

CCBG



Prime Minister

Ref. A086/1492

PRIME MINISTER

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a minute for your signature is
attached.ARW
21/5. MRRoskill Report: Serious Fraud Office

Mr Norgrove's minute of 12 May asked me to consider and advise you on the machinery of government aspects of the proposal for a Serious Fraud Office (SFO).

Background

2. As reported in the Lord President's minute of 8 May, the SFO would be set up to investigate and prosecute the most serious fraud cases (maybe 100 out of the 20,000 fraud prosecutions that are brought each year). The SFO itself would be staffed by lawyers, accountants and others with expertise in investigating company fraud. Because of constitutional and other difficulties, members of the police force would not be brought directly into the SFO, which would be part of the Civil Service as such; but a group of police officers would be permanently located with the SFO and would be under the day-to-day direction of the Director of the SFO, who could delegate SFO powers to these police officers in individual cases. It is not yet fully certain, however, that the police will find these arrangements acceptable. Their involvement with the SFO is a crucial element in achieving the closer co-ordination in tackling fraud that setting up the SFO is intended to bring about. Decisions on machinery of government aspects can therefore only be provisional pending the outcome of the Home Secretary's further discussion with the police about the proposed arrangements.



The Attorney General

3. On the assumption that the police would find the proposals acceptable, the Chief Secretary's paper to H Committee proposed that the SFO should be accountable to the Attorney General, but as a Department separate from the Department of the Director of Public Prosecutions (DPP).

4. The case for placing the SFO under the Attorney General's control in this way is clear:

a. responsibility for a new prosecuting authority fits naturally with the Attorney's long-standing responsibility for the DPP's Department and now for the Crown Prosecution Service (CPS), which comes into full operation from October 1986;

b. it is also a natural development from the present less formal Fraud Investigation Group (FIG) co-ordination arrangements, under which the FIG Controller has been a member of the DPP's Department;

c. the creation of the SFO as a Department separate from the Law Officers' Department, but acting under the Attorney General's superintendance (as with the DPP), would allow some distancing of Ministers from the handling of individual cases and therefore a more appropriate form of Parliamentary accountability than if the SFO were part of another Department such as the Department of Trade and Industry.

5. The implications of giving the Attorney General responsibility for the SFO are, however, substantial and merit careful consideration. I am concerned on two fronts: first the way in which administrative burdens on the Attorney General are being increased; and secondly the risk that we may be moving



steadily in the direction of a Ministry of Justice without any explicit examination of the case for doing so.

6. The Law Officer's Department as presently constituted is designed to support the Law Officers in their traditional function of the provision of legal advice to the Government. It has little capacity for administration and management, and in fact has no role in relation to the Attorney General's superintendance of the DPP's office (some 220 staff) and now the Crown Prosecution Service (growing to some 3,500 staff), which reports directly to the Attorney through the Director. In straight manpower terms the SFO is a small addition by comparison with the CPS - some 30-40 lawyers and about as many supporting staff. But the individual cases handled by the SFO will be large and complex and likely to attract public attention, and handling the relationship between the SFO and the police can be expected to throw up issues requiring Ministerial involvement. In supporting the proposal that the Attorney General should have responsibility for the SFO, Department of Trade and Industry Ministers were most concerned that he should have proper organisational back-up to ensure that the new organisation operated effectively.

7. Against this background the Solicitor General has suggested that there might be a need to consider appointing a Parliamentary Secretary in the Law Officers' Department specifically to look after administration and management responsibilities. There is a precedent for this during the Labour Government 1974-79 (Mr Davidson). And the appointment of an additional Parliamentary Secretary would, on present numbers, still leave you with room to appoint one (but only one) more salaried Minister to the Government (inside or outside the Cabinet). It is also possible that there might need to be some increase in the number of officials employed in the Law Officers' Department. You may therefore want to ask the Attorney General to consider in more detail the arrangements he



would need to manage the SFO in addition to his existing responsibilities for the DPP and the CPS, and in particular whether he might need the support of a Parliamentary Secretary.

8. Placing the SFO under the superintendance of the Attorney General would not of itself imply a move towards a Ministry of Justice. Nor is it certain that it would be perceived as such. Most of the comments in recent years about the case for a Ministry of Justice have been focussed on alleged conflict between the Home Secretary's dual responsibilities for certain justice matters (eg magistrates courts) and for what may be termed "Ministry of the Interior" functions (eg police and prisons) and on the split of justice functions between the Home Secretary and the Lord Chancellor. Responsibility for prosecution functions has not been a major part of the debate and, as far as I am aware, giving the Attorney responsibility for the CPS has not been interpreted as a step towards a Ministry of Justice. But this is only now coming into operation and the further announcement in the near future of the Attorney General's responsibility for the SFO might just be seen as indicating a trend in that direction. There is also a political dimension in that the Alliance parties have in the past indicated some support for the idea.

9. The creation of a Ministry of Justice would of course be a major change in the machinery of government with considerable management and resource implications. Even a review of the implications on a contingency basis would be a sizeable task, since it would affect the responsibilities of several senior Ministers (Lord Chancellor, Home Secretary, Law Officers). I do not therefore suggest that you have such a review conducted at the present time. But you might want just to note the possibility, in case this increase in the Attorney General's responsibilities rekindles the Ministry of Justice debate.

Other Ministers

10. There are other Ministers to whom responsibility for the SFO could be allocated; but there are objections to all of them:

a. Secretary of State for Trade and Industry - many of the prosecutions might involve offices under legislation for which DTI has responsibility; but other Departments' responsibilities would be involved (eg Inland Revenue) and it would look odd for one line Department to bring prosecutions effectively on behalf of another. Distancing the Secretary of State from responsibility for individual cases would also be more difficult if the SFO were part of the DTI, which would result in more detailed Parliamentary accountability and could provoke fears of political interference in the handling of individual cases, given the Secretary of State's responsibility for the financial services sector;

b. Home Secretary - this would run counter to the recent trend of transferring prosecuting powers from the police to the CPS. In any case the Home Office have no expertise either in investigating commercial fraud or in the conduct of prosecutions as such. More generally it might be seen as inappropriate for the Home Secretary to have responsibility for prosecution work as well as for the police, prisons and the magistrates. And it could just as easily provoke speculation about a Ministry of Justice;

c. Lord Chancellor - this would similarly seem inappropriate, given his position as head of the judiciary; again the risk of speculation about a Ministry of Justice would be present.

11. More generally, the police are less likely to find acceptable the proposals for co-locating police officers with the SFO, if responsibility for it is given to a Minister other



than the Attorney General. As indicated earlier, involvement of the police in this way is essential to achieving the objectives of setting up the SFO.

12. One further option that I should mention would be to set up the SFO as a non-departmental public body sponsored by the Attorney General. This would reduce the Law Officers' responsibility for management of the SFO and should have no Ministry of Justice connotation. But I think it would lack public credibility if responsibility for the investigation and prosecution of the most important fraud cases were given to a quango rather than a Government Department. It has not attracted any support among Ministers who considered the proposal for an SFO and I do not recommend it.

Conclusion

13. Subject to the outcome of the Home Secretary's discussion with the police about the proposals for an SFO, I conclude that responsibility for the SFO should be given to the Attorney General. There is no credible alternative. There is, however, no need for a final decision before the Home Secretary's discussion with the police confirm the acceptability of the SFO proposals. I suggest therefore in the meantime you might:

- a. ask the Attorney General to consider the administrative and management implications of giving him responsibility for the SFO in addition to the CPS, and in particular whether he would see a need for the appointment of a Parliamentary Secretary to support the Law Officers in this respect; and
- b. note the slight risk of this being interpreted as a further, albeit small, step towards a Ministry of Justice and the possible need to conduct a review of the implications of such a development at some time in the future.



14. A draft minute that you might send to the Lord President of the Council is attached.

RA

ROBERT ARMSTRONG

20 May 1986

CONQUEROR