

CONFIDENTIAL



1. David Wrayson - to see
2. NBPM

QUEEN ANNE'S GATE LONDON SW1H 9AT

ccba

9 December 1985

2 PRS

Dear Millie

CONFISCATION OF THE PROCEEDS OF DRUG TRAFFICKING

I have seen a copy of Quintin Hailsham's letter to you of 29 November, concerning the proposal that the police or prosecution should be able to seek a court order requiring Inland Revenue to produce relevant information in drug trafficking cases.

As you know, it was not my original intention that these matters should be subject to court order: at first I asked that the police should be given access to information in drug trafficking investigations on the same basis as Customs and Excise, by an extension of s.127 of the Finance Act 1972. But Nigel Lawson and John Moore expressed concern about the implications for confidentiality and, on reflection, I was prepared to accept that the Bill should, in connection with drug trafficking, put the Inland Revenue on a similar footing to the banks - that is, that disclosure should be dependent upon the order of a court. The concordat reached with John Moore and Nigel Lawson on this is helpfully set out in John Moore's subsequent letter of 2 December to David Mellor, of which I enclose a copy.

As Quintin says, our proposal is for information about third parties, as well as about the suspected drug trafficker himself, to be obtainable in this way. We are agreed that this should be possible only in strictly limited circumstances. The court would have to be satisfied that any information about a third party was likely to be of substantial value to the investigation of the suspect's drug trafficking: there could be no question of authorising "fishing expeditions". Whilst I appreciate Quintin's concern about third parties, I do feel that where this test is satisfied, such information should be made available to the investigation, given the widespread adoption of laundering techniques in drug trafficking. To do less than this would be to continue to put Inland Revenue information on a different footing from information held by the bank and other institutions whose relationship with the customer is normally one of confidence; and we do not believe that such a difference can readily be sustained, either so far as the effectiveness of the Bill is concerned or politically. The purpose of the disclosure is, as Quintin says, quite distinct from the ascertainment of liability for the collection of revenue. But it should be borne in mind that, where it can be shown that a third party received the proceeds of drug

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The Rt Hon Viscount Whitelaw, CH, MC

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trafficking from a trafficker with the intention of helping him retain control of that money, then the third party will himself be guilty of a drug trafficking offence under the new Bill.

My overriding concern is that where Inland Revenue holds information which is relevant to the investigation of drug trafficking and the tracing of its proceeds, that information should be made available to the police or prosecuting authority. Whether the initiative comes from the police seeking a production order from the court, or from Inland Revenue requesting leave to disclose, is for us of secondary importance, provided of course that both alternatives would result in relevant information being made available. I confess, however, that I am not quite sure what it would be that, on Quintin's proposal, the court would be deciding: the Crown would already have come to the conclusion that the disclosure was proper and must override the normal requirement of confidentiality. As I understand it, however, it is not likely that the Inland Revenue will resist an application (under the procedure that John Moore and we propose) on quite this ground. What they need is an opportunity to argue that an application is simply unmeritorious or potentially injurious to a wholly innocent third party, and the procedures which we propose would give them an opportunity to put such arguments before the court. Would it not be rather unusual for a Government department to have to apply to a court for leave to do something it considers justified in the wider public interest?

For these reasons I think that the arrangements on which John Moore and we have now reached a settlement is preferable to the new proposal which Quintin has made.

David Mellor is writing to John MacGregor about the financial arrangements to be made in connection with the Bill. There is one other matter which I ought to mention as being outstanding from H Committee's earlier exchanges. The coming Bill will confer power on the High Court to restrain assets which would be liable to be confiscated on a trafficker's conviction, in order to prevent their disposal between his arrest and the end of criminal proceedings. Our original intention was to allow the court, as I understand is done in normal civil cases, to require undertakings for compensation from the application should it turn out that the assets have been frozen needlessly: in other words, we would have empowered the courts to order compensation for any defendant whose assets were frozen but who was subsequently acquitted.

On reflection, however, I think that it would be wrong to provide more generous compensation arrangements for those suffering financial loss as a result of a restraint order than for those who at present suffer loss of liberty by being remanded in custody and are subsequently acquitted. In criminal cases, there is no question of routine compensation simply because at the trial the prosecution was unable to sustain the burden of proof beyond a reasonable doubt in relation to the specific charge that was brought; but compensation is available on an ex-gratia basis where the period in custody has resulted from serious default on the

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part of the investigating or prosecuting authority. I believe that this should also be the basis on which compensation should be available following restraint of assets, and I propose to ask for the necessary provision to be included in the Bill.

I am copying this letter to the Prime Minister, other members of H Committee, the Solicitor General, Sir Robert Armstrong and Sir George Engle.

Yours,
Douglas.

- cc
- Miss Meneaud.
- Lorenburg
- Mr Duke Evans.
- Mr Partridge
- Mr Faulkner
- Mr Bohan
- Mr Varney
- Mr Pakenham.
- Walsh
- Mr Jeffrey
- Mr Nagler
- Mr Harding
- Mr Abbott
- Mr Grousey
- Miss Andrews
- Mr Acton

Home Affairs Pt 3

Drugs

