

PRIME MINISTER

JMB AND ANSBACHER

You are meeting tomorrow with the Chancellor, Governor, Secretary of State for Trade and Industry, and the Attorney General to discuss JMB and Ansbacher. David Walker will be accompanying the Governor. The papers are:

- Paper by the Treasury, reflecting comments by the DTI (Flag A);
- Paper by the Bank of England (Flag B);
- Letter from Baring Brothers (Flag C);
- Letter from Nigel Wicks reporting your conversation with the Governor in Scotland (Flag D);
- Note by the Policy Unit (Flag E).

The material in the papers is mostly familiar. The letter from Baring Brothers simply reinforces the Bank's arguments that the viability of JMB would be damaged by an inquiry.

The two main factors which have not so far been discussed in a general meeting are the Treasury's recognition that the action against Arthur Young would delay publication of an interim report of an inquiry, and the statement that the Bank would be prepared for Price Waterhouse to publish an edited report.

You might start the meeting by noting that the action against Arthur Young means that the interim report "could not become public in less than a year and then only if we had by that time given up all hope of prosecutions and saw no complications for the civil action (paragraph 20 of the

Treasury paper). This clearly makes it worthwhile to consider alternatives to an inquiry.

You might then turn to paragraph 4 of the Bank paper.

On paragraph 4(a), how much of the Price Waterhouse material might be publishable, when, and would the Chancellor after Parliament returns would be able to promise that a Price Waterhouse report would be published?

On paragraph 4(b), when is a decision about a full police investigation likely to be made (paragraph 2 of the Treasury paper)?

On paragraph 4(c), it is true that the Treasury Committee give Chancellors a harder time than Governors, but if the Governor is willing to appear surely the Chancellor ought to be less reluctant than he seems to be (paragraph 19 of the Treasury paper)?

I understand that the Secretary of State for Trade and Industry is inclined to go for a Section 447 inquiry into the Ansbacher affair. This will also need to be discussed.

DW

DAVID NORGROVE

23 September 1985

SLHAGS

SECRET

20 a STOP

BANK OF ENGLAND
Threadneedle Street
London
EC2R 8AH

23 September 1985

David Norgrove Esq
10 Downing Street
London
SW1

Dear David

JMB INQUIRY

When we spoke earlier today, you said that the Prime Minister would be ready to accept, among the papers to be considered at tomorrow's meeting, a submission from Mr Robin Broadley, a Director of Baring Brothers. As I mentioned to you, Barings are advising the Bank on the sale of JMB to the private sector.

Accordingly, I enclose a letter which Mr Broadley has today written to the Governor. I am copying this letter and enclosure to Rachel Lomax (Treasury), Michael Gilbertson (DTI) and Henry Steel (Law Officers' Department).

Yours ever

John
2

John Bartlett
Private Secretary
to the Governor

10 DOWNING STREET

Pamie Quinter

It would
be right to receive
a paper from Robin
Broadley on this
part of
Governor's
case

You might like to have a first
glance at these pps (brief to follow
on Monday). See final sentence of
para 4 of the Treasury paper in
particular.

The Governor was allowed
himself + 1 (to be David Walker).
He also wants to have Robin Broadley,
a director of Barings, who is
handling the sale of JTB, for at
least part of the meeting. The
Treasury know and are strongly
opposed. I agree - it looks bad
for the Governor himself. No one
else is bringing anyone.
Refuse Broadley? - JKW 20/9



Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

20 September 1985

David Norgrove Esq
10 Downing Street
London SW1

Dear David

JOHNSON MATTHEY BANKERS

I now attach the paper commissioned in Nigel Wicks' letter to me of 6 September, for discussion at the Prime Minister's meeting next Tuesday morning. It reflects comments by the DTI. The Bank also saw a copy in draft, but did not comment; instead, I understand that the Governor may submit a separate paper.

I am sending a copy of this letter to John Mogg (DTI), Henry Steel (Law Officers' Department) and John Bartlett (Office of the Governor of the Bank of England).

*Yours ever
Rachel*

RACHEL LOMAX

JOHNSON MATTHEY BANKERS**Paper by the Chancellor and the Attorney General**

The continuing political and press interest in the Johnson Matthey Bankers case has remained at a high level, even during the Parliamentary recess. It is clear that the Opposition Parties will make a meal of it as soon as Parliament returns. Unless some form of independent published report can be promised, suspicions of a cover-up will become increasingly hard to dispel. There is also a legitimate public interest because of the probable loss of public money through the rescue.

Involvement of the police

2. The police will report shortly to the DPP on their preliminary enquiry. They strongly suspect fraud, but have no firm evidence. They are likely to recommend a full police investigation, which would be conducted by the Fraud Investigation Group (FIG). It is, however, clear that it would take FIG a long time - perhaps as long as 18 months to 2 years - to establish any firm basis for possible prosecutions, and it must remain doubtful whether they will ever succeed in doing so. And unless the police investigations result in prosecutions, none of the evidence they might unearth will become public. In any case, the evidence made public through prosecutions would in the nature of things relate only to limited aspects of JMB affairs.

Options for a published report

3. There are overwhelming reasons for continuing to resist publication of the Price Waterhouse Report. An Inquiry under the 1921 Act would be wholly inappropriate.

4. An enquiry under Section 432 of the Companies Act could however meet the need for an independent public account of the affairs of the company leading to the collapse. The Secretary of State has a discretionary power to publish a report after considering its contents. If there were prosecutions, the report would not normally be published until after the end of court action (in the event of an unsuccessful prosecution there could well be arguments against publication). If no prosecutions are contemplated, the report would normally be published upon completion. There is therefore a possibility that no full public report would be available for at least three years. The Secretary of State can commission an interim report which would be likely to cover the main aspects of the debacle, but the timing of publication of any report would have to take account of progress in the civil action by the Bank against the auditors - which could be very protracted.

5. Section 432 Inspectors have powers to require witnesses to give evidence, which can, in appropriate circumstances, be passed to the police. Co-ordination of the police enquiries and those aspects of the inspectors' enquiries which relate to criminal matters could be achieved through FIG.

The Bank
make a
rather
surprising
offer on that
(see their
para 4).

This is
new, to me
or surely
works a
major hole in

the Treasury argument. - They hadn't thought of the point before we raised it.

6. The Chancellor and the Attorney General believe that an inquiry under Section 432 offers the only practical route, even if early publication of a report were not to prove possible.

The Governor's case against Section 432 inquiry

7. The Governor has advanced a number of arguments against setting up a Section 432 inquiry. These are set out at (i) to (vii) in Nigel Wicks' letter of 6 September to Rachel Lomax (Annex A).

Flag D

unattached

Would a Section 432 inquiry jeopardise prospects for sale?

(Points (i), (iii) and (iv))

8. The Governor argues that an inquiry would delay sale of JMB; cause the bank's board and management to fall apart; and lead to indemnitors suing the Governor for compensation.

*The Governor's
death with
this
branch
against
person
432 against
a company*

9. It is, however, difficult to see why a Companies Act inquiry should deter a potential buyer more than the Fraud Squad investigation that is already under way. Although a Section 432 enquiry could be aimed at the company's affairs leading up to the collapse, the inspectors ought not to be prevented from following up any indications of subsequent wrong doing by anybody, including staff still employed by the company. But neither can the police be restricted to covering the pre-rescue period.

10. The board and management of JMB undoubtedly face a difficult task. But again it is not clear that these difficulties, which are already present, would be significantly

worsened by a Companies Act inquiry. Nor can this consideration be allowed to determine whether there is to be a Companies Act inquiry or not.

11. As for the indemnitors, whatever the arguments about the likelihood of their taking action against the Government, if the Secretary of State had acted bona fide in exercise of his statutory powers, the Attorney-General is in no doubt that no Court would uphold their case.

Would a Section 432 inquiry jeopardise prospects of successful prosecution?

12. The Governor argues that an inquiry would not deter irresponsible bankers, while successful prosecution would; and that it would delay any prosecutions (points (ii) and (vi)).

13. There is no reason why an inquiry should cause delay in mounting prosecutions, though prosecutions would delay its report. Given the inspectors' powers to require evidence and documents, the police might even be assisted in mounting a case. A Section 432 inquiry would also unearth any Companies Act offences and would draw out any general lessons to be learnt from the case.

The Governor's other points (v) and (vii)

14. The Governor doubted whether there was a precedent for a Companies Act inquiry into a bank which was a going concern. It is correct that London and County had already totally collapsed. But JMB would also have collapsed, had the Bank not rescued it.

But the Bank did

Had London and County been similarly rescued, that would not have been a good reason for not having an enquiry. *Report*
didn't work

15. Finally, the Governor argued that JMB's civil action against Arthur Young would be jeopardised. If Price Waterhouse are right in their advice that JMB have a good case, the worst consequence of an inquiry would be delay. Moreover the current police investigation offers Arthur Young a rather better pretext for delay, since the question of whether they were fraudently misled by JMB management is germane to the issue of their accountability.

The involvement of public funds

16. There is of course legitimate concern about the potential cost to public funds, whether or not the eventual disposal is likely to be more affected by a Section 432 inquiry than by the police investigation. But this needs to be weighed against the wider political and public interest issues mentioned earlier.

What happens if no Section 432 inquiry?

17. Parliamentary pressure is most unlikely to die down. Apart from Dr Owen's demands for an inquiry into the bullion business, and Mr Sedgemore's allegations, the Opposition front bench is likely to continue pressure for publication of the Price Waterhouse report and a public inquiry. The Leader of the House appears to believe that demands for a debate in the next session will be irresistible.

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18. In answer to Opposition pressure, the Chancellor will be able to say nothing beyond what is already on the record, and will have to refer back repeatedly to the police enquiries. Demands for a public inquiry will continue. A 1921 Inquiry will have to be resisted, and questions about a Section 432 inquiry referred to the Secretary of State. He would have to counter them by saying the police investigation must take its course - an argument which is most unlikely to satisfy demands for a public inquiry. The Government would be wholly on the defensive, in the absence of a convincing case, in a matter where they have every interest in a full investigation of the facts, and nothing to hide.

19. It is also highly probable, that unless there is a Companies Act inquiry, the TCSC (of which Mr Sedgemore is a member) would decide to hold its own inquiry. The Government could not resist this. The Governor would no doubt be required to give evidence and to provide an account of events at JMB, both before and after the rescue, as well as to defend the rescue itself. It is also highly probable that the TCSC would demand to see the Price Waterhouse report, and the Government would only be able to refuse by opposing the request on the floor of the House.

Conclusion

20. The Governor has raised a legitimate point about the public money that might be put at risk. But there are wider issues to be taken into account. In the Chancellor's and the Attorney General's judgement, the balance of the arguments points to recommending that the Secretary of State be invited to initiate

SECRET

an inquiry under Section 432 of the Companies Act into events at JMB prior to its rescue by the Bank. This would guarantee an independent inquiry, though the results could not become public in less than a year, and then only if we had by that time given up all hope of prosecutions and saw no complications for the civil action. It should not be any more prejudicial to successful disposal than the police inquiry. It is the only possible way of providing a convincing answer to public and Parliamentary demands for a full explanation of events at JMB.

21. The Secretary of State for Trade and Industry has been consulted in the preparation of this paper.

2.



CONDENSATION

157

COVERING SECRET

18A

Handwritten signature
cc HMK

BANK OF ENGLAND
Threadneedle Street
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EC2R 8AH

20 September 1985

David Norgrove Esq
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Dear David

JOHNSON MATTHEY BANKERS

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Yours ever

John

John Bartlett
Private Secretary
to the Governor

PAPER BY THE BANK OF ENGLAND

JMB: SHOULD THERE BE A DTI INQUIRY?

1 This paper sets out the main factors that in the Bank's view justify answering the question in the negative.

A POLICY OBJECTIVE

2 The Bank's policy objective is to return JMB to the private sector as soon as possible on the best possible financial terms. A decision to institute a DTI Inquiry is inconsistent with and prejudicial to this objective because:

- (a) No potential buyer would be ready to conclude a deal in the face of such an Inquiry, which to judge by precedents would last at least a year and probably two or three. The uncertainty of the outcome and the fact that such an Inquiry would inevitably cause disruption throughout the business would make it difficult, if not impossible, for a Board of Directors to justify agreeing to purchase.
- (b) Since the main policy objective would at best be postponed and in all probability frustrated, the Bank of England would have to continue to run a commercial business with potential loss prospects for far longer than is desirable. This probability is made the more likely as confidence in the bank from its customers would be weakened by the Inquiry, as would the loyalty and application of the bank's Board and management. The Bank of England could well be forced to dispose of JMB on well nigh "fire-sale" terms or even to put it into liquidation as the best means of saving the balance of its investment.
- (c) A DTI Inquiry would delay the case against Arthur Young. This would entail cost because the benefit of the claim could well be included in any sale, and delaying the claim would thus depress its value. A DTI Inquiry could also lead to the

publication of statements and findings that could be turned by Arthur Young to defeat the case against them. Additionally, would it be proper to conduct a DTI Inquiry into facts which are simultaneously the subject matter of a High Court action?

- (d) The fact that the terms of reference of the Inquiry into JMB might be confined to the period up to 30 September 1984, or to the banking business only, would cut little ice with potential buyers or the market. Uncertainty would be bound to be increased and confidence in JMB reduced.

3 Taken together, these purely commercial factors point to a potentially serious loss of money to the public sector as a result of launching a DTI Inquiry. Loss would also be sustained by the indemnitors.

B ALLEGATIONS OF A COVER-UP

4 The Bank acknowledges the need to deal with allegations of a "cover-up", but believes that this is already being and can be further met in the following ways:

- (a) The critics have seized particularly on the fact that Price Waterhouse's report has not been published. There are three reasons why no report has been published so far -
 - (i) to avoid prejudicing the claim against Arthur Young;
 - (ii) to maintain banking confidentiality;
 - (iii) Price Waterhouse's concern that they might be liable to claims for damages against named individuals.

As soon as the claim against Arthur Young has been filed (probably towards the end of this year) the Bank would be prepared for Price Waterhouse to publish as comprehensive a report as is compatible with meeting the points raised above. It is suggested that an independent Privy Councillor might be invited to certify that anything omitted from the published

report (eg the names of individuals) was omitted for legal grounds and did not involve the suppression of any material facts.

- (b) In addition, it is now public knowledge that a police investigation is in train and if it were decided to make this a FIG case, that could be announced and would be wholly consistent with the purposes for which Parliament was informed that the FIG arrangement was being put on a permanent footing in July 1984.
- (c) As far as statements by the Bank itself are concerned, there has already been an account of the circumstances leading up to the rescue in the Annual Report. Moreover, if the Treasury Select Committee sought to conduct its own investigation, the Governor would certainly be ready to appear before it.

C OTHER POINTS

5 Several other factors need to be borne in mind:

- (a) One purpose of a DTI Inquiry is to draw out general lessons from the evidence for the future. In the JMB case, however, the main elements of what went wrong in terms of incompetence and misjudgment are already abundantly clear. The subsidiary nature of other lessons that might emerge from a DTI Inquiry and the long delay before publication suggest that any further lessons which might emerge would be largely, if not wholly, valueless for the purposes of improving banking supervision.
- (b) In terms of deterrence, much the most effective action that could be taken would be a prompt and successful prosecution for fraud if evidence can be found to justify it. But no prosecution could be properly launched while another official Inquiry into the same set of facts was being conducted.
- (c) Other DTI Inquiries into significant cases over the past 15 years have, to the best of the Bank's knowledge, been initiated in respect of going concerns only where Directors, shareholders or creditors (or some combination) have sought such an Inquiry

in the absence of any other means readily to hand for getting to the bottom of the matter. This is emphatically not the position in JMB: the shareholders do not want an Inquiry and there are no creditors who are at risk.

- (d) According to precedent, DTI Inquiries have been used to elicit facts which, in turn, have been instrumental in the institution of criminal proceedings or actions for civil remedies. In this case, the reverse is the position. Criminal investigation is in process and a civil action has begun. A DTI Inquiry would be prejudicial to both these.

D CONCLUSION

6 The case for a DTI Inquiry therefore rests solely on the need to dispel the impression that there is a cover up. The Bank does not believe that a DTI Inquiry could possibly achieve so much more in this respect than the courses described in paragraph 4 above (including, in particular, early publication of a full report by Price Waterhouse) as to warrant the unpredictable but undoubtedly very large loss to public funds that such an Inquiry would cause.

Bank of England

Domestic Monetary Pol:

Econ Pol. PC-14

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Potentially - valuable asset.

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Facts would come out which would require action against A.Y.

*500-400
68 -40-45
2 -1.3
120 -90
Customers vic.
Other Central Bank*

*Volunteers
stay there &
see this through*

*Rule of man
BYE
Pound note
Low numbers
60-70m*

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Bank of England