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 Private Secretary to the Home Secretary
 Home Office
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 London
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2 April 1986

Dear Stephen,

ROSKILL REPORT: UNIFIED ORGANISATION

As agreed at the Chief Secretary's meeting on 13 February (at which the Home Office was represented by your Parliamentary Under Secretary), the Treasury-chaired interdepartmental working group of officials has produced a report on the case for a unified organisation to tackle cases of serious fraud. The Chief Secretary has asked me to circulate the Chairman's note and the officials' report which will be discussed at the meeting arranged for 3pm on Wednesday 9 April, at which the Home Office will be represented by Mr Mellor.

I attach a copy of the officials' report for the Home Secretary plus two spare copies. Copies have also been issued to those officials who attended the officials' working group.

I am copying this letter, with two copies of the report, to David Norgrove (No. 10), John Mogg (DTI), Michael Saunders (Law Officers Department), Richard Stoate (Lord Chancellor's Office), John Bartlett (Bank of England), Catherine Brand (Inland Revenue), Lance Railton (Customs and Excise) and Michael Stark (Cabinet Office).

Yours sincerely,

JILL RUTTER
 Private Secretary

ECON. POLICY
Grouser Report
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OFFICIAL GROUP TO REVIEW A UNIFIED FRAUD INVESTIGATION
AND PROSECUTION ORGANISATION

Note by the Chairman

I attach the report of the interdepartmental group I have been chairing over the last few weeks.

2. Inevitably, in the time available we have had to cut a lot of corners. Some aspects would have repaid deeper investigation. But we have examined the issues we were asked to look at, with two exceptions. First, we have a little more work to do on the question of what specific powers would need to be available to a new unified organisation. Meanwhile the relevant paragraphs (paragraphs 2.32 to 2.37) of the report are in fairly general terms. Second, we have had to defer looking at the question of resources devoted to fraud until the Home Office group, which is looking at other aspects of Roskill, has got further with its work.

3. The conclusions are summarised in Section 5. With the exception of the police representatives, whose views are set out separately in Annex F, all members of the group believe that the balance of advantage lies in seeking to establish a new unified organisation for dealing with cases of serious fraud. But there are arguments both ways. There are also some difficult questions about the form and responsibilities a new organisation should take.

4. We have found some difficulty in identifying and agreeing the reasons for the delays that occur at present in some cases. Many, certainly, are the almost unavoidable result of the complicated process of accumulating useable evidence, and should be eased if other Roskill recommendations are implemented. Others result from the fact that a prosecuting Counsel is often only instructed at a relatively late stage in the process, and this can lead to a delay as he reads himself in. (There is a suggestion for improving this situation, in the context of a unified

organisation, in paragraph 3.15 of the report). And some delays result from natural staff turnover. Resource limitations are also a factor.

5. But the police apart, there is general agreement that at least some delays and inefficiencies result from the lack of a unified approach. The FIG co-operation arrangements are a considerable improvement on previous practice. But they do not involve the Revenue Departments, and this has meant in the Lloyds case, for example, that separate Inland Revenue and FIG investigations have been carried out in parallel: and that it has been difficult to use information gathered on one investigation in the other. This is clearly inefficient. It also seems highly probable that some of the reasons given for delays - unexpected departure or retirement of key officers, or as cases are moved from the police to DPP's office - would be avoided if a single body were managerially responsible, and accountable, for the whole process. The fact that in some cases the police and DPP's office appear to have different views of the reasons for past delays would seem to confirm this view.

6. A new organisation would also be able to develop special expertise. And it might prove more effective in attracting high quality staff.

7. Despite the advantages, however, I believe it would be a mistake to go ahead if there were doubts about receiving full, continuing and active co-operation from the other bodies, that would continue to have an interest in handling fraud cases. In this context, the police representatives on my group indicated that despite their reservations about the concept, they would certainly give such co-operation if a decision were taken to go ahead. It is crucially important that, for example, there should be no reluctance about passing cases over whether from the Police, DTI or Revenue Departments, where a unified approach was appropriate. It is also important that the new organisation, whose resources would be limited, should be able to seek assistance from police forces on those occasions (for example, for some

cases outside London, or where there was a heavy surveillance requirement) when it would be helpful.

8. Turning to the form of organisation:-

(a) It is essential to the concept that it encompasses both investigation and prosecution. It should also handle cases now dealt with by the Revenue Departments, where there are closely linked revenue and non-revenue aspects;

(b) on balance it seems best that it should be a relatively small body, dealing only with the 20-40 cases of large and complex, financial and commercial fraud current at any time. This does have drawbacks, both operational and presentational (see paragraph 2.15 of the report), and will increase the dependence on co-operation from others. But I believe it provides the best option if the aim is to get an effective operation going quickly; and in practice it would handle all the really significant cases, of the sort that have led to recent concern;

(c) The arguments point to the body being accountable to the Attorney General, alongside the DPP - although there is a case for situating it in the DTI.

9. An appropriate name might be the Serious Fraud Office.

D L C PERETZ

2 April 1986

REVIEW OF FRAUD INVESTIGATION AND PROSECUTIONReport of an Interdepartmental Working Group

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1. INTRODUCTION

Origins of Review

- 1.1 For a number of years there has been concern that financial fraud is increasing and often goes unpunished. Public concern has more recently been heightened by a few major cases, such as Lloyds, where apparent wrongdoers seemingly have not been brought to book.
- 1.2 In 1978 this concern led to the setting up of a Working Party, chaired by the then Deputy Director of Public Prosecutions, to review the arrangements for investigating and prosecuting fraud and the roles and interrelationships of the relevant authorities. This recommended additional police powers and extra manpower for both police and prosecuting lawyers. In 1979 the then Attorney General appointed a working group to examine the Working Party's proposals for improving co-ordination and the detection, investigation and prosecution of fraud. A pilot scheme for ad hoc fraud investigation groups, drawn from the DPP, Department of Trade and Metropolitan Police, was set up in 1981, initially to deal with two major fraud cases. These ad hoc arrangements were reckoned to save about one third of the time taken on conventional enquiries.
- 1.3 These gradual developments were not considered sufficient and in early 1983 three reviews were established. The first concerned preventive and regulatory measures, and contributed towards the Financial Services Bill (although the latter to a large extent represented the implementation of Professor Gower's Review of Investor Protection).
- 1.4 The second review, by a Treasury chaired official committee,

considered the arrangements for identifying, investigating and prosecuting fraud. It recommended that a new fraud investigation and prosecution unit should be created, reporting either to the Secretary of State for Trade or the Attorney General (probably as part of the Department of the Director of Public Prosecutions - DPP). Partly because of the difficulties in proceeding in this way without legislation, Ministers decided on a different approach.

- 1.5 It was decided that the ad hoc arrangements for fraud investigation groups should be put on a permanent basis. From 1 January 1985 the Fraud Investigation Group (FIG) came into being within the DPP's Department. Staffed by 19 lawyers of the DPP with 3 accountants and 2 examiners seconded from the Department of Trade and Industry, the FIG assists early co-operation, in fraud investigation groups, between the DPP, DTI and police. Officers remain within their parent organisations and the Revenue departments are not included.
- 1.6 Currently FIG arrangements are formally being applied in about 100 cases of varying complexity (see paragraph 2.13 below); and FIG-type practices are being applied informally in many more. However, there is still dissatisfaction among some of those involved at the efficacy of arrangements which do not put the handling of a case, and the resources allocated to it, under one roof and under single direction. In his report on the first six months' operation of the FIG, the then Controller said that the conclusion reached by the Treasury chaired official committee, that a new fraud investigation and prosecution unit should be created, remained valid.
- 1.7 The third review led to the setting up of an independent committee of inquiry into the judicial process in fraud cases, chaired by Lord Roskill. It reported in December 1985. As well as making many recommendations about trials procedures, it recommended immediate study of the need for

a new unified fraud detection, investigation and prosecution organisation.

- 1.8 At the Prime Minister's meeting on 9 January it was agreed that the Roskill recommendations should be urgently pursued. In the House of Commons on 14 January the Home Secretary welcomed the report as the basis for early legislation and announced that the Chief Secretary would be reviewing the need for a unified organisation.

Terms of Reference

- 1.9 The Chief Secretary was invited by the Prime Minister to consider recommendations 1, 10, 11 and 12 of Lord Roskill's Committee. It was subsequently agreed on 13 February between the Chief Secretary and the Parliamentary Under Secretary of State (Home Office) that recommendation 12 (a career structure for police fraud squad officers) would be more appropriate for the Home Secretary's study and recommendation 7 more appropriate to the Chief Secretary's review (although the Home Secretary is studying all these recommendations in relation to the police, as well as the other Roskill recommendations).

- 1.10 The recommendations relevant to this review are, in full:

1. The need for a new unified organisation responsible for all the functions of detection, investigation and prosecution of serious fraud cases should be examined forthwith.

7. A "Case Controller" should be responsible for the control of a serious fraud case from the time of discovery until the verdict.

10. The resources devoted to the pursuit of fraud must be expanded as a matter of priority.

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11. More expert accounting staff are likely to be needed in the DPP.

1.11 The remainder of recommendation 11, that "permanent qualified accounting staff should be attached to the police fraud squads", is being considered by the Home Office chaired interdepartmental group in the context of the other recommendations affecting police resources.

Structure of report

1.12 The Chief Secretary asked officials to assess the issues and report back by Easter 1986 (the membership of the official working group is set out at Annex A). In the rest of this report we examine first the various practical problems that would arise with establishing a unified organisation, and possible solutions to them. Our aim is to set out what such an organisation would look like. We then consider the arguments for and against establishing an organisation on the lines described. Finally, we consider the other particular issues listed in paragraph 1.10, except for recommendation 10 (resources) to which we will return when the Home Office group has got further with its work.

2. A UNIFIED ORGANISATION

Functions

- 2.1 Lord Roskill's Committee suggested that a unified organisation might be concerned with the detection, investigation and prosecution of fraud. This could mean that a single organisation would carry a case through from the stage at which suspicions first arose, to the decision on whether or not to prosecute and, if appropriate, to eventual conviction or acquittal.
- 2.2 Detection of fraud, at least in the sense of identification, typically results from the scrutiny of accounts (as is undertaken by auditors, Customs and Excise and the Inland Revenue); supervision of financial institutions by regulatory organisations; detailed investigation of possible criminal activities of many sorts by the police; insolvency investigations by DTI; complaints from investors and creditors; or the gathering and analysis of intelligence on suspicious and criminal financial activities. It is hard to see what role a new organisation could efficiently play in this process. Fraud is often first detected as a side effect of some other activity.
- 2.3 A case could be made for establishing a central fraud intelligence service, for collecting and coordinating intelligence about fraud on the lines of the new National Drugs Intelligence Unit. However, the serious and complex cases which would be considered by a unified organisation represent only a small proportion of those for which intelligence could be gathered. There would be a danger that the unified organisation would either be swamped by information about all sorts of fraud and general financial information, or be diverted from its main role of tackling serious cases. Moreover the Metropolitan Police already maintain a central fraud database. We conclude that a broadly

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based fraud intelligence function should not form a part of a unified organisation.

- 2.4 While detection would not seem to form a natural part of the responsibilities of a new organisation, it is essential to the concept that it should combine investigation and prosecution.
- 2.5 Fraud investigation in England and Wales is at present undertaken by a wide range of agencies, including the 43 police forces, DTI, Inland Revenue, Customs and Excise and the DPP's FIG staff. Serious fraud investigations can involve many or all of those agencies. Although many investigations are conducted speedily, and where delays do occur there are many causes, including resource constraints, there is some evidence and a considerable weight of opinion that in some cases overlapping interests can cause some duplication of effort, and delay.
- 2.6 Lord Roskill's committee were particularly concerned that one individual, the "Case Controller", should be responsible for taking control of a case from the earliest moment a serious fraud is detected to the verdict, where appropriate. They also considered that prosecuting counsel should be involved with the investigation from the outset to avoid delay and the pursuit of unrewarding avenues of enquiry. The intention was to provide clear, uniform direction of investigations, in ways most helpful to the prosecution.
- 2.7 There are arguments against combining investigation and prosecution. In some circumstances it could make investigation less efficient: for example where the investigation requires a commitment of manpower beyond the resources of a self contained organisation, where if it had been handled by the police extra resources could have been drawn in. It is also argued that overseas police forces are more willing to co-operate with their opposite numbers in the UK.

2.8 Moreover, in taking forward the Crown Prosecution Service the Government has argued the merits of separating the two functions for the generality of crime. But at the same time the Government recognised that serious frauds need special treatment, by setting up the FIG arrangements which bring together investigators and prosecutors. Unifying investigation and prosecution within one organisation could therefore be presented as the logical development of existing policy so far as serious fraud is concerned. The Revenue Departments and DTI have also for many years successfully operated unified investigation and prosecution services.

Coverage and procedure for choosing cases

2.9 The second key question is what range of cases would best be handled by a unified organisation. This would determine its size, and the extent to which its activities affected the responsibilities of organisations currently responsible for investigating and prosecuting fraud. The great majority of the over 20,000 offenders prosecuted for fraud each year have not committed offences of a scale or complexity to justify special arrangements. The concern is with the pursuit of particularly complex cases of financial and commercial fraud.

2.10 We considered whether the criteria currently used for FIG cases would provide a basis for choosing cases for a unified organisation. To judge from the experience of the first year of the FIG arrangements, there may be less than 100 cases current at any one time which are sufficiently serious and complex to meet these criteria (a number of FIG-type cases are receiving similar treatment, but are not formally FIG cases).

2.11 The guidelines for identifying cases which might be suitable for FIG treatment are set out in Annex B. They mention frauds upon Government departments or local authorities;

large scale corruption; large shipping and currency offences; and frauds discovered by DTI inspectors. The Controller of FIG also has discretion whether to investigate cases with an international dimension; those involving nationalised industries and public limited companies; those connected with Lloyds, the Stock Exchange and other commercial exchanges; and other cases involving well-known, public figures.

2.12 An alternative approach would be to look to the guidance given in the Roskill report about serious and complex fraud cases which might be suitable for the proposed Fraud Trials Tribunal. The Roskill Committee thought that such cases are most likely to be found among frauds involving the Stock Exchange, Lloyds and commodities and financial futures markets, and perhaps among some Revenue and Customs cases. The suggested guidelines are reproduced at Annex C.

2.13 All such guidelines are inevitably imprecise. Moreover, it is not apparent that all cases which, for example, are suitable for FIG treatment would also be suitable for a unified investigation and prosecution organisation. FIG cases vary considerably in complexity and location - over half being located outside London. We have analysed the cases currently handled by FIG, and Annex D groups the cases by various criteria. Although it is hard to lay down hard and fast guidelines, we have concluded - guided by the DPP's experience - that of the 100 or so FIG cases there are perhaps 20 to 40 at any one time which are of such complexity and seriousness that they stand out from the others. It is these cases which would benefit most from handling by a unified organisation, because of the specialised skills and knowledge required to understand them and the team work necessary if they are to be pursued quickly and successfully.

2.14 The guidelines, by which these 20 to 40 cases might be identified, would be those potential FIG or Revenue cases involving financial and commercial frauds where over

£5 million was involved plus a few other very sensitive and complex, potential FIG or Revenue cases (for example, those with important international aspects, or involving senior public figures). Revenue cases would be included where there were linked revenue and non-revenue aspects. More detailed guidance about identifying cases might also be prepared in due course. Cases would be considered both in the light of the guidelines and the current workload of the unified organisation. Whether or not a more marginal case was handled by the unified organisation would therefore be influenced by the availability of resources. There might be a ceiling of 40 cases at any one time, not normally to be exceeded.

- 2.15 These guidelines have therefore been drawn up with a certain number of cases in mind. One result would be that the less complex majority of cases currently being handled by FIG arrangements would not be handled by the unified organisation. This means that in future investigation and prosecution could be carried out in three different ways; by the unified organisation; by existing agencies under FIG arrangements; and by existing agencies outside FIG arrangements.
- 2.16 This has the possible disadvantage of looking rather complicated. But in fact it would not be, and it should be possible to explain that the basic choice would be whether the case fell to the new organisation, or not. Where it did not, it would remain open to the bodies handling the case to use the FIG co-operation arrangements which have been developed; if they felt it would be helpful to do so. These arrangements might be available even for cases that did not meet the current FIG guidelines. The test would simply be the degree of co-operation that would be useful.
- 2.17 The Head of the unified organisation would select the cases to be handled. He would be able to refuse to accept any case if he thought that it was either totally unsuitable or that his organisation could not apply adequate resources to the case and that it would therefore be pursued more

effectively by other agencies. He would also need to be able to refer back cases to the originating agency, for example if, on consideration, it were less complex than originally thought. However, on each case he would consult the other parties with an interest in his decisions. And he might be guided in his selection policy by a committee meeting periodically. It might include the head of the Metropolitan and City Police Company Fraud Department, the Heads of the DTI, Inland Revenue and Customs and Excise Investigation Divisions, the Controller of FIG and the Head of the unified organisation. Close consultation and co-operation might avoid the need for the Head of the unified organisation to have a power to call in a case for handling by the unified organisation (similar to the DPP's power to call in a case for consideration). The power of the DPP to call in cases should not cause any practical problems for the unified organisation if both were accountable to the Attorney General.

- 2.18 Cases would be referred by investigatory agencies, such as the police, DTI, the Inland Revenue or Customs and by regulatory agencies, such as the Bank of England or the Securities and Investments Board (SIB) (acting in concert with the relevant self-regulating organisations (SROs), recognised investment exchanges (RIEs) or recognised professional bodies (RPBs)). They would take the first look at the issues. But the unified organisation would need to be consulted as early as practicable, so action could be taken before witnesses disappeared abroad, evidence was tampered with etc. Therefore cases should ideally be referred when the agency first had clear suspicions of major fraud. The correct parallel in police procedure would be when a decision to investigate a complaint or suspicion is first taken, not when it is decided to mount a full investigation. The latter depends upon evidence of major fraud, and this could be a considerable way into the investigation.

- 2.19 Of the 20 to 40 cases a year which the unified organisation might handle, only a handful would be likely to involve Revenue frauds or public sector corruption. The great majority would be commercial frauds arising in the London area. Because of this, and because an organisation dealing with that number of cases would be relatively small, the unified organisation would need to be situated in London.
- 2.20 Some cases would nevertheless require investigations outside London. In such circumstances it would seem reasonable for the unified organisation to request some assistance from other agencies. If this meant that a person from another agency became involved in a case, such a person would legally remain within his own organisation and operate under its powers (although means would have to be found in some cases to enable information to be passed to the unified organisation: see paragraphs 2.42 and 2.43 below). It might also be necessary for the unified organisation to pay for any major assistance.
- 2.21 It would also be necessary to ensure that the unified organisation had good international links - eg with Interpol - given the considerable foreign element in many major frauds.
- 2.22 A unified organisation on this scale would be free to concentrate on the really difficult and complex cases which have caused most public concern, such as Lloyds. Because the organisation would be smaller and handle fewer cases than under other options, it should cause less disruption to existing arrangements. As noted above (paragraph 2.16), some of these cases which were not serious and complex enough, or were judged unsuitable for the unified organisation, could continue to be handled under FIG-type co-operation arrangements, where this seemed a useful approach (this might involved using the arrangements for a wider range of cases than hitherto if that were thought useful).

Staffing and management

- 2.23 It is an advantage of going for an organisation with fairly narrow scope, as suggested above, that it would make it more manageable; and ease the task of getting it under way.
- 2.24 Staffing needs will of course have to reflect the complexity of the cases to be handled. Further detailed analysis of staffing requirements will need to be undertaken if it is decided to establish a unified organisation, but it appears that it might require a complement of perhaps 30-40 professional staff and investigating officers, and perhaps 60-80 staff all told.
- 2.25 It seems desirable to have a mixture of permanent staff (perhaps a half), and staff on short term contracts. In practice, but not necessarily in law, those on short term contracts would often be secondees. Some of the staff would come from Government Departments such as the DTI, Inland Revenue, Customs and Excise and the DPP's Department. Others would come from public sector bodies and regulatory agencies, such as the Bank of England and SIB. But it would also be desirable to attract staff from such private sector organisations as firms of City accountants and solicitors.
- 2.26 A further advantage of establishing a new organisation is that it might prove an attractive place of employment - both to permanent staff, and also to those on short term contracts, to the extent that the latter believed the work to be important and interesting and - for some - that a period of service would assist them in future private sector employment. That has certainly been the experience in the USA, with similar organisations. Nevertheless, it would clearly also be necessary to provide adequate levels of remuneration.

2.27 The staff of the new organisation would almost certainly be civil servants or be in a body subject to civil service controls. As such they would be subject to civil service rules about recruitment, pay, grading and so on. Although the market for people with appropriate financial, legal and accountancy qualifications is very competitive, there is evidence, from DTI for example, that in such situations these rules can be flexible enough to enable staff with the right skills and experience to be seconded. The Treasury therefore believes that it might be possible to provide rates of pay within existing rules which would attract good quality staff. For some secondees employment costs might be shared between the unified organisation and the seconding organisation.

2.28 All staff would formally be members of the unified organisation and would be regarded as acting under the direction of the Head of the unified organisation. To avoid legal confusion and conflicts of interest, and for the sake of uniformity and fairness, all staff should be equally subject to the organisation's procedures (including any code of conduct and complaints procedures) as long as they served with it. For those who transferred from other areas of the civil service, this should cause relatively few difficulties. For example, they would remain members of the Principal Civil Service Pension Scheme (PCSPS). However, for those transferring from elsewhere in the public sector, or from the private sector, the position would be more complicated.

2.29 For example, on the investigating side the unified organisation might expect to take on a short term contract some police officers, in effect seconded from forces in England and Wales. As with other members of the organisation's staff, they would be acting not as police officers, Customs Officers, DTI investigators etc but as members of the unified organisation and would be exercising the powers of the unified organisation, and be subject to its disciplinary and complaints procedures. In this they would be different from other police officers seconded for central service, and they would therefore have a special

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status. It would not be appropriate for them to remain subject to the police disciplinary code. In this respect their position would be more like that of police officers seconded for overseas service. We envisage that, like the latter, assuming satisfactory service they would retain a right to revert to their parent force in the rank in which they left (or a higher rank, if promoted in their absence) and would be deemed to have served continuously in the police for pension purposes.

Cost

2.30 An organisation of the size described above (30 to 40 professional staff plus 30 to 40 supporting staff) would probably cost about £4 to 5 million a year. This might represent £2 million or so for the staff costs of its employees; perhaps £2 million or more for the costs of prosecuting Counsel who are not employees and of temporary assistance from other agencies; and the remainder for accommodation, computer services and general administrative expenditure.

2.31 But the figure of £4 to 5 million does not represent the net additional cost of the organisation itself. Against this figure has to be offset the fact that it would be undertaking work presently done by other bodies; that some additional resources may in any event be required to deter and pursue fraud whether or not there were a unified organisation; and that the organisation might prove more cost effective in deterring and pursuing fraud than present arrangements. Further work to establish the gross and net additional costs of a unified organisation would be needed once it was clear what its precise form and functions would be.

Powers

2.32 A new unified organisation would have to possess adequate powers to carry out its functions effectively. These powers would need to cover investigation, arrest, protective measures

(such as the freezing of assets) and disclosure of information (a power to call in cases for handling by the unified organisation might also be needed if it were thought undesirable in principle to rely only on co-operation to select cases: see paragraph 2.17 above). There would be little point in setting up a unified organisation if it were not able to exercise powers at least no weaker than the relevant powers of the agency which had referred the case to it. But it would not need all the powers currently exercisable by its constituent parts. Some of them are irrelevant to cases of fraud. A reasonable starting point is the powers provided by the Police and Criminal Evidence Act 1984. These powers would need to be supplemented by powers to seize papers and require evidence to be given, ie. powers similar to those of the DTI under Sections 432 and 447 of the Companies Act, and perhaps certain of the control powers, of access to documents and premises, exercised by the Customs & Excise, which go further than those available to the police. Another option, which could be simpler but more contentious, would be to base the powers of the unified organisation on those of Customs and Excise. In any event there would also have to be powers under the Taxes Management Acts to obtain personal tax information, and a new power to enable it to be made freely available within the organisation and perhaps also to be passed on in certain circumstances (see paragraph 2.44 below). The powers presently available to the various agencies, and the group's recommendations for a new unified organisation, are set out in more detail at Annex E.

- 2.33 It is never easy to persuade Parliament to grant wide ranging investigatory powers, still less when they are concentrated in one organisation. It will, however, be helpful that the proposed new organisation will have a strictly defined and narrow scope covering only major financial fraud. It will also be necessary to provide adequate safeguards (see paragraphs 2.38 to 2.40 below). It will also be important how the new powers are presented in draft legislation.

- 2.34 We have considered a system whereby no powers would be given specifically to the unified organisation. A power possessed by a particular agency would be exerciseable on behalf of the new organisation only by an officer from that agency, who would retain the authority to use those powers by virtue of remaining a member of his home agency. We have, however, rejected this as inefficient and as incompatible, both legally and practically, with the unified character of the organisation. We have also examined whether it would be appropriate for a particular power - eg one possessed by the Inland Revenue or Customs & Excise - to be exerciseable only with the authority of that department or through a court order.
- 2.35 Prevailing public and political attitudes will determine the ease with which it will be possible to give effective powers to the new organisation. In a sense, the unified organisation and its powers stand or fall together. If the idea of a unified organisation is accepted, it would be reasonable to expect that Parliament would give it the powers it needed. Ideally, it would be given a tailor-made set of powers to suit its particular purposes.
- 2.36 In some circumstances, there would be attractions in drawing attention in this way to the powers to be given to the new organisation. A similar option would involve listing the powers it would have, but confining the list to powers already enjoyed by other agencies. But it should also be possible to grant powers by reference to other pieces of legislation, merely conferring powers originally given, for example, to the police or Customs & Excise, on the unified organisation. The last mentioned option might be less contentious; and might produce a shorter Bill than the other options, which could make its drafting and Parliamentary handling easier.

2.37 By taking this option it might also be possible to provide some flexibility in the range of powers to be given to the unified organisation. The main powers would probably be applied by the primary legislation used to establish a unified organisation; but it might also be possible to allow a selection from the general powers granted by various Acts to be applied to the unified organisation by secondary legislation. Secondary legislation was used to apply the Police and Criminal Evidence Act 1984 to Customs and Excise. In that instance the statutory instrument was subject to negative resolution, perhaps because Customs and Excise already enjoyed similar powers. If greater safeguards were required in the case of the unified organisation, in some circumstances the statutory instrument could be subject to affirmative resolution. Such an approach might enable the Government to make relatively minor additions or modifications to the powers of the unified organisation - to correct faults in the list of powers originally thought necessary or to respond to developments in legal practice - without requiring further primary legislation.

Safeguards

2.38 The acceptability of the new organisation will also hinge to a degree on whether effective safeguards can be devised.

2.39 All the constituent agencies have their own codes of conduct. It would, however, be invidious if officers seconded to the new organisation were to be governed by different codes in performing the same duties as their colleagues. We therefore think that a code of conduct, probably with statutory backing, should be devised for the new organisation. It should draw on the existing police code of conduct, expanded as necessary, and on other codes, to cover the discharge of powers not enjoyed by the police.

2.40 The Attorney General would be answerable to Parliament for the conduct of the new organisation, and actions by it. We do not consider the PCA to be an appropriate safeguard in the case of criminal investigations and prosecution (just as the PCA is excluded from the DPP's Department). We do, however, consider that there will be a need for a complaints procedure. This would cover the conduct of the organisations' officers in exercising their powers. It would not of course deal with the merits of decisions whether or not to prosecute, in respect of which the courts provide ample safeguards. We envisage also that the right to claim damages would be available to aggrieved parties.

Information and Relationship with Regulatory Bodies

2.41 One particular aspect that could give rise to difficulties is the **passage of information** between the new organisation and the other agencies likely to have knowledge relevant to cases it handles.

2.42 The inclusion of Revenue cases within the unified organisation's ambit and the passing of information between the Revenue Departments and the unified organisation could involve particular difficulties. But these should not be insuperable. For example, concern has been expressed that some of those with important information (eg banks) would be very worried about the possibility of the Revenue Departments obtaining - via the banking supervisors and the new organisation - tax information unrelated to the particular case under investigation, and might be unwilling to provide information at all. To counter such fears it might be laid down that such information could only be used in pursuit of the organisation's functions of investigating and prosecuting major fraud; and could only be passed to third parties (eg the Inland Revenue) with the consent of the originator. Such a restriction might, however, require amendment of the Attorney General's guidelines on the disclosure of unused material to the defence.

2.43 The other side of the coin is a concern that information obtained by the Inland Revenue about individuals' tax affairs might have to be made freely available to the unified organisation, and then passed on to other agencies. It is a long standing principle that the Revenue do not pass details of individuals' tax affairs to other departments, or to Ministers. However, it would be necessary to ensure that the Inland Revenue were able to supply all the information necessary to pursue cases adequately, certainly where there was a tax fraud aspect. Having set up the unified organisation to pursue and deter fraud it would clearly be unacceptable if such a case could not be completed successfully for want of information held by the Revenue. If necessary, safeguards could be introduced. For example it could be stipulated that Revenue information would be supplied only in respect of nominated cases, and perhaps only for specified purposes of the unified organisation, and perhaps only with a court order. Under the proposals in the Drug Trafficking Offences Bill the police will be able to go to court in camera to apply for an order requiring the Inland Revenue to release information about the tax affairs of people under investigation for drug trafficking offences.

2.44 The unified organisation will also need close links with regulatory bodies in the financial sector, ie the Bank of England in respect of banks, the Building Societies Commission and Registry of Friendly Societies, the SIB and SROs to be set up under the Financial Services Bill, and the DTI in respect of insurance companies. Cases of serious financial fraud may well first come to light through regulatory enquiries. The Bank of England and the DTI are already empowered to pass supervisory information to the relevant authorities in furtherance of criminal proceedings. Similar powers are proposed for the Building Societies Commission and the SIB. Supervisors will, however, need to be able to communicate information to the new unit at the point at which they become suspicious, rather than waiting until they have solid evidence. New powers will be necessary. Similarly, the new unit may need powers to pass information to supervisory bodies in cases where this will assist it

or them to perform their respective functions. The circumstances in which information can be passed in either direction should be tightly circumscribed, so as not to endanger the willingness of institutions to confide in their supervisors.

- 2.45 Supervision of financial institutions is, however, a function distinct from the investigation and prosecution of financial fraud. So, for example, we do not envisage that the unified organisation would prepare the sort of reports on company activities currently published by DTI (if such a report were required it would have to be prepared by DTI after the prosecution, under Section 432 of the Companies Act). Whilst therefore there should be a two-way flow of information between supervisors and the new unit, we do not think they should be more closely integrated into it. Some machinery may, however, be needed to ensure continuing co-operation, a point we return to in paragraph 2.56 below.

Accountability and Ministerial Responsibility

- 2.46 When the possibility of establishing a unified organisation was examined in 1983 the question of how such an organisation should be accountable to Parliament was left unresolved. The two main options were direct accountability to the Secretary of State for Trade - as he then was - (the unified organisation being a unit of DTI) or accountability to the Attorney General acting in an independent capacity (the unified organisation forming part of the DPP's Department).
- 2.47 The argument then was complicated by the fact that legislation was seen only as a distant possibility, so the unified organisation would have had to operate under existing powers. This meant that the constitutional attractions of placing responsibility with the DPP and the Attorney General had to be weighed against the difficulty that explicit permission from the Secretary of State for Trade would have been necessary every time Companies Act powers to require the production of financial documents were used. Moreover, under existing law only DTI officers can exercise the powers under section 447 of the Companies Act 1985 to require the production of books and papers.

- 2.48 However, now that legislation is envisaged some of these difficulties can be overcome. As indicated at the Prime Minister's meeting on 9 January, the DTI would see no difficulties about equipping the new organisation with powers similar to those available to the Department under section 447 of the Companies Act. As discussed above, it might also enjoy powers currently available to the Police and Revenue Departments.
- 2.49 Consequently there are less difficulties now with the option of making the unified organisation accountable to the Attorney General acting in an independent capacity. The case for this course is strengthened by the undesirability of a Minister acting in a departmental capacity being answerable to Parliament for decisions on prosecutions. Although the Customs and Excise, Inland Revenue and DTI do prosecute in many cases, outside the specialised tax and revenue field it is normal practice for Departments with responsibility for prosecutions to restrict these to their very limited and specialised fields. And in those areas, it is not normal for Ministers to answer questions in Parliament on particular cases.
- 2.50 Even when consent to undertake proceedings for offences is vested in a Minister of an administrative department it is almost always the case that the Attorney General or the DPP are also named as having the power to prosecute or give consent. They can thereby exercise some influence over the prosecution policy of the Department. Moreover, the Attorney General nominates Counsel, is consulted on certain cases and through the DPP can call in any criminal case for consideration. He alone has the power to terminate any prosecution brought by a Department by entering a nolle prosequi (this power is, however, exercised only in exceptional circumstances; it is more common for prosecutions to be terminated by the formal offering of no evidence by the prosecution).
- 2.51 The cases to be dealt with by a unified organisation do

not belong to a limited and specialised field in the same sense as those cases falling to a Revenue Department, for example. The offences in major fraud cases will range across criminal law and may also give rise to civil actions. There could be unease, or strong opposition, in Parliament and in legal circles if the ultimate responsibility for prosecutions were vested in anyone other than the Attorney General. It is generally accepted that the Attorney General has a special, independent, constitutional role in relation to the enforcement of the criminal law and decisions as to whether or not a prosecution is in the public interest.

- 2.52 It is also relevant that the location of a unified organisation alongside the DPP's Department would make it easier to build upon the current FIG arrangements (the permanent FIG staff report to the DPP, as does the new Crown Prosecution Service).
- 2.53 The other possibility would be for a unified organisation to be a unit of the DTI, reporting, perhaps through the Permanent Secretary, to the Secretary of State. This would build upon existing DTI responsibilities for investigating and prosecuting certain commercial frauds under various statutes. It would provide natural links with DTI's regulatory activities in the UK and their contacts overseas. It might also profit from DTI's links with the accountancy profession and experience of secondment of accountants to Government, and could in some respects make it easier to introduce the new arrangements in advance of legislation.
- 2.54 But under this arrangement there would be the risk of suspicion of political interference in decisions on investigation and prosecution. There would be bound to be criticism from the opposition and commentators on these grounds. And although locating a unit within the DTI would remove the need for legislation giving it the DTI's powers to mount Companies Act enquiries, and the DTI prosecutors and investigators could be responsible to the Attorney General for operational decisions, it would still need additional powers to deal with Revenue aspects of cases and to handle certain functions currently undertaken by the police.

2.55 On balance our general conclusion is that the best option would be to make the unified organisation accountable to the Attorney General, alongside the DPP's Department. Legislation will be needed in any event, and this can be used to equip the organisation with the necessary powers, from the DTI and elsewhere.

2.56 Wherever it was located, however, it would also be important for there to continue to be close co-operation between all the bodies concerned if serious fraud is to be tackled effectively and efficiently. It might help to create some kind of steering committee for the organisation, with representatives from the other organisations with an interest in cases. This would be a development of the Committee mentioned in paragraph 2.17 above. Such a steering committee might with advantage include representatives from the main supervisory agencies - at least the Bank of England and SIB.

Timetable for Implementation

2.57 A new organisation could not formally get underway before enactment of appropriate legislation. This would probably be the 1986-87 Criminal Justice Bill. This might not have Royal Assent until, say, the autumn of 1987, and many of its provisions might not come into force until 1988.

2.58 Because of the need to have appropriate powers, both to obtain information and to disclose it as appropriate, the unified organisation could not operate before the relevant provisions came into effect. However, it would be possible to begin to set up the organisation, obtain accommodation, recruit staff etc, beforehand.

2.59 It would probably take at least a year to complete the organisational preparations. Allowing for this, and the preparation and passage of the necessary legislation, it seems unlikely that the unified organisation could commence operations before April 1988.

3. CASE FOR AND AGAINST ESTABLISHING A NEW ORGANISATION

3.1 The preceding paragraphs discuss what a unified organisation would look like if one were set up. In short, we think the best form of organisation would have the following characteristics:-

(i) It would be responsible for both the investigation and prosecution of serious and complicated cases of financial fraud, but not for detection.

(ii) It would be responsible only for handling the small number (perhaps 20-40 at any one time) of really serious and complicated cases, leaving other cases to be handled where they are at present - using the FIG co-operation procedures where appropriate.

(iii) It would handle the very small number of Inland Revenue cases (and even smaller number of Customs cases) where there were closely linked revenue and non-revenue aspects.

(iv) It follows that the organisation itself would be a relatively small and manageable one.

(v) It should be accountable to the Attorney General, probably as a new agency in parallel to the DPP.

(vi) The main powers available at present to the organisations responsible for investigating and prosecuting such cases would have to be transferred to the new organisation, with matching safeguards.

- 3.2 For present purposes we assume that the alternatives are to proceed with establishing an organisation on these lines; to extend the coverage of such an organisation to all FIG cases; or to maintain existing arrangements, perhaps developing and intensifying the FIG co-operation arrangements to some extent.

Arguments Against

- 3.3 There are several arguments for not establishing a new organisation on the lines described.

- 3.4 First, there is the case for keeping prosecution and investigation separate. The argument of substance is that prosecuting lawyers need to be detached from the investigative process, in order to make an objective assessment of whether a prosecution can be brought successfully. It is also argued that presentationally it might be difficult to reconcile the proposal for combining investigation and prosecution functions with the setting up this year of the independent Crown Prosecution Service, which will have the effect of separating the two functions for the generality of crime. It is, however, relevant that the current FIG co-operation arrangements for cases of financial fraud were established at much the same time as the decision to proceed with the Crown Prosecution Service, and explicitly recognised the value and importance, in cases of financial fraud, of bringing prosecution lawyers in at an early stage in the investigation process. In this, complex fraud cases have been recognised to be different from the generality of crimes. The fraudsters' are often particularly sophisticated criminals, and the precise nature of their frauds may be difficult to detect. The concept of bringing prosecution lawyers in at an early stage is designed to allow investigations, which can otherwise go wide and be very time-consuming, to be directed at those specific areas thought to be important if a successful prosecution is to be mounted.

- 3.5 Second, there is the difficulty that nowadays many criminal activities involve an element of financial fraud. It can be argued that it would be wrong to separate the fraud element out, and give it to the new organisation, leaving the police to investigate other aspects. We think this is largely a matter of getting the right procedures for choosing cases to be handled by the new organisation. The concentration recommended above on the few really major cases of complex fraud should help in this respect. Cases involving fraud, but where the crimes were for the most part non-financial, should normally be left to be handled by the police, using FIG co-operation arrangements if appropriate.
- 3.6 Third, there is the difficulty of asking Parliament to provide a new organisation with sufficient powers. This is mainly a question of providing powers equivalent to those of other organisations, rather than creating entirely new ones. Even so there could clearly be parliamentary difficulties: something which would depend on the climate of opinion at the time. Permitting information to be passed to and from the Inland Revenue raises some particularly difficult issues, but clearly it would have to be possible, at least for the limited range of cases where there was an element of fraud on the Revenue.
- 3.7 Fourth, it has been suggested that a new organisation could find difficulties of co-operation with some existing bodies, such as the police and regulatory agencies. It would certainly be important to establish machinery for ensuring continued co-operation, on the lines proposed above. It would also help in this respect for the organisation to be a small one, handling a limited number of cases. For this means that its creation would be more likely to be seen as a piece of machinery designed to help existing bodies handle certain cases, rather than to take their responsibilities or resources away from them. It would also in practice make continuing co-operation essential, as cases were referred to the new body, and no doubt on occasion referred back to the originating agency - for example if it became clear that only the tax aspects of some particular case were worth pursuing.

3.8 Fifth, there are the consequences of the creation of a new organisation for the police - given the responsibility of Chief Officers of police for the investigation of crime within their force's area - and in particular for the City of London police force which is most closely involved in the kind of case that it would handle. There could also be some concern that establishing a new unified organisation for fraud could in due course set a precedent for similar developments in other areas of crime. While that is clearly possible, if the organisation proved successful, we believe that complex financial fraud does call for a special range and concentration of expertise, not so necessary in other areas of crime.

3.9 Finally it has been pointed out that one advantage of present arrangements, that will be lost for those cases handled by a unified organisation, is the present level of flexibility in the resources that can be devoted to particular cases. For example, at present the police can at short notice switch very large resources to any case being handled under the FIG arrangements, if it becomes urgent to do so. And they can apply expertise gained in areas other than major fraud. This is the other side of the coin to the advantages of having dedicated resources. This point also suggests the need for the unified organisation to continue to co-operate closely with other agencies. We believe it should be permitted to ask for short term assistance in some circumstances. Major calls for assistance could, however, prove difficult because of existing commitments within the organisations whose help was required.

Arguments in favour of a unified organisation

3.10 At his meeting with the Prime Minister on 31 December 1985 Lord Roskill made clear his criticism of present arrangements. He said that:-

"His Committee had concluded that the authorities were fighting fraud with a machine that was seriously inadequate. The services for investigation and prosecution of fraud were far too fragmented. There was a clear need for a new central organisation with the authority to make those concerned push forward with the job, eliminating rivalry between departments and prosecution services."

- 3.11 The essential argument for a unified organisation is that it would be more efficient than existing arrangements. It would be clearly accountable for all stages of the process, removing any rivalries between those agencies at present involved in the cases it would handle. There would be no possibility of attributing responsibility for delays and inefficiencies to others. It should reduce delays and inefficiencies that can arise as cases are handed from one organisation to another. It would also give each case single direction through all its stages from investigation to eventual prosecution, with those responsible for mounting a prosecution able to help direct the investigation from the outset.
- 3.12 We have found it difficult to establish what proportion of inefficiencies and delays in cases at present can be put down to organisational factors. The police believe that most if not all delays can be attributed to other causes - some inevitable, some that may be removed by implementing other Roskill recommendations, and some due to resource limitations.
- 3.13 Such investigations can vary greatly in length, from a few weeks to over a year. Since late 1983 the average time taken by the Metropolitan police to investigate serious fraud cases has been 4½ to 5 months, and 8 to 9 months for the City of London police. But these figures are influenced

by a number of very lengthy cases (such as the Lloyds cases, which have been running for over 3 years). The majority of police investigations in London and the provinces take less than 4 months. Investigations by government departments such as DTI and Inland Revenue also show major variations; those by the Inland Revenue, for example, vary from 6 months to 18 months. And further police enquiries may have to await the DPP's analysis of the results of such DTI investigations.

3.14 Some delays have been caused by changes in the investigating personnel. The DPP considers that in the first 15 months of FIG operations there have been 7 cases in which there have been such delays, averaging a couple of months. A unified organisation clearly could not avoid all personnel changes; but with broadly the same team taking a case through from the outset to its completion there should be greater continuity, and less risk of breaks in attention to the case. Single accountability would also help.

3.15 There can also be an interval between completion of an investigation and a decision whether or not to prosecute, for instance while the prosecution authority reconsiders the case. The police consider this to be a major factor. The DPP have at present identified delays at that stage of from 6 weeks to 6 months in 5 per cent of cases during the first 15 months of FIG operations. Often the cause of interruptions at this stage is the time it takes for an appropriate prosecuting counsel to become free and to read his way into a case. A unified organisation would not in itself help here: presumably cases would still be conducted by independent prosecuting Counsel. It has been suggested to us that there might be scope within the context of a unified organisation for using a barrister employed by the organisation - particularly where he was a practising barrister on a short-term contract - in support of independent Counsel in conducting the case. This raises some fundamental issues of legal practice, but might merit further consideration.

3.16 A further cause of inefficiency, for example in the Lloyds context, is that because the Revenue Departments are not part of the FIG arrangements there can be overlapping investigations, with information gathered in one not readily available in the other. A unified organisation with powers to conduct the revenue aspects of cases as well as non-revenue aspects would avoid overlaps, duplications and inconvenient and inefficient methods of operation.

3.17 It should also help to improve management and direction of the work in a number of other ways:-

(i) The organisation's resources would be dedicated, not, as at present under the FIG arrangements, subject to sudden removal to deal with quite different matters. (But there would be a corresponding lack of flexibility, see paragraph 3.9)

(ii) The various branches of the unit would be located together, and a wide range of skills and expertise (accounting, legal, investigatory, etc) would be available in-house. This should help to promote common aims and a team spirit.

(iii) The organisation would develop highly specialised investigatory knowledge and skills in pursuing complex financial fraud, in a way that would not be possible in a less specialised organisation.

(iv) Its status might help to attract the high quality staff that are needed from the private sector.

(v) Legislation would remove some of the restrictions on passage of information from one organisation to another, which can at present sometimes hinder investigation.

In a variety of ways, therefore, it seems that productivity ought to be increased.

3.18 Some of the delays and inefficiencies that occur with present

arrangements are caused by difficulties in obtaining evidence; some might be resolved by providing more staff; but some may be due to organisational features (even though the FIG co-operation arrangements mark a considerable improvement on earlier practice, and the police argue that they are already co-operating fully on cases with the other interested agencies). Most of us believe that a new organisation on the lines described above, given good management and adequate resources, would provide a significant improvement in both speed and effectiveness of tackling major cases of complex financial fraud.

Conclusion

3.19 Due weight must be given to the arguments against establishing a unified organisation. But none of them, in our view, raises insuperable difficulties. It will be essential to have legislation to give the new organisation sufficient powers; and for it to be given adequate resources and good management. If these conditions are met, then with the exception of the police - who believe that many of the difficulties experienced in complex fraud cases are largely outside the control of the investigators and do not reflect organisational problems, that such problems as could be tackled would best be left to closer co-operation within FIG arrangements, and that the creation of a unified organisation could raise constitutional difficulties (see Annex F) - we believe the balance of advantage lies with going ahead, with an organisation on the lines suggested in Section 2 above.

4. OTHER ISSUES

4.1 The previous sections have considered the likely characteristics of a unified organisation and case for and against establishing one. This leaves a number of other miscellaneous issues we have been asked to look at. We will have to return to the question of resources devoted to the pursuit and deterrence of fraud in a further report, once the report of the Home Office group is available. The present section considers the need for case controllers (recommendation 7) and for more accountants (recommendation 11).

Case Controllers

4.2 The Roskill Committee's views on the use of case controllers were set out in paragraphs 2.65 and 2.66 of their report. They considered that, in future, from the time a serious fraud was detected, one person from one of the organisations concerned with fraud should take control of the case until it ended. "He should be responsible for directing the initial investigation process and employing suitable accountancy and legal services from the start; briefing prosecuting counsel early on, and at all times ensuring that there is close co-operation between them; protecting documents against destruction or removal; sifting the evidence and detecting the gaps which need to be filled; arranging for witnesses' statements; sorting, filing and numbering the exhibits in an orderly way so that they are reduced to manageable proportions; preparing, in conjunction with counsel, simplified charts and schedules and for visual displays in court; always with a view to the ultimate presentation of the case in court and making it ready for trial quickly. Changes of a Case Controller in the middle of a case should not take place. Jointly with the prosecuting counsel who is briefed in the case, the Case Controller would be answerable for any defects which arise in the preparation and presentation of the case and any unnecessary delays."

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- 4.3 Much of this seems eminently sensible. Indeed case controllers, or something analogous, have been used by the FIG, DTI and the Revenue Departments for some while. And where the police are in the lead in a case a senior police officer has overall supervision of that case (in consultation with the DPP as necessary).
- 4.4 There are at present certain differences between organisations in the particular type of person whom they appoint as case controller. For example, in FIG cases the officer who fulfils the case controller's duties is a lawyer. The DPP sees many of the judgements he makes as requiring professional legal knowledge. On the other hand, in the Revenue Departments the person in charge of the case tends to have a different background, as tax inspector and/or investigator, administrator etc.
- 4.5 These differences probably reflect in large part both the different organisational histories of the various departments (lawyers taking the lead in DPP, tax inspectors in tax investigations, and so on). It is not clear that in the case of an organisation undertaking investigation and prosecution, and in which legal and accountancy experts were fully involved from the start of a case, it would be desirable to stipulate in advance the precise qualifications necessary to be a case controller.
- 4.6 Indeed to try and lay down hard and fast rules about the category of people who would have the lead responsibility for cases within the unified organisation could be detrimental to its chances of success. If the organisation is to succeed in attracting good quality staff it will need to be seen to offer relatively equal opportunities to skilled and motivated people whether their background is in the law, accountancy or investigation. The main requirements would seem to be an ability to be an effective investigator where needs be, to understand prosecution procedures and what is needed to mount a successful case, and a facility for

managing people, of varying skills and backgrounds, and their work, effectively.

- 4.7 There is therefore general agreement with the principle of appointing case controllers to take charge of the investigation and prosecution of all serious fraud cases. The case controller would come from the body with overall responsibility for the investigation (ie the police, DTI etc for cases which fell outside the FIG and unified organisation arrangements). Where a body is responsible both for detecting and investigating a particular fraud it may be possible to appoint a case controller as soon as there are clear suspicions of serious fraud. For cases referred to the unified organisation the appointment of a case controller within the unified organisation would have to await formal acceptance of the case. However, the intention is that initial suspicions of serious fraud should be put to the unified organisation as soon as possible.

Accountants

- 4.8 The Roskill committee were also especially concerned that adequate accounting advice should be readily available to the police and the DPP. The questions as to whether permanent accounting staff should be attached to police fraud squads, and more external accounting advice made available to the police, are being addressed by the Home Office chaired group considering the Roskill recommendations. But there is also the question of the accountancy resources available to the DPP. For this purpose we include the unified organisation, if one were established.
- 4.9 There is no doubt that the involvement of skilled accountants with professional experience outside the Civil Service is essential to the successful investigation and prosecution of many serious and complex fraud cases. Complicated, and often misleading, financial records have to be examined and understood. The Inland Revenue and DTI have considerable experience of using full-time accountants both as advisers

and investigators; and most DTI Companies Investigation Branch and Insolvency Service investigators have considerable accountancy experience. The DPP are also increasingly seeking accountancy advice, and so far 3 permanent accountants have been attached to the FIG.

- 4.10 The unified organisation would require professional accountants as well as investigators who had accountancy training (even if they were not fully qualified accountants). The number of professional accountants required would depend on the nature of the cases referred to the organisation. The DPP's analysis of current FIG cases suggests that the FIG would employ professional accountants in about half of the cases that would go to the unified organisation. Three or four senior and very experienced professional accountants supported by five or six less experienced people might be needed on the basis that each senior accountant could reasonably be expected to supervise 4 or 5 cases provided he had adequate support from the less experienced assistants, who would do the detailed investigation work. Consequently, the organisation might require from 8 to 10 professional accountants overall.
- 4.11 Initial estimates by the DPP suggest that perhaps a dozen accountants would also be required for serious cases which would still be handled by the FIG and for other fraud cases.
- 4.12 It therefore appears that the unified organisation and the DPP would need up to 20 or so permanent, professional accountants. Some of these posts might be filled by transfers from elsewhere in the public sector (eg DTI or the Inland Revenue) or by existing DPP staff. However, it is likely that many will have to be recruited from the private sector.
- 4.13 The unified organisation would also on occasion need to call upon the services of outside accountancy firms. At present the DTI's Companies Investigation Branch often call upon the assistance of leading chartered accountants when investigating a major case or where a public figure is involved.

5. CONCLUSIONS

- 5.1 We were asked to look at recommendations 1, 7, 10 and 11 of the Roskill report.
- 5.2 We agree with the recommendation (no 7) that case controllers should be appointed to see through all serious fraud cases from the beginning of the investigation to the verdict. We also agree that more expert accounting staff are required in the DPP (recommendation 11). These two issues are discussed in section 4. We will return to the question of resources (recommendation No 10) when the Home Office group has got further with its work.
- 5.3 The bulk of this report is concerned with the Roskill Committee's proposal for an urgent examination of the need for a new unified organisation responsible for all stages of the pursuit of serious fraud cases. Section 2 examines in detail a variety of practical problems that would have to be faced in setting up such an organisation, and develops possible solutions. What emerges is a preferred form for an organisation, with the following characteristics:-

(i) It would be responsible for investigation and prosecution of serious and complex cases of financial fraud, but not the initial detection and identification.

(ii) It would handle only a small number of serious and complex, financial and commercial cases, where a unified attack using a range of skills is most justified. Around 20-40 cases current at any one time fall into this category. These would include a small number of Inland Revenue and Customs cases where there are closely linked non-revenue aspects. The FIG co-operation arrangements could continue to be used for other cases where appropriate.

(iii) A "steering committee" of representatives of the police and other agencies concerned is suggested, to advise criteria for the choice of cases, and ensure co-operation between the new body and the other agencies.

(iv) It would be a relatively small organisation. It would need strong management, and to be adequately staffed. Perhaps there would be a total of 30-40 professional staff in all, though this would need further consideration. It would be important to attract the right kind of staff (accountants and lawyers) from the private sector, as well as from elsewhere in the public sector. The total cost might be around £4 million to £5 million a year, but some of this should be offset by savings elsewhere.

(v) It would be accountable to the Attorney General, alongside the DPP.

(vi) Legislation would be needed to provide for the transfer of appropriate powers (and corresponding safeguards), and to permit exchange of information with the other bodies concerned.

5.4 Section 3 sets out the arguments for and against establishing such an organisation. There are difficulties, but although the police have considerable reservations we do not believe any of them to be insuperable. There would also be significant advantages. In particular there would be the gains from having a single organisation accountable for all stages of a case, from investigation to verdict; from the unified management of resources; from the specialised expertise that would be developed; and from the elimination of some of the delays and inefficiencies that can occur at present as cases are passed from one organisation to another as particular aspects are investigated and as cases progress from investigation to prosecution. On balance, with the exception of the police representatives, we think that for the range of serious and complex cases we have in mind the advantages outweigh the disadvantages. The police reservations are set out fully in Annex F.

THE MEMBERS OF THE WORKING GROUP

The working group set up in response to the Chief Secretary's request to officials (as described in paragraph 1.12 of the Report) comprised the following:

Chairman:	Mr D L C Peretz	- HM Treasury
Members:	Mr P R H Allen	- HM Customs & Excise
	Mr K Teller	- HM Customs & Excise
	Mr J Wood	- Director of Public Prosecutions
	Mr W J Bohan	- Home Office
	Mr D Hugo	- Inland Revenue
	Mr J B Shepherd	- Inland Revenue
	Mr S Wooler	- Law Officers Department
	Mr C W Dymont	- Lord Chancellor's Department
	Mr A A Duguid	- Department of Trade and Industry
	Mr D Hobson	- No 10 Policy Unit
	Mr J P Charkham	- Bank of England
	Mr M Buck	- Chief Constable, Northamptonshire Police
	Mr J A Dellow	- Assistant Commissioner, Metropolitan Police
	Mr G Hosker	- Treasury Solicitors Department
	Mr A Wilson	- HM Treasury
	Mr M A Hall	- HM Treasury

The following also attended meetings:

	Mr R H Lawrence	- HM Customs & Excise
	Mr D G Williams	- Director of Public Prosecutions
	Mrs S Street	- Home Office
	Mrs L Pallett	- Home Office
	Mr J R Wollman	- Department of Trade and Industry
	Mr O Kelly	- Commissioner of Police, City of London
	Miss C E C Sinclair	- HM Treasury
Secretariat:	Mr P S Hall (from 17/2/86)	- HM Treasury
	Mr R J T Watts (to 17/2/86)	- HM Treasury

CURRENT FIG GUIDELINES

(extracts from text of Home Office Circular No.16/1985 to Chief Officers of Police concerning the investigation of fraud, dated 15 February 1985)

5. The provisions of this Circular do not remove the need, expressed in the DPP's letter of October 1981, for Chief Officers, where appropriate, to seek legal advice early in the course of the investigation of a suspected fraud where full FIG handling is not considered appropriate...

Purpose of FIG

8. The two major objectives of FIG will be first, to ensure speedy investigation and institution of proceedings in those cases where that course is justified and second, early identification of those cases where an investigation is unlikely to result in criminal proceedings so that the investigation may be discontinued and valuable manpower and other resources deployed to other investigations. It will be an essential function of FIG, and a matter over which the Controller will exercise close supervision, to avoid wastage of time on minor offences, minor offenders, blind alleys and peripheral matters.

Identification of a FIG case

9. The initial complaint may be made to DTI, less commonly to the DPP and, probably in the majority of cases, to the police. Not all cases of fraud will require FIG handling but the following paragraphs describe the type of case encountered by the police where FIG is likely to be the appropriate means of taking the investigations forward. This list is by no means intended to be exclusive but rather to serve as a guide to the sort of fraud complaint where FIG should be considered from the outset. Where there is any doubt about the

need for FIG handling the fraud complaint should be referred without delay to the head of the force Fraud Squad or to the ACC (Crime) as appropriate. If there is doubt, error in favour of a FIG should be made, at least at the outset but, of course, this list is concerned only with cases meeting criteria of substance, complexity and importance. The following types of fraud may be suitable for FIG treatment:

- (i) upon Government Departments and local authorities, for example VAT-related fraud;
- (ii) which include large scale corruption; and
- (iii) involving large shipping and currency offences.

Frauds discovered by Inspectors appointed pursuant to section 109 of the Companies Act 1967 or section 165 of the Companies Act 1948, and reported by them to DTI in the latter case, will also be referred by the Department to the Controller of FIG.

10. The following types of fraud case should also be reported to the Controller of FIG so that he may exercise his discretion whether they should be investigated by FIG:

- (i) upon Governments of other countries;
- (ii) with an international dimension;
- (iii) involving nationalised industries and public limited companies (eg British Leyland, Rolls Royce);
- (iv) by persons connected with Lloyds of London, the Stock Exchange and other Commercial Exchanges; and
- (v) involving well-known public figures (eg Members of Parliament, captains of industry).

Reporting of FIG cases

11. As soon as the police, DTI or DPP have made a preliminary judgement that the case is worthy of FIG investigation the Controller should be consulted....The Controller will convene a meeting at the earliest convenient time inviting representatives of the police and DTI and arranging for a DPP lawyer and FIG accountant to attend...

At this meeting the decision will be taken whether FIG is the appropriate manner of investigation...where FIG is ruled out at this stage, the Chief Officer should nonetheless consult the DPP as described in paragraph 5 above wherever necessary. Should further investigation suggest that FIG investigation is necessary, the case should be referred back to the Controller. In cases reported to the DPP pursuant to section 41 of the Companies Act 1967, the Controller will immediately liaise with the Inspectors through the Inspector of Companies with a view to deciding lines of enquiry.

Investigation by FIG

12. As soon as possible after the decision to investigate by way of FIG has been made and once all parties have had an opportunity to consider what paperwork there may be, a further meeting will be held to determine the future direction of the investigation. In urgent cases, where immediate police investigation is required, this meeting may be dispensed with.

13....It may be found early in the police investigation that a request to DTI for an inspection under section 109 of the 1967 Act is desirable. Should this be so, the Controller will consult directly with the Inspector of Companies at DTI and ask for an early and speedy inspection so that the police investigation is not delayed.

14. When the enquiry has been completed a decision will be made whether or not to prosecute. AS the DPP's lawyers will have extensive knowledge of the case and as it will have become clear in many instances before completion of the police investigation that proceedings will be taken, it is hoped that the papers will be in a form enabling them to be served upon the defendants soon after proceedings have been instituted. It is likely that as the investigation proceeds there will have been discussions as to the appropriate charges to be preferred against the defendants.

Consultation with Counsel and other specialist advisers

15. The DPP will not normally consult Counsel before committal for trial but inevitably there will be cases of such magnitude, complexity and importance that Counsel will need to be consulted. Every effort will be made to ensure that Counsel's advice is obtained speedily and the Attorney General will nominate Counsel who are not only experienced in this field but who are known to be available to deal with the particular case expeditiously....

Police participation in FIG

16. Police officers will not be attached permanently as an integral part of FIG but, as before, will operate under the operational supervision of their Chief Officer in full co-operation with the new Unit. This arrangement has been agreed in recognition of each Chief Officer's individual responsibility to investigate crime within his area and the need for police officers involved in a fraud enquiry to retain their powers as constable: a constable holds office under the Crown and in law cannot be subject to direction as to the exercise of those powers.

17. Where referral of a fraud complaint in his force area has given rise to a FIG investigation, the Chief Officer will make appropriate arrangements to provide sufficient officers to take forward the enquiry on the lines and at the speed agreed with the Controller at the meeting described in paragraph 13 above. In selecting officers for such a task, Chief Officers will wish to bear in mind the particular skills required for such investigations and the need to develop a body of expertise within their force. A balance is required: it would clearly not be conducive to the concept of FIG for officers totally unfamiliar with the investigation of fraud to be deployed on such cases but equally Chief Officers may wish to include on a case some officers relatively inexperienced in the investigation of fraud who could benefit from such experience and use it to the longer-term advantage of the force.

18. As the FIG office will be based in London, no problems are anticipated in communications with the Metropolitan and City Police Company Fraud Branch. Geographical distance is however a consideration for cases occurring outside London. Clearly police investigation will be carried out locally in the force area where the fraud is alleged to have occurred. It is however vital for close co-operation to be maintained and in order to effect this in cases outside London the DPP will expect his lawyers to visit from time to time the police station where the enquiry is based. It is also expected in the majority of cases that the FIG accountant will base his investigation of financial records at the local police station. The DTI will similarly arrange for their officers to visit the police station as and when necessary. Police travel outside the force area is therefore likely to be confined to that necessitated by their enquiries and to meetings in London with the Controller to discuss progress on the case where these cannot be held locally.

ANNEX C

ROSKILL REPORT GUIDELINES ON COMPLEX FRAUDS

"A complex fraud case is not necessarily one in which enormous sums of money are involved, or one in which the documentation is copious, or the list of witnesses long, although it would be normal if some - if not all - of these ingredients were present.

It is fraud in which the dishonesty is buried in a series of inter-related transactions, most frequently in a market offering highly-specialised services, or in areas of high-finance involving (for example) manipulation of the ownership of companies.

The complexity lies in the fact that the markets, or areas of business, operate according to concepts which bear no obvious similarity to anything in the general experience of most members of the public, and are governed by rules, and conducted in a language, learned only after prolonged study by those involved. A factor which often adds much complication and difficulty is the use of a network of companies and bank accounts overseas which conduct business in currencies other than sterling.

The frauds are usually committed by people who are acknowledged experts in their field and it is often their very expertise which enables them to identify and exploit a flaw in the system, and to add further complications so as to avoid detection or hinder investigation.

The concept of the market must be understood before the fundamental dishonesty of the fraudulent transaction can be recognised. To explain or to understand such market concepts in "classroom" conditions represents a very considerable intellectual challenge, to which only the exceptional could rise.

The sub-group of crime is likely to be found in frauds upon or involving the Stock Exchange, Lloyds of London, and the commodities and financial futures markets. Geographically, such institutions are located within the boundaries of the City of London, but because

of the convenience of modern communications it can, and does, happen that frauds in which these institutions are used take place in venues throughout the country and overseas. Some frauds on the Revenue and Customs and Excise may also include some of the features described above."

Source: Annex on page 153 of the Fraud Trials Committee Report (the Roskill Report).

ANALYSIS OF FIG CASES BY THE DPP

Definition : Cases of substance, complexity and importance in which one or more of the factors listed in Appendix B (paras 9 and 10) are present.

There were 88 such cases at 4 March 1985

Methodology : All cases were examined under the following heads:

- 1 Sum at risk
- 2 Max. number of police so far engaged
- 3 Whether accountants engaged
- 4 Whether counsel engaged
- 5 Whether DTI, revenue or other Government department, or agency involved
- 6 Locality
- 7 Identity of police force
- 8 Type of fraud
- 9 Venue of trial

Results:

1. In 17 cases the sum at risk was under £½ m.
 In 17 cases the sum at risk was between £½ m and £1 m.
 in 27 cases the sum at risk was between £1 m and £5 m
 in 27 cases the sum at risk was over £5 m
2. The number of police engaged was as follows:

In 26 cases	2
in 29 cases	3 - 5
In 33 cases	Over 5
3. Accountants are engaged in 20 cases
- 4 Counsel are engaged in 59 cases
- 5 Other departments are involved in 36 cases
- 6 48 cases are located outside London

- 33 cases are located in London
- 7 cases are located in London and the provinces

- 7 43 cases are investigated by provincial forces
- 40 cases are investigated by Metropolitan and City
- 2 cases are jointly investigated
- 3 cases are investigated by other forces

- 8 43 cases were "City" frauds (investment, insurance, banking, shipping etc)
- 45 cases were "Non City" frauds (upon Government agencies, nationalised industries, large corporations, local authorities).

- 9 All cases if committed will be tried in the Crown Court

POWERS OF A UNIFIED ORGANISATION

(to be circulated)



POLICE RESERVATIONS

Note by Police Representatives on the Working Group

The Police have serious reservations, firstly with regard to the need for a unified organisation and secondly in regard to constitutional issues. Additionally there are several implementation problems which they feel will not be overcome with the ease suggested by others, and certainly not without damaging the residual police units committed to fraud investigation.

2. The Police Service recognises without reservation the need to speed up and effectively deal with complex fraud cases. In this regard it is in agreement with many of those recommendations in the Roskill Commission report that centre upon prosecution, pre-trial and trial procedures for it is in this area that they believe remedies can be found.

3. The Service acknowledges that there also exists delay in the investigation of some frauds but contend that such delays are largely outside the control of the investigators. They more often relate to witnesses and accused being beyond jurisdiction, to reluctance on behalf of witnesses to make definitive statements upon first and early contact with police, and to procedural difficulties in mutual assistance with foreign governments, prosecutors and police forces. The latter is now fully exploited by fraudsmen who see the advantage of introducing a foreign element into their frauds.

4. If improved effectiveness and rapidity are the objectives, the police service see no merit in addressing both investigation and prosecution together (other than in the FIG concept) and certainly not in pursuing the concept of a unified investigation and prosecution organisation. The same problems besetting investigators operating within their parent organisations will, it is contended, face investigators equally when operating within a unified unit.

5. It was recognised long before discussion took place about the concept of the Fraud Investigation Group that the demand for fraud investigation was out-stripping police resources and that there was a need to concentrate on essentials. Several new management and investigatory techniques were adopted, particularly within the Metropolitan and City Police Company Fraud Department, and over a period investigations were shortened very considerably with a consequential increase in the number of cases submitted to the DPP. This had the effect of over-burdening the resources of that Office and in some cases resulted in delay in the prosecution stage.

6. The police believe that further improved concentration of police and prosecution effort has resulted from the implementation of the FIG concept, and whilst police concede that the system is not yet perfect, it cannot agree with the DPP criticisms of it. His suggestion that it affords his office insufficient control over investigators and that the absence of co-location results in difficulties, police find hard to accept.

7. The police view is that before any move is made to what they see as an unnecessary additional investigatory unit, the current FIG arrangements should be allowed to run a proper course of evaluation, rectifying any procedural problems on the way.

8. Another major point made by the Police is the apparent illogicality of bringing together the role of the investigator and the prosecutor under one head for fraud at a time when considerable political and professional endeavour has been expended in separating the two roles in all other instances wherein police are investigators. The special nature of fraud per se seems to the police insufficient ground upon which to reverse such a fundamental principle. Indeed, in practical terms they consider there are other equally, if not more, complex crime investigations where such would never be considered.

9. One other issue which police consider to be of extreme importance is that of the constitutional position of the Commissioners of the Metropolis and for the City of London, and of Chief Constables in regard to command and control of their own officers. They oppose any arrangement whereby they would be required to surrender command of or lose the power of direction in the final analysis of any member of their Force in operational matters.

10. In addition to these main issues the police foresee many other difficulties of a mechanical nature in the implementation of a unified organisation. They agree that with greater or lesser effort many of these may be overcome or diluted. They are especially concerned about the residual damage that might be done to police fraud or commercial investigation units by the removal, permanently or upon secondment, of experienced police investigators. Most police units of this kind are structured in such a way as to provide mutual support for all manner of fraud investigation and to provide internal supervision, administration and discipline, the removal from which of seasoned and ranking investigators would, in the view of the police, create very damaging vacuums.

11. The police are concerned also about the ability of a unified organisation to contract and expand to fit demand; this is especially so in regard to expansion. They feel that the idea that a unified organisation could refuse cases when its quota was reached, and refer them to the appropriate police unit, would be quite wrong, not least because such a police unit might well have had its expertise diluted by the very act of servicing the unified organisation. The alternative of police forces providing additional officers for secondment from within finite resources at times of pressure upon the unified organisation is no more attractive to them, it being pointed out that once a special organisation has been set up Chief Officers' views on priorities would be differently angled.

12. The police believe that the objectives being sought through unified investigation could be achieved much more economically and as effectively by the appointment of a Fraud Commission (as recommended by Roskill at paragraph 2.49) to monitor the investigation of those serious and complex frauds which cause public concern.

13. Given suitable powers, the Fraud Commission could have the ability to knock departmental heads together when there is a perceived lack of co-operation or co-ordination, or when there has been inordinate delay. The police would have no objection to such scrutiny.

14. As suggested by Roskill, the Fraud Commission could also be responsible for ironing out the present in-built procedural delays and for investigating legislative changes where necessary.

15. This arrangement would avoid the formidable constitutional, legislative and expensive organisational changes which will be met in pursuing the proposals for unified investigation made elsewhere in this paper.