

PRIME MINISTER

ROSKILL

The Home Secretary did not in the event make a statement before the recess to announce the Government's decisions on Roskill. The main obstacle was the belief, held strongly by the Chancellor among others, that to do so would take the pressure off the police to agree that police fraud officers should work alongside the Serious Fraud Office.

The Home Secretary in his letter below says the Commissioner of the City of London police has now agreed that a group of his fraud squad officers should work with the SFO and be co-located with it.

The Home Secretary proposes to announce the decisions in the week before the Party Conference. He has circulated a draft of his proposed statement (below).

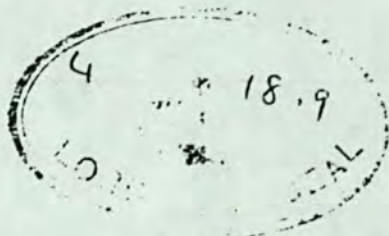
You will remember that the two main Roskill recommendations which are not to be accepted are, first, that for a new advisory body and second, the proposal for a special tribunal to replace juries in serious fraud cases (the fear was that to withdraw the right to a jury trial would jeopardise acceptance of other recommendations, for example on admissibility of evidence, which might themselves be more helpful than the proposed tribunals).

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DAVID NORGROVE

22 September 1986



QUEEN ANNE'S GATE LONDON SW1H 9AT

17 September 1986

Dear Willie,

ROSKILL

You will recall that my letter to you of 17 July, setting out proposals for the investigative powers for the Serious Fraud Office (SFO) and for the relationship between the SFO and the police, met with some reservations from colleagues. On that basis it was decided that we should not make a Roskill announcement before the Recess and that officials should pursue the outstanding issues.

The discussions which my officials have since held with the police and other Departments have produced results which in my view overcome the earlier difficulties. I therefore hope that colleagues will now feel able to accept the amended proposals outlined in this letter and to agree to the postponed announcement going ahead.

Colleagues felt particularly strongly that a designated group of police officers should be co-located with the SFO to ensure effective working. We have therefore been back to the police. The Commissioner of the City of London Police has offered to designate a group of his Fraud Squad officers, who would be supplemented to meet special needs, to work with the SFO and to co-locate them with the SFO. He is also prepared to suggest that his force should provide premises for this purpose, such as have been made available for the JMB enquiry. The Metropolitan Police have agreed that a small group of their Fraud Squad officers, the precise numbers flexible in the light of experience, should be designated to work with the SFO and thus build up experience and provide an element of continuity. Accommodation would be available for SFO representatives working with these officers in the investigation of particular cases. The far wider range of demands on the Metropolitan Police does mean that, more than is the case in the City, this commitment would need to be adjustable in response to other operational emergencies. This move on the part of the police thus delivers co-location of that part of the joint Metropolitan and City Police Company Fraud Department, namely the City component, which is likely to handle the majority of SFO cases; equally, it preserves both Commissioners' ultimate command and control of their officers, which, as I emphasised in my earlier letter, it is their constitutional right to do. I hope colleagues will agree that the arrangements now proposed are very much on the lines originally envisaged by the Ministerial working group.

As with my earlier proposals, I remain of the view that measures should be put in hand to monitor the police commitment to the work of the SFO. I have in mind here an inter-Departmental group of senior officials, similar to the Drugs Intelligence Steering Group, representing the Home Office, Attorney General, Department of Trade & Industry, Treasury and the police, who would meet periodically to review progress and resolve any

The Rt Hon The Viscount Whitelaw, CH., MC.

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difficulties. I see chairmanship of the group as falling to either the Home Office or the Law Officers' Department; this, together with precise terms of reference, could be left to officials to work up. For the present, I should welcome colleagues' support in principle for such a monitoring group.

Subject to general acceptance of these proposals the way is now clear for the announcement of our decision on the Roskill Report. I should like to make it in the form of a Home Office statement in the week before the Party Conference, and therefore not to Parliament. I would simultaneously write to Gerald Kaufman and other interested people. I enclose a draft announcement and should be grateful for agreement to my proposal and the draft by 25 September..

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,

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ACTION AGAINST FRAUD - THE GOVERNMENT'S  
RESPONSE TO THE ROSKILL REPORT

The Home Secretary is to introduce a wide range of measures to improve the efficient investigation of fraud and the successful prosecution of fraudsters without removing the right to jury trial. In addition to accepting the Roskill Committee's recommendation that peremptory challenge of jurors should be abolished, the Government has decided upon the following proposals:

- a Serious Fraud Office to investigate and prosecute major fraud;
- new procedures for taking and admitting foreign evidence, readier admissibility of reliable documentary evidence and further practical steps to assist in the presentation of the evidence to the jury (applying to all criminal proceedings);
- streamlined court procedures in serious fraud cases, including a preparatory stage of trials to clarify issues for the jury;
- wider use of the common law charge of conspiracy to defraud;
- police action to match the new arrangements including a review of the training of fraud squad officers

2. Where legislation is necessary to give effect to those proposals, provision will be made [in the forthcoming Criminal Justice Bill.

3. The Government has decided that the measures to be taken would be evaluated carefully and given time to take their course, but has ruled out as unlikely to bring benefits which would justify its costs the creation of a new advisory body, as Roskill had suggested. Nor

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does the Home Secretary intend to pursue, at this stage, the recommendation for a special tribunal to replace juries in serious fraud cases. The proposal is not ruled out for ever. But, many of the other measures are intended to make it easier for juries to understand the evidence in complex fraud cases. These should be given a chance to prove themselves before such a radical change as dispensing with the jury is contemplated.

4. Commenting on the decisions today, Mr Hurd said:

" This very positive response to the Roskill Report should be seen as part of our strategy for combatting fraud and safeguarding the probity of our financial institutions. The strengthened investigative and court powers in the Companies Acts 1980 and 1981, changes in the Insolvency Act 1985, and the new regulatory framework in the Financial Services Bill are all part of the same picture. Fraud can do great damage not only to its victims, but to confidence in the commercial and financial institutions which are so vital to the country's future. The new Serious Fraud Office and the substantial improvements I have announced today in law and court procedure are evidence of our full-hearted commitment to stern action against fraud."

#### The proposals in more detail

##### I Serious Fraud Office

5. A statutory body will be set up to investigate and prosecute the most serious and complex frauds, developing the existing non-statutory arrangements for coordination and including the revenue Departments. The office will operate under the superintendence of the Attorney General in much the same relationship as the Office of the Director of Public Prosecutions. The members of the new office will have a range of relevant professional skills and qualifications, and will include lawyers, accountants and officers experienced in company legislation. They will work closely with designated officers of the Metropolitan and City Police Company Fraud Department and will have the investigative

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and prosecuting powers they need, including those now exercised by the Director of Public Prosecutions as well/<sup>as</sup> powers for obtaining access to documents and information, but not police powers of search, arrest and detention. The objective is to bring together the necessary powers and expertise so that major fraud cases can be brought to trial as rapidly and effectively as possible.

6. (The decision to establish a Serious Fraud Office follows a study by the Chief Secretary to the Treasury and other interested Ministers, which was announced by the Home Secretary during the Debate on the Roskill Report in the Commons on 13 February.

## II Evidence

7. There are two main changes in the present law. Each will apply to criminal cases generally and not just fraud. Under the first, archaic inhibitions on the use of documentary evidence, which Roskill criticised, will be considerably relaxed. Many documents will normally be admissible as evidence, with the judge having discretion to exclude them only if he considers it would be in the interests of justice to do so. The weight to be attached to the contents of such documents will of course be a matter for the jury. There will be an exception for written statements by witnesses who could be expected to attend court in the usual way and be subject to cross-examination. In accordance with the Roskill Committee's recommendation, these will not normally be admissible, unless the judge considers that it would be in the interests of justice to admit them. The revised rules of evidence will take account of the possible use of live video links as a means of taking evidence directly from a witness who could be cross-examined.

8. The second main change will be the introduction of a procedure under which courts in this country will be able to request the authorities in other countries to arrange for evidence to be taken on commission for use in proceedings here, or for documents to be produced. Evidence taken in this way will be readily admissible, on the basis described for documents.

9. A further change relates to the presentation. The Roskill Report points out that material which summarises and presents the evidence more clearly, for example as a schedule or chart, can greatly assist the jury in understanding a complex case. Reforms to the rules of evidence will allow this kind of evidence to be admitted.

10. The Roskill Committee heard of otherwise well-founded cases which were not prosecuted because of expected difficulties over the strict proof of documentary evidence. The changes now planned should enable reliable and relevant evidence to be taken into account by the court without weakening the principle that witnesses with substantive evidence to give should testify in person and be subject to cross-examination.

### III Court Procedures

11. Again, there are two new procedures, both of which were recommended by Roskill. Under the first, prosecutors will be able, in serious or complex fraud cases, to transfer the case straight to the Crown Court for trial, without the need for committal proceedings in the magistrates' court. It will be open to the defence to make an application to the Crown Court for discharge, on the ground that there is no case to answer.

12. Under the second new procedure, if the trial judge believes that the conduct of a fraud trial will be assisted by clarifying in advance the issues which will fall to the jury, he will be able to order preparatory hearings. These will be in open court. The judge will be able, at this stage, to decide points of law and make orders designed to simplify the presentation of the evidence to the jury. Both parties will be obliged to indicate in outline the nature of their case but the line of defence will not be disclosed to the jury unless with the consent of the defence or the leave of the judge.

#### IV Conspiracy to Defraud

13. The Bill will provide that this offence can be charged whether or not other offences could also be charged. The Roskill Report drew attention to the case of Ayres, in which the House of Lords decided, in effect, that any relevant offence in statute must be charged in preference to a common law charge of conspiracy to defraud. The Home Secretary remitted the matter to the Criminal Law Revision Committee earlier this year. The CLRC Report (published on 9 September) recommends restoring the full ambit of the common law offence. The Committee takes the view that, at present, not only are conspiracies relating to major frauds charged as relatively trivial offences in statute (carrying low penalties) but also that juries can be confused when one charge has to be substituted for another as the details of the case unfold during the trial. Prosecutors will be given guidance on the proper use of the common law charge, which will carry a maximum penalty of ten years' imprisonment.

#### V Police action against fraud

14. The joint Metropolitan and City Police Company Fraud Department already has 200 officers dedicated to the investigation of commercial fraud. The increases in Metropolitan Police manpower announced by the Home Secretary on 20 May should enable the Commissioner to strengthen further his commitment to the investigation of fraud. The Association of Chief Police Officers has undertaken to review the training of fraud squad officers, and both Commissioners (the Metropolitan Police and the City) are examining the scope for improvement in career structure or repeated periods of service for fraud squad officers, to build on experience, and for accountants attached full-time to the fraud squad. Specialist advice on accountancy and other matters related to fraud is already available to the police and will be improved by the establishment of the Serious Fraud Office.



Notes for Editors

a. The Roskill Committee was set up in November 1983 with the following terms of reference:

"to consider in what ways the conduct of criminal proceedings in England and Wales arising from fraud can be improved and to consider what changes in existing law and procedure would be desirable to secure the just, expeditious and economical disposal of such proceedings."

Its report was published on 10 January 1986 and made 112 recommendations. Debates on the report took place in both Houses of Parliament in February 1986.

b. The Home Secretary announced his decision to seek the abolition of peremptory challenge of jurors in reply to a Private Notice Question from Mr Gerald Kaufman on 9 July (Official Report, col 305).

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