

E.P.

1.

PRIME MINISTER

Crown Agents

You looked at the arranged Q&A over the weekend.

As we expected, you are now recommended to include a reference to the 1979 Crown Agents Act. The suggestion is that this should be in an expanded penultimate paragraph. The amended version is now included in the attached copy of the answer. Below it is Robert Armstrong's note explaining the amendment.

Agree the revised answer?

MA

24 May 1982

na  
MA 27/✓



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MR. PATTISON

Crown Agents Tribunal

With my minute of 19th May I attached a draft Question and Answer for Wednesday, 26th May. As you noted in your minute of 24th May, a further addition has been under consideration.

2. The point here is that the present chairman of the Crown Agents Mr. Sydney Eburne is concerned that the publication of the report and the resurrection of the old affair could damage the confidence of overseas principals on which the Crown Agents depend for their business. It has been suggested that the Answer should include a reference to the Crown Agents Act 1979, which now governs the current operations of the Crown Agents and which is intended to preclude any recurrence of the events described in this report.

3. I am a little chary of suggesting an addition which implies that the enactment of the 1979 Act has definitely precluded any recurrence of the events described, although we obviously think and hope that it has. But I think that a specific reference to that Act in the Prime Minister's Answer would help to minimise the risk of damage to confidence, and would provide a peg on which more detailed briefing of the Press as to the effects of the 1979 Act could be founded.

4. I therefore recommend that the penultimate paragraph of the Answer should be amended as follows:-

"The Government will now study the Tribunal's findings in greater detail. It will look closely at the criticisms made, and in particular at those of the institutions and procedures examined by the Tribunal, to see whether the changes that have taken place since the events of 1967-74 (including the enactment of the Crown Agents Act 1979, which now governs the current operations of the Crown Agents) are sufficient to prevent the risk of repetition, and if not what action now needs to be taken."

*Amend  
MS ✓*

*RA*

Robert Armstrong

24th May 1982

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1.  
PRIME MINISTER

(through <sup>MUS</sup> MCS)

Crown Agents

Elsewhere in your box, you will have seen the draft Written Answer announcing publication of the Report, together with the briefing.

There may be one substantive addition to the draft. It has been suggested that there should be a couple of sentences in the actual Answer making it clear that these kind of events should not recur, as the Crown Agents were entirely reconstituted by the 1979 Act.

I am sure that it is sensible to spell this out, since only a small number of MPs have closely followed the entire history of the subject over the past ten years. But there is still some discussion between Departments about how best to deal with the point. It will be resolved in the course of Monday.

Sir Robert Armstrong's earlier minute set out the timetable for making available the Report to various individuals with an interest. This had been expressly approved by the Home Secretary. We are now told, in Sir Robert Armstrong's minute below, that Lord Barber and Mr. Healey have been added to the list of those who should get advance copies. It is suggested that we might therefore send one to Mr. Foot.

I am sure that this is sensible. Both Judith Hart and Denis Healey on his Front Bench team will get them. In transmitting a copy to Mr. Foot, we will make it clear that this is a courtesy because other Labour Front Benchers are receiving it for personal reasons; and that it is not a sign that you expect the Report to be the subject of immediate Parliamentary controversy.

Agree to let Mr. Foot have an advance copy?

Yes not

MFD

21 May 1982



Ref. A08494

MR PATTISON

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Report of the Crown Agents Tribunal

As I made clear in my earlier minute, advance copies of this report are to be given to individuals affected at 4.30 pm on Tuesday 25th May and to the press at 9.30 am on Wednesday 26th May, before publication at 3.30 pm on 26th May.

2. However the report covers the actions of the Treasury during the periods when Lord Barber and Mr Healey were Chancellors of the Exchequer, and the Treasury have apparently committed themselves to making advance copies of the report available to Lord Barber and Mr Healey when they are being made available to the press and to witnesses. There is no criticism of Lord Barber or Mr Healey in the report and we do not think that it is necessary to send them copies on the Tuesday evening. It is therefore proposed to make their copies available at or after 9.30 am on Wednesday 26th May.

3. If Mr Healey is getting his advance copy on Wednesday morning, I suggest that an advance copy should be sent at about the same time to the Leader of the Opposition, Mr Foot, making it clear that the copy is personal and confidential to him until publication at 3.30 pm. Although reasons for sending an advance copy to Mr Healey relate to his former position as Chancellor of the Exchequer rather than to his present position as Deputy Leader of the Opposition, there seems to be nothing to be gained by holding Mr Foot's copy back until later in the day.

RET

ROBERT ARMSTRONG

21st May 1982

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Prime Minister

①

Ref. A08465

MR. WHITMORE

*I really think that those who are named should have been consulted in advance.*

*With the Home Secretary's agreement*

*We have gone ahead with the timetable recommended below.*

*Yes -> Agree the draft answer? (at A)*

*-> Agree the line to be taken with the Press including that at 4(ii) below?*

*MCS 21/5*

In your minute of 14th May you told me that the Prime Minister was content to answer a Written Question on this subject on Wednesday 26th May.

2. I now attach a draft Question and Answer. If the Prime Minister approves the Answer, perhaps you will arrange for the Question to be tabled. The Question should be put down for Written Answer on Wednesday 26th May; if it could be put down on Friday 21st May (to appear on the Order Paper of 22nd May), the publication of the Question would alert Parliament to the Report's forthcoming publication at about the same time as information about publication is given to the individuals involved in the Tribunal's inquiries.

3. I assume that the No. 10 Press Office will be responsible for giving background guidance to the Press about the Report, and for co-ordinating the line to be taken by the Press Offices of the Departments concerned. A brief for this purpose, and a background note, are also attached.

4. I should like to be sure that the Prime Minister is content with the line suggested on two points in particular:

(i) The Report will be published at 4.00 pm on Wednesday 26th May.

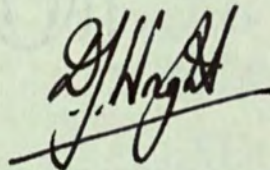
Confidential Final Revises (CFRs) will be released to the Press at 9.30 am that day. We have considered when CFRs should be made available to the 75 individuals who were warned that their part in the affair was liable to be the subject of the Tribunal's examination (including the 35 who are the subject of adverse comment). We think that they should be able to see CFRs no later than they are released to the Press, and it seems right that they should be given a little longer than that to read what the Report says about them and to consider their positions (if necessary consulting their legal advisers) before the Report is published. Accordingly we recommend that CFRs should be available to those people on a strictly personal basis about 24 hours

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before publication, from 4.30 pm on Tuesday 25th May. There is a small risk of a leak in the morning papers of 26th May, if one of them disregards the embargo and takes his copy to the Press, but we think that the risk is not great and worth running in order to ensure that those who are the subject of adverse comment have a reasonable (and by no means excessive) amount of time in which to consider their positions.

- (ii) Only one civil servant still serving is the subject of adverse comment in the Report. He is Mr. F.R. Barratt, a Deputy Secretary in the Treasury; he is criticised, but the Tribunal did not find that he had lapsed from accepted standards. Sir Douglas Wass and I believe that disciplinary action against him would not be appropriate, and that it is right, and only fair to Mr. Barratt, to make this clear at the outset. This is the inwardness of the last sentence of the answer to Question 5 in the main Press briefing.



ROBERT ARMSTRONG

(approved by Sir R. Armstrong  
and signed on his behalf)

19th May, 1982

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Crown  
Agents

CROWN AGENTS TRIBUNAL

MAIN NOTE FOR PRESS BRIEFING

1. Will there be a debate?

The Government will certainly be ready to consider one.

2. Fairness of the Tribunal's procedure - what remedy have people criticised to clear their names?

The Tribunal are responsible for their findings and their criticisms. Individuals who consider the findings in the Report unfair can make their views known to the Government, and the Government will take them into account in considering the report. I cannot go beyond that today.

3. Fairness of the Tribunal's procedure to individuals?

The Tribunal were asked to follow the "Salmon principles" as far as possible, ie the principles recommended in 1966 in the Report of the Royal Commission on Tribunals of Inquiry chaired by Lord Salmon (Cmnd 3121). They felt compelled by the nature of their inquiry to depart from these in some particulars. The Tribunal clearly gave much thought to procedure and the Government will examine the views and findings they have set out in their report with great care.

4. Unfair to allow individuals criticised only a short time to study the Report before publication?

The Report is presented to Parliament. It seems right to give people criticised in a report of this kind some advance notice of that fact. But they, like the Government, will need to consider in depth what the Report says - which must be done after the Report has been published.

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given to Parliament, not before.

5. Action against officials who are criticised in this Report?

One consequence of having proceeded through a Tribunal set up under the 1921 Act, as the then Prime Minister (Mr Callaghan) made clear when he announced the Tribunal on 8 December 1977 (Hansard 12, 1646-47), was that it effectively prevented criminal proceedings from being taken against witnesses. Disciplinary proceedings could only be taken by the Government against those still in its service and most of the people involved have now retired. No civil servant still serving is found to have lapsed from accepted standards, and the Report discloses no reason for taking disciplinary procedures against any serving civil servant.

6. Action over the pensions of those criticised?

Unless they are found guilty of certain criminal offences, former public servants cannot be made to forfeit their pensions.

7. Why were witnesses granted immunity from criminal proceedings?

The then Attorney General authorised the Tribunal to say that evidence given to it by witnesses (including documents) should not be used in any criminal proceedings against the person giving evidence unless those proceedings related to the giving of false evidence before the Tribunal. This was done to enable the Tribunal to obtain all the material evidence it needed and look thoroughly into all those issues of considerable public concern. An assurance of this kind effectively removed from a witness any right he might otherwise have to refuse to answer the question on the grounds that the answer might incriminate him. It is only by taking this step that



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the truth could be wholly uncovered. As the Tribunal say in their Report (Note paragraph 15) "It is a question of balancing one public interest against another". Immunity from civil proceedings could not be, and was not, granted.

8. Have the Crown Agents been re-organised?

Yes. The Crown Agents Act 1979 established two corporate bodies separating traditional activities from the holding and realisation of the assets acquired on own account. These bodies have a clear legal status and their functions and the powers of the Minister (Secretary of State for Foreign and Commonwealth Affairs) are defined. The basic constitutional position is now quite clear and the Crown Agents relate to Government on a basis broadly comparable with that of other public corporations. Progress has been made on the financial position of both bodies, as has been announced in recent months by the Minister for Overseas Development.

9. What action has the Government taken to ensure that what went wrong in relation to the Crown Agents cannot be repeated elsewhere?

The Treasury, in consultation with sponsor departments, made a thorough and critical examination of all other organisations and situations which might have involved the kind of risks which were present in the Crown Agents situation. Action was taken where it was found to be necessary, and the Treasury also clearly registered with all departments the lessons to be learnt from the Crown Agents affair, with the object of avoiding any recurrence of the mistakes that were made in that case.

10. How much did this Report cost? Was it justified?

The inquiry cost about £2.5m, of which a large part represents the costs of legal representation. This was an inquiry of exceptional scale and complexity, the events

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investigated covering seven years and many subjects and as many as 75 people being at risk of coming under criticism. Inquiries held under the 1921 Act are necessarily formal, and procedures accordingly cost more than those of less formal inquiries.

11. How much did the Crown Agents lose?

The accumulated deficit shown in the 1976 Crown Agents' Realisation Accounts was some £212 million. The Crown Agents Holding and Realisation Board's accounts for the end of 1981, which are in the process of being audited, are likely to show a reduction of this accumulated deficit to about £140 million. At present the sale of most of CAHRB's assets, property in Australia, is being negotiated. [See ODA Press Release of 8 April 1982]

12. How much did HMG lose?

HMG paid to the Crown Agents in 1974 and 1978 recoverable grants totalling £175 million which were written off by the Crown Agents Act 1979. Against this has to be set the Crown Agents commencing capital debt to Government of £30 million (over £9 million already repaid), other payments by them to Government totalling almost £5 million, and an expected net return to Government of about £10 million arising from the recent agreement of the Crown Agents Holding and Realisation Board to sell their Australian property holding company.

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## BACKGROUND BRIEFING

### A. THE TRIBUNAL

#### I. Terms of Reference

1. The Tribunal was set up in 1978 under the Tribunals of Inquiry (Evidence) Act 1921. Its terms of reference were to inquire:

'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 to 1974 described in the report of the Committee of Inquiry on the Crown Agents (The Fay Report, HC 48 of 1977).'

The Chairman of the Tribunal was the Hon Mr Justice Croom-Johnson, and the other members were Lord Allen of Abbeydale and Sir William Slimmings.

#### II. Fay Committee

2. The Committee of Inquiry under Judge E S Fay was set up in April 1975 'to inquire into the circumstances which led to the Crown Agents requesting financial assistance from the Government'. In December 1974, the Government had made available £85m of public money together with standby facilities of £50m arranged with the Bank of England. A further grant of £90m was made in 1978. The Fay Committee's report was published on 1 December 1977. It is that report which is mentioned in the Tribunal's terms of reference, and the debates on it in Parliament led to the establishment of the Tribunal.

#### III. Issues Investigated

3. The main issues investigated were:-

- the way in which the Crown Agents came to operate as financiers on own account
- the main transactions which led to the ultimate losses
- internal control over the own account activities

- the impact of the financial crisis of 1974 on the Crown Agents
- the part played by Government departments and the Bank of England in supervising the Crown Agents' activities and considering their future status and accountability.

#### IV. Cost of the Tribunal

4. The total cost of the Inquiry was of the order of £2.5m. A large part of this total represents the costs of legal representation.

5. The Crown Agents Inquiry has been unique in its scale and complexity, the events investigated spanning 7 years and many subjects. As many as 75 persons were at risk of being criticised. Inquiries held under the 1921 Act are necessarily formal in their character, and their procedures are inevitably more costly than those of enquiries less formally conducted.

6. Legal representation costs, and fees paid to members of the Tribunal, are met from the Law Charges Vote and are borne by the Treasury Solicitor's Department. Accommodation costs will be borne by the Department of the Environment and staff costs by the Departments which have loaned staff to the Tribunal.

7. Witnesses' Costs - The Government authorised the Tribunal to recommend the payment from public funds on an ex gratia basis the reasonable costs of individuals in respect of legal representation. A number of such recommendations have been made, but it is not the practice to disclose details relating to particular witnesses. The 1921 Act is silent on this question, and it has been the practice to deal with it administratively.

B. CRITICISMS AGAINST INDIVIDUALS

I. Those criticised

8. The Tribunal's findings are particularly directed at Sir Claude Hayes (Senior Crown Agent, October 1968-September 1974) and Mr A H Challis (Director of Finance, Crown Agents 1968-1973), who are found responsible for a number of serious lapses or lapses. One person, Mr Wheatley, former sterling money market manager in the Finance Department, (died in July 1977) is found to have acted corruptly. In addition, serious lapses or lapses are found against a further 7 individuals from the Crown Agents; 4 of the Crown Agents associates; 3 staff from Davies, Arnold and Cooper (Solicitors dealing with the Crown Agents); one former Minister of Overseas Development (Lord Holderness); 4 former ODM officials; 1 former Treasury official; and 2 former Bank of England officers. Some of these are also criticised. There are criticisms (falling short of lapses) of 2 individuals from the Crown Agents, one former Minister of Overseas Development (Dame Judith Hart), one former ODM official; 2 former Treasury officials; one serving Treasury official; one former Bank of England officer and two former E & AD officials. (The text of the criticisms against Lord Holderness and Dame Judith Hart is attached at Annex A.)

II. Disciplinary Action/Pension Forfeiture

9. Witnesses before the Tribunal were granted immunity from criminal proceedings. With one exception the civil servants who were criticised have now retired. Disciplinary action could only be taken against those still serving. The superannuation benefits of retired civil servants can only be withheld in whole or in part if they are convicted of certain offences which are not in issue in this case.

III. Fairness of the Procedures

10. Certain witnesses have expressed dissatisfaction over what they consider to be the failure of the Tribunal to follow the six cardinal principles recommended by the Salmon Commission on Tribunals of Inquiry. These principles, which are outlined at Annex B, were endorsed by the then Government in a White Paper published in 1973 and also by the then Home Secretary in moving the establishment of the Crown Agents Tribunal in the House of Commons on 28 February 1978. The experience of the Crown Agents Tribunal has led it to comment on the practicabilities of these principles.

11. The Tribunal sought to comply with the second cardinal principle - that witnesses should be informed in advance of the allegations against them and the evidence for these - by issuing letters to witnesses listing the questions they were likely to be asked and by supplying the entire evidence to them. However, a number of witnesses felt that they were not informed adequately in advance of criticisms of their conduct and were not therefore given sufficient opportunities to furnish the supporting evidence. The Tribunal also found it necessary to modify the application of the principle relating to the oral examination of witnesses. The Tribunal has explained why it found it necessary to depart from the principles, and where they did not seem appropriate. The Government will examine its procedural suggestions with great care.

The criticism (lapse) of Lord Holderness - paragraph 19.47

"We consider that the respects in which Lord Holderness' conduct was defective were:-

- i. Despite knowing that the Stevenson Committee regarded urgent interim action as necessary and that a long-term solution was likely to take some time to implement, he did not require the Crown Agents to provide information to the Ministry on their existing own account activities and commitments, as well as on new ventures. As a result, these activities continued unmonitored and future policy was formulated in ignorance of the true situation.
- ii. He did not intervene to impose a solution when it became apparent that the talks with Sir Claude Hayes were not getting anywhere.
- iii. He adopted arrangements for the Crown Agents which did not provide adequate control over their activities or adequate protection for the interests of the Government, and which did not remedy the defects identified by the Stevenson Committee or comply with the requirements which he had himself laid down.

We consider that cumulatively these defects amounted to a lapse from the standards to be expected of a Minister occupying the position he held."

The criticism (criticism) of Dame Judith Hart - paragraph 20.115

"Dame Judith was informed by her officials of the outcome of the meetings on 13 May, but did not see either the minutes or Mr Hewins' rough balance sheet.

THE SIX CARDINAL PRINCIPLES

- i. Before any person becomes involved in an Inquiry, the Tribunal must be satisfied that there are circumstances which affect him and which the Tribunal proposes to investigate.
- ii. Before any person who is involved in an Inquiry is called as a witness he should be informed of any allegations which are made against him and the substance of the evidence in support of them.
- iii.
  - A. He should be given an adequate opportunity of preparing his case and of being assisted by legal advisers.
  - B. His legal expenses should normally be met out of public funds.
- iv. He should have the opportunity of being examined by his own solicitor or counsel and of stating his case in public at the Inquiry.
- v. Any material witnesses he wishes called at the Inquiry should, if reasonably practicable, be heard.
- vi. He should have the opportunity of testing by cross-examination conducted by his own solicitor or counsel any evidence which may affect him.



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Nevertheless she knew that the Crown Agents' position was serious enough to require the Government to stand ready to give an open-ended guarantee. She should have appreciated the need to find out more about their finances, especially in the light of the Bank's doubts about the soundness of their balance sheet which should have caused her to think about their solvency. It was not enough to assume that her officials would make whatever enquiries were necessary; she should herself have asked questions. We criticise her failure to do so, but we recognise that she was not adequately briefed by her officials either about the Crown Agents' finances or about the action required to investigate them, and we do not consider that her conduct amounted to a lapse."

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CROWN AGENTS TRIBUNAL

FOR WRITTEN ANSWER, WEDNESDAY 26 MAY

: To ask the Prime Minister, whether she will make a statement on the Report of the Tribunal of Inquiry on the Crown Agents.

THE PRIME MINISTER

The Report of the Tribunal of Inquiry on the Crown Agents has been published today.

The Crown Agents were deeply involved in the property and secondary bank failures which took place in 1974-75, with the result that large sums of public money had to be made available to enable them to meet their liabilities.

Following the report of the Committee of Inquiry under the chairmanship of His Honour Judge Fay, the Tribunal was set up in 1978 by the previous Government under the Tribunals of Inquiry (Evidence) Act 1921 to enquire into the extent to which 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.

The Tribunal has examined the issues very thoroughly and the Government would like to express its gratitude to the Chairman, Mr Justice Croom-Johnson and to his colleagues Lord Allen of Abbeydale and Sir William Slimmings for all the time and work they have put into examining these events.

The Tribunal's report is long and detailed. Five main issues are examined:-

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- i. The way in which the Crown Agents came to operate as financiers on own account;
- ii. the main transactions which led to the ultimate losses;
- iii. internal control over the own account activities;
- iv. the impact of the financial crisis of 1974 on the Crown Agents;
- v. the part played by Government Departments and the Bank of England in supervising the Crown Agent's activities, and in considering their future status and accountability.

// In looking at these issues, the Tribunal has identified a number of serious shortcomings that existed at that time, not only in relation to the conduct of individuals, in respect of some of whom lapses or criticisms falling short of lapses were formally specified, but also in relation to the operation of institutions and procedures. The Tribunal has drawn some general conclusions about the causes of these shortcomings. Those conclusions are based on the findings on specific issues given in the main body of the Report, and need to be considered in that context.

The Government will now study the Tribunal's findings in greater detail. It will look closely at the criticisms made, and in particular at those of the institutions and procedures examined by the Tribunal, to see whether the changes that have taken place since the events of 1967-74 (including the enactment of the Crown Agents Act 1979, which now governs the current operations of the Crown Agents) are sufficient to prevent the risk of repetition, and if not what action now needs to be taken. ३

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The Government will also consider the Tribunal's comments on the recommendations of the Royal Commission on Tribunals of Inquiry on the procedure to be followed in inquiries carried out under the 1921 Act.

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