

05 7641 Ext.

Communications on this subject should  
be addressed to

THE LEGAL SECRETARY  
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,  
LAW OFFICERS' DEPARTMENT,  
ROYAL COURTS OF JUSTICE,  
LONDON, W.C.2.

17 April 1986

Ms. Jill Rutter  
Private Secretary to the Chief Secretary  
to the Treasury  
HM Treasury  
Parliament Street  
London  
SW1P 3AG

NBPN at this stage

Dear Jill,

**ROSKILL REPORT: UNIFIED ORGANISATION**

... I refer to our telephone conversation yesterday and enclose herewith the paper promised by the Solicitor General for consideration by the Chief Secretary's meeting today. We are sorry for the delay - the Solicitor General's other commitments prevented him from finalising it yesterday.

Copies of this letter together with two copies of the report go to Stephen Boys-Smith (Home Office), David Norgrove (no. 10), John Mogg (DTI), Richard Stoate (Lord Chancellor's Office), John Barlett (Bank of England), Catherine Brand (Inland Revenue), Lance Railton (Customs and Excise) and Michael Stark (Cabinet Office).

Yours sincerely  
Stephen Wooler

S J WOOLER

enc.

Relationship of a unified fraud unit to Attorney GeneralNote by Solicitor General

1. Paragraph 5.3(v) of the Report presented to Ministers by the Official Group suggested that a unified organisation should be "accountable to the Attorney General alongside the DPP". This Paper considers further the nature of the relationship which a unified organisation would have to the Attorney General. To a large extent that question will be governed by the form any new organisation takes. However, there will inevitably be comparison with the existing accountability of the Director of Public Prosecutions to the Attorney General. Accordingly this Paper first describes that relationship. Thereafter, it considers the relationship which would be appropriate in each of the following eventualities:
  - (a) If the new organisation were to constitute a Department in its own right; or
  - (b) If it constituted a new non-Departmental Public Body (quango) under the Attorney General's sponsorship; or
  - (c) If it formed part of or constituted a division within the Department of the Director of Public Prosecutions; or
  - (d) If it were to constitute a new Department with its permanent head reporting to the Attorney General on a "standard" Ministerial basis.
2. In theory there is a fifth option, which would be to place the new body within the Law Officers' Department but as a separate division. This has not been suggested by anybody. It would be wholly inconsistent with the present role of the Department and the Attorney General would not welcome such a move.

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Finally, this note assesses the application of the propositions outlined above to the various proposals contained in the Treasury note on the 'task force' approach circulated on 14th April 1986.

### 3. Relationship of Director of Public Prosecutions to Attorney General

Successive Prosecutions of Offences Acts since the Office of Director of Public Prosecutions was first established have provided that he should discharge his duties "under the superintendence of the Attorney General". That expression has never been judicially considered and what in practice it implies is merely derived from practice and usage. Historically it has meant responsibility for the overall efficiency of the DPP. To this extent the relationship is comparable with that of a chief constable to his police authority. But it goes further in that the Attorney General is regarded as being answerable for the general policy of the Director. As regards individual cases, it has been the practice of successive Directors to consult the Attorney General in relation to cases involving substantial questions of public interest. In recent years changes of attitude, both inside and outside Parliament, have required the Law Officers to become more ready to answer for the handling of individual cases than their predecessors.

4. Despite this increased answerability, the relationship between the Director and the Attorney General is not the traditional Permanent Secretary/Minister relationship. The decisions and executive acts of the Director and his staff are not those of the Attorney General in the way that those of an official are ordinarily attributable to his Minister. This relationship precludes the establishment of any institutional machinery in the LOD for exercising superintendence. Though the Director is accountable to the Attorney General, he is not accountable to the Legal Secretary - who indeed is junior to him in rank - nor is his Department in any sense an appendage of the LOD; it is, as it were, an entirely separate command sharing the Attorney General as its superintending Minister.

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### 5. Possible arrangements

It is necessary to consider the three eventualities mentioned above:

#### (a) Unified organisation as a separate Department

Under this option the unified organisation would be separate from the DPP and would have its own separate legal status. The nature of the new unit's functions and the public concern presently surrounding the manner of their discharge suggest that Parliament would not be content with anything less than a clear line of accountability to Parliament through a Minister. On this assumption the appropriate relationship would be one which was identical to that now prevailing between the DPP and the Attorney General. This is precisely the arrangement which the Law Officers understood the Official Group to be recommending.

#### (b) Unified organisation as a non-Departmental Public body

A body constituted in this way would have its own legal status. Legislation would define the scope of its functions and powers as well as its structure including arrangements for accountability. These could be 'tailor made' for the particular body with the sponsoring Minister being given such powers of direction as seemed appropriate. Financing of such an organisation would be through the sponsoring Department.

6. The Health and Safety Executive is an example of an investigation and prosecuting authority so constituted. It is one of two bodies coporate (the other being the Health and Safety Commission) established by section 10 of the Health and Safety etc at Work etc Act 1974. Broadly speaking, the Commission has responsibility for policy matters and recommendations to relevant authority as to the exercise of regulatory powers. The Executive has responsibility for enforcement of relevant statutory provisions. It is directable by the Commission in all matters except enforcement action although the Commission may give such a direction if it is necessary for giving effect to

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directions to the Commission from the Secretary of State. But in practice the Executive discharges its enforcement functions quite independently of the Commission or the Secretary of State who does not answer to Parliament for such matters.

The present policy of MPO is to discourage the establishment of quangos except where the objectives cannot be achieved by any other means. Considerable importance is attached to the provision of clear arrangements for accountability.

7. Responsibility on the part of the Attorney General for an additional Department or a quango might have resource and/or structural implications for the Law Officers Department. The burdens upon the Law Officers are already heavy. Parliament will expect meaningful accountability. The LOD has not yet felt the full effects of the establishment of the Crown Prosecution Service and it will take time to adapt the working relationship and practices with the Director to the greatly enhanced responsibility of the Attorney General. At the Ministerial meeting on the 9th April I expressed the view that the combined effect of these two additional responsibilities might be to necessitate the appointment of an additional junior Minister (a Parliamentary Secretary) as was done under the Labour administration. An alternative approach might be to endeavour to devise a slightly different arrangement whereby officials at the LOD could discharge some of the functions of the Attorney General in relation to the unified organisation. However, this would be difficult - especially if, as seems possible, the new unit were headed by an individual senior in rank to the Legal Secretary. And the responsibility of the Attorney General for matters falling within his jurisdiction is widely seen as being more personal than that of a Secretary of State.

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### (c) Unified organisation as part of DPP

There would be no change from the existing arrangements described earlier in this note. The functions of the unified organisation would simply be additional functions of the Director which he would discharge under the superintendence of the Attorney General. This is not the appropriate document in which to discuss the other difficulties which surround this option.

### (d) Department reporting to the Attorney General on a "standard" Ministerial basis

This would present no constitutional difficulties. But it would entail direct responsibility and answerability on the part of the Attorney General for every case handled by the unified organisation. It is not a practical proposition and not one which has been contemplated by the Law Officers.

The attached chart shows how the Attorney General would stand in relation to the new body constituted in each of the above ways. Arrangements (a) and (d) have the same structural appearance because the essential difference is an internal one i.e. the nature of the relationships between the Minister and the permanent head.

### 8. Proposals considered by the Official Group

A unified investigation and prosecution organisation on the lines recommended in the report by the Official Group could be accommodated within any of the four possible arrangements canvassed above. However, practical and policy difficulties make (c) and (d) highly unattractive. Creation of a new quango would be politically unattractive. It might entail the creation of a controlling body with more than one member (the Health and Safety Executive comprises three members). Legislation which sought to establish a clearly defined relationship between a Minister and a prosecuting authority would undoubtedly prove controversial. There seem to be clear advantages in applying to the new organisation the

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tried and tested formula of "under the superintendence of the Attorney General".

9. As regards the "task force" variant advocated by the Home Office, this would not involve the creation of any new institution but merely extend and to some extent formalise the present arrangements for co-operation. The only new function would be that of a secretariat or co-ordinator - to the extent that this function is not already discharged by the Controller of FIG. This step would hardly justify the creation of a new Department or body and the individual(s) who assumed this mantle would presumably remain attached to his parent Department (probably the DPP). This approach would leave respective Ministerial responsibilities unaffected. Whatever the presentational advantages, the reality would be that the secretariat or controller would be expected to achieve the increased efficiency sought by both Parliament and the public by means of influence and the issuing of directives unsupported by any authority. The Attorney General would not welcome what appears to be increased responsibility without the necessary powers.
  
10. A second variant which has been suggested involves the creation of a Serious Fraud Office and a dedicated force of police officers, possibly known as the National Fraud Squad. This is necessarily a half-way house. The Serious Fraud Office could be constituted under any of the four arrangements canvassed earlier. But the same arguments are applicable to this body as were mentioned in the context of a fully unified fraud and prosecution organisation. Thus, the balance of advantage seems to lie in establishing the Serious Fraud Office as a new Department discharging its functions under the superintendence

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of the Attorney General. But the associated police body would not be accountable to or answerable to the Attorney General. Some accountability might be achieved by creating a body within the police service to discharge the functions of the Chief Constables Committees which at present exist to oversee the activities of Regional Crime Squads.

## 11. Conclusion

The Attorney General believes that our needs can best in practice be met by a variant of arrangement (a). A Serious Fraud Office whose Head would be "under the superintendence of the Attorney General" would have as part of its investigative armour a dedicated force of police officers, possibly known as the National Fraud Squad. These would not be accountable to the Attorney General but the constitutional position of police officers would be reflected by preserving their relationship with their chief constables, while power of direction would be given to a senior police officer himself forming part of the new organisation and expected to co-operate very closely with its Head. It is for consideration how accountability for this arm of the organisation should be achieved.

A.M.

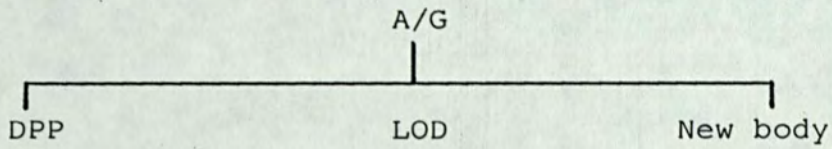
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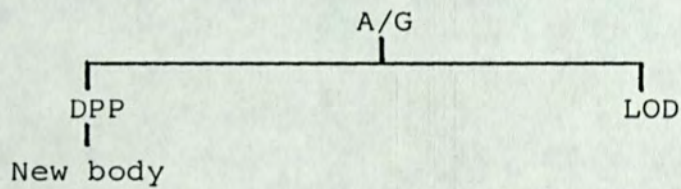


ARRANGEMENTS FOR NEW FRAUD BODY UNDER ATTORNEY GENERAL

NEW DEPARTMENT  
(Arrangements (a) or (d))



PART OF DPP  
(Arrangement (c))



NON-DEPARTMENTAL PUBLIC BODY  
(Arrangement (b))

