

HM CROWN PROSECUTION SERVICE INSPECTORATE

**INSPECTION OF THE LONDON CASEWORK UNITS
OF THE CUSTOMS AND EXCISE PROSECUTIONS OFFICE
(REPORT 22/04)**

EXECUTIVE SUMMARY

Introduction

1. This is Her Majesty's Crown Prosecution Service Inspectorate's (HMCPPI) report of the second inspection of the Customs and Excise Prosecutions Office (CEPO - formerly known as the Prosecutions Group). The fundamental purpose of the inspection was to review the quality of casework and casework processes in CEPO's three London-based casework units. CEPO was established in April 2002 in response to concerns about the appropriateness of the previous prosecution arrangements for Customs and Excise cases.

Context

2. HM Customs and Excise (the Department) was the subject of inquiries in 1999 and 2000 into the handling of two prosecutions. The Butler Report, following an inquiry in 2000, made a number of recommendations. A further review was set up to examine the relevant issues, and the subsequent Gower Hammond Report recommended that the Customs and Excise Solicitor's Office should retain its prosecution function, but that the Solicitor should be accountable for this function to the Attorney General. This resulted in the creation of a discrete unit known as the Customs and Excise Prosecutions Office.
3. In November 2002, as a result of major difficulties with a number of prosecutions, known as the London City Bond cases, a further review of the Department was set up. The subsequent Butterfield Report recommended that there should be a complete separation of the prosecuting function for the Department's criminal cases from the organisation itself, through the creation of a separate prosecuting authority. It is anticipated that CEPO will become an independent prosecuting authority in April 2005, headed by a new Director, who took up post on 6 December 2004.
4. The Gower Hammond Report had also recommended that inspections of the prosecution function of the Solicitor's Office be carried out by HMCPPI. It was in response to this recommendation that HMCPPI undertook a pilot inspection of the Manchester-based casework unit in 2002. During the currency of that inspection, circumstances arose which caused the Butterfield Review to be re-convened, and inspections of CEPO were put on hold pending the outcome. One of the recommendations in the Butterfield Report was that HMCPPI should inspect the new prosecuting authority, and that this role should be put on a statutory basis.

Scope

5. Against this background, an important issue for the inspection team was the extent to which the Gower Hammond recommendations had been implemented. In view of the forthcoming restructuring into an independent prosecuting authority, the inspection did not consider management and other operational issues, except to the extent that these aspects have a direct bearing on the quality of casework.

The London casework units

6. There is no geographical or functional alignment between the London casework units and the flow of work generated by Law Enforcement - cases flow into CEPO from investigators in any of the regions. However, the units generally handle cases which are dealt with in the Crown Court and magistrates' courts in the south of the country. The Unit Heads each have strategic responsibility for national topics, and in addition, two of the units include a national casework project team, for which the Unit Heads are responsible.
7. At the time of our inspection, the units had the equivalent of 120.5 full-time staff (nine of whom were working on casework project teams).

Main findings of the Inspectorate

8. The London units, and CEPO as a whole, have gone some way towards implementing the Gower Hammond recommendations. Furthermore, the move towards an independent office - following the Butterfield Report - has required a cultural change and a re-alignment of attitude in both agencies, which has to a significant extent been achieved. Above the level of the individual case, closer and more regular contacts have been developed between senior managers in CEPO and Law Enforcement about strategic issues. Progress has also been made in addressing issues of concern relating to disclosure, and CEPO has been closely involved in raising the level of awareness of the importance of disclosure issues amongst investigators. Even so, more work needs to be done to ensure that difficulties do not occur.
9. Because of the factors referred to below, we were not confident that lawyers were always able to keep fully abreast of, and in control of, all their cases. The size of cases they are required to handle has increased substantially - many are part of large-scale nationwide investigations, which can result in a number of separate cases with linked defendants or disclosure issues. Lawyers are more aware of the importance attaching to the discharge of disclosure obligations and CEPO has introduced project teams and other ways of collaborative working in linked cases. Nevertheless, lawyers' capacity to master all the developing evidence in cases is questionable, with poor accommodation and lack of a quiet environment not assisting.
10. The lack of a CEPO Business Plan and, consequently, lack of unit plans, means that CEPO's priorities have not been formally determined. Although Unit Heads discuss performance with their management teams on a regular basis, they will not be in a position to assess each unit's performance properly without consistent management checks, measured against targets in the Business Plan.

11. Pressure permeates throughout the units, and the level of supervision of the handling of cases appears to be limited. The overriding message appears to be that there is insufficient planning of work, and it is not clear if CEPO's capacity matches demand. It is clear, however, that lawyers are stretched to a point where they are not able to do their job properly. Further, the role of the lawyer is not closely defined - what is done by the lawyer on the one hand and counsel on the other varies from case to case, and on an ad hoc basis.
12. Factors currently constraining CEPO's progress include:
 - * insufficient staffing levels, with consequent inability to handle all cases within its remit;
 - * poor accommodation;
 - * lack of basic equipment such as photocopiers;
 - * lack of basic services such as couriers; and
 - * poor IT systems – half paper-based, with difficulties in retrieving management information.
13. In order to attain a level of performance which will command the confidence of the judiciary and other criminal justice agencies, there is a need for an external 'bottom-up' review of casework, to determine what resources CEPO should properly take, and what accommodation is required, in order to handle casework to the proper professional standard to which it aspires. This needs to be undertaken as a matter of urgency, in order to inform the work being undertaken on the creation of the independent prosecuting authority, and to ensure that it can deliver a level of service which will command confidence, particularly that of the judiciary and the legal professions, from the time of its inception.

Specific findings

Providing advice

14. The quality of advice is good - lawyers generally provide investigators with well-reasoned and detailed advice notes, including a clear indication that the Code for Crown Prosecutors has been applied. However, advices are not always provided promptly, and Unit Heads need to improve the systems to monitor timeliness. With the reduction in numbers of Investigating Legal Advisory lawyers (ILAs), there has been an increase in the numbers of pre-arrest cases advised upon. This has facilitated more effective direction of the progress of cases, and in focusing the scope of investigations.

Reviewing cases

15. Lawyers are making good, independent, decisions and there is now a clear understanding of the respective roles of CEPO and the Department. However, CEPO still needs to increase its credibility in the eyes of criminal practitioners and representatives of the other criminal justice agencies. Some of the policies CEPO has been obliged to adopt,

because of resource and other restraints, militate against being in control of their cases. Increasing magistrates' courts attendance by CEPO advocates, and Crown Court coverage by Case Managers who are familiar with the issues in a case, would go some way towards enhancing the confidence of external bodies in CEPO.

16. There is not always a clear audit trail of all decisions made in a case, and lawyers need to ensure that a comprehensive, reasoned, record is made. This may go some way towards improving continuing review of cases, and reduce the number of adverse cases where the acquittal could have been avoided, or action taken earlier.

Preparing cases

17. Once received by CEPO, committal papers are reviewed and prepared quickly. Managers are tackling the delay in submission of papers by Law Enforcement, but need to extend the recently introduced monitoring to include quality as well. Instructions to counsel do not generally include the reviewing lawyer's comments on the issues, so lawyers need to use the new brief template to add their views, in order to demonstrate to counsel that they are considering the cases and adding value to the process.
18. In order to address the disclosure issues arising out of linked cases, teams of counsel have been instructed in some large cases, and special counsel have been appointed to provide an overview in linked cases. Lawyers are pro-active in considering schedules of unused material and seeking clarification/amendment where necessary. There are, however, some inconsistencies of approach to disclosure, and the sheer size of some cases can prevent lawyers from being fully aware of all the issues. Managers need to provide further guidance on the approach to be taken, and the respective roles of lawyers and counsel.

Presenting Customs and Excise cases in court

19. The standard of advocacy in the magistrates' courts is satisfactory, although managers need to ensure that - where agents are instructed - papers are delivered to them in time to enable them to prepare fully. Advocacy in the Crown Court is generally considered to be good, although there are some concerns about the expansion of the list of counsel approved to prosecute CEPO cases. Increasing court coverage by Case Managers should enable more targeted monitoring to be undertaken.
20. The units have increased CEPO representation in court, including deployment of in-house lawyers with higher court advocacy rights at the Crown Court sitting at Croydon and Isleworth. However, there still remain a number of magistrates' courts venues where local Customs and Excise staff routinely prosecute, which is the equivalent of police officers conducting their own cases. It has now been recognised that the investigation and prosecution of offences should be handled separately, in order to bring a degree of objectivity to the process. Managers need to take steps to ensure that, at the very least, all cases for which CEPO is responsible are covered by either in-house advocates or agents. Coverage in the Crown Court is not provided for the whole of any trial, and the Case Manager or Case Support Officer who attends court is not always familiar with the issues in the case. Addressing this should enhance CEPO's reputation with others in the criminal justice system.

Relationships with internal stakeholders and others involved in the criminal justice system

21. The relationships with Law Enforcement on a strategic level are good, with Unit Heads having responsibility for national topics. There is generally appropriate consultation on casework decisions, although some tensions exist as a result of the move towards independence. There is some liaison with criminal justice partners at a local level, but the fact that there is no geographical alignment to the units (and indeed Law Enforcement) tends to reduce CEPO's impact. Consideration needs to be given to extend the designation of individuals as local contact points. Work has been undertaken to discuss listing issues with the Crown Court, and could be usefully extended to include the magistrates' courts.

The way forward

22. No additional resources have been made available to CEPO since the pilot inspection, yet there have been additional demands from the special project teams which have been set up, an increase in the size and complexity of cases, and the need for lawyers to spend considerable time in exploring disclosure issues. Other pressures include the resources needed for the handling of 'legacy' cases, which are cases that had been concluded, but have been re-opened because concerns about their original investigation and/or prosecution have subsequently surfaced. There has also been a reduction in staff resources available because of the work being undertaken on the change and independence programme. Managers need to ensure that the resources and accommodation required to deliver an effective and efficient prosecution service are determined as a matter of urgency.

Recommendations and suggestions

23. Inspectors have made ten recommendations to help improve the casework units' performance:
 1. Unit Heads develop and implement a system to ensure timeliness of advice, which should include provision for re-allocation where necessary (paragraph 3.11).
 2. Lawyers should keep cases under continuous review to take account of changes in the evidential position (or circumstances affecting the public interest test) (paragraph 4.15).
 3. Lawyers ensure that there is a clear record of all the decisions made during the life of a case, including review and disclosure decisions (paragraph 5.34).
 4. CEPO managers provide guidance on the handling of disclosure, in particular how to apply the Criminal Procedure and Investigations Act framework, and the respective roles of lawyers and counsel (paragraph 5.37).
 5. CEPO managers extend the monitoring of timeliness of committal and sent case papers submitted by Law Enforcement to include the quality of papers, and that operational meetings to discuss the results be held on a regular basis (paragraph 5.44).

6. CEPO managers:
 - * make available full guidance on custody time limits within the Case Management System, which should be re-enforced with training where necessary;
 - * introduce a manual back-up system on all units; and
 - * introduce checks to ensure that all Case Managers are consistently using SOLAR to alert themselves and the case lawyer to custody time limit review dates at least ten working days before the expiry date (paragraph 5.76).
 7. CEPO managers consider replacing SOLAR with a database that reduces duplication of effort, provides information and records in an easily accessible format, and enables production of performance indicators (paragraph 5.99).
 8. CEPO managers develop performance measures linked to the Business Plan, to ensure consistent and effective assessment of unit performance (paragraph 5.102).
 9. Unit Heads ensure that all magistrates' courts hearings in cases for which their unit is responsible are covered by CEPO (in-house advocates or agents); and that CEPO senior managers work towards the undertaking of advocacy in all Customs and Excise prosecutions (paragraph 6.8).
 10. CEPO managers commission an external 'bottom-up' review of casework, to determine the resources and accommodation required in order to deliver an effective and efficient prosecution service (paragraph 8.7).
24. Inspectors also suggested action be taken, but as a lower priority, on the following:
1. Managers ensure that after committal, where there is a need to serve further evidence, papers are reviewed and any necessary composite bundles served and, if appropriate, jury bundles prepared (paragraph 5.48).
 2. Managers perform periodic dip checks to ensure that SOLAR alerts are being properly used and actioned (paragraph 5.82).
 3. Managers ensure that separate files of correspondence are kept for each defendant in big multi-handed cases (paragraph 5.88).
 4. CEPO managers undertake work towards the reduction of resources used in the magistrates' courts, including taking steps to negotiate rationalisation of court lists (paragraph 6.10).
 5. Managers introduce a system whereby either files are delivered to agents - or relevant parts are faxed - the day before the court hearing, in order to ensure that agents are given the opportunity to prepare fully (paragraph 6.12).

6. Managers ensure that a clear, central record of the results of court hearings, including the bail status of each defendant and court directions, should be kept in or on the file (paragraph 6.33).
7. CEPO managers ensure that all out-of-court work undertaken by counsel is checked, and that case management planning is undertaken with counsel over reading and preparation time (paragraph 6.39).
8. CEPO managers extend the designation of individuals as contact points for court centres (paragraph 7.7).

The full text of the report may be obtained from the Corporate Services Group at HMCPS Inspectorate (telephone 020 7210 1197) and is also available online at www.hmcpai.gov.uk.

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