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NAPN at two stage.

Treasury Chambers, Parliament Street, SW1P 3AG

Stephen Boys-Smith Esq
Private Secretary
to the Home Secretary
Home Office
50 Queen Anne's Gate
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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 FRAUDNote 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 good reason 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 unincorporated 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) **Distrainment 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 disciplinary 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 conferring 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 direction 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 other kinds 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 necessary 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.

E.R.

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

/ terminology

E.R.

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 jurisdiction 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