

PRIME MINISTER

The meeting of Ministers on the Crown Agents is scheduled for 1730 on Monday. Half an hour is allowed. The Home Secretary, Lord Chancellor, Foreign and Commonwealth Secretary, Lord President, Chancellor of the Duchy, Chief Secretary, Attorney General and Chief Whip will attend. Sir John Hunt and one of his staff will service the meeting.

The initial round of correspondence favoured bringing the Tribunal to a halt, whilst recognising the difficulties involved. Since you asked for a meeting, the Home Secretary has set out the arguments for and against (Flag A), and has arranged some consultation with members of the Tribunal (Flag B). The Treasury Solicitor has also offered a note underlining the differences in this Inquiry from the earlier Fay Inquiry (Flag C). He reckons that the overall costs are unlikely to exceed £2 million.

Sir John Hunt's brief below brings this together. His personal advice is that winding up now might be a mistake, even if the original decision to go ahead was also a mistake.

*MAP*

*In my view the Tribunal  
should continue. The meeting  
need not. therefore take long  
no.*

13 July 1979



Ref: A09966



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PRIME MINISTER

Crown Agents Inquiry

*Flag B* In paragraph 10 of my brief dated yesterday, for your meeting on Monday, I said that I was inclined to advise against winding up the Tribunal unless the latter was itself prepared to express a view on the matter. This brief was written before I had seen the Home Secretary's second minute, also dated yesterday, which gives the views of the Tribunal. Having read the latter, I think the case against winding up is even stronger.

(John Hunt)

13th July 1979





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Telephone 01-233 7391

Sir Basil Hall KCB, MC, TD

Our reference

Your reference

PPS/Prime Minister

CROWN AGENTS TRIBUNAL

I have seen a copy of the Home Secretary's minute to the Prime Minister of the 12th July. I write this minute in case you should wish to give any further background briefing to the Prime Minister.

The costs of the Tribunal are dealt with by this Department. We have already received some accounts and it appears to me that even if the Inquiry should go on well into 1981 its costs are unlikely to exceed two million pounds. In reaching this figure I have included an element in respect of the costs of the Bank of England and the Crown Agents.

It may be right to call the Prime Minister's attention to the fact that the Terms of Reference of this Inquiry are to enquire

"to what extent there were lapses from accepted standards of commercial or professional conduct or of public administration in relation to the operations of the Crown Agents as financiers on own-account in the years 1967-74 described in the report of the Committee of Inquiry on the Crown Agents (HC 48 of 1977)".

The terms of reference of the Fay Inquiry were different. They were

"to inquire into the circumstances which led to the Crown Agents requesting financial assistance from the Government".

The matter of the exchange control prosecutions are referred to in paragraph 2 of the annex to the Home Secretary's minute of the 6th July and in paragraph 2(5) of that of 12th July. The immunities given was the general immunity given to all witnesses - that the evidence of a witness would not be used against him in criminal proceedings. It would not have been the case but that for the Inquiry there would have been prosecutions. The correspondence which I have with the Deputy Director of Public Prosecutions states that the enquiries made had revealed no evidence of personal gain and that in all the circumstances he did not think that public interest required a prosecution even though there may

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Matthew Parker Street  
11/12/79  
well have been contraventions of the Exchange Control Act 1947. I entirely agree with the Tribunal that the procedures laid down by the Salmon Commission can be unworkable. I have had difficulties with other Inquiries, though the difficulties were not so severe as they were in this.

I have not thought it necessary to copy this minute elsewhere.

*Basil Hall*

Treasury Solicitor

13th July 1979

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PRIME MINISTER

CROWN AGENTS TRIBUNAL

In my minute of 6th July I set out the background for our discussion on the possibility of winding up the Crown Agents Tribunal, and the main arguments for and against.

2. With my approval, my Permanent Secretary has sought the views of the members of the Tribunal on this matter. He reports as follows:

- (1) the Chairman of the Tribunal expects the inquiry to run well into 1981. He would expect the process of hearing evidence to be completed early in 1981 at the earliest, and possibly not until the middle of the year. Thereafter the Tribunal would have to finish their report, though much of it would be able to be written before the process of hearing evidence is completed;
- (2) the Tribunal are not prepared to hazard any guess as to the costs of the inquiry, if it goes through to completion. Informal discussion with them suggested that the cost of the inquiry could well be of the order of £3 million, mostly in legal fees. That figure includes the costs to the Bank of England and the Crown Agents who are carrying their own costs, as well as costs falling on the Treasury Solicitor. I understand that the Treasury Solicitor thinks that figure on the high side;
- (3) the members of the Tribunal do not themselves wish or intend to express any view about whether it should be wound up. They are the servants of the state for this purpose, there to do a job. They could be put in a very difficult position if they were to express a view one way or the other;

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- (4) the Tribunal would recommend against trying to seek the agreement of all those concerned, if the Government is minded to discontinue the Tribunal, and would not wish themselves to undertake the task of seeking that agreement. They doubt whether all concerned would be prepared to agree;
- (5) the inquiry is covering one or two aspects of the matter which were not covered by the Fay Inquiry. The Tribunal have received evidence from two witnesses who refused to give evidence to Fay (Mr Davidson and Mr Finlay). At the time the Tribunal was set up the Director of Public Prosecutions was considering the possibility of exchange control prosecutions. Those prosecutions were abandoned. The Tribunal agreed to investigate the exchange control matters in question, and witnesses were given immunity from prosecution. Witnesses have already given evidence on that basis. If the Tribunal was discontinued, those matters would have to be left uninvestigated;
- (6) if the Tribunal reports, it is likely that it will differ from the conclusions of the Fay Inquiry in certain limited respects;
- (7) if the inquiry is discontinued now, there can in the Tribunal's view be no question of an interim or provisional report on the substance of the inquiry. They would, however, wish to report on certain questions of procedure: they have found some of the procedures laid down by the Salmon Commission unworkable, and propose to draw these matters to the Government's attention;
- (8) the Tribunal would very much like to know whether or not the inquiry is to be discontinued before they rise for the summer recess at the end of this month.

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3. My Permanent Secretary asked whether the Tribunal's work would be significantly delayed by the illness of Mr John Rankin, Counsel for Sir Claude Hayes, the former Principal Crown Agent, who is due to be the next witness. The Tribunal said that it would be impossible for a new Counsel to come into the picture at this late stage. The junior who had been supporting Mr Rankin was taking over the lead. The Tribunal had said that they would not call Sir Claude Hayes for his evidence in chief until mid-September. Mr Rankin might be back by then; if (as seemed more likely) he was not, that would give the junior time to prepare himself. The delay should not be greater than about a fortnight in effect, since the Tribunal in any case would have been rising for the summer recess during August and the first half of September.

4. My Permanent Secretary tells me that it was evident from the discussion that the Tribunal were worried about the risk of an appearance of unfairness, if the Tribunal's inquiry were now to be discontinued. Sir Claude Hayes's reputation had been called in question in the evidence which had been given, and he would be deprived of the opportunity of answering the allegations. He would think that unfair; other witnesses - Sir Claude Hayes's former subordinates at the Crown Agents - might think it unfair that he had not been subject to the same scrutiny as themselves. Furthermore, it was expected that he would take the line that much of the responsibility for what had gone wrong lay with people in the Ministry of Overseas Development, the Treasury and the Bank of England: it was just those people who would be relieved of the necessity to give evidence by a decision to call the inquiry to an end now.

5. I am sending copies of this minute to the Lord Chancellor, the Foreign and Commonwealth Secretary, the Chancellor of the Exchequer, the Lord President of the Council, the Chancellor of the Duchy of Lancaster and the Attorney General, and to Sir Ian Bancroft, Sir John Hunt and the Treasury Solicitor.

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12th July 1979



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PRIME MINISTER

Crown Agents Inquiry

BACKGROUND

You have called a meeting for Monday 16th July to consider whether the Crown Agents Inquiry should be disbanded. The main document is the Home Secretary's minute to you of 6th July; other relevant papers are:-

The Home Secretary's original minute to the Foreign and Commonwealth Secretary of 11th June.

The Attorney General's minutes of 14th and 15th June.

The letter from the Private Secretary to the Lord President of 20th June.

The Chancellor of the Duchy's letter of 21st June; and

The letter from the Private Secretary to the Foreign and Commonwealth Secretary of 25th June.

2. Anxiety about the Crown Agents, and especially their "own account" operations, goes back to the late 1960s and resulted in the appointment of the Stevenson Inquiry in 1971. That report was concerned primarily with the status of the Crown Agents and their relationship with the Government; it was completed later that year and was the subject of a statement by the then Minister for Overseas Development (Mr. Richard Wood). It was not published at that stage.

3. There followed the financial disaster which occurred in 1973-74: the basic facts are that the Crown Agents' "own account" speculation in property and secondary banking had resulted in a deficit of over £200 million, for which the Government had to mount a rescue operation. There was strong feeling on both sides of the House of Commons which led to the appointment of the Fay Inquiry in April 1975. This inquiry was concerned with the facts of the financial loss and its report, together with the report of the Stevenson Inquiry, was published on 1st December 1977.





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4. The Labour Government's original intention at that stage was to appoint a further, private, inquiry under the chairmanship of Sir Carl Aarvold to assess the nature and gravity of any neglect or breach of duty by individuals, both in the Crown Agents themselves and also in the then Ministry of Overseas Development, the Treasury, the Bank of England and the Exchequer and Audit Department. That intention was announced in Parliament on 1st December 1977 but was overturned by a subsequent debate initiated by Mr. John Mendelson on 5th December, as a result of which the Government decided on a public Tribunal of Inquiry under the Tribunals of Inquiry (Evidence) Act 1921. The latter decision was announced on 8th December 1977.

5. The debate on 5th December 1977 was the culmination of several years of increasing concern among backbenchers of both main Parties. It was focused partly on the individuals who had been responsible for what had taken place (some of whom had been identified in the Fay Report and were being prosecuted), and partly on the performance of the various institutions which had been involved - Government Departments, the Bank of England, and Parliament's own failure to find out earlier what had been happening. None of the speakers on either side of the House criticised the Government's decision to hold a further inquiry, but most argued that it should be a full Tribunal sitting in public. The present Attorney General as Opposition spokesman, and Mr. Richard Wood, who had been Minister of Overseas Development in the critical period 1970-1974, both argued that any inquiry should be in public, but without committing themselves on whether it was needed or on the value of the results it might produce. Other leading speakers were Sir Bernard Braine, Mr. Peter Brooke and Mr. Richard Luce on the Conservative side, and Sir Harold Wilson, Mr. Michael English, Mr. George Cunningham and Mr. Dennis Skinner, as well as Mr. Mendelson, on the Labour side; Mrs. Judith Hart spoke for the previous Government.

6. The Tribunal was set up on a Motion by the then Home Secretary on 28th February, 1978. It was to enquire "to what extent there were lapses from accepted standards of commercial or professional conduct or of public administration in relation to the Crown Agents as financiers on own account





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in the years 1967-74 described in the report of the Committee of Inquiry on the Crown Agents" (the Fay Report). The present Attorney General welcomed the motion on behalf of the Opposition.

7. The Home Secretary, supported by the Lord Chancellor, the Lord President and the Attorney General, has questioned whether the Inquiry should continue. The arguments for and against disbanding it are set out in the Annex to his minute of 6th July. Although there is no precedent for disbanding a Tribunal set up under the 1921 Act, it can be done under the Prerogative. There is no legal requirement to obtain the approval of Parliament but in view of the background it would clearly be right to give both Houses the opportunity for a debate.

HANDLING

8. You might invite the Home Secretary to introduce his paper and then to ask the Attorney General (who has made most of the running) and the Lord Chancellor whether they have anything to add. The discussion might then concentrate on the following questions:-

- (a) Are Ministers satisfied that the Inquiry will not produce sufficient results to justify the expense?

About £1 million might be saved. There is little public interest. The view that there is no real advantage to be gained from letting the Inquiry run its course (paragraph 2 of the Annex to the Home Secretary's paper) has come from informal consultation with the Chairman, Mr. Justice Croom-Johnson, the Counsel to the Tribunal, Mr. Robert Gatehouse, QC, and other counsel. It is supported by the Treasury Solicitor. Does it apply both to uncovering the faults of individuals and to casting light on the performance of institutions, about which Parliamentary feeling will be equally strong? What statements can be quoted publicly to support this conclusion? The Home Secretary rules out asking the Chairman or the Tribunal collectively for public support. Could the Counsel to the Tribunal be asked formally to go on the record?





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- (b) Would it be politically acceptable for the Inquiry to be disbanded at this stage?

There are likely to be accusations of "cover-up", and you will need to bear in mind that the events took place in the main during the last Conservative Administration. On what basis can the Government justify a departure from the view, which they took in Opposition and which the then Government accepted, that a Tribunal was preferable to a shorter private investigation?

(It was recognised at the time that a Tribunal would take two or three years). Those who have been criticised already, and especially Sir Claude Hayes who was head of the Crown Agents from 1968 to 1974, might well claim that they have been denied the opportunity to clear their names - an important argument. Would a decision to disband the Inquiry make it easier or more difficult not to proceed with a post-Bingham inquiry?

- (c) Must a decision be taken now?

Sir Claude Hayes, whose evidence is due probably in September, is expected to be critical of the Ministry of Overseas Development, the Treasury and the Bank of England. Accusations of "cover up" would be much stronger if the Tribunal were wound up once he had given it. Secondly, such a decision can more easily be justified in the early days after a new Government has taken office. A decision can clearly not be announced while Parliament is in recess. November would be too late.

- (d) If the Inquiry is to be disbanded, what steps should now be taken?

- (i) There may be need for urgent consultation with the Tribunal about the modalities e.g. the costs of the parties. You will want the views of the Attorney General and the Home Secretary.





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- (ii) There would clearly have to be a debate in both Houses, for which it would be difficult to find time, especially in the Commons. You will want the views of the Chancellor of the Duchy and of the Chief Whip. (I understand that a three-hour debate might just be possible before the debate on the Northern Ireland Appropriation Order which is planned for 24th July.)
- (iii) The Home Secretary proposes that there should be discussions with the 1922 Committee before the debate.
- (iv) Should there also be discussion with the Opposition?
- (v) Detailed arrangements for any consultations and for the debates could probably be left to the Home Secretary to settle with the Leaders of the two Houses in consultation with the Lord Chancellor and the Attorney General, as the Home Secretary has proposed.

CONCLUSIONS

9. In guiding the meeting to a decision you will wish to establish:-

- (a) Whether cancellation of the Tribunal would do injustice to any of those criticised in the Fay Report.
- (b) Whether anything useful is likely to come out of the Tribunal justifying the expenditure of a further £1 million.
- (c) Whether the Government could obtain support in public for that view from any of those engaged in the work of the Tribunal, e. g. Counsel to the Tribunal.

And you will wish to take a view of the likely public and Parliamentary presentation of a decision to wind up the Tribunal.

10. If I may add a personal comment, I am inclined to advise against winding up the Tribunal. I am clear that it has been a costly mistake and that we shall get very little useful from it. But unless the Tribunal is itself prepared to say this, I think the Government might have difficulty in meeting





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arguments in the House about a cover-up, particularly since a Conservative Administration was in power for the critical period 1970-74. In any case there is very little time left for the necessary consultations and debate before Sir Claud Hayes starts his evidence (see paragraph 8(c) above).

John Hunt

12th July, 1979





A

PRIME MINISTERCROWN AGENTS TRIBUNAL

You have called a meeting to discuss the possibility of winding up the Crown Agents Tribunal. It may be helpful if I set out, as a basis for discussion of the question (on which I have already consulted those of my colleagues most directly involved), something of the background and the main arguments.

## BACKGROUND

The tribunal was set up by the last Government under the Tribunals of Inquiry (Evidence) Act 1921, following publication of the Fay Report (HC 48 of 1977) on the financial collapse of the Crown Agents. The then Government first proposed the appointment of a committee of inquiry sitting in private and mainly intended to assess the culpability of individuals involved, but the House of Commons rejected this course at the end of a debate on 5 December 1977 (Official Report, Cols. 1026-96) during which the present Attorney General expressed a preference for a 1921 Act tribunal.

The tribunal was appointed on 1 March 1978, held a formal meeting in April 1978 and began hearings in September 1978. Present indications are that the tribunal's hearings are likely to continue well into next year, if not into 1981, with the report appearing some time later.

The tribunal was set up, as the Act provides, by a warrant signed by my predecessor following resolutions passed by both Houses of Parliament. There is no precedent for bringing such a tribunal to an end before it has reported but, as I understand the legal position, there is power in the Crown to dissolve the inquiry, and as a matter of law at any rate there is no requirement to seek Parliamentary approval.

Any decision to end the inquiry must be taken very soon. The choice is between allowing the inquiry to be completed and stopping it now without any report. So far the tribunal has heard part of one side of the case, and there is no sufficient basis for even an interim or provisional report. The next major witness is Sir Claude Hayes (Senior Crown Agent 1968-74) and it would be difficult to terminate the inquiry once he had begun to give evidence. That will probably not be until the autumn, but a decision must be taken before the Recess.



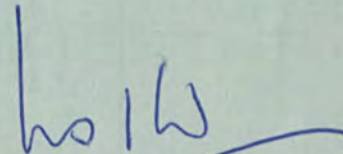
## ARGUMENTS FOR AND AGAINST DISBANDMENT

I have set out in an annex to this minute the arguments for and against disbanding the tribunal as they have emerged from preliminary discussion with colleagues. It seems very unlikely that the conclusions of the inquiry will justify the expenditure of public money and of legal talent entailed in its continuance. If, however, we call a halt to it now, we shall be accused of a cover-up (just as the most senior people involved in the Crown Agents and in Departments are about to come under examination); and we cannot be sure that all those whose conduct is under scrutiny would acquiesce. So there are political risks, which we have to consider in relation to our decisions on following up the Bingham Report.

## PARLIAMENTARY HANDLING

If we decide that the tribunal should be dissolved, we shall need to seek the endorsement of both Houses for the decision before it is put into effect. I suggest that it should be left to the Leaders of the two Houses and myself, in consultation with the Law Ministers, to settle the terms in which the matter should be brought before Parliament. Some preliminary soundings of our own backbenchers in the Commons would also seem advisable.

I am sending copies of this minute to the Lord Chancellor, the Foreign & Commonwealth Secretary, the Chancellor of the Exchequer, the Lord President of the Council, the Chancellor of the Duchy of Lancaster and the Attorney General, and to Sir John Hunt.



6 July 1979



## ARGUMENTS FOR AND AGAINST DISBANDING THE TRIBUNAL

Arguments for

1. To disband the tribunal now would save £1 million (some would say considerably more) in costs to be met by the Government; there would also be savings for the Bank of England and the Crown Agents who are meeting their own costs. This largely reflects the demands which the inquiry is making on the time and skills of members of the legal profession.

2. Informal and separate consultation has shown that the chairman of the tribunal, counsel for the tribunal, and at least one among leading counsel appearing for persons involved in the inquiry share the view that there is no real advantage to be gained from letting the inquiry run its course. That is also my assessment. The tribunal cannot be expected to produce any significant new facts, though there may be a few points on which its findings may differ from those of the Fay Committee. In particular, its terms of reference, unlike those of Fay, extend to exchange control matters, in relation to which those concerned have been given immunity from criminal proceedings: so if the inquiry were wound up those matters would not be pursued at all. But I doubt whether any benefit in this respect would be commensurate with the cost.

3. Disbanding the tribunal would not be inconsistent with the line we took in Opposition. In the December 1977 debate the present Attorney General did no more than express a preference for a 1921 Act tribunal over the private inquiry favoured by the Labour Government. When the resolution setting up the tribunal was moved in the House of Lords, the present Lord Chancellor questioned the need for any further inquiry at all.



Arguments against

4. If the inquiry were terminated now, some of those whose conduct has been called in question, and who may already have been given notice of allegations, would be left with no opportunity to defend or explain themselves. The proceedings of a tribunal, which is an inquisitorial body deciding its own course of inquiry, are quite different from those of a criminal trial where, if the prosecution is abandoned, the defendants are acquitted. The person most criticised, who has not yet given evidence, is Sir Claude Hayes, Senior Crown Agent at the relevant time, who is expected to defend himself by criticising the role of the Ministry of Overseas Development, the Treasury and the Bank of England, and might feel aggrieved at being deprived of the opportunity to do so.

5. Those who pressed most strongly for an inquiry, and those whose reputations have been called in question, would say that to stop now is a deliberate attempt to cover up the actions of Ministers, particularly of those involved during the last Conservative administration, and to make scape-goats of those criticised while protecting from examination anyone in the Departments concerned, and the Bank of England, whom the tribunal might find to have been at fault.

6. Although many of those best placed to know agree that continuing with the inquiry will be largely a waste of time and money, we could scarcely ask either the tribunal collectively or the chairman to give our decision any public support: the most we could hope for would be their acquiescence, and their co-operation in seeking the agreement of the parties concerned to discontinuance. We should have to take responsibility for the decision. The Opposition would no doubt feel bound to criticise it, and unless the tribunal succeeded in securing the acquiescence of all those concerned there could be complaints from individuals who felt that they were being treated unjustly.



- 6 JUL 1979

