

RESTRICTED - INVESTIGATIONS

FROM : [REDACTED]
DATE : 31 March 2000
EXTN : 5266
ROOM: 112/GND

ECONOMIC SECRETARY

cc : Sir S Robson
Mr Fellgett
Mrs Diggle
Mr Halligan
Mrs Oliver (TSol)

BARLOW CLOWES - INTERNATIONAL TRUST CORPORATION
(IOM) LTD (ITC) OFFICEHOLDERS' ACTION IN THE ISLE OF MAN

Issue: the Officeholders' legal action against ITC to recover funds defrauded from Barlow Clowes' investors.

Recommendation: that you authorise officials to indicate to the Officeholders that they take the case forward.

Timing: routine.

Context

2. My note of 20 March explained the background to the Treasury's involvement in the Barlow Clowes fraud and reported on progress in the recoveries exercise. This note seeks your approval for officials to authorise the Officeholders (the receivers and liquidators of the collapsed Barlow Clowes group of companies) to proceed with litigation in the Isle of Man.

3. It is the Officeholders' responsibility to prosecute the ITC case, but in view of the costs involved in the action, the likelihood of success, and even

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if successful, the difficulty in recovering the funds, you now need to take a view on public policy grounds as to whether the action should continue.

The Officeholders

4. The Officeholders pursue claims on behalf of the Barlow Clowes group of companies for recovery of investors' funds improperly received by third parties. In particular their role is to liquidate the various companies and the conduit companies used for laundering investors' funds. A major proportion of the total recoveries to date have come through the Officeholders.

5. The Treasury has no locus over the Officeholders fulfilling their statutory obligations in their capacity as court appointed agents. But, as the principal creditor, the Treasury has an interest in ensuring that the claims pursued by the Officeholders have regard to the taxpayers' interest.

6. The Officeholders are able to use some of the recoveries as their own running costs. It is essential that they do not pursue expensive litigation with little prospects of success which could reduce the eventual final payment to the Treasury, without reference to the Treasury as principal creditor.

ITC

7. ITC was a company controlled by Peter Henwood and Andrew Sebastian. It was widely used by Peter Clowes and his associate Guy Von Cramer in setting up nominee companies in the Isle of Man. There were a large number of such companies, and ITC's involvement was extensive.

8. In their report, the DTI inspectors were disturbed about the manner in which ITC operated, being prepared to fabricate correspondence to legitimise many transactions. The inspectors concluded that ITC, Henwood and Sebastian have significant responsibility in the whole Barlow Clowes

affair, and without the companies and bank accounts it would have been difficult to conceal diversion of funds.

The cost risks

9. The claim is for £8.9 million as at June 1987 which, with interest now amounts to £20 million. Legal costs to date have been some £450,000. Estimated further costs of going to trial are about £800,000. If the case is lost, the Officeholders might have to pay a further £300,000 to the defendants. To drop the case now may mean indemnity costs of some £200,000.

10. Possible outcomes are, therefore:

- i) victory for the Officeholders and recovery of £20 million;
- ii) victory for the Officeholders, at a cost of some £1.2 million, but little or no recovery because the assets are well hidden;
- iii) defeat for the Officeholders at a cost of some £1.5 million;
- iv) judging by other cases, a negotiated settlement out of court.

Legal Advice

11. The Officeholders and Clyde and Co (the Treasury's litigation advisers), held a consultation with Leading Counsel (Elizabeth Gloster) to consider the case. The case hangs on proving dishonesty. But Counsel believe that the prospects of success are good. The Officeholders are always very cautious and are clear that they would not use their own money to pursue the case having regard to the costs involved and chances of recovery. However, Leading Counsel thought that there was a good case for proceeding on public propriety grounds. No doubt she had in mind the demonstration effect in other cases. But this was, of course, a decision for the Treasury.

Comment

12. Officials have also had a separate discussion with the Treasury Solicitor and Clyde & Co to thrash matters through. Given the poor prospects for recovery, even if the case is won, the case for pressing ahead is poor. It might also be said that the Officeholders would be using their deep pockets for retribution against a person who has 'done no wrong' when, all things being considered, none of the Officeholders would use their own money to prosecute the case.

13. However, it is also clear that Mr Henwood in particular was able to use the Isle of Man companies to money launder Barlow Clowes investors' funds and has been less than open in aiding the Officeholders' investigations. Mr Henwood has been living a lavish lifestyle ever since. The funds which went through ITC and its companies in the 1980s formed a substantial part of their income. In addition, Mr Henwood and his lawyers have done all in their power to delay legal proceedings - though it is fair to say that the Officeholders have not given this as much priority as perhaps they should. (Initial legal proceedings by the Officeholders began in 1994.)

14. But there are also wider considerations here. Tactically, moving swiftly to prosecute the case might persuade Mr Henwood that the Treasury is serious. If the Officeholders win the action, his reputation would be damaged. Mr Henwood has claimed that he has no assets, though information obtained by the Officeholders has shown that he may have some £5 million available as he was considering buying an apartment in London. He is presently living a very comfortable lifestyle, therefore, claiming that he has no assets would call that into question and the Officeholders would have to bankrupt him. This would mean that his room for travel and doing business across the world would be restricted. All this might lead him to conclude that he could not risk a trial and make an offer of settlement

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beforehand. Our normal criteria for settling such cases is based on cost benefits, and to at least recover our costs.

15. Alternately, it is surprising the assets which defendants come up with when faced with an adverse judgement and possible bankruptcy. He might make an offer of settlement immediately afterwards. Either way, there are some prospects of at least recovering our costs, or bettering that.

16. On the wider public policy front, the Treasury, through the Officeholders pursuing recoveries of taxpayers' funds wherever they have gone, and for however long it takes, will send signals that there is no hiding place for money launderers and fraudsters. It would also send a strong signal that the Treasury is serious when other actions (about which we will consult you shortly) become public.

Conclusion

17. On balance officials believe that the wider public policy considerations outweigh the pure cost benefit analysis of the ITC case and that officials should authorise the Officeholders to prosecute the case.

18. Do you agree please?



From: [REDACTED]
To: OASIS07.PO07 [REDACTED]
Date: 18 May 2000 10:59am
Subject: Barlow Clowes -Reply

David

Thank you for the extra information. The EST has agreed to authorise the Officeholders to proceed with prosecuting the case in the Isle of Man.

[REDACTED]

Many thanks

[REDACTED]

>>> [REDACTED] 17/May/2000 05:10pm >>>

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