REVIEW OF THE INVESTIGATION AND CRIMINAL PROCEEDINGS RELATING TO THE JUBILEE LINE CASE

EXECUTIVE SUMMARY

1. On 22 March 2005 the case of *Regina v. Rayment* and others[1] (generally referred to as the Jubilee Line case), which had been running at the Central Criminal Court since 25 June 2003, was terminated when the prosecution announced its decision not to oppose a defence application to discharge the jury. Following the discharge, the prosecution indicated that it would not be seeking a re-trial of the six defendants and formally offered no evidence, both against them and against four other defendants in a related case that had been scheduled to follow. They were acquitted.

2. The collapse of a case that had been running for so long and at such public expense (over £25 million), without a jury reaching any verdicts on the merits, was the occasion of much public disquiet and widespread media comment. Immediately afterwards the Attorney General, Lord Goldsmith QC, announced in a written Parliamentary Statement that he was referring the matter to HM Chief Inspector of the Crown Prosecution Service (CPS) under section 2(1)(b) of the CPS Inspectorate Act 2000. The terms of the reference were:

   - to review the circumstances surrounding the prosecution commonly known as the Jubilee Line case;
   - to ascertain the factors leading to the decision to terminate;
   - to consider what steps the prosecution could have taken to avoid that outcome; and
   - to make recommendations aimed at preventing this happening again.

The nature of the case

3. In brief outline, the case concerned alleged fraud and corruption arising out of contracts for the construction of the Jubilee Line extension undertaken by London Underground Limited (LUL) in the 1990's. The two main defendants ran a quantity surveying firm and were said by the Crown to have corrupted certain LUL personnel in order to obtain financial information confidential to LUL, which they had then fraudulently used on behalf of a client contractor in relation to the original tendering process, and later on behalf of several client contractors in relation to claims against LUL arising out of contractual variations. With the exception of one defendant, who pleaded guilty on a limited basis to the charge alleging fraud in the tendering process, all defendants denied any wrongdoing. A fuller statement of their defences to these allegations is contained in the main report.

[1] The defendants were: Stephen Rayment, Mark Woodward-Smith, Paul Maw, Paul Fisher, Mark Skinner, Graham Scard and Anthony Wootton.

Summary of main findings

4. The decision to end the case was inevitable and was correct in the light of the authorities. Their application to the circumstances prevailing in March 2005 indicated that, as a matter of law, the point had well been reached when no jury could be regarded as having their own sufficient independent recollection, so as to be able fairly to assess contentious evidence that had been given as long ago as a year before, or in some cases 18 months before. Whether this particular jury did, in fact, have sufficient independent recollection to perform its task is a separate question which is addressed in the full report.

5. The size and nature of the case was not such as to make it intrinsically unmanageable before a jury. The fundamental reason the trial had to be terminated was because it had gone on too long.

6. The length of the trial was due to a number of factors, some avoidable, others not. The three most significant factors were:

   - the decision by the prosecution to include as count 2 in the indictment the alleged "variation of claims" conspiracy comprising all defendants except Paul Maw and Paul Fisher;
   - the slow and disjointed nature of the court proceedings, which meant that it took much longer to get through the evidence with the jury than is either usual or desirable; and
   - the illness of the defendant Mark Skinner, and the failure to resolve at an early date its effect on the progress of the trial.

7. One or even two of these factors might not have been sufficient to cause the collapse of the trial: it was the combination of them that was fatal. This outcome was not a systemic failure of the criminal justice system or the nature of jury trial. What happened was the cumulative effect of mistakes and shortcomings by agencies and individuals within the system. These mistakes and shortcomings tested the adversarial system, as well as the jury system, beyond breaking point. In relation to the slow and disjointed nature of the proceedings and the illness of Mr Skinner there were many matters that were outside the control of the Crown. Trial management may have played a part. However, following constitutional convention, the trial judge did not participate in the review, and it would therefore be inappropriate for the report to comment on that aspect.

8. It may be that there were aspects of individual defence cases that could have been handled differently and perhaps more expeditiously. But our terms of reference did not make it appropriate to examine matters which did not appear to have contributed significantly to the outcome. Moreover, we are conscious that the duties of the defence are different to those of the prosecution.

The findings in more detail

The decision to include count 2. (Conspiracy to defraud London Underground Limited)

(i) The essence of the Crown's case was that the defendants had conspired together to obtain confidential claims assessments and other commercially sensitive information from LUL and use it to advance the commercial interests of their client contractors and/or those of the claims consultancy, RWS Project Services Limited, at the expense of the commercial interests of LUL.

(ii) From an early stage in the investigation, the British Transport Police (BTP) took an important strategic decision: their investigation of this part of the case would not seek to establish whether false and dishonest claims had actually been made and paid, and thus whether LUL had in fact suffered loss. Instead, they sought evidence to establish that wrongful possession by the defendants of the confidential claims assessments created a risk that the economic interests of LUL would be damaged. This strategy was justified by their wish to avoid getting "bogged down" in examining a very large volume of claims documentation. At the same time, and for similar reasons, the BTP was reluctant, despite initial advice from the CPS, to engage the services of an independent quantity surveyor who could assist them with expertise relating to the claims process.

(iii) There were different views within the CPS as to the viability of the proposed conspiracy to defraud. Counsel, although somewhat ambivalent in his first advice, included it. The judge ruled before the start of the case that the count was good in law, and at the close of the prosecution case, that there was a case to answer. But count 2 lacked precision as to what was alleged and, as the case progressed, there were a number of changes in the way the Crown stated its position, in particular on what they accepted that they had to prove. At no point did they attempt to prove that any particular confidential document had been actually used by the defendants in any particular way. Their case, as finally formulated, was that the dishonest possession of these documents, and all the surrounding circumstances, raised an inference that the defendants intended to use them to the economic prejudice of LUL. However, it should have been foreseeable that the defence would seek to refute that inference by exploring both actual usage, and the extent to which the documents were capable of being used, having regard to the provenance of the information contained in them and the systems which operated for assessing and validating claims. It was inevitable that this would involve much detailed and repetitive examination of routine financial documents with witnesses.

(iv) The lack of particularisation, especially the decision not to attempt to identify any documents actually used or any claims actually affected, was one of a number of mistakes by agencies or individuals within the system, and it was a major factor both in delaying the trial (through the disclosure process and through argument about it); in lengthening the trial; and in increasing costs. The defence felt constrained, after gaining access to a large body of material relating to the contracts still in the possession of LUL, to embark on the inevitably protracted exercise at trial of seeking to prove a negative - namely, that the documents had not been used – and, moreover, that in many cases they were incapable of the kind of use suggested. Thus it was that this part of the trial came to resemble more the investigation of a case conducted in an adversarial forum than the prosecution and defence of a criminal allegation - with the slow rate of progress and frequent interruption that such a process implies.

(v) The result was that the evidence dealing with count 2 was spread over some ten months. Had it not been included the prosecution case would have been completed during October 2003 rather than August 2004, and in those circumstances the scope for other factors to have affected the trial would have been significantly less. Moreover, it did not add materially to the totality of the alleged criminality, particularly when account is taken of the concessions the prosecution were forced to make in the course of the evidence. There was no direct evidence to prove this count and it relied entirely on inference where the inferences which the prosecution wished the jury to draw were not the only ones that could have been drawn. It is difficult to invite the drawing of an inference in circumstances where the actual position could have been ascertained from the evidence but has not been investigated. Whether the jury could or would have convicted is not a matter appropriate for comment, but in the event of convictions this count would not have been a decisive factor in any confiscation orders that the judge might have made.

(vi) Throughout the relevant period (1997 to 2003), the CPS lacked a clear strategy for the handling of heavy fraud work. There was also a deterioration in clarity about responsibility for decision-making and therefore accountability. The CPS prosecutors responsible for the Jubilee Line case were being managed by others who were not expected to have specialised expertise, for example in fraud. Since the prevailing culture was to devolve exclusively to the case lawyer the responsibility for decision-making in all but a tiny handful of especially sensitive cases, the result was the breakdown in the supervision of, and accountability for, decision-making in major cases like this one. This flowed in part from the manner in which certain recommendations of the Butler Report, which had been accepted by Ministers, were interpreted. These factors produced a situation whereby the more senior lawyers up to level of the Chief Crown Prosecutor of Central Casework (latterly, the Director of Casework), and the Director of Public Prosecutions (DPP) himself, had little involvement with, or control over, individual casework. In the result there was no real awareness about this case until well after it had started to go badly wrong.

The slow and disjointed nature of the proceedings.

(i) The transcript of the trial shows a rate of progress through evidence which is strikingly slow even by the standard of other fraud trials. In part this was the result of the prolonged examination of repetitive documents, and a consequence of witnesses having to be given the documents in advance of their evidence to examine them outside court; but in part also it was because the case from a quite early stage simply lost momentum and itself became "bogged down".

(ii) These and other factors meant that the time spent sitting with the jury was greatly reduced. Thus, for example, in one month of sitting (January 2004) the jury sat for 15 of the available 18 days, but only for an average of less than one hour and 55 minutes out of the available (and normal) four and a half hours. There were also frequent interruptions: some caused by legal argument arising out of the nature of the evidence; some by illness of jurors and others, including members of jurors' families; holidays; paternity leave; and numerous other reasons. These events conspired so that in some months, such as December 2003 and April and July 2004, very little evidence was heard at all. Between 30 September 2003 and 16 August 2004 there were 80 days when the court did not sit for various reasons; and there were further holiday breaks totalling 28 days. These interruptions exceeded the number of days when evidence was called.

(iii) Some of these delays and interruptions were unforeseeable, or at least unavoidable, but there was a cumulative effect and the overall result was a steady increase in inertia and the inexorable lengthening of the trial. One of the lessons to be learnt from the case is that keeping the momentum of the proceedings going is sometimes difficult but always essential. The jurors themselves were subsequently to comment on the need for a more disciplined approach towards prompt and regular attendance - including by some of their own number.

The illness of a defendant.

(i) Very soon after Mark Skinner, the first defendant who had chosen to give evidence, had entered the witness box, he began to complain of symptoms associated with high blood pressure and was unable to continue. He was subsequently diagnosed as suffering from essential hypertension brought on by the stress of court proceedings and having to give evidence. After Mr Skinner's medical problems had persisted for some seven weeks, the prosecution - with good intention - funded a consultant to examine and treat him, providing periodic updates to the court. No criticism can be made of that consultant. However, the relationship between doctor and patient is not the same as that between a doctor and an individual whom he or she is examining on the instructions of a third party for the purpose of thoroughly testing fitness for a particular purpose. The judge accepted from the outset that Mr Skinner's illness was perfectly genuine and entirely unexaggerated. Nevertheless, both the prosecution itself and the court

would have been better served if the normal procedures had been followed whereby the defence had produced a medical report and, following that, a medical practitioner had been appointed by the prosecution to test the position. Mr Skinner's illness was one which was capable of being controlled by medication sufficiently for him to give evidence, but this could and should have been established sooner than it was.

(ii) The review has identified a need for a clarification of the procedures for dealing with the illness of defendants in criminal trials.

(iii) The illness of Mr Skinner, and the way it was dealt with, meant that in this case he gave only five days of evidence (in aggregate) over five months, while the proceedings remained otherwise in suspense. Illness of jury members and counsel, along with other problems during this period, produced further interruptions. Thus a case which, because of the foregoing two reasons, had already gone on far too long, was further stretched out beyond breaking point.

The jury

9. No responsibility for the inconclusive outcome of the case can properly be attributed to the capabilities or conduct of the jury. Overall, they discharged their duties in a thorough and conscientious manner, and the fact that the trial became unmanageable was not their responsibility. The case was not intrinsically of such seriousness or complexity that it would necessarily have been accepted by the Serious Fraud Office (SFO) as falling within its criteria for taking on cases. Nor is it a forgone conclusion that it would have met the conditions set out in section 43 of the Criminal Justice Act 2003 which (subject to implementation) enable a judge, with the approval of the Lord Chief Justice, to direct trial without jury. Although the termination of the case was the direct result of its length, that in turn was attributable to a number of factors, some of which were clearly avoidable. In addition, the case was formulated in a manner which added greatly to its length and complexity. Accordingly, although the collapse of the Jubilee Line case was regarded in many quarters as relevant to the debate about the suitability of juries to try charges of fraud, and in particular the proposal to implement Section 43 of the Criminal Justice Act 2003, its circumstances were in reality so unusual that it cannot be relied on to support either position in that debate. It was one of those cases which was intrinsically manageable but became unmanageable through a combination of the manner in which it was handled and other factors – some largely beyond the control of those involved; and the longer a case goes on the greater the risks become.

10. Seen from the perspective of the jury, the trial was a quite intolerable burden. Despite the determination of the senior judiciary and the Government that the length of trials should in future be contained, there will undoubtedly be, from time-to-time, some trials of substantial length. There is a need in such cases for more structured support for jurors, to enable them to plan more effectively and minimise disruption to their personal and family lives; and to provide

authoritative assistance in resolving difficulties directly attributable to the length of jury service. Without that, the problems which may flow from long periods of jury service are greater than those which a citizen can properly be expected to bear simply as part of civic duty. The Department for Constitutional Affairs (DCA) has recognised the special problems associated with lengthy jury service, and is considering the scope for enhanced support arrangements. The experience of this case suggests that support may need to continue after the conclusion of proceedings, to take account of the possibility of repercussions in relation to employment and careers which only emerge after, or extend beyond, the proceedings.

The way forward

11. The two primary purposes of a review of this nature are firstly to ascertain what went wrong and secondly to make recommendations aimed at preventing a recurrence. Chapter 11 of the report sets out the conclusion that the collapse of the Jubilee Line case was not the fault of the system, but the cumulative effect of mistakes and shortcomings by agencies and individuals within the system. Consequently, many of the "lessons" of this case are far from new, and in many instances the solution is better adherence to existing good practice. Moreover, the investigation and subsequent proceedings were spread over a long period from 1997 to 2005, with some of the key mistakes occurring at an early stage. Chapters 3 and 11 describe some of the steps already taken to strengthen the handling of serious casework in the CPS (including replacing Casework Directorate with three new Divisions) and the proposal to create a new specialist fraud unit.

12. However, there have been some other important developments since the conclusion of the Jubilee Line trial which could do much to reduce the risk of recurrence:

    (i) The Lord Chief Justice issued (on the same day the trial collapsed) a Protocol intended to supplement the Criminal Procedure Rules 2005 by summarising the pre-existing good practice and providing guidance on aspects of case management which can assist in reducing the length of trials of fraud and other charges resulting in complex trials. Had this good practice been followed more closely in the Jubilee Line trial the case would in all probability not have ended in the way that it did.

    (ii) Following on from the Protocol, the DPP announced arrangements to bring CPS practice into line with it. These changes were already in hand as part of the re-structuring of the work undertaken by the former Casework Directorate. He was also planning a restructuring of arrangements for dealing with much of the casework submitted to Headquarters in anticipation of the implementation of the Serious and Organised Crime Act. In essence - and where relevant to the review - the new arrangements introduce mechanisms whereby senior managers, up to the level of the DPP himself, must be periodically apprised of all potentially long and complex cases and of the issues in them. The review considers that these new arrangements must be complementary to, and not a substitute for, effective day-to-day supervision of large fraud cases.

(iii) The CPS has indicated its intention to transfer the handling of heavy fraud cases - previously referred to the Casework Directorate of Headquarters - to a new Fraud Prosecution Service, which will be part of CPS London. During the finalisation stage of this report evidence was received that the initial transfer of staff had occurred, albeit they were housed in temporary and unsatisfactory accommodation. In addition there is a firm commitment to additional funding, although the level of extra funding has not yet been determined. It will be a specialist unit structured to prosecute all fraud cases that are accepted in accordance with an established set of criteria and the initial estimate is for an annual caseload in excess of 205 cases. Plainly, it is too early for the review to comment on the effectiveness of the new arrangements, although subject to the caveat below these developments are welcomed. It is recommended that the successor body to HMCPSI (the Inspectorate for Justice, Community Safety and Custody) provided for by the Police and Justice Bill should make early arrangements to inspect the progress of the new CPS Headquarters Divisions, the Fraud Prosecution Service of CPS London and the functioning of Case Management Panels.

Other relevant issues

13. Fraud has undoubtedly been treated as the Cinderella of the CPS, particularly since 1997 when it ceased to be regarded as a specialism. If the CPS's stated determination to improve the handling of fraud cases is to be seen through a significant investment will be required, and there is a need to ensure that other forms of investment in the CPS, in particular that in relation to other serious crime, are not put at risk. A careful assessment of the requirements will be needed. Although a positive start has been made, there is more work to be done to determine the full scope and structure of the unit. This will involve the development of assumptions in terms of numbers of lawyers and accountants required and the number of cases involved.

14. Although the return to a specialised unit for prosecution of fraud allegations is a step in the right direction, the review has some reservations about whether a unit located within CPS London, but with a national remit, is the right solution. In particular a three-tier system (SFO, Fraud Prosecution Service, and CPS Areas) may be difficult to operate satisfactorily. An alternative approach might be to enhance the capacity of the SFO so that it can handle a wider range of cases than at present. The Fraud Review announced on the 27 October 2005 should therefore explore the feasibility of vesting in one organisation all those fraud cases investigated by the police which cannot be dealt with appropriately by the CPS Areas.

Recommendations

15. Taking account of those developments the review makes the following recommendations:

R1. Police forces should ensure that there are in place structured arrangements for the regular review of investigative strategy during major enquiries, such review being undertaken by a senior officer with relevant expertise (paragraph 11.30).

R2. There should be effective compliance with the requirement in serious and complex cases for the creation of a structured review note analysing the evidence and public interest considerations which underpin the prosecutorial decision (paragraph 11.52).

R3. Where it is proposed to charge conspiracy to defraud the CPS case lawyer must consider and set out in writing in the review note how much such a charge will add to the amount of evidence likely to be called both by the prosecution and the defence, the justification for using it, and the reasons why specific statutory offences are inadequate or otherwise inappropriate. Thereafter and before charge the use of the charge should be specifically approved by a supervising lawyer experienced in fraud cases. Equivalent procedures should apply in other prosecuting authorities (paragraph 11.88).

R4. A protocol should be developed establishing clear and well defined procedures for ensuring that full medical evidence is obtained at an early stage in relation to the illness of any defendant; this should include consideration by the prosecution of the appointment of a medical practitioner for the specific purpose of testing the position fully and in a forensic context (paragraph 11.67).

R5. In considering the enhanced support needed for jurors in long trials the Department for Constitutional Affairs should take into account the importance of:

- continuity in the individuals allocated to support the jury;
- forms of support which might not normally be within anyone's remit, such as minimising unnecessary trips to court;
- support from someone with the time and resources to deal with problems;
- keeping the jury informed;
- clear information about what they can expect as jurors and what will be expected of them; and
- the possibility of repercussions in relation to employment and careers continuing beyond the end of the proceedings (paragraph 11.14).

R6. Any dedicated fraud unit within the CPS should handle its casework within a framework which has, as a minimum, the following characteristics:

- fraud should be recognised as a specialism;
- there should be a multi-disciplinary approach with investigators, prosecutors (including counsel), accountants and other experts where appropriate working together as a team from a very early stage in the investigation;
- regular review of progress by the team internally;

- a senior prosecutor, in addition to the case lawyer, assigned to each case from the beginning of the investigation and remaining in overall charge of the case team throughout its life;

- senior prosecutors fulfilling this role have relevant experience and expertise and are able to provide effective day-to-day supervision and quality assurance through a "check and challenge" process; and

- the unit has an appropriate level of resourcing – both human and financial (paragraph 11.21).

R7. The establishment of the unit within CPS London to be known as the Fraud Prosecution Service should be preceded by a 'bottom up' review of the anticipated caseload and the resources needed for the effective discharge of its responsibilities (paragraph 11.26).

R8. The Fraud Review should explore the feasibility of vesting in one organisation the prosecution of all those fraud cases investigated by the police which cannot be dealt with appropriately by CPS Areas (paragraph 11.28).

R9. The establishment of Case Management Panels within the CPS must be treated as complementary to and not a substitute for effective day-to-day supervision and oversight of large fraud cases by suitably experienced managers with relevant expertise (paragraph 12.21).

R10. The Attorney General should consider with the senior judiciary the development of a procedure which would enable a truly comprehensive review of any case where things have gone so badly wrong as to render the trial unmanageable (paragraph 11.97).

R11. The new Chief Inspector for Justice, Community Safety and Custody should make early arrangements to inspect the progress and performance of the new CPS Headquarters Divisions, of the Fraud Prosecution Service of CPS London, and the functioning of Case Management Panels (paragraph 3.17).

Copies of the full report are available from the Corporate Services Group, HMCPSI, 26-28 Old Queen Street, London SW1H 9HP or from our wesbite: www.hmcpsi.gov.uk.

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