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CCBG



Prime Minister 4

The Chief Secretary's  
study group is beginning  
work in thorough style.

Treasury Chambers, Parliament Street, SW1P 3AG

DLB  
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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 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.

Will request if required

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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## 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) Direct accountability to Ministers  
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 there 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

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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.

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 January 1986 enables police for first time to obtain a warrant to search premises for evidence of fraud.

