governor. Governor emphasises Bank willing to co-operate in any law enforcement investigation but has no further information about possible Companies Act offences than is in Ansbacher's statement to shareholders.

7 August: My office informed by Solicitor-General's office that Section 447 Companies Act investigation appears appropriate and suggests Treasury Ministers should advise the Secretary of State for Trade and Industry accordingly. Solicitor-General repeats this in writing to Economic Secretary (on 8 August).

It is quite clear from the letter to shareholders of 24 July (Annex 1) that at the least inadequate information was provided to shareholders at the time the interim dividend was declared. It is very possible that they were deliberately misled. The Law Officers have made it clear that they do not want to instigate a police inquiry if the Bank are not prepared to lodge a complaint.

A Companies Act inquiry could take one of two forms. The alternatives are set out in Annex 2. The more usual form of inquiry for a case such as Ansbacher would be under Section 447. While this would not result in a published report, any evidence suggesting criminal activity could be passed to the police. The alternative of a Section 432 inquiry would be more high profile, and the report would probably be published.

Against an inquiry, it could be argued that the shareholders are not complaining about the conduct of the business, and the Fenhalls/Vercambre letter recommends that bygones be bygones. Nor does the Governor consider an inquiry necessary. He reports that the Bank have no evidence of offences against the Companies Act beyond the Fenhalls/Vercambre letter and press reports. At a time of great public concern, however, about malpractices in the City, and in the light of a clear likelihood of a breach of the Companies Act, the Government would appear to be turning a blind eye if there were not at least a Section 447 inquiry.

JOHNSON MATTHEY BANKERS

The course of events has been as follows:-

June 1983 - June 1984: As we now know, during this period there was mis-reporting of 2 large exposures by JMB - although it was not discovered until May 1985. JMB's report for March 1984 (due in April) did not reach the Bank until June. Arthur Young signed off JMB's 1983/84 accounts with a clean audit certificate.

July 1984: The Bank sought a meeting with JMB (which JMB delayed).

Early August 1984:

- (Without the Bank's knowledge) Arthur Young sent JMB a letter warning of shortcomings in their control systems.

- The Bank receive JMB's report for June and the Bank/JMB meeting was held. The Bank expressed serious concern, sent in 2 officials. Arthur Young was requested to re-examine the loans.

25 September: The Bank were informed by JMB that provisions against bad loans required in the light of Arthur Young's examination threatened JMB's solvency.

25-27 September: At Bank's urging, Arthur Young carried out a wider examination. The Bank began discussing liquidity support for JMB with clearers, and the Deputy Governor gave Peter Middleton an initial warning of problems. By the night of 27 September, a team from the clearers was examining JMB's books; the Bank had called in Price Waterhouse; and JMB's insolvency was clearly exposed.

28-30 September: Abortive negotiations arranged by Bank with possible purchasers of JMB over the weekend culminated in news agency stories about a London bullion house in difficulty.

1 October:

- 6am: Peter Middleton was telephoned and told that the Bank's resources were unlikely to be adequate to rescue JMB.

- 7.30am: I held a meeting at which the Governor informed me that in fact the Bank proposed to rescue JMB from its own resources (together with £50m from JM plc and £50m warranties from the gold market and the clearers).

- Later that day the Bank purchased JMB for nominal sum from JM plc. The capital deficiency was estimated at £108m.

3 October: The Bank informed Treasury officials that the deficiency was now £150m, but that the warranties had also increased from £50m to £90m. (In the event, the detailed commitments of the other banks and the gold market were not settled until 29 March 1985. They take the form of a Bank indemnity to JMB of up to £150m against losses on commercial loans, supported by counter-indemnities for half of any such losses from the clearers (up to £35m), gold market members (£30m) and other accepting houses (£10m).)

October: The Bank took over direction of JMB. Staff from other banks were drafted in to assist in "reordering the loan portfolio and records". Price Waterhouse commissioned by Bank to make confidential reports about the state of JMB.

9 November: The Governor sent me the Bank's initial confidential report on the rescue. Inter alia it says:

> "On the basis of the information available to the Bank we have no grounds to believe there was fraud on the part of the bank's officers ..."

22 November: Bank deposits £100m with JMB. Treasury not informed. (See 18 December).

27 November: I saw the Governor with officials, and we agreed to set up the review committee under the Governor's chairmanship.

17 December: I announced the review in the House of Commons.

18 December: In response to Press stories, the Bank confirmed (and informed the Treasury for the first time of) £100m deposit.

13 February: Price Waterhouse (second) interim report, sent by the Bank to certain Treasury officials on a personal basis.

8 May: Ian Stewart confirmed (in a written answer) that the Bank's Annual Report to me under the Banking Act 1979 will attach an account by the Bank of events concerning JMB and its rescue.

13 May: The Bank announced a capital re-organisation of JMB (£50m ordinary, £25m redeemable and £25m subordinated loan stock). £100m deposit to be repaid. The latest estimate of likely call on indemnities was announced to be £65m.

28 May: The Deputy Governor informed Peter Middleton that only in the previous week the Bank had discovered that JMB had substantially under-reported their large exposures.

19 June: Chancellor saw Price Waterhouse Report for the first time.

20 June: I made my statement on the Review Committee's report and laid the Bank's Annual Report under the Banking Act, with their note on JMB, before Parliament. JMB announced it will sue Arthur Young. The potential claim on the indemnity was estimated at £68m.

I also said in the House:

> "No prima facie evidence of fraud has so far been uncovered. The Price Waterhouse report turned up no prima facie evidence of fraud. However, if any prima facie evidence of fraud were to be turned up in further investigations, of course the appropriate action would be taken".

9 July: The Bank informed Ian Stewart in a letter:

> "No prima facie evidence of fraud has been discovered. It is clear, however, that the serious inadequacies of JMB's internal systems left it unduly exposed to fraud. The City Fraud Squad will be assisting ... [Price Waterhouse in a more detailed loan examination than hitherto]"

The Bank had approached the police on 5 July. Significant further documents had been confirmed missing since my statement on 20 June. The Bank had previously thought it a reasonable assumption that the missing documents would eventually come to light, given the disorder in JMB's systems.

11 July: Oonagh McDonald in a PQ and letter to you, asked for a tribunal of enquiry under the 1921 Act into JMB and the Gomba group of companies. You answered on Treasury advice:

> "I see no purpose in the establishment of such an enquiry".

16 July: I had separate meetings with the Attorney General and the Governor to discuss Fraud Squad involvement.

17 July: I made a further statement. I explained to the House that in the light of serious and unexplained gaps in JMB's records

(revealed by continuing investigations since my statement on 20 June), JMB had requested the City of London police to conduct a preliminary inquiry with a view to establishing whether any criminal offences have been committed. The report will go to the DPP. I side-stepped ("wait, and see") Hattersley's and Oonagh McDonald's suggestions of a 1921 Act Tribunal inquiry (or Select Committee investigation) after the police investigation.

Sedgemore made his allegations re Hepker, Fraser, Sipra.

23 July: JMB issued its writ against its former auditors, Arthur Young.

24 July: Arthur Young issued writs against me and BBC/ITN/C4.

26 July: Adjournment debate.

1 August: David Owen wrote to you requesting a public tribunal of inquiry. You reiterated in reply that you saw no grounds for setting one up.

14 August: (Section 447) Companies Act investigation is (exceptionally) announced, into Sumrie Clothes (chaired by Hepker).

14 August: Sedgemore dossier delivered to Treasury.

Throughout this whole period there has been constant pressure for the publication of the Price Waterhouse report.

The present position

The Governor reports that the affairs of JMB are looking slightly better than the Bank originally thought. It looks as though the estimate of £68m to be met collectively by the banks' indemnity and the Bank of England could be unduly pessimistic. The Governor's latest estimate is that it may be £20-30m on the high side. The Governor also reports that around 50 organisations have expressed an interest in buying JMB, two or three of whom are clearly buyers subject to price. Negotiations about a complete sale are continuing with serious prospective purchasers, all of whom are reputable big banks. But no firm deal is likely within two to three months at the earliest.

On the legal front, Freshfields are preparing JMB's statement of claim against the auditors, Arthur Young. I am myself preparing my response to the statement of claim by Arthur Young in their libel action. I must emphasise that the case for a Companies Act inquiry into JMB is considered in this paper entirely on its merits. It has no bearing one way or the other on the libel action.

The police are conducting a preliminary enquiry, and the Fraud Squad should present their preliminary report to the DPP within a few weeks. The absence of vital documents related to some of the more doubtful loans, and indications the police have received that substantial numbers of documents were shredded, strongly suggests fraud. It is probable that the police will tell the DPP that they regard a full police investigation as desirable. It is, however, clear that the papers of JMB are in such a confused state that it could take the police a long time to establish any firm basis for possible prosecutions, and it is doubtful whether they will ever succeed in doing so.

Following our meeting on 1 August, I have reconsidered the case for publishing the Price Waterhouse Report. My view, with which the Attorney General agrees, is that this is not possible, for

the following reasons:-

(i) - This is a confidential document of the Bank of England. In the Attorney's view, the future value of such confidential investigations would be seriously prejudiced if witnesses were to find evidence published which they had given in the belief that it was in confidence.

(ii) Much of the information in the Price Waterhouse report relates to details of individual's accounts. This is protected both by customary commercial confidentiality and under the Banking Act.

(iii) The Price Waterhouse reports provide the basis for the Bank's action against Arthur Young.

Political interest in JMB has remained at a high level, despite the Bank's attempt in its annual report to dispel anxieties by being more than usually forthcoming. Even during the recess, interest has been kept up by David Owen's demands for a 1921 Tribunal, derived from his (I am advised, misguided) serious worries about JMB's gold bullion business, and Brian Sedgemore's voluminous and headline-catching allegations. The Opposition front bench, although slow off the mark, have kept up pressure for publication of the Price Waterhouse report and a tribunal of enquiry under the 1921 Act. The case will not go away. Parliamentary interest will revive once Parliament reassembles and, in John Biffen's view, there will be no way of resisting a debate before the end of the session.

<u>The need for an independent, published Report</u>

The fundamental difficulty arises from the absence of a published independent account of what went wrong. The Price Waterhouse

report cannot be published, for the reasons given above. Unless the police investigations result in prosecutions, none of the evidence they might unearth will become public. There is a real possibility that the police will be unable to mount a prosecution.

There are overwhelming arguments against a 1921 tribunal:-

(i) The JMB case does not constitute a crisis of confidence of the gravity normally associated with such an inquiry.

(ii) The proceedings would be conducted in public, and therefore reported daily, and no doubt prominently.

(iii) The cost of such a tribunal would be substantially greater than for a Companies Act inquiry, without any corresponding benefits (the expenses of the tribunal would have to be met, as well as the cost of representation of witnesses at risk of being criticised in the tribunal's report).

(iv) As the Crown Agents case has shown, such an inquiry can take as long as four years.

(v) Witnesses could refuse to give incriminating evidence in the absence of express immunity from prosecution.

I have become convinced that some form of independent published report will be necessary to dispel accusations of a "cover up". These allegations are aimed at three separate targets. It is argued that this is another example of the City closing ranks - incompetence at the level displayed by the management of JMB would never have been tolerated in a manufacturing company; it

is alleged that Ministers are in some way implicated, through connections with customers of JMB, particularly Mr Shamji of Gomba; and it is also said that the Bank of England wishes to cover up its own incompetence.

A Companies Act inquiry

An inquiry under Section 432 of the Companies Act would meet this need. Its proceedings would not be public, but it would publish a report. The Secretary of State can commission an interim report - if published, say after a year, it would cover all the main aspects of the debacle. Although Companies Act inquiries are not treated as sub judice for the purposes of proceedings in Parliament, the Speaker would be likely to seek to avoid prejudice against individuals by unrestrained comment and speeches. The Government would nevertheless be in a strong position to refute allegations of any kind of "cover up" and to refer critics to the prospect of the inspectors' report.

It is also highly improbable that if the Government were to volunteer a Companies Act inquiry under Section 432, the case for a 1921 tribunal of inquiry would continue to be pressed.

Against this, the Governor believes that the announcement of an inquiry would seriously jeopardise his chances of disposing successfully of JMB, and could cause a flight of customers, leading to collapse. The Bank would then be exposed to further criticism of their stewardship of JMB, through no fault of their own. Furthermore, if JMB did collapse again, there would be a substantial cost to public funds.

The Governor's objections must be given due weight. But his fears may be exaggerated. Prospective purchasers already know the Fraud Squad are investigating JMB, and that prosecutions may result. Furthermore, it should be possible to confine the terms of reference of the inquiry to the period prior to the Bank's intervention. But the Governor feels very strongly and will want to put his case to you personally, if we decide in favour of a Companies Act inspection.

There is an obvious awkwardness in announcing a Companies Act inquiry now. I shall be asked why this was not done right at the start, and what has happened since.

I believe these presentational difficulties can and should be overcome. Although we have consistently refused a 1921 tribunal of inquiry, we have never explicitly ruled out a Companies Act inquiry. It would be perfectly reasonable to say that in view of continuing pressure for publication of the Price Waterhouse report, I have reconsidered the decision not to publish. Regretably, there are still powerful reasons for its remaining confidential. But public concern for an independent published report was understandable, and for this reason I had invited the Secretary of State to consider setting up a Section 432 Companies Act inquiry.

Clearly any such inquiries must be conducted in such a way as not to hold up the progress of concurrent police inquiries.

Conclusion

I therefore recommend that the Secretary of State for Trade and Industry be invited to institute inquiries under the Companies Act into both JMB and Ansbacher. In the case of JMB this should certainly be under Section 432. For Ansbacher, Section 447 seems the better route, though there may be a case for proceeding under Section 432.

The Attorney General has seen this note, and agrees with the substance.

N.L.

3 September 1985

Annex 1

Henry Ansbacher Holdings PLC

(Registered in England No. 1180361)

Registered Office:
1 Mitre Square,
London EC3A 5AN

24th July, 1985

Dear Shareholder,

Payment of the Interim Dividend of 1.5p per share paid on 20th December 1984.

In my letter to you of 21st May 1985 I reported that a Committee of the Board consisting of Messrs Fenhalls and Vercambre, who were not Directors at the time of payment of the interim dividend on 20th December 1984, had been appointed to review the circumstances in which it came to be paid. In the appendix to this letter is set out a copy of the report of 22nd July 1985 which that Committee has delivered to the Board.

The Board has unanimously accepted the findings and recommendations of the Committee as set out in the Report.

As you will have seen from our recent rights issue circular, the Board had taken immediate remedial action prior to the findings of the Committee to prevent the recurrence of the sort of matters which were the subject of the investigation by the Committee. It has taken action to ensure that appropriate checks and balances apply throughout your Company.

I therefore believe that the Board has established a firm base for the protection of the Company and your interests in the future.

Yours sincerely,

David LeRoy-Lewis,
Chairman.

APPENDIX

REPORT on the payment of an interim dividend by Henry Ansbacher Holdings PLC on 20th December 1984 in respect of the six-month period ended on 30th September 1984

To: *The Directors of Henry Ansbacher Holdings plc* 22nd July 1985
From: *Richard Fenhalls and Claude Vercambre*

1 On 14th May 1985 we were appointed to form a sub-committee of the Board to enquire into and report on the circumstances surrounding the payment of an interim dividend of 1.5p per share by Henry Ansbacher Holdings PLC ("HAH") on 20th December 1984 in respect of the six months ended on 30th September 1984.

2 We have been assisted in our enquiries and findings of fact by Mr Henri Perpete, the external auditor of Groupe Bruxelles Lambert SA who has devoted the equivalent of some 5 working weeks to going through the papers and records of the Company and its subsidiaries and interviewing various people. We did not commission an audit.

3 In setting the parameters of our enquiries we acted on legal advice from Messrs Barlow Lyde & Gilbert, solicitors of 1 Finsbury Avenue, London EC2.

4 We have considered the Interim Statement of 8th November 1984 which accompanied the announcement of the Directors' intention to pay a special interim dividend of 1.5p per share on 20th December 1984. We are of the opinion that the Interim Unaudited Results for the half year ended 30th September 1984 given in that Statement did not give a true and fair view of the profits and losses of the Company and its subsidiaries on a consolidated basis for that period.

We are of the opinion that the Interim Statement should have shown a substantial loss and not a profit for the half year ended on 30th September 1984 and that there were no profits out of which an interim dividend could have been paid on 20th December 1984. For the same reasons we also believe that the language of the Interim Report was unrealistic in that it did not objectively reflect the true underlying trend of the businesses.

5 The Company did not obtain any professional advice from outside the group in relation to the declaration or payment of the Interim Dividend.

6 Summarised information was supplied to the Board in relation to the results of the company to 30th September 1984 by the then Group Managing Director which omitted facts which in our view should have been made available to the Board and without which the Board was not in a position to form a true and fair view of the affairs of the Company on a consolidated basis. We are of the opinion that the Board of the Company as a whole did not have a true and fair view of the consolidated affairs of the Company prior to the payment of the dividend.

7 On legal advice from Barlow Lyde & Gilbert we have considered whether any Director had acted without an honest belief that there were profits when there were not.

8 We have found no evidence that any Director who was not a member of the Permanent Committee of the Board or any non-executive Director who was a member of the Permanent Committee did so act. Insofar as The Lord Spens, Charles B Longbottom and Peter F Phillips are concerned, who were in senior executive positions at the relevant time, we have found no evidence that their knowledge of the respective portions of the company under their direct responsibility, extended to specific knowledge of other parts of the business of the company.

9 The interests of the Directors of the Company in the shares of the Company are set out in Appendix IV Paragraph 5 on pp 30 and 31 of the proposals for the Financial Reconstruction of the Company sent to shareholders on 21st May 1985.

10 We find that the creditors at the time of the payment of the interim dividend on 20th December 1984 were not prejudiced since new capital has been raised by the Company.

11 We find that no motive of personal gain was involved on the part of any past or present Director connected with the dividend payment. Indeed, the shareholding body as a whole benefited from the payment, for they received the money.

12 In view of our findings in the previous paragraph and our belief that it is in the Company's best interests to let the matter rest rather than to reopen matters which are now past history, we would recommend that no action be taken against any Director arising out of the payment of the interim dividend on 20th December 1984. We have discussed this recommendation with Groupe Pargeson/Bruxelles Lambert who concur with it.

Annex 2

Forms of Companies Act investigation

There are two possible routes under the Companies Act:-

(a) **Section 447**

The more usual type of inquiry in simple and low profile cases. The Act empowers officials of the DTI to look at, and seize if necessary, books, records and papers of a company. The grounds for the inquiry are that the Secretary of State considers there is "good reason" (it is under this Section that an investigation is being conducted into Sumrie Clothes, a customer of JMB). Inquiries are relatively quick, discreet, and do not result in a published report. There are powers to require "explanations" of papers etc demanded by officials. Refusal to co-operate can result in fines. Information obtained can be disclosed with a view to prosecution if criminal charges are made. It is not usual to announce a Section 447 inquiry, though this is sometimes done (as with Sumrie).

(b) **Section 432**

A more formal inquiry. Independent inspectors are appointed (a QC and a senior accountant), and witnesses have legal representation. The Secretary of State can order such an investigation in circumstances suggesting fraud; if acts or omissions by the company are likely to be unfairly prejudicial to some part of its members; if a company's management has been guilty of "fraud, misfeasance or other misconduct towards the company or its members"; or if the company's members

have not been given all the information in respect of its affairs which they might reasonably expect. Evidence may be required under oath. Failure to give evidence when summonsed is liable to the same penalties as contempt of court. The report of the inspectors is normally published, although the proceedings take place in private. The process is fairly lengthy, but the Secretary of State can require an interim report. (This normally occurs when circumstances strongly suggest criminal activity, and the inspectors wish to expedite criminal proceedings.)

Section 432 inquiries are normally set up at the instance of the Secretary of State. But it is also possible for an interested party - e.g. a disgruntled shareholder - to obtain a court order setting up an inquiry (e.g. in the recent case of Milbury Investments).

The report of a Section 432 inquiry is admissible in legal proceedings "as evidence of the opinion of the inspectors in relation to any matter contained in the report". In practice this procedure is never followed. The police do however frequently use inspectors' reports as the basis for their own enquiries. The same evidence can be elicited from the same witnesses either by the police in obtaining a statement if the witnesses are prepared to answer, or through cross-examination in court.

Neither the Secretary of State nor the inspectors have powers to grant immunity to witnesses in respect of subsequent

prosecution. Although the Attorney does have such a power, it is never used in the context of a Companies Act inquiry. This marks an important difference from tribunals under the 1921 Tribunals of Enquiry Act. Immunity is not infrequently given to witnesses before these tribunals, because they have the right to refuse to incriminate themselves, which is specifically not available to witnesses in Companies Act inquiries.

E.R.

SECRET

8

3 September 1985

PRIME MINISTER

JOHNSON MATTHEY BANKERS AND ANSBACHER

MEETING WITH ATTORNEY GENERAL AND CHANCELLOR, 4 SEPTEMBER

Should these companies be investigated under Part XIV of the Companies Act 1985? The Attorney General and the Chancellor will argue for such an investigation.

The issues are:

a. Can Companies Act proceedings speed up the enquiry so that such skeletons as there are, are out of the cupboard as quickly as possible? (At the moment, the DPP and Scotland Yard report a huge and lengthy investigation which, on best estimates, if charges are brought, might mean a trial in 1987/88.)

b. Will more of the truth be brought out?

c. In view of all that has happened (see Annex) and the time that has elapsed, can we show that there is good reason for acting so late? Have we fresh evidence?

We are doubtful about all these points and even if the Chancellor hypothises the DPP does not prosecute JMB that should not worry us. We can rightly say we trust the police.

LBTAAZ

SECRET

The Dangers in using a DTI Investigation

1. We will be criticised for not leaving investigation to the police.

2. The police are proud of their speeded up procedure, and might feel their noses are out of joint.

3. We may be criticised for not doing this investigation sooner (in respect of JMB).

4. The Governor of the Bank of England has threatened to publicly oppose DTI investigation of JMB.

5. Why it will be said by David Owen and others if we are serious in our intention to have a full inquiry into JMB do we duplicate the "independent" police inquiry with an investigation which will be seen as a Whitehall (and therefore a Government) inquiry even if an independent accountant is appointed. Why did we refuse a tribunal as late as 2 August this year?

6. We may be criticised for attacking Kinnock's adviser, Lord Williams (Chairman of Ansbacher).

7. We might have egg on our faces if it is shown that we

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do not have "good reason" for the investigation within the meaning of Section 431(3). This is possible in the case of Ansbacher because the shareholders did not object to the error made by Williams and the company has already been cleared by one audit by a Belgian form of accountants.

Conclusion

We advise great caution in both cases. You should wait at least until mid-September, when the police say they will be in a better position to judge the evidence on JMB.

HARTLEY BOOTH

The Chancellor has expressed a wish that his paper goes to you & Private Office only.

SECRET

ANNEX

Resumé of Events

1984	25-30 September	Failure of JMB made apparent to Bank of England
	2 October	Heads of agreement between Bank of England and JMB for the sale of JMB signed
	10 November	Bank of England placed deposit of £100 million with JMB
	17 December	Chancellor stated to the House of Commons that banking supervision would be fully reviewed by a Committee
1985	20 June	Review Committee Report announced in Commons (34 recommendations) Bank announced initiation of legal proceedings against the auditors of JMB: Arthur Young McClelland Moores & Co Chancellor stated in Commons that Bank acted within their discretion to nationalise JMB

ANNEX (cont.)

	Losses of £348 million announced, of which £130 million and £150 million were met, leaving £68 million to be paid 50:50 by Bank and private sector banks (ie £34 million by the Bank)
17 July	Announcement by the Chancellor that JMB had invited the police to investigate and report to the DPP

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7

1.

PRIME MINISTER

JMB AND ANSBACHER

A meeting on the possibility of a Companies' Act inquiry into JMB and Ansbacher has now been arranged for Wednesday morning, 4 September, at 9 am. Treasury are preparing a note.

They would prefer at this stage to confine the meeting to yourself, the Chancellor and the Attorney-General. The Chancellor would want to talk to the Secretary of State for Trade and Industry if the meeting decides in principle that a Companies' Act inquiry would be worthwhile. The Chancellor would also prefer not to have the Governor at the meeting.

Content?

Yes

DAVID NORGROVE

2 September 1985

SECRET

EL3AMQ