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10 DOWNING STREET

24 September 1985

From the Private Secretary

Dear Rachel,

JMB and Ansbacher

The Prime Minister today discussed with the Chancellor of the Exchequer, the Governor of the Bank of England, the Secretary of State for Trade and Industry and the Attorney General proposals for Companies Act inquiries into the affairs of JMB and Ansbacher. Mr. David Walker was also present. The meeting had before it papers by the Treasury and the Bank of England and a letter from Mr. Robin Broadley of Baring Brothers.

Introducing the discussion, the Chancellor said he saw the question whether there should be a Companies Act inquiry into JMB essentially as turning on an assessment of the effect on the Government's position in the House. The attack on the affairs of JMB would re-emerge with renewed force after Parliament returned. The Lord Privy Seal had said he saw no way of avoiding a debate. There would be accusations of a cover up. Though unjustified these would be difficult to handle.

Continuing, the Chancellor said there was no assurance that the police would feel able to bring prosecutions. If there were to be no prosecutions, no report would be made public, without an inquiry. There would certainly, in any case, be demands for a Companies Act inquiry under Section 432. So far the demands had been for a public inquiry under the terms of the 1921 Act, which the Government had refused. But inevitably the demands would soon turn to the Companies Act, and the Secretary of State for Trade and Industry would need to be able to respond. In the absence of an inquiry under Section 432, there would also probably be an inquiry by the Treasury Committee. This would be highly ~~undesirable~~. The Chancellor had concluded that an inquiry under Section 432 offered the best way ahead, subject to the agreement of the Secretary of State for Trade and Industry.

The Governor had put forward essentially one argument against an inquiry, the Chancellor said, namely that this would make JMB more difficult to sell and reduce its price. The Chancellor questioned how far this was a real fear. Potential buyers already knew of the police inquiries and

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the Chancellor was sceptical about how much extra deterrent would be created by a Companies Act inquiry. However, even if the Governor's analysis were correct about the financial costs, this was not an argument which could or should be used by the Secretary of State in deciding whether to appoint an inquiry; nor could it be used in Parliament. The Chancellor expressed gratitude that the Governor had offered the publication of an edited version of the report by Price Waterhouse. This warranted consideration. The Chancellor questioned, however, whether to publish this would be a desirable precedent and he also doubted whether it would satisfy Parliamentary pressures, since it would need to be heavily edited and might well have been overtaken by events.

The Prime Minister drew a distinction between a police inquiry and a Companies Act inquiry: the one was against persons, the other was an inquiry into the company. A Companies Act inquiry into a bank which was a going concern would be unprecedented. To appoint a Companies Act inquiry could kill JMB. The Prime Minister was also concerned that an inquiry would do great harm to the reputation of the City. The cause of the present difficulties was the absence of an effective fraud and prosecution service.

The Secretary of State for Trade and Industry noted that the decision on whether to hold an inquiry was at his discretion. An inquiry would cover the events leading up to the rescue. The fact that there had been no inquiry into a bank which was operating as a going concern, and the civil actions should not be seen as obstacles. He would prefer to avoid an inquiry. But if prosecutions were unlikely or there was no prospect of a reasonably full report otherwise being published, an inquiry was the only way of achieving a public account of events. The Secretary of State noted the Chancellor's view that the continuing criticism of the JMB affair was itself damaging the City's reputation.

The Governor of the Bank of England drew attention to the substantial improvements in JMB's position. The loan book had been cut from £500m to £400m; loan provisions were down from £68m to £45m; the balance sheet had been reduced from £2bn to £1.3bn; and the exposure to Nigeria had been reduced from £120m to £90m. There was serious interest from buyers, who were not being deterred by the police investigation. The tone of newspaper comment had changed in recent months from attacking the past to commenting on the way in which the company was being restored to health. JMB had succeeded in holding on to its customers, who included central banks. Customers recognised that a fraud squad investigation was directed ad personam. However, they might see an inquiry under Section 432 as risking bringing their affairs under investigation. The Governor was also concerned about the effect on the new Board, who had taken on the task out of a sense of duty to the City. The Governor was not sure that they would stay with JMB if they had to face another inquiry.

The Governor further drew attention to the investment by the Bank of England and the indemnities of £140 - £150m. If a forced sale of JMB took place, the receipts might amount to £80m or less. This would be a heavy price to pay for what might prove to be a not terribly effective answer to Parliamentary pressure. There might also be a further cost in terms of lower receipts from the sale of JMB, reflecting expectations of the lower outcome of the case against Arthur Young, which might be weakened by publication of an inquiry report.

Continuing, the Governor said that the Price Waterhouse report, even edited, might result in disclosures as far reaching as those which might be put out in a Companies Act report: that too would have to be edited (though the Governor acknowledged that editing the Price Waterhouse report might well have to be substantial). The Price Waterhouse investigations were virtually complete and the work for the statement of claim against Arthur Young might be ready in one to two months. The Governor noted that prosecutions stemming from Lloyds scandals were being held up by a Companies Act inquiry. (The Attorney General later disputed this, explaining that they were being held up by the difficulty of obtaining evidence and witnesses from overseas). In the case of JMB, the shareholders did not want a Companies Act inquiry and there were no creditors at risk. To hold a Companies Act inquiry into JMB would therefore be outside the usual scope of such matters.

The Attorney General described the state of affairs over the decision on whether to prosecute. The prosecution would arise from the unusual exposures at JMB, which had arisen in relation, for the most part, to people associated with the bank. There were missing documents, and the poor reporting to the Bank of England was also suspicious. A decision would be taken probably within two months on whether to bring in the fraud investigation group, but prima facie evidence of criminal activity was needed for this. The Attorney General hoped that a decision on whether or not to prosecute would be made by next Spring. The Attorney General was concerned that to publish the Price Waterhouse report, even heavily edited, would amount to a breach of faith and create a damaging precedent. The information made public at the time of the prosecution would be much more limited than a publication either of an edited Price Waterhouse report or a report of an inquiry under the Companies Act, and so less damaging to JMB.

The Prime Minister reiterated her concern that a Companies Act inquiry into JMB would be unprecedented and would result in damage to the Treasury, to indemnitors, to the City, and in the longer run to the Government.

In response to the Prime Minister, Mr. Walker described his perceptions of the reactions of likely buyers. From his experience with two or three of them, in his judgement they would be keen that allegations of fraud at JMB should be followed up. However, they would not wish the management of

a company which they had bought to be subjected to an inquiry under Section 432, with no assurance about what would be published about the business in two or three years' time, when they would hope JMB would be operating well. It would cut little ice that the inquiry would be directed at events before the rescue: it was part of the achievement of the past year that existing customers had been retained after the rescue. It might be argued that an inquiry would focus on the banking business, but the management of the banking business and the bullion business was integrated and it would not seem credible to potential buyers to try to distinguish between them.

Reinforcing this assessment, the Governor said that an inquiry would introduce further uncertainty into the affairs of the company. He doubted that JMB would hold together if an inquiry was instituted and the result could well be a forced sale or liquidation. It was the worst of all worlds for a central bank to carry out a rescue and then to see the company fail.

The Chancellor noted that a decision on whether to hold an inquiry would fall to the Secretary of State for Trade and Industry and he would have to defend his decision. If he decided against, this would greatly increase the probability of an inquiry by the Treasury Committee. The Bank would then have to consider the possibility of publishing the edited Price Waterhouse report. Indeed, it might be impossible to prevent publication without a vote on the floor of the House. Even if it were published, the Treasury Committee might still decide to hold its own inquiry.

The Prime Minister invited the Secretary of State for Trade and Industry to consider, in the light of the discussion, whether or not to institute an inquiry into JMB under Section 432. The Prime Minister invited the Governor to set in hand the production of an edited version of the Price Waterhouse report with a view to publication if the Secretary of State decided against a Companies Act inquiry. Editing should be carried out by Price Waterhouse themselves. It might be possible to get permission from those who had given evidence to release more of the information in the report: this release would need to be freely given if the risk of setting damaging precedents was to be reduced. Price Waterhouse might wish to include an addendum bringing the report up to date. (The Chancellor believed this was already in hand.) Preparations would need to be made so that action could be taken quickly if necessary.

The meeting briefly considered the possibility of an inquiry into Ansbacher under Section 447. The Secretary of State for Trade and Industry said there were indications of deliberate concealment of information, but as yet insufficient evidence for a prosecution. If there were to be an inquiry under Section 447, it would not necessarily be announced. The Attorney General said that the Director of Public Prosecutions hoped for an inquiry under Section 447

in order to gather material to establish whether there was a basis for prosecution.

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The Prime Minister recognised that if it became public knowledge an inquiry into Ansbacher would increase pressure for an inquiry into JMB. She invited the Secretary of State for Trade and Industry to consider, in consultation with the Attorney General, whether to institute an inquiry under Section 447. This should take account of a letter which Lord Williams had sent to the Governor about the affair. The Chancellor undertook to circulate this letter to the Secretary of State for Trade and Industry and the Attorney General.

I am copying this letter to the Private Secretaries to the Governor of the Bank of England, the Secretary of State for Trade and Industry and the Attorney General.

Yours sincerely,

David

(David Norgrove)

Mrs. Rachel Lomax,
HM Treasury