



Prime Minister 4
 You may like to
 see the powers proposed
 for the Serious Fraud Office.

QUEEN ANNE'S GATE LONDON SW1H 9AT

17th July 1986

Dear Mr. [unclear]

ROSKILL

At its meeting on 30 April H Committee accepted the Chief Secretary's proposal that a new body, the Serious Fraud Office, should be established to investigate the most serious cases of fraud. It should be staffed by lawyers, accountants and others who would work closely with the police, and it would be responsible to the Attorney General. It was also agreed that further consideration should be given to the investigatory powers that should be available to this body, and to its working relationships with the police. I have now considered the question of powers in the light of the enclosed report from officials, and I have consulted on the question of working relationships with the police. I invite colleagues to endorse the proposals set out in this letter.

Investigatory Powers

The working group took as its starting point the powers which are at present available to the DTI under the Companies Act 1985. It did not prove feasible to express SFO powers in terms equivalent to DTI powers because of the extent of the adaptations which would be required to meet the circumstances in which the SFO is likely to need to exercise them. Consequently the group focussed on the powers which are necessary to investigate suspected offences and to obtain evidence. Its recommendations are summarised in paragraph 25 of its report. The main proposals are that:

- (i) the SFO should have a power to order the production of documents where it thinks it right to do so, backed up a power to obtain a search warrant from a magistrate where ordering production is not practicable;
- (ii) the SFO should have a power to require persons to provide information, and it should be an offence to refuse to answer its questions; and
- (iii) the SFO should be authorised under certain circumstances to disclose information which comes to its attention through the exercise of its powers, to specified competent authorities, including Government Departments and professional supervisory bodies.

These powers are modelled on those available to DTI investigators under the Companies Act, rather than those available to the police under the Police and Criminal Evidence Act 1984, and would be included in the Criminal Justice Bill. I must admit to some misgivings that they may excite more Parliamentary interest than will be comfortable during the passage of what will anyway be a large and in some respects controversial Bill. We shall want to give careful thought to the formulation of the necessary provisions, and to keep in close touch with colleagues about their handling in Parliament.

The proposal to enable the SFO to require people to answer questions, subject to a penalty for refusing to do so, derives from the Companies Act. This may be politically sensitive as it could be seen as undermining the right to silence. Some members of the working group thought that the statements obtained through the exercise of this power should be admissible in criminal proceedings, as they are under the Companies Act. Others, however, thought it difficult to justify asking Parliament to include such a provision in a measure dealing specifically with criminal investigations (the Companies Act having primarily a regulatory purpose). They concluded that it would be an acceptable compromise between the requirements of the investigation and recognition of the importance of the right to silence if a statement obtained through the exercise of this power were not admissible against the person who made it, unless it was made voluntarily after the investigation had cautioned the suspect. This would preserve the normal requirements in criminal proceedings which Parliament has continued under the Police and Criminal Evidence Act. But statements inadmissible against the person making them (who might be only a minor participant) would be admissible against others. This seems to me the best solution, and I hope that colleagues will feel able to accept it.

The working group also considered the implications of the proposal that the head of the SFO should be able to confer SFO investigatory powers on police officers who were working with his staff in an investigation. This proposal was intended to avoid any confusion which might arise from members of an investigating team having differing powers. But disparity would exist anyway as it is not intended to confer police powers on SFO staff and the police are not accustomed to exercising a power to require people to answer questions. Some members of the working group have suggested, in the light of consultation with the police, that the proposal should be reconsidered.

While the police accept that the powers proposed for the SFO would be useful to enable accountants and lawyers to obtain records and information to help them to establish whether an offence has been committed, they feel strongly that their existing powers would enable them to investigate the offence. Giving police officers SFO powers would create an accountability gap: the head of the SFO would not be accountable for their use of such powers (as distinct from the decision to delegate) but accountability within the police structure for the exercise of non-police powers would be difficult to arrange. I believe that, while it would be right to make SFO powers available to non-members who work under contract for it, such as outside accountants, such powers ought not in practice to be available to the police (though I see no need to exclude them on the face of the Bill). I hope that colleagues will agree.

Relationship Between SFO and Police

H Committee also invited me on 30 April to discuss further with the police arrangements for their co-operation with the Serious Fraud Office. The police will not be an integral part of the SFO; I see the relationship as one of collaboration, not subordination. From the discussions which have been held with the police, I am satisfied that they are ready to work in the

fullest co-operation with the SFO. I shall monitor their performance to ensure that this is so.

The SFO will assume prosecutory powers, now held by the Director of Public Prosecutions, for a range of fraud cases. The police have no difficulty in accepting this transfer of powers, and hence the responsibility of the Head of the SFO to undertake the direction of the way in which enquiries should be pursued towards prosecution. They recognise that the SFO will have the resources and skills to conduct this function energetically, and they welcome such additional skills and resources.

I share the concern of colleagues that the police effort on SFO cases should be adequate as regards quantity of personnel, and also as regards quality and continuity of experience. Bearing in mind that the great majority of SFO cases will be London-centred, the joint Metropolitan and City Police Company Fraud Department provides a natural complement to the SFO. That Department comprises 200 police officers dedicated to fraud enquiries. The police recognise that SFO cases are likely to be among the most serious, and see no difficulty about treating them on that basis. They would not, however, be prepared to sub-divide the Metropolitan and City Police Company Fraud Department. They consider that such a division would be operationally inefficient and would reduce their capacity to respond constructively to the inevitably variable demands from the SFO. Moreover, the police are very conscious of the growing links between fraud and other major organised criminal activity, such as drug trafficking. The MCCFD has established links with the other criminal investigation specialisms within the Metropolitan Police. It would be counter-productive to treat fraud as an entirely separate type of crime, when all the indications are that the criminals are increasingly diversifying. These arguments are not only powerful. They are related to operational matters which are constitutionally the responsibility of the two Commissioners. I have therefore decided to proceed on the basis that the police will provide the SFO with the necessary support from within MCCFD. The Metropolitan Police Commander in charge of MCCFD will act as the senior police officer to whom the Head of the SFO will relate. The MCCFD will, moreover, continue to provide a national resource for any expertise or support which any other force may from time to time request, as well as maintaining their national intelligence base function.

On location, the police would welcome physical arrangements which made close co-operation with the SFO easy. They find that the present arrangements, whereby the Director's staff are located from close to the MCCFD, is helpful. If it proved convenient for the SFO and the MCCFD to be housed in a single set of premises the police would have no objection, provided that there were no additional costs for them, and that the part of premises occupied by the police were formally vested in the police.

As I announced to the House on 13 January, the police have already responded positively to other Roskill recommendations as regards career structure, training and the use of qualified accounting staff. Their response to these recommendations will be carried forward with the SFO dimension fully in mind.

I am satisfied that the police response to the SFO concept has been made positively and that, bearing in mind their responsibilities, which go more widely than the investigation of fraud alone, their support of the SFO will meet the practical needs of that Office in the most efficient and effective way. I am, however, concerned to monitor the progress of the police commitment to the investigation of fraud and the SFO in particular; to that end my officials will be taking forward work, in consultation with

the police and other Departments as necessary, on how this might best be achieved.

Conclusions and Further Announcement

If colleagues accept the proposals set out in this letter, the way will be clear for a further announcement of our decision on the Roskill Report before the recess, which might be on the lines of the enclosed draft. In order to enable me to make the announcement before the House of Commons rises, I should be most grateful if you and other colleagues would let me have your replies to this letter not later than midday on Tuesday 22 July.

I am sending copies of this letter to other members of H Committee, to the Secretary of State for Trade & Industry, to the Attorney General and to Sir Robert Armstrong.

Yours,
Douglas

INVESTIGATORY POWERS FOR A SERIOUS FRAUD OFFICE
REPORT OF A WORKING GROUP OF OFFICIALS

Introductory

1. In his minute of 8 May, reporting to the Prime Minister on H Committee's discussion of issues arising from the Roskill Report, the Lord President mentioned the Chief Secretary's proposal for a Serious Fraud Office

"which would be staffed by lawyers, accountants and others and possess prosecuting powers [and powers] analogous to those given to DTI Inspectors under the Companies Act to require the production of books and papers. It would not, however, be given police powers of search arrest and detention... The controller of the SFO would be empowered to delegate SFO powers to the police in individual cases."

We have met as a working group under Home Office chairmanship, with membership as set out in Annex A, to consider in more detail what **investigatory** powers a Serious Fraud Office would require. (We assume that its **prosecuting** powers would be equivalent to those of the DPP.)

2. We have taken as our main criteria for this purpose the propositions that the SFO's investigatory powers should be -

- (a) no less than are at present exercised to good effect in the investigation of fraud under the existing FIG arrangements, but
- (b) no greater than Ministers will be able to justify to Parliament as necessary for the effective investigation of serious fraud.

In seeking to estimate what may be acceptable to Parliament we have had regard both to recent and current legislation for the regulation of companies and financial institutions, and to the provisions of the

Police and Criminal Evidence Act 1984 (some of which were enacted with fraud investigations specially in mind).

3. We have taken as our starting-point the outline proposals on powers for a Serious Fraud Office contained in an annex to the paper by the Chief Secretary which was before H Committee on 30 April. This annex listed the proposed powers in fairly general form, and its references to the corresponding powers exercisable by the Secretary of State for Trade and Industry or his inspectors were illustrative rather than exhaustive. It had originally been hoped that the SFO's investigatory powers could be expressed in terms of the equivalent DTI powers, subject to certain adaptations; but further examination has shown this not to be feasible because of the extent of the adaptations which would be required to extend these beyond the specific circumstances in which they can be exercised under existing legislation. The SFO will need to be able to obtain information from a wide range of people and in less restricted circumstances. Some of the DTI powers are vested in inspectors appointed by the Secretary of State; others are vested directly in the Secretary of State who, however, is empowered to confer them on his officers in individual cases. The SFO powers will need to be more uniformly vested, possibly in certain staff of the SFO, working under the general superintendence of the Attorney General. The Head of the SFO would be empowered to confer SFO powers on such other persons as he may decide. Consequently the scope and nature of the powers will need to be set out explicitly in the legislation.

4. We have therefore considered afresh what sort of investigatory powers the SFO will need, bearing in mind the criteria indicated in paragraph 2 above. The existing arrangements whereby fraud is investigated by DTI inspectors, who also possess wide powers for company regulation, or by police officers with the full range of police powers, or by both together, have the advantage that powers originally designed and justified for other purposes can in practice be deployed against fraud without attracting public attention. The establishment of a new statutory body solely to investigate and prosecute fraud presents us with a dilemma: either the wider powers must be overtly given to the new body, or it must make do with the powers

ordinarily available for criminal investigation. The first course would give those responsible for investigating fraud powers wider in some respects than are available to those investigating rape, murder or terrorism. The second course would leave fraud investigators under the new scheme less well armed than they are now. The compromise arrangements described below should minimise the embarrassments. They cannot, however, altogether avoid them.

Extent of investigatory powers: general

5. Investigation of fraud principally involves -

- (a) access to documents and records held by an organisation or by an individual associated with that organisation (primarily but not necessarily when the organisation itself is under investigation);
- (b) questioning individuals who may have information relating to the affairs of the organisation which is being investigated; and
- (c) obtaining information from other agencies which hold records which relate to the affairs of the organisation under investigation (e.g. Government Departments, the Bank of England and other banks, the Stock Exchange, accountants).

In succeeding paragraphs of this report we consider what powers could usefully and justifiably be conferred on the Serious Fraud Office under each of these heads; to what extent the SFO should be authorised to pass on information to other investigatory or regulatory agencies; and to what extent provision should be made for the delegation of any or all of these powers to people who are not on the staff of the SFO itself.

Access to documents

6. There are two ways in which the SFO might be authorised to gain access to documents and records.

- i. It could itself have and exercise a power to order the production of the relevant material in cases where it thinks there is good reason to do so. This would reflect the approach in s.447 of the Companies Act 1985, which gives the DTI a similar power.
- ii. It could request a magistrate (or, in the case of confidential material, a circuit judge) to order the production of the relevant material in cases where he is satisfied that there is reason to believe a serious offence has been committed and the required material is likely to constitute relevant evidence. This would reflect the approach in ss.8 and 9 of the Police and Criminal Evidence Act 1984.

7. To cover the full range of serious fraud cases, such a power would in either case need to be exercisable in relation to the documents or records of any individual or organisation engaged in business (in the widest possible sense) - companies, partnerships, friendly societies, charities, building societies, insurance companies, and investment organisations. A requirement to produce material should be imposable on any person in possession of it. It would also be necessary to provide a back-up power to enable the SFO to seek a search warrant from a magistrate where a production order has not been complied with, or in circumstances where making a production order might prove impracticable because it might result in the disappearance, destruction, or alteration, of the records.

8. Giving the SFO its own power to order production would provide great flexibility by enabling an investigation to begin in cases where the SFO might have reason to be suspicious about the conduct of the affairs of persons or bodies engaged in trade or business or carrying on professional activities, but did not have grounds to believe an offence had been committed. This would provide the SFO with an opportunity to investigate with a view to establishing whether there was evidence of an offence. It would, however, limit the safeguards on the exercise of the power as it would not, in practice be possible to question the reasons for its exercise at the time. However, the

SFO would be accountable to the Attorney General for the conduct of its investigations and, through him, to Parliament. The Attorney General's responsibility would cover the role of the SFO in deciding which cases to investigate and the manner of investigation adopted, including any exercise of the power to require production of documents (but it would not extend to the conduct of the police in carrying on an investigation in collaboration with the SFO). As regards the SFO's prosecution decisions, for which he would likewise be responsible, we understand that the Attorney General would, as a general rule (consistent with his practice in relation to cases handled by the DPP) confine answers to the basis of the decision in the particular case, without giving details of the evidence or other considerations which have led to a particular decision.

9. Requiring the SFO to obtain a production order from a magistrate would provide an independent assessment of the grounds on which the power was exercised, and would reduce the likelihood of its exercise being directed against people who turn out to be innocent. But it could seriously weaken the investigation by preventing access to evidence where it was not possible to establish, on the basis of the available information, the nature of any offence that might have been committed. In view of the confidentiality which surrounds business affairs, this could provide an opportunity for offenders to cover their tracks and operate beyond the reach of the SFO.

10. The essence of fraud investigations, unlike many other criminal offences, is that there may well be no certainty that any offence has been committed until documentary evidence becomes available to the investigators. For this reason a power appears necessary to enable evidence to be sought before the fact of an offence has been established, and on grounds which do not amount to evidence which a judicial authority could be asked to accept. In view of the seriousness of the cases which concern the SFO and the opportunities for offenders to conceal evidence, the wider powers represented by the Companies Act seem more appropriate than the more narrowly defined approach of the Police and Criminal Evidence Act, and are likely to result in a more effective investigative body. The working group recommends this approach should be adopted. We believe that failure

.../to comply

to comply with a production order from the SFO should constitute an offence punishable by a fine and altering, destroying, or concealing records relevant to the body under investigation (unless there is no intention to conceal information), or providing false information should be an offence punishable by a fine or imprisonment or both (as under the Companies Act).

Questioning individuals

11. There is no restriction on people charged with the investigation of offences questioning anyone they believe may be able to provide useful information. The Judges' Rules referred to the citizen's duty to assist the police in their investigations, and the Codes of Practice issued under the Police and Criminal Evidence Act 1984 refer to the right of the police to question people. The duty to assist the police is, however, a civic rather than a legal duty and no penalty is attached to a refusal to co-operate. A witness may be subpoenaed and required to answer questions in court, but he is not required to answer questions by the police outside court. The right to silence, arising from the acceptance that no-one may be required to incriminate himself, has been upheld by the Royal Commission on Criminal Procedure and preserved under the Police and Criminal Evidence Act. The police are required, when questioning a suspect (though not a witness) to caution him that he is not required to say anything and, when they have sufficient evidence to charge him, they must not (except in narrowly defined circumstances) continue to question him. The admissibility of confession evidence is controlled by s.76 of the 1984 Act, which excludes it under specified circumstances.

12. The Companies Act provides the investigator with a wider power. Where an Inspector is appointed, s.434 authorises him to require agents and officers of the company he is investigating or others who may have relevant information to attend before him. The Inspector may examine them on oath, and s.436 provides that a refusal to attend or answer questions may be regarded as a contempt of court. S.447, which authorises the Secretary of State to require the production of documents etc, also authorises him to require the person who holds the

.../documents

documents, or anyone who is or was an officer of the company, to provide an explanation of the documents. Similar provisions are contained in clauses 92 and 147 of the Financial Services Bill, relating to investigations into investment business and into insider dealing. Information or documents obtained under s447 may be used with a view to the institution of or otherwise for the purposes of any criminal proceedings pursuant to or arising out of the Companies Act and similar legislation, or for an offence entailing misconduct in the management of a company's affairs, or misapplication or wrongful retainer of its property.

13. We believe that the SFO will need, for the purpose of effective investigation, power to require people connected with the body whose affairs it was investigating to attend before it and to provide information and answer questions. This information would be obtainable in the form of a witness statement and would be admissible as evidence in criminal proceedings. This would be of particular help in relation to witnesses who may have relevant information but who may be reluctant to provide it fearing, for example, pressure from employers. It may also seriously handicap the conduct of an investigation if the SFO were not able to require explanations of documents which may be technical, complex, or deliberately misleading. DTI investigations under the Companies Act may, of course, lead to criminal proceedings, but this represents only a very small proportion of all criminal investigations and it would constitute a major departure from the rules governing criminal investigations in general to give an investigator and prosecutor the power to require a suspect to answer questions and provide information which might incriminate himself. It is the DTI practice not to seek explanations under s447 from a person after he has been charged with an offence, but its powers may be used to require a person to answer questions and provide information which might incriminate him. DTI investigators do not allow a potential defendant to volunteer information of a type which could not be obtained under s447 without administering a caution.

14. The police are required to caution people who are suspected of an offence before questioning them. This arises from the Codes of

.../Practice

Practice issued under the Police and Criminal Evidence Act 1984, and section 66(9) of the Act requires others charged with the duty of investigating offences to act in a similar manner. Both of these requirements reflect the earlier provisions of the Judges' Rules.

15. In view of the complexity of fraud investigations it may be defensible for the SFO to have a power to require persons to answer questions, and to make a failure to answer an offence. The working group was divided over the use to which information gathered in this way might be put. Some members felt it should be subject to no restrictions as the existing powers of DTI investigations under the Companies Act were not and as the new powers under the Financial Services Bill will not be. The provisions on admissibility of evidence have not met with any Parliamentary opposition during the passage of this Bill. It might well be thought odd for DTI-type powers to be vested in the SFO in a weaker form than that in which they are now available for fraud investigation through the FIG machinery. However, others felt it would be more consistent with normal practice in criminal prosecutions if oral evidence gained in this way were inadmissible in criminal proceedings unless it had been provided voluntarily after the suspect had been cautioned. Although there may be an inconsistency in such an arrangement, it could represent a workable compromise between conferring on the SFO powers which have hitherto been used mainly for regulatory purposes and the preservation of the fundamental right to silence. Such a compromise might help to avoid the Parliamentary opposition that could result from any proposal to remove the right to silence in a criminal investigation and to avoid re-opening the debates which surround the Police and Criminal Evidence Act.

16. The Companies Act provisions are in large measure reflected in the Financial Services Bill currently before Parliament. Clause 92 authorises the Secretary of State to require a person whose affairs are to be investigated, or anyone connected to that person (within the wide definition in the clause), to attend and answer questions. Anyone, whether or not connected to the person under investigation,

.../may be

may be required to produce documents and to provide explanations of them. A failure to comply will constitute an offence punishable by a fine or imprisonment. Statements made during such investigations under clause 92 will be admissible in evidence. Clause 147, on insider dealing, contains similar provisions without any limitation on the persons who may be required to produce relevant information or otherwise to assist (although it provides that offenders will be treated as if guilty of contempt of court rather than for a fine or imprisonment as such). This may provide an acceptable model for the SFO, directed at persons connected with the body being investigated. Indeed, there might be criticism if the powers available for the pursuit of serious fraud cases were inferior to those that, by the time the Criminal Justice Bill is debated, will be enacted for insider dealing.

Information from other bodies

17. Information which may assist in the investigation of suspected offences may be held under an undertaking of confidentiality by other bodies. This is likely to fall into three categories:

- i. information held by private bodies, such as banks, the Stock Exchange, investment companies, or other financial organisations;
- ii. information held by public bodies such as Inland Revenue or Customs and Excise, the DTI or the Bank of England; and
- iii. information held subject to legal privilege.

18. All of the relevant legislation provides an exemption for the last category so that the investigator may not require the disclosure of information held by a legal adviser on behalf of his client subject to professional privilege, and it would seem right to retain this exemption in the case of SFO investigations. (PACE's absolute prohibition on police access to legally privileged material was made in the belief that the courts would in any case rule such material inadmissible.) Both the Companies Act and the Financial Services Bill

.../contain

contain provisions for the investigator to require a bank to provide information relating to the accounts of bodies or individuals where such information is necessary for the purpose of the investigation. It would seem appropriate to give a similar power to the SFO, subject to the safeguard that this information should be used only for the purpose for which it was obtained. The Bank of England should be permitted to pass on information to the SFO for the purpose of an investigation, subject to the same safeguard.

19. The Inland Revenue hold information on the tax affairs of individuals and organisations which is treated with strict confidentiality. That information may be disclosed to third parties only with the taxpayer's consent or in such other cases (which are very few) as may be authorised by law. One such authorisation concerns disclosure "for the purposes of a prosecution relating to an Inland Revenue offence". Where the Serious Fraud Office has grounds for suspecting that an offence against the Inland Revenue has been committed by a particular person or persons and they request information which is likely to be of relevance to the investigation of that offence, then the Inland Revenue could, under the existing law, make such information available. Occasions are likely to occur in practice where the Serious Fraud Office concludes that it should not, in the event, prosecute the fraud on the Revenue which has been investigated. But the Office may still wish to make use of confidential taxpayer information supplied to it for the investigation and prosecution of another offence. There may be some doubt about the admissibility of the taxpayer information in such circumstances (see, for example, Section 78 PACE 1984) and it is desirable to put the matter beyond doubt by legislating explicitly for the bilateral exchange of information between the Inland Revenue and the Serious Fraud Office. The legislation should make it clear that:-

- a. access to Inland Revenue information runs in respect of the particular case under investigation; and

- b. it is for use for the immediate purposes of the SFO itself (which include the investigation and prosecution of non-Revenue offences).

20. Information held by Customs and Excise is not subject to a statutory obligation, and there is case law permitting disclosure on authority of a court when this would be in the public interest. Generally Customs and Excise will disclose information in comparable circumstances without the need for application to the court. This would include disclosure to the SFO in connection with the investigation of an offence.

Transmission of information to other agencies

21. The SFO should, we recommend, be able not only to obtain information from other bodies but also to pass information it had obtained in its investigations to other supervisory agencies. S.449 of the Companies Act provides that information obtained by the Secretary of State through the exercise of his powers under the Act may not be disclosed, except to a competent authority (which is defined in this section) unless this is required for criminal proceedings or for certain other specified purposes. It would be desirable to provide the SFO with a right to disclose such information to similar competent authorities (both in this country including appropriate government departments, and in other countries which had a legitimate interest in the investigations), and to extend the definition to include, for example, professional supervisory bodies such as the Law Society, where evidence of professional misconduct comes to light, the Securities and Investments Board, self-regulating agencies and the Bank of England (in its regulatory capacity) where evidence of impropriety is discovered. However, where this was done for a purpose other than criminal proceedings, the passing on of information obtained from a financial supervisor would be subject to that supervisor's approval, and confidential taxpayer information received from the Inland Revenue would not be available to be passed over by the SFO to other agencies. (Complications may arise over obtaining information from foreign governments who object to it being

.../used

used for revenue purposes; this aspect will need further consideration.) A body receiving information from the SFO should be able to pass it on to other agencies in so far as that is consistent with the rules government that body's use of its own information. Arrangements for exchange of information on the lines discussed in this and the three preceding paragraphs should extend to the corresponding agencies in Scotland and Northern Ireland.

Availability of SFO Powers to Others

22. There are two type of circumstances in which it could be advantageous to confer SFO investigatory powers on people who were not themselves members of its staff:

- i. where individuals, such a private accountants, are contracted by the SFO to assist in an investigation; and
- ii. where police officers are involved in the investigation in collaboration with the SFO.

23. In the former case the view might be taken that private individuals who are under contract to the SFO to work on its behalf are in effect co-opted into the SFO to carry out a function which would otherwise be undertaken by a full-time member of the SFO. Consequently it would seem right to authorise the head of the SFO to confer similar investigatory powers on such persons for the purpose of the investigations on which they are engaged

24. H Committee specifically envisaged the delegation of SFO powers to police officers. This raises different considerations. It is unlikely that police officers will be deployed interchangeably with lawyers, accountants or others on the staff of the SFO because their professional skills are different, but there may be situations in which they will be part of a team which is, for example, questioning individuals and it would seem odd if SFO investigators could require witnesses to answer their questions but police officers could not.

.../Mistakes

Mistakes and confusion about which powers were being used to question a witness could moreover lead to legal challenges to the validity of evidence. On the other hand, to confer SFO powers on police officers would raise a number of difficulties. It may appear inconsistent to allow a disparity in powers between police officers and SFO investigators, but if this were resolved by conferring SFO powers on the police in these cases, it might create a similar disparity between police powers in serious fraud investigations and their powers in other, perhaps more serious types of offence, which would not be easy to justify and where it is accepted that the police should not have the power to require answers to their questions.

Those directly involved in fraud investigations doubt if confusion over the powers of the SFO and police will in practice arise, and it is also possible that, given SFO powers, the question of police accountability might not be easy to resolve as the responsibility of chief officers for police officers exercising non-police powers might not be straightforward. The police themselves, having regard to these difficulties, think it preferable that their officers conducting a fraud investigation should not exercise the powers which are proposed for the SFO. They believe their existing arrangements for obtaining necessary information are satisfactory, and they are anxious to avoid proposals which might re-open the debate on police powers. They do not believe it would be appropriate for a police officer to be able to exercise a power to require persons to answer questions and they believe that co-operation between the police and the SFO will be most effective if SFO staff with their experience as accountants, DTI investigators, or lawyers exercise SFO powers derived from the Companies Act, while police exercise police powers. Some Departments represented on the working group would, for these reasons, recommend Ministers to reconsider the question and take the view that it would in practice be better not to mingle SFO and police powers. (The point is not one on which it seems necessary to make express statutory provision.)

Conclusion

25. It is proposed that:

.../i. in obtaining

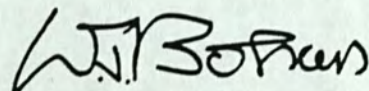
- i. in obtaining access to documents, the SFO should have a power to order the production of relevant material where it thinks there is good reason to do so, and a power to request a magistrate to issue a search warrant where such documents are not produced or where an order for their production is not practicable;
- ii. in obtaining information from individuals, the SFO should have a power to require individuals to attend before it, to answer questions and provide explanations of any documents they have been ordered to produce; [such information, however, when obtained orally should not be admissible as evidence in proceedings against the person who supplied it unless it has been made voluntarily following a caution;]
- iii. in obtaining information held by private bodies, the SFO should have a power to require private bodies such as banks to provide information relevant to the organisation or individuals under investigation;
- iv. provision should be made to permit the SFO and Inland Revenue to exchange information in cases where fraud against Inland Revenue is suspected, and that such information should be available to the police involved in the investigation;
- v. these powers should be directed at persons or bodies engaged in trade or business or carrying on professional activities, and at the officers and employees, past and present, of those bodies, and at others who may hold information relevant to the affairs of the organisation under investigation;
- vi. a failure to produce documents etc. when ordered to do so, or a refusal to appear and answer questions should be an offence;

.../vii the SFO

- vii. the SFO should have no power to require the production of information held subject to legal privilege;
- viii the SFO should be authorised to disclose information obtained in the course of its investigations to specified competent authorities, including professional supervisory bodies, although for information obtained from a financial supervisor which is not being passed on for the purposes of criminal proceedings, this would be subject to the approval of that financial supervisor;
- ix. the head of the SFO should be authorised to confer investigatory powers on persons who are not members of its staff (in practice, these would be private individuals contracted to the SFO to assist in an investigation);
- x. [SFO investigatory powers should not, in practice, be available to police officers].

Square brackets indicate matters on which the working group are unable to make a unanimous recommendation.

Signed on behalf of the working group



W J BOHAN

14 July 1986

ANNEX A

WORKING GROUP OF OFFICIALS

Membership

WJ Bohan Esq	Home Office (Chairman)
PRH Allen Esq	HM Customs and Excise
D Bentley Esq	Home Office
J Charkham Esq	Bank of England
G Clark Esq	Department of Trade and Industry
P Hall Esq	HM Treasury
A Harding Esq	Home Office
P Jenkins Esq	Treasury Solicitor's Department
Mrs PM Newman	Northern Ireland Office
DLC Peretz	HM Treasury
JB Shepherd Esq	Inland Revenue
D Steel Esq	Department of Trade and Industry
J Wood Esq	Office of the Director of Public Prosecutions
SJ Wooler Esq	Law Officers' Department
JR Woolman Esq	Department of Trade and Industry
RJ Baxter Esq	Home Office (Secretariat)
T Wilkie Esq	Home Office (Secretariat)

E.R.

ROSKILL REPORT: ARRANGED QUESTION

To ask the Secretary of State for the Home Department what conclusions have been reached on the Report of the Fraud Trials Committee.

DRAFT REPLY

The Report of the Fraud Trials Committee chaired by Lord Roskill was published in January. Since then we have been considering it actively, with the benefit of debates in both Houses, and comments on the White Paper on Criminal Justice. We have decided to take action on a wide range of the Report's recommendations, and shall be bringing before the House proposals to that end in the forthcoming Criminal Justice Bill.

2. First, in the light of the study by my rt hon Friend the Chief Secretary to the Treasury which I announced on 13 February, we shall establish a Serious Fraud Office. The new Office will operate under the superintendence of my rt hon Friend the Attorney General, and in the closest collaboration with the police. It will be charged with investigating and prosecuting the most serious and complex frauds, replacing the existing arrangements for coordination through the Fraud Investigation Group. Members of the new Office will have a range of relevant professional skills and qualifications. They will have the powers they need, including those now exercised by the Director of Public Prosecutions in relation to prosecutions, and powers for obtaining access to documents and information, but not police powers of search, arrest and detention.

3. Second, we propose to remove the restrictions imposed by recent case law on the use of the charge of conspiracy to defraud. The Roskill Report identified these as a source of concern, because in some cases they prevented the prosecution of the charges which most

/fully reflected

fully reflected the seriousness of the fraud and carried adequate maximum penalties. I therefore referred the matter to the Criminal Law Revision Committee for urgent advice. Their report, which will be published shortly, recommends the restoration of the full ambit of the common law charge, and I propose to accept that recommendation.

4. Third, in line with recommendations of the Roskill Report, we shall be proposing changes in the law to make it easier for a wide range of documents to be admitted in evidence, and to provide for a procedure under which evidence can be taken from witnesses resident abroad. These changes will apply in all criminal proceedings, not just fraud.

5. Fourth, we shall streamline court procedures in fraud cases. We accept the Roskill Committee's argument that in cases where serious or complex charges of fraud are pending, there are good grounds for the Crown Court becoming seized of the matter as early as possible. We shall therefore be coming forward with a procedure under which, as Roskill recommended, the prosecutor would be able to issue a certificate transferring such cases to the Crown Court without the need for committal proceedings. The defendant would have the right to apply to a Crown Court judge for discharge on the ground that there was no case to answer. We shall also propose that in suitable fraud cases the judge should be able to order that there should be a preparatory hearing, at which the matters agreed and those at issue could be identified and clarified before the jury was called in. These hearings would take broadly the form envisaged by the Committee, and would be formally part of the trial. To help in clarifying the issues, the defendant would be obliged to disclose in outline the nature of his case, but to prevent the disclosed outline from becoming the focus of the trial it would be made available only to the prosecutor and the judge, as was suggested in a note of dissent to the report.

6. Fifth, as I announced in reply to a Private Notice Question from the rt hon Member for Manchester Gorton on 9 July, we accept the Committee's recommendation that peremptory challenge of jurors should be abolished.

FOR.

7. The readier admissibility of documents, including charts and other visual aids, and the institution of preparatory hearings at which the issues can be clarified and simplified should do much to tackle the difficulties which jurors sometimes encounter in understanding the evidence in complex fraud cases. I have not closed my mind to the idea of a special tribunal to replace the jury in such cases, and share the concern which led the Committee to recommend change on these lines. But I should prefer to let the other measures designed to ease the task of the juror take their course before contemplating so radical a change.

8. In this and other respects we shall want to evaluate very carefully the effects of the charges made in the light of the Roskill report. We shall also be considering whether there would be advantage in establishing formal arrangements for assessing collaboration between the Serious Fraud Office and the police. But I am not persuaded that the creation of a new body outside Government with a continuing advisory role would bring benefits which would justify its costs. We therefore do not propose to pursue the Committee's idea of a standing Fraud Commission.

9. If unchecked, fraud can do great damage not only to its victims but to confidence in our commercial and financial institutions. The Roskill Committee performed a considerable service in highlighting weaknesses in the investigation and prosecution of fraud, and the arrangements for bringing cases to trial. Many of its recommendations were directed at practitioners outside Government, and bore on professional attitudes and practices. But our acceptance of the great majority of those which do fall to Government, and our commitment to legislation, are evidence of our determination to take stern action against fraud.