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cc PS/Minister of State (B&L)
 *PS/PUS (B&L)
 (c) PS/Sir K Bloomfield (v) sec 1
 Mr Burns
 *Mr Innes
 Mr Knight
 *Mr Chesterton
 * without encl

PS/SECRETARY OF STATE (B&L)

PARAMILITARY FINANCES

This is just to confirm, before I go on leave, that action is in hand to give effect to the Secretary of State's decision (recorded in your minute to me of 7 September) that the dedicated unit which he wishes to establish should be formed on an administrative or non-statutory basis in the first instance, and as soon as practicable, rather than wait until there has been time to provide a statutory basis for it.

I have accordingly

- (i) written to my opposite numbers in LOD, IR and C&E to enlist their help in identifying a suitable person, with the necessary experience, to head the unit; and in making available seconded officers to work as integrated members of the team;
- (ii) asked Miss Pease to follow up the secondment question; and also to explore, and provide advice on, the crucial matter of funding and establishment cover, following S of S's trailer to Mr Major;
- (iii) asked Mr Hammond to interest himself in this structural aspect of our work on racketeering, as well as in the study of substantive new powers (RICO etc) which LOB are conducting.

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In order to give these and other parties an adequate idea of what we are about, I have compiled a note setting out the state of play and the issues ahead. It contains nothing which has not already been brought to S of S's attention but he may possibly find it useful as a checklist.

3. Mr Innes and LOB will meanwhile be going ahead with developing the thinking on the units' functions and modus operandi and, with ESL, with analysing the SFO story to see if there is further scope for saving ourselves time by capitalising on that experience.

4. We ought soon to be thinking about when and how to put the RUC fully in the picture about the decision to form a dedicated unit. This has not been a matter of urgency, once S of S had agreed that we should adopt the SFO solution of having the police "with but not in" the unit. Nevertheless they will need to know soon if we want them to provide officers to sit alongside the unit. But, if S of S wishes to be the first to broach the matter with the Chief Constable, I think it could wait until just after the forthcoming overseas visit.



11 September 1987

A W STEPHENS

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An Anti-Rackets Unit for Northern Ireland

The Secretary of State wishes to bring into being a dedicated multi-disciplinary unit to concentrate full-time on preventing paramilitary and criminal groups from exploiting or flouting the law for financial gain through rackets, extortion and other such activities: by identifying ways to curb those activities and by cooperating with the police and the other investigative agencies to mount prosecutions.

2. The purpose of this note is to summarise the background to, and the rationale underlying, this decision; the current state of play; and the principal issues that remain to be resolved.

Background

3. Paramilitary financial activity is by no means a new problem. From early in the 1970s it has been known to be a potent source of funds for the terrorist groups and much interdepartmental effort has been devoted over the years to reducing the scope for exploitation of such activities as drinking clubs and black taxis. Fraud and extortion in the building industry has been a constant concern. Some success has been achieved in hastening the relative failure of paramilitary-inspired business enterprises such as the Andersonstown Cooperative. More recently there has been legislative action such as the Orders relating to Betting and Gaming, Registration of Clubs and Liquor Licencing and the provision in the new Emergency Provisions Act for the registration of security firms. An RUC Rackets Squad has been in existence since 1982.

4. Nevertheless, from about the beginning of this year, there has been mounting concern that the situation is not improving overall and may be getting worse: in the sense that the flow of funds to the paramilitaries seems if anything to be increasing

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and there are worrying signs that the organised crime from which much of it stems is becoming institutionalised and tacitly accepted by the community as an inevitable feature of life in Northern Ireland. Early in the year, while hearing a case of tax exemption fraud, a High Court Judge uttered scathing (if not wholly accurate) criticism of the adequacy of official action to curb such activities, which was widely reported. And in August a Central Television "Cook Report" programme, screened nationwide and entitled "Worse than the Mafia", gave the subject further prominence.

5. In February the Secretary of State consulted the (then) Solicitor General as to whether action against racketeering in NI might be added to the remit of the Serious Fraud Office which is currently being set up (and which will include NI in its jurisdiction). Sir Patrick Mayhew took the view that this would be an undesirable distortion of the SFO's intended function, which will be to concentrate on sophisticated "City" fraud.

6. The Secretary of State discussed the problem with the Chief Constable in April. Subsequently, in July, the Chief Constable sent Mr King a detailed report which analysed the nature and extent of paramilitary fund-raising activities; confirmed how difficult it was to mount successful prosecutions while potential witnesses remained so reluctant to testify (just as in terrorist cases); and, in consequence, recommended legislative action to provide new and far-reaching powers to trace suspected paramilitary funds through bank accounts, following the example of the US "RICO" (Racketeer Influenced and Corrupt Organisations) legislation of 1970. The latter suggestion is now being urgently examined by officials.

Rationale for a dedicated unit

7. Primary responsibility for investigating suspected offences, including those involving extortion and other forms

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of racketeering, must continue to lie with the police. Given the intensity of the RUC's other pressures and preoccupations, however, it is only sensible to complement their effort with high grade machinery for putting to fullest use the experience and knowledge of other investigative agencies and the best available expertise in the legal and accountancy fields.

8. The Law and Order Division of NIO already runs a standing committee on paramilitary finances which brings together representatives of the relevant Departments and investigative authorities as well as the police (and which is currently conducting the study into additional legal powers). While this represents an important step forward, it cannot however be a complete substitute for a full-time composite team which can devote its entire energy and ingenuity exclusively to the one task of identifying the most serious and intractable forms of racketeering, thinking of all the possible ways to put a stop to them and ensuring that everything that can be done is being done to investigate them and bring them to court.

9. It is such a team that the Secretary of State wishes to bring into being.

Building on other experience

10. Such is the urgency of the matter that we should take care to make the fullest possible use of the lessons that have been derived from analogous exercises and avoid wasting time in reinventing the wheel. In particular, we should be able to tap the lessons which have emerged from the process of setting up the Serious Fraud Office, several of which seem likely to be relevant.

11. Two salient conclusions which were eventually reached in that exercise after many months of debate would appear to fit our case equally well and to merit immediate adoption without going through the whole lengthy process again. First, as

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regards interface with the police. it has been decided that police specialists in company fraud should work in close collaboration with the SFO, to the extent of being colocated with it, but should not be totally integrated in it and should remain responsible to their own police hierarchies. The Secretary of State has provisionally accepted that we should plan on the same basis for the anti-rackets unit.

12. Second and even more fundamental is the question of whether the unit's powers need to be provided statutorily - and (? therefore) its needs to have a statutory existence - or whether it is sufficient for them to be provided administratively. In the post-Roskill case, after some two years' experience of a non-statutory Fraud Investigation Group, Ministers concluded that it was essential to have a statutory Serious Fraud Office with statutory powers of investigation and prosecution. There seems no reason to suppose that an anti-rackets unit which was not equipped with legal powers of investigation (prosecution is addressed separately below) would prove any more satisfactory as a permanent solution and the Secretary of State has indicated that he does not rule out a statutorily empowered unit as the eventual objective.

An Administrative Start

13. The Secretary of State does not, however, wish to wait for the unit to be formed until such time as it could be established on a statutory basis and he has directed that it is to be formed administratively in the first instance, as soon as practicable. He wishes action to commence forthwith to identify a suitable person to head the unit; to determine how many other members it will need at the outset and with what specialisations; to recruit them or negotiate their secondment from other authorities; and to decide how the necessary funding and establishment cover are to be provided.

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Size and composition

14. The idea is not that the unit should duplicate a large part of the work of the RUC Rackets Squad or other existing agencies but that it should concentrate on identifying and probing the most lucrative, most sinister and most intractable forms of racketeering activity and on devising and developing new approaches and new techniques for combatting them. It need not therefore be very large - quality rather than quantity should be the watchword - and a team of about five (excluding clerical and other support staff) may well be sufficient, at least to start with. (That also excludes the attached police officers.)

15. Secretary of State has agreed that the team leader (Director seems a suitable label) should be chosen for his experience and proven expertise in the investigative field, irrespective of his discipline and walk of life. Someone on the point of retirement might be a good choice. His rank as Director will have to depend on his background and qualifications but might be at or around Grade 4.

16. Subject to the specialisation of whoever is chosen as leader, the team ought also to include from the outset

- at least one lawyer with experience in criminal law and, if possible, commercial law;
- an accountant with experience in relevant sectors of commerce and/or industry (eg the building industry);
- a seconded official from each of Inland Revenue and Customs and Excise, perhaps at Grade 7 (Principal) level

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A prosecuting role?

17. While there are strong arguments for wanting the unit to have its own legal powers of investigation, it is less obvious that it will need to be able to mount its own prosecutions, (as the SFO will do) rather than handing over the results of its investigations to existing prosecuting authorities - police, DPP(NI), IR, C of E etc. There may even be certain advantages in preferring the latter approach; for instance

- (i) it may help to avoid duplication of effort and staff;
- (ii) it may avoid the familiar problem of whether information acquired by IR can be made available to another investigating agency;
- (iii) it may leave a freer choice as to whether the unit should be responsible to, and under the direction of, the Secretary of State or the Attorney-General.

18. Nevertheless it is possible to envisage circumstances in which it would be advantageous for the unit to be able to reach its own conclusion on whether to prosecute and be able itself to conduct the prosecution. There may be a halfway-house solution; it might be provided that the unit could conduct a prosecution with leave from the Attorney General.

19. However, there is no need for an immediate decision on this and it can be assumed that, in its initial non-statutory period, the unit will rely on other authorities to do the prosecuting.

Ministerial responsibility and oversight

20. The SFO - in common with the DPP for England and Wales and the Crown Prosecution Service - will be answerable to the

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Attorney General. So too is the DPP for NI as far as his professional discharge of his duties is concerned. It could be argued that it would be appropriate for the anti-rackets unit, as a form of law enforcement agency, to be similarly responsible to the Attorney. On the other hand, the Secretary of State undoubtedly has the major political interest in an effective response to the problem of racketeering in NI.

21. It may eventually be considered (though it may not) that the balance would tilt decisively to making the unit answerable to the Attorney if it were allowed and encouraged to conduct its own prosecutions as a regular practice, on the ground that this made it more closely analogous to the SFO. But the decision on that lies in the future. For the time being, the Secretary of State considers it appropriate and desirable that the unit should be responsible to him and his responsibility.

Funding and complementing

22. The SFO is being constituted as a self-standing and self-accounting Department, under the provisions of the recent (pre-Election) Criminal Justice Act, while answerable Ministerially to the Attorney General, as are the DPP for England and Wales and the Crown Prosecution Service. Unless and until the anti-rackets unit acquires statutory status it will presumably not be possible for it to be similarly free-standing. In any case, the DPP for NI, though professionally answerable to the Attorney, is a part of NIO for administrative and accounting purposes and, unless and until that ceases to be the case, it would probably be argued that the unit should be on the same footing.

23. It does not follow, however, that the unit should not qualify just as fully as the SFO for the funds and the establishment cover that it will need to be specially allocated. It will be just as much a new service as the SFO and, although its size and its activities will be on a

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relatively modest scale, NIO's vote provision and DRCs and staff numbers are already far too tightly stretched to leave any scope for absorbing the new unit without any extra provision. This aspect of the matter will have to be pursued very urgently.

Emergency or non-emergency?

24. If it is decided in due course to seek legislative action to provide new powers of the kind recommended by the Chief Constable (and irrespective of whether they would be conferred on the new unit as well as on the police) we shall have to decide whether the appropriate form of legislation is Bill or Order in Council. This in turn will require us to take a view on whether we are essentially dealing with an aspect of terrorism - in which case only a Bill will do - or with an ongoing problem to which the proper response is a strengthening of the ordinary criminal law - which would be a matter for an Order in Council.

25. There is no doubt that the urgency of tightening the grip on racketeering stems largely from the fact that so much of the proceeds goes to fund terrorism. But the racketeering activity itself is a serious matter; and it is by no means clear that it would come to an end if its terrorist inspiration was suddenly removed. The recent history of the Official IRA points in the opposite direction. There is no clear cut answer to the question - fraud, extortion, gangsterism and terrorism form a continuum - but it can fairly be said that the racketeering has achieved a life of its own and will need to be tackled as a long-term problem whatever is happening on the terrorist front. This suggests that the Order in Council route would not be inappropriate.

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