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24 September 1986

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
50 Queen Annes Gate
London SW1

NBM

Dear Home Secretary,

ROSKILL

I write in response to your letter of 17th September 1986 to the Lord President. In it you outlined the results of discussions held by your officials with the police and other interested Departments to try to overcome the reservations expressed by colleagues to the proposals set out in your letter of 17th July.

The revised proposals for the relationship between SFO and the police, in particular reflecting the agreement that they should be partially co-located, represent a real and welcome advance.

They are not ideal, nor likely to be as effective as either a unified organisation or the proposals for a bi-partite arrangement made by the Chief Secretary's Working Group. For example, there will not be a single police commander corresponding to the Head of the SFO with responsibility for the deployment of men and resources to individual cases, and for the subsequent management of the police part in those investigations. And it will remain the case that primary responsibility for the investigation of complex fraud will rest with individual police forces on a territorial basis.

Nevertheless, I recognise that efforts to persuade the police service to move closer to the bi-partite organisation envisaged by the Chief Secretary would at present be unlikely to succeed. I am therefore prepared to agree the present proposals, subject of course to my being at liberty in the future to suggest



modification or re-structuring in the light of experience. Here the functioning of the monitoring committee which you have suggested will be important.

I would find it helpful in view of the fact that I shall have Ministerial responsibility for the SFO, if it were to be chaired by my Legal Secretary.

We must take care to see that the legislation should not fix me with direct Ministerial responsibility for the investigation of one particular category of crime. As I see it, the function of the SFO will be to identify alleged offences which, on account of their serious or complex character, ought to be the subject of a joint investigation by the police in collaboration with the SFO, and also to ensure that such investigation comes about. My officials are consulting with your Legal Adviser's Branch on the terms of the instructions to Parliamentary Counsel, and I do not envisage difficulty in finding the right formula.

The only remaining issue arising out of the proposal to establish an SFO is the question of funding. In my view there will inevitably be a net cost, and we cannot divorce policy questions from the issue of who is to bear that net cost. I am writing separately to the Chief Secretary on this. I would prefer agreement to be reached on the question of funding before announcement of any policy decision. As to the terms of the announcement, I am content with what you propose subject to some relatively minor amendments indicated on the attached copy. My officials will of course explain the reasoning behind those amendments if required.

Copies of this letter go to other members of H Committee, Secretary of State for Trade & Industry, Sir Robert Armstrong and the Prime Minister (to whom I understand your letter of 17th September has also now been copied).

Yours sincerely
Stephen Wooler

Approved by the Attorney General
and signed in his absence.

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~~ ^{investigate and carry on joint investigations with the police} 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~~ ^{removing the remaining restrictions on,} 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 ^{collaborate with the police} investigate ^{in the} and prosecute ^{in the} 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

/and prosecuting

and prosecuting powers they need, including those now exercised by the Director of Public Prosecutions as well/^{as} 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.

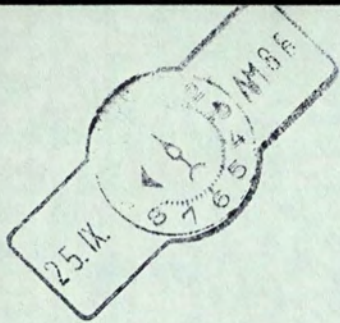
Notes for Editors

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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