



**THE INSPECTORATE'S REPORT
ON
THE LONDON CASEWORK UNITS
OF THE CUSTOMS AND EXCISE
PROSECUTIONS OFFICE**

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Promoting Improvement in Criminal Justice

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1 INTRODUCTION

1.1 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). It has centred on the three London-based casework units.

Background to the inspection

1.2 Historically, HM Customs and Excise (the Department) was responsible for the prosecution of cases which it investigated. They were handled by the Solicitor to Customs and Excise.

1.3 The Department was the subject of inquiries in 1999 and 2000 into the handling of two prosecutions. The Butler Report, following the inquiry in 2000, made a number of recommendations. Two of which were:

- * Consideration to be given as to whether the Department should continue to conduct prosecutions; and
- * The need for an independent inspectorate (possibly HMCPPI) if the Department was to continue as a prosecuting authority.

1.4 A further review was set up to examine the relevant issues and was conducted by His Honour John Gower QC, assisted by Sir Anthony Hammond KCB QC. Their report, *The Review of Prosecutions Conducted by the Solicitor's Office of HM Customs and Excise* (the Gower Hammond Report) was published in December 2000. Fifteen recommendations were made which are set out in full at Annex 1. The Government has accepted all the recommendations in principle, but opted for a phased approach to implementation.

1.5 In direct response to the Butler Report, the 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, not to the Department's Commissioners or their Chairman (Recommendations 1 and 2). It also recommended that the Solicitor should have his own budget for his prosecution function, that it should - at the very least - be "ring-fenced", and that consideration should be given to his having his own Vote (Recommendation 4). This resulted in the creation of a discrete unit known as the Customs and Excise Prosecutions Office.

1.6 The Gower Hammond Report also recommended that inspections of the prosecution function of the Solicitor's Office be carried out by HMCPPI (Recommendation 5). It was in response to this recommendation that HMCPPI undertook a pilot inspection of the Manchester-based casework unit in 2002. The pilot report (No 16/2002) was published in November 2002.

1.7 In November 2002 a further review of the Department was set up, as a result of major difficulties with a number of prosecutions known as the London City Bond cases. The review was announced following the termination of proceedings in Liverpool Crown Court after a 35-day abuse of process argument. The Honourable Mr Justice Butterfield conducted the review, which focused in particular on disclosure issues and Departmental

investigation techniques. Two key issues for the review were, again, whether the Department should continue to investigate, and whether it should continue to conduct its own prosecutions.

1.8 The report, *Review of Criminal Investigations and Prosecutions conducted by HM Customs and Excise* (the Butterfield Report), was published in July 2003 and made 18 recommendations. In particular, two recommendations were made to address the key issues for the review, which we set out in the preceding paragraph. They were:

- * HM Customs and Excise should continue to have a separate role as an investigating force; and
- * There should be a complete separation of the prosecuting function for Customs and Excise's criminal cases from the organisation itself, through the creation of a separate prosecuting authority.

1.9 Four recommendations directly affect CEPO, and they are set out in full at Annex 2 (for ease of reference we have numbered them one to four). The Government has accepted these recommendations in principle, although they have not yet been implemented. In particular, legislation has not yet been introduced to create a separate prosecuting authority. However, work is being undertaken to do so - including the drafting of legislation - and 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*. In addition, from April 2003 the Prosecutions Group adopted the name of the Customs and Excise Prosecutions Office.

1.10 HMCPSI had put inspections of CEPO on hold after the initial inspection of the Manchester office, pending the outcome of the Butterfield review. One of the recommendations in the Butterfield Report is that HMCPSI should inspect the new prosecuting authority, and that this role should be put on a statutory basis. It is anticipated that the legislation creating the new prosecuting authority will also be used to place HMCPSI's inspection role on a statutory footing. The three London-based casework units have now been selected, to continue the work already commenced with the inspection of the Manchester-based unit.

1.11 The Government has also decided that HM Customs and Excise will merge with the Inland Revenue to form Her Majesty's Revenue and Customs, and steps to enable this to occur are in hand. As a consequence, it has been decided that the new prosecuting authority recommended by the Butterfield Report should also have responsibility for prosecuting offences currently prosecuted by the Inland Revenue. It will be known as the Revenue and Customs Prosecutions Office (RCPO).

1.12 The Government has also decided to create a new agency, the Serious Organised Crime Agency (SOCA), and the necessary legislation forms part of the programme announced in the Queen's speech on 23 November 2004. The Government hopes that it can be operational in 2006. Part of Customs and Excise's work (together with that from other agencies) will transfer into the new agency. When it is created, staff from the new prosecuting authority will share with the CPS the responsibility for prosecuting offences the agency investigates.

* Some of the casework functions of the Director have been discharged on an interim basis since 29 September 2004 by an Acting Director.

Customs and Excise Prosecutions Office

1.13 CEPO at present remains the responsibility of the Solicitor to HM Customs and Excise. It is structured into two distinct Divisions. They are:

- * Operations Division, which handles all work relating to criminal prosecution, save some international matters; and
- * Policy, Advisory and Quality Assurance Division, which contributes to the strategic direction for CEPO, provides legal information and training on prosecution issues, and undertakes thematic reviews and system checks, as well as providing guidance and advice on quality assurance measures, and advice and assistance in relation to international matters, including extradition and the European Arrest Warrant.

Operations Division

1.14 The Operations Division currently has six distinct units. Four of these are the casework units, dealing with all prosecutions. The remaining two units are:

- * Business Development and Support Unit, which consists of four teams. It usually provides business services (now temporarily being dealt with by the Solicitor's Office); handles the list of approved counsel and deals with payment of fees; deals with the registering of cases; and monitors court hearings.
- * Independence Project team, which is scoping and planning for CEPO's move to an independent prosecutions office and the merger with the Inland Revenue Crime Group (this team consists both of new appointees and staff seconded from the Business Management Team).

1.15 Three of the casework units are based in London, with the fourth in Manchester. In order to implement Recommendations 12 and 13 of the Gower Hammond Report, the Division has set up an Advocacy Unit. This is not a distinct unit, but is staffed by a contribution of lawyer time from two of the London units.

1.16 Until 1 April 2002 (when Operations Division was established), casework was allocated to teams which either dealt with a larger volume of less complex cases, or fewer, but more complex, cases. They have all now been structured into combined units, with staff dealing with all types of cases. Responsibility for line management of staff has been split into two parts, in order to provide developmental opportunities for Band 12 lawyers.

The London casework units

1.17 There is no geographical or functional alignment between the London casework units and 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. The Unit Heads each have strategic responsibility for national topics. In addition, two of the units include a national casework project team, for which the Unit Heads are responsible.

1.18 At the time of our inspection, the units had 120.5 staff (nine of whom were working on the case project teams mentioned above). The organisational structure can be found at Annex 4.

The nature and scope of the inspection

- 1.19 The fundamental purpose of the inspection was to review the quality of casework and casework processes in the three London-based casework units of CEPO. It was important to establish the extent to which the relevant Gower Hammond recommendations have been implemented, especially those relating to the independence of the prosecution process and case ownership; a synopsis is included at Annex 5. Particular emphasis was placed on testing the systems in place for ensuring that the lawyer in charge of a case - or a series of related cases - has knowledge of all the unused material, and of all the issues in that case (or cases) that are raised by the defence, so that they could discharge their obligations in relation to prosecution disclosure effectively. The degree of emphasis placed on this reflected the extent to which problems relating to disclosure have featured in the cases giving rise to inquiries, and harmed the reputation of HM Customs and Excise as a prosecuting authority. In view of the forthcoming restructuring into an independent prosecuting authority, the inspection did not consider management and other operational issues. However, we did consider, and comment upon, aspects of management and operations that have a direct bearing on the quality of casework, including an overview of the resource position.

Methodology

- 1.20 The inspection spanned several months, with inspectors visiting the units between 19 - 23 July 2004. Our methodology combined examination of 103 cases finalised in the preceding 12 months, observations in the magistrates' courts and the Crown Court, and interviews with members of CEPO staff at all levels, Departmental staff outside of CEPO, criminal law practitioners and representatives of criminal justice agencies. Some of the external consultees were sent questionnaires to complete. We also placed notices in *Counsel* and *The Law Society's Gazette*, seeking views from members of the Bar and solicitors.
- 1.21 Our file sample was made up of advice cases, withdrawn and stayed cases, judge ordered and directed acquittals, cases which were subject to custody time limits, and a random sample. The latter was selected in a manner which ensured that it included a full range of cases as regards type, size and complexity. A detailed breakdown of our file sample is shown at Annex 6. A list of individuals from whom we received comments is at Annex 7.
- 1.22 The purpose and aims of HMCPSI are set out in Annex 8.

Structure of the report

- 1.23 We have set out our findings, and make recommendations and suggestions to improve matters in chapters which reflect the key stages of CEPO's work:
- * Providing advice
 - * Reviewing cases
 - * Preparing cases
 - * Customs and Excise in court
 - * Relationships with internal stakeholders and others in the criminal justice system
 - * The way forward

2 SUMMARY OF INSPECTORATE FINDINGS, RECOMMENDATIONS AND SUGGESTIONS

Overview

- 2.1 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 realignment 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 in 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.
- 2.2 However, 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 lawyers are required to handle has increased substantially. Many of CEPO's cases 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. CEPO has introduced project teams and other ways of collaborative working in linked cases. Nevertheless, their capacity to master all the developing evidence in cases is questionable. The poor accommodation and lack of a quiet environment does not assist.
- 2.3 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.
- 2.4 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, however, clear 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.
- 2.5 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.

- 2.6 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.

Providing advice

- 2.7 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 (the Code) 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

- 2.8 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 increasing 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.
- 2.9 There is not always a clear audit trail of all decisions made in a case; 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

- 2.10 Once they are received by CEPO, committal papers are reviewed and prepared quickly. Managers are tackling the delay in the submission of papers by Law Enforcement, but need to extend the recently introduced monitoring to include quality of papers. Instructions to counsel do not generally include the reviewing lawyer’s comments on the issues, and 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.
- 2.11 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

- 2.12 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 approved counsel. Increasing the court coverage by Case Managers should enable more targeted monitoring to be undertaken.
- 2.13 The units have increased CEPO representation in court, including deployment of in-house lawyers with higher courts advocacy rights at the Crown Court sitting at Croydon and Isleworth. There still remain, however, a number of magistrates' courts venues where local Customs and Excise staff routinely prosecute. This 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

- 2.14 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

- 2.15 No additional resources have been made available to CEPO since the pilot inspection, and yet there have been additional demands from the special project teams which have been set up, the 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

- 2.16 The distinction between recommendations and suggestions lies in the degree of priority the Inspectorate considers should attach to its proposals. Those meriting highest priority form the basis of recommendations.
- 2.17 We recommend that:
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).

Suggestions

2.18 We suggest that:

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).

3 PROVIDING ADVICE

Introduction

- 3.1 Our inspection was concerned primarily with the quality and timeliness of the advice provided by unit lawyers in cases after arrest. We have also considered the circumstances in which unit lawyers may provide advice to Law Enforcement, prior to arrest.

The provision of advice

- 3.2 On 1 April 2002, in order to maintain appropriate separation between investigations and prosecutions, the responsibility for providing advice was split. Generally, all advice sought in relation to pre-arrest cases should be dealt with by the Investigating Legal Advisory lawyers (ILAs), who, unlike unit lawyers, advise on issues such as the use of investigative powers, including some cases which may never lead to a prosecution. Unit lawyers are primarily responsible for advice sought post-arrest.
- 3.3 At the time of the pilot report, CEPO had overall responsibility for the ILAs. However, the Butterfield Report has recommended that the work of the ILAs, whilst remaining within the Solicitor's Office, should be separated from CEPO completely. Although no final decision has yet been made, the responsibility for ILAs currently rests outside CEPO.
- 3.4 Further consultation between CEPO and Law Enforcement has led to a recent understanding whereby unit lawyers can be consulted in place of ILAs, in cases where investigations are being progressed with a view to prosecution. Although this is partly due to the limited number of ILAs currently in post, we welcome early involvement of unit lawyers. This ensures that those who ultimately will have conduct of the prosecution are able to direct the progress of the case, and focus the scope of the investigation on the relevant issues. It has the advantage of efficiency and timeliness, and eliminates the risk of inconsistent advice. However, it does also carry with it the risk that the decision-maker comes to the case with a prior interest in it. While on-site, we were told about two cases involving large operations, where Law Enforcement had sought such advice from unit lawyers. Although there were concerns about the timeliness of the request for advice (see chapter 7), in both cases, the resulting discussions had led to more clearly defined and focussed investigations, and had also facilitated the early involvement of prosecution counsel.
- 3.5 CEPO have made it clear, however, that where unit lawyers are consulted pre-arrest, any advice provided should be in place of, not in addition to, the advisory role of the ILA. This is to ensure that matters are advised on once only, and reduces the risk of conflict between, or the undermining of, the respective roles of the ILA and CEPO.

Quality of advice

- 3.6 We examined a sample of nine cases with a view to assessing the review decisions. All of the requests for advice were written requests submitted with a case file and typed written advice was provided. In all cases, both the evidential and public interest Code tests had been considered and properly applied. In one case, further information was sought appropriately before the advice was given.

- 3.7 In eight cases, the advice provided was well-reasoned and detailed, setting out clearly the basis of the decision-making and the information considered. In the remaining case, however, the advice was poorly reasoned and failed to cover significant evidential aspects. In addition, later advice provided by the reviewing lawyer to the case officer gave inaccurate guidance on the role of the investigator in pursuing all reasonable lines of enquiry, and on dealing with disclosure of unused material.
- 3.8 The Unit Heads allocate all advice cases, according to workload and experience, and allocation is considered to be fair. Monthly quality assurance checks are carried out in all units, as part of the ongoing monitoring of the decision-making and case handling of individual lawyers. No specific monitoring of the quality and timeliness of advice files is undertaken.

Timeliness of advice

- 3.9 CEPO has set a target for provision of advice within 15 working days of request in straightforward cases. In all other cases, the allocated lawyer should seek to agree a timetable with the case officer. It is important that case officers have access to timely advice in all appropriate cases, so that they can be progressed quickly. The provision of late advice can result in statutory time limits being missed, or lead to abuse of process arguments when a case eventually comes to court, as well as putting pressure on investigators and case officers.
- 3.10 We found that advice is not always provided promptly; three of the nine advices were subject to delay. All of the late cases were straightforward and, in each, the lawyer took over a month to provide advice once all the necessary papers had been received. In two cases, the delay was as a result of the original reviewing lawyer not being available to advise on the file. Although the cases were eventually re-allocated, this was after the set time had elapsed. In addition, a statutory time limit applied in one case. Despite the efforts of both the new reviewing lawyer and the case officer, the correct documentation was not received by the magistrates' court in sufficient time, and the case could not, therefore, proceed. There was also no documentation on the file to indicate that the case officer had been notified of the change of lawyer, or the reason for the delay, until the advice was eventually provided.
- 3.11 Administrative systems in place to monitor timeliness should be improved. It is appreciated that papers are not always complete at the time of initial submission, and that some investigations are lengthy, but there appeared to be no mechanisms to chase up officers for outstanding papers. Further, lawyers did not appear to be agreeing timetables with officers for the submission of further papers, and the provision of advice, in the complex cases in our sample.

RECOMMENDATION

Unit Heads develop and implement a system to ensure timeliness of advice, which should include provision for re-allocation where necessary.

4 REVIEWING CASES

Introduction

The Code tests and implementation of Recommendation 6 of the Gower Hammond Report

- 4.1 We examined the quality and timeliness of the decision-making at various stages in the progress of cases. The Code for Crown Prosecutors gives guidance to Crown Prosecutors on the general principles to be applied when making decisions about prosecutions, but its principles are also followed by all non-CPS prosecutors. CEPO lawyers are, therefore, required to take all decisions in accordance with the principles set out in the Code to the extent that they are relevant to cases conducted by Customs and Excise. The most fundamental aspect of the Code is the twin criteria for the institution or continuation of proceedings: first, there must be sufficient evidence to afford a realistic prospect of conviction; secondly, the circumstances must be such that a prosecution would be in the public interest.
- 4.2 Prior to 1 April 2002, whilst lawyers were responsible for making the final decision in relation to the evidential test, it was Customs and Excise administrators who were responsible for determining the public interest test. The Gower Hammond Report recommended (Recommendation 6) that this should change and that the lawyers in the Solicitor's Office should make decisions on whether or not to prosecute, and whether to continue prosecutions, after seeking the views of an administrator - where appropriate - on matters of policy and the public interest. It was recommended that lawyers should always consult an administrator before making a decision in relation to cases with a revenue aspect. The Recommendation has been fully adopted.

Other aspects of review

- 4.3 In the inspection process we examine not only the substantive decision whether to prosecute, but a number of ancillary decisions, such as whether to oppose bail. Other issues considered are: the extent to which the correct charge is identified; how effective a unit is in ensuring that lessons from cases are shared with all lawyers; and the soundness of its systems for recording decisions, and reasons for them, on files.
- 4.4 Assessing the quality of legal decision-making can be difficult. Decisions frequently turn on legal or evidential issues that are essentially matters of professional judgement. It frequently occurs that different lawyers do, for perfectly proper reasons, take different views in relation to the same case. Our assessment in relation to quality of decision-making, therefore, considers whether the decision taken was one that was properly open to a reasonable prosecutor having regard to the principles set out in the Code and other relevant guidance. A statement that we disagree with a decision means that we consider it was wrong in principle; we do not "disagree" merely because inspectors might have come to a different conclusion. Against this background, we set out our findings.

Quality of review

- 4.5 We examined a total of 56 cases covering proceedings in the magistrates' and the Crown Court. Almost without exception, we found that the Code had been applied appropriately at both initial and committal review. The decision to proceed was in accordance with the Code in all 56 random sample cases. It had also been applied appropriately at committal review in all 49 relevant cases in random sample, and in 16 out of 17 judge ordered and judge directed acquittals. In the one case where the Code had not been correctly applied (a judge directed acquittal), the case proceeded to trial despite the reviewing lawyer having identified that there was insufficient evidence to provide a realistic prospect of conviction against one of the two defendants.
- 4.6 The Gower Hammond Report recommended that urgent consideration should be given to improving CEPO's working conditions, including accommodation (Recommendation 8). At the time of the review, the offices were found to be cramped, overcrowded and noisy, and they were not considered suitable for lawyers engaged in complex and demanding casework.
- 4.7 The accommodation (responsibility for which rests with the Department) in the London office remains poor. It is still not a suitable working environment for the review and handling of large and complex cases. Nor does it enhance CEPO's reputation with those who visit the office (including counsel and Customs and Excise staff). We comment further on the standard of accommodation in Chapters 5 and 8.

Monitoring

- 4.8 The Case Management System (CMS) requires managers to undertake "risk-based" checks, but does not specify the type and frequency. Managers in two of the units undertake monthly checks of two cases per lawyer and Case Manager. In the third unit, managers undertake a weekly check of all cases due in court the following week. This provides a check to make sure that cases are ready for court, with all necessary review and other work undertaken, and also provides managers with the opportunity to measure the quality of individuals' work.
- 4.9 This does not assist in ensuring a consistent performance across the units, nor does it enable Unit Heads to measure their unit's performance against other units or overall targets. We comment further on this aspect in the next chapter, under the heading "Performance indicators and performance measurement".

Allocation and caseload

- 4.10 Unit Heads and the Band 12 line managers allocate cases to lawyers according to their caseload and experience. Larger, more difficult, cases are allocated to an experienced lawyer, sometimes with a less experienced lawyer as junior/second. This is a sound idea in principle, but resources appear to have reduced its value in terms of the assistance the junior lawyers are able to provide, and the mentoring the experienced lawyers can undertake.
- 4.11 Even the "simpler" cases can involve difficult disclosure issues, and many cases are both voluminous and complex. Managers consider that CEPO cases are becoming more difficult, and that because of resourcing issues some lawyers have to be given cases that they may not be sufficiently experienced to handle.

- 4.12 The size of cases, and the overall caseload held by individuals, can mean that lawyers have only an ‘overview’ of a case and that, consequently, they are not in a position to make all the decisions in that case. This can result in the role of counsel becoming that of the effective decision-maker, rather than being an advisory one. Not only does this detract from case ownership, but it may also have an impact on a lawyer’s ability to deal with disclosure issues properly. We should make clear, however, that we found lawyers to be committed and hardworking, and we acknowledge their wish to be fully involved in decision-making in their cases.
- 4.13 Many of CEPO’s cases are part of large-scale nationwide investigations, which can result in a number of separate cases with linked defendants or disclosure issues. We commented in the pilot report about the need to ensure that such cases are allocated in a way that maximises consistency of decision-making, particularly with regard to the disclosure of unused material. CEPO has now moved towards more linking of cases and issues. These linked cases (and indeed any major cases) are managed as projects, with contributions from teams of lawyers and Case Managers. We comment further on this progress in the next chapter, under the heading “Disclosure”.

Continuing review

- 4.14 We found limited endorsement of continuing review decisions, although it is clear that lawyers are seeing additional evidence as investigators submit it, and before it is served by way of notice of additional evidence.
- 4.15 Some lack of continuing review is evidenced by the fact that CEPO could have done more to avoid the acquittal (or taken action earlier) in four out of the nine judge ordered and directed acquittals where the reason for the acquittal was foreseeable. The CMS does not specify the need for any further review of all the evidence in the case, either before committal or before trial. The nature of Customs and Excise prosecutions is such that investigators continue to gather evidence right up to the beginning of a trial, and even during the prosecution case. Therefore, a case of any complexity can change considerably between first review and trial. Evidence that was expected does not always materialise, or it is not in the form it was envisaged; the converse may also apply. There thus arises a need for a further review of the totality of the evidence, in collaboration with prosecution counsel.

RECOMMENDATION

Lawyers should keep cases under continuous review to take account of changes in the evidential position (or circumstances affecting the public interest test).

Selection of the appropriate charge

- 4.16 We found that, generally, the appropriate charge is being selected. The case proceeded on the correct charge in 54 out of the 55 cases in the random sample.

Bail

- 4.17 Most applications for bail by a defendant appear to be dealt with by Customs and Excise officers. These applications require legal decision-making about their merits and can be robustly resisted by defence lawyers. We consider that the use of officers to deal with them is inappropriate, and that lawyers or counsel should handle them. We commented on this practice in the context of Manchester Airport cases in the pilot report, and are disappointed to see that it still exists. Although there are resource implications, it is fundamental that an independent prosecuting authority should have conduct of its cases.
- 4.18 The current file jacket does not lend itself to a detailed endorsement of bail applications and decisions and currently, there is no clear, central, record of bail hearings on or in the file. There is often no CEPO lawyer at magistrates' courts hearings (a theme we develop in Chapter 6), so it is particularly important that there should be such a record.

Independence

- 4.19 Over two years has expired since the implementation of Recommendation 6 of the Gower Hammond Report. We were pleased to find that there is now a much clearer understanding of the roles of CEPO and Customs and Excise than at the time of the pilot inspection. We had no concerns about independence of decision-making in the cases in our file sample, to the extent that circumstances enables CEPO staff to trace them.
- 4.20 Some external concern was expressed about a perceived lack of CEPO independence. We think that this could be due in part to the limited court cover by CEPO lawyers in the magistrates' courts, and insufficient CEPO representation at the Crown Court. In addition, behaviour at court suggests that some investigators have too much influence on the CEPO representative at court.
- 4.21 There also has to be some limitation on the extent that CEPO lawyers can be masters of their cases, because of the pressure on resources and the fact that CEPO is not represented at court throughout trials. As we stated in the pilot report, increasing Crown Court coverage by Case Managers with knowledge of the case should help to dispel this perception. Increasing cover by in-house lawyers at the magistrates' courts would also assist in enhancing the reputation of unit lawyers as independent decision-makers, and enable them to be in control of their cases.

Withdrawn cases and cases stayed under the Customs and Excise Management Act 1979

- 4.22 We examined six cases which were stopped by CEPO - four cases were withdrawn and the remaining two were stayed. The decision to terminate was made in accordance with the Code in each case. The decision was timely in four out of five cases, but we could not ascertain the position in the sixth.
- 4.23 The power to stay cases is now vested in the Solicitor, the Head of CEPO and the Head of Operations. The new procedure is set out in the CMS, which we comment on at the beginning of the next chapter. Although the circular with guidance for the old procedure was still in the Annex at the time of our inspection, we understand that this has since been amended.

Review endorsements

- 4.24 The CMS introduced a Case Decision Record, on which lawyers are required to record their review decisions.
- 4.25 The quality of review endorsements is variable, and there is no consistency in the use of the Record. In our file sample, 30 out of 54 cases had a satisfactory or better initial review endorsement. Some endorsements were poor, and there were only one or two cases in the sample where there was a full, centralised, record of all relevant case decisions. Bearing in mind the fact that a significant proportion of CEPO cases are complex, inspectors would have expected to find more detailed review endorsements.
- 4.26 The reason for an acquittal or decision to terminate is not always set out clearly in the file. This was the case in four out of the 17 judge ordered and directed acquittals, and in one of the six terminated cases.
- 4.27 We were told that managers have encouraged a greater use of the Case Decision Record, so we looked at a number of current cases while on-site and saw some recent examples of much more thorough Records. However, continued efforts need to be made to ensure that they are, indeed, a comprehensive record of all decisions made in a case, and that they do not just cross-refer to the fact that decisions have been made or action taken.

Learning from experience

- 4.28 Instructions to counsel include a request for written reasons for any unexpected acquittal, and these are usually provided where appropriate. These adverse case reports, together with any comments from the Case Manager/Support Officer at court, and/or the reviewing lawyer, are considered by the Unit Heads. The reports are not kept on the case file, but the Unit Heads maintain adverse findings folders with the reports. It would assist if the reports themselves were kept on the case files, in order to provide an audit trail. Two of the three adverse findings folders showed consideration of the issues and learning points, but in the third folder, there was only very recent evidence that issues had been actioned and/or considered. Adverse results are also included in the Unit Heads' monthly situation reports to the Head of CEPO.
- 4.29 The Unit Head is required to consider the merits of holding a case conference with counsel and the investigator after each acquittal. If a case conference is to be held, Law Enforcement Professional Standards (a Departmental unit) are provided with a copy of counsel's note, and a representative invited to attend the meeting. All acquittals that occurred in 2003 were analysed.
- 4.30 Legal and CMS bulletins are circulated regularly. Judgements in CEPO cases are also circulated routinely, raised at unit meetings, and discussed at management team meetings. However, as CEPO staff are not at court throughout the whole of proceedings, they are not able to be in control of their cases, nor are they in a position to provide feedback on general issues relating to the handling of prosecutions and any legal issues arising. We accept that Unit Heads are pro-active in circulating rulings and judgements they are aware of, but they need to rely on counsel notifying them of results, or on transcripts of rulings.

5 PREPARING CASES

General

- 5.1 Good quality decision-making is of limited value if the subsequent handling of cases is not thorough and efficient. In this section, we consider the performance of the unit in relation to specific stages in the progress of cases, from the institution of proceedings through to their conclusion.
- 5.2 CEPO uses a Case Management System to provide a comprehensive framework for dealing with case preparation across the full spectrum of their work. The CMS contains instructions on case preparation and assurance checks, and sets out areas of responsibility across the units. We comment below on areas where it could be developed.
- 5.3 The roles and responsibilities of investigators and CEPO are defined to some extent in the *Mutual Understanding of Responsibilities between Law Enforcement and Customs and Excise Prosecutions Office in Relation to Criminal Casework* (the MUR). We discuss the extent to which the MUR is adhered to, and areas where it could be developed, in the next two chapters.

Advance information

- 5.4 It is a legal requirement that advance information is provided in either way cases and, in practice, it is usually provided in summary only cases as well. In many instances, investigators provide advance information before case papers are passed to CEPO. The MUR guidelines require a copy of what has been served by an investigator to be provided to CEPO and the CMS requires CEPO to keep a record of what has been served. However, there was a record on the file of what had been served as advance information in only 26 of the 43 relevant cases in the file sample.
- 5.5 It is important that a proper record is kept of when advance information is served - and what is included - to provide assurance that the prosecution has complied with its statutory duties. The prosecution is also likely to be disadvantaged in dealing with subsequent queries if it has no record of what material has been served on the defence. CEPO managers will wish to take steps to ensure that the CMS guidelines are complied with.

Disclosure of unused material

Overview

- 5.6 Over recent years, CEPO cases have increased in size, and have become more complex. What would have been considered to be a large case in the past would now seem a very modest one. As a result, we understand that up to 80% of lawyers' time is spent on disclosure issues.

- 5.7 Notwithstanding the time invested, responsibility for ensuring scrupulous compliance with the prosecution's obligations of disclosure is an onerous one. The potential sources of unused material are many and varied, including some outside the Department itself. The task of identifying and marshalling this material falls to the investigators, who must ensure that it is revealed to the prosecutor. There is, therefore, a heavy degree of dependency on investigators for ensuring that all potentially disclosable material is identified and considered by the prosecutor. The scope for omission, for whatever cause, is considerable. It is incumbent on the prosecutor to scrutinise carefully both the schedules and the actual unused material put forward, and to prompt and advise the investigator if it appears that anything may have been overlooked.
- 5.8 In making our assessments as regards the performance of CEPO, we have had regard to this dual responsibility for scrutinising what is actually put forward, and the extent to which advice was given to assist investigators in the discharge of their duties. Even so, the size of the cases and the fact that much, if not most, of the unused material remains at all stages of the process in the hands of the investigators, means that our conclusion must be read in that context.
- 5.9 CEPO has worked hard to improve its performance in relation to disclosure and, in particular, to address the issues arising out of linked cases. Teams of disclosure counsel have been appointed in some of the bigger cases. Special counsel - with an overview role - have also been instructed in relation to a series of linked cases, to inform those conducting one case what may be relevant and disclosable from the others. This happens in particular for fraud cases involving the importation of high value goods, and money laundering cases.
- 5.10 We considered CEPO's handling of disclosure within the parameters described above in 46 cases. These cases were drawn from our random sample, and included the List A cases, as well as those where a QC or Standing Counsel had been instructed. These were all cases which were concluded relatively shortly before our inspection, so that disclosure issues would have been addressed with the recommendations of previous reviews - notably Gower Hammond and Butterfield - in mind. They did not include any of the 'legacy' cases.

Primary disclosure

- 5.11 Overall, the quality of unused material schedules is good, with lawyers being pro-active in asking for clarification from Law Enforcement and seeking any necessary amendment.
- 5.12 Primary disclosure was dealt with appropriately in 39 out of 46 cases in the unused material sample. In five of the seven cases where it was not dealt with appropriately, lawyers disclosed material that did not fall to be disclosed under the statutory regime - it was supplied on a voluntary basis. The unsatisfactory aspect of this is that it transfers to the defence the responsibility for sifting the material and the prosecution may be disadvantaged if it hands over material which it has not itself fully considered. In the remaining two cases, the lawyer did not examine potentially undermining material before primary disclosure was made. In one instance, this material was not disclosed to the defence.

- 5.13 Timeliness of primary disclosure is an issue in some cases. It does not appear to be served until well after committal, even where the lawyer has dealt with it at the time of committal preparation.
- 5.14 At the time of the pilot inspection, we commented upon the lack of a target in the draft MUR for the service by CEPO of unused material upon the defence; it still does not set such a target.

Secondary disclosure

- 5.15 The draft MUR did not set deadlines for the submission by Law Enforcement of secondary disclosure schedules, nor did it set a target for the service by CEPO of secondary disclosure upon the defence. The amended MUR still does not set any targets and, as we stated in the pilot report, we consider that CEPO needs to consider agreeing deadlines with Law Enforcement, and setting targets for service of both primary and secondary disclosure by the units.
- 5.16 Secondary disclosure does not fall to be made until a defence statement is served. We were pleased to note evidence of lawyers chasing up defence statements where appropriate.
- 5.17 Secondary disclosure was dealt with appropriately in 27 out of 38 relevant cases in the unused material sample. There was no Disclosure Officer's report and certificate in 11 cases – secondary disclosure should not be made unless these documents are received and considered. There were three cases in our sample where potentially assisting material was not disclosed to the defence. We also had concerns about one case where what was clearly potentially assisting material was provided on a “voluntary” basis, and the formal secondary disclosure letter indicated that there was no assisting material.
- 5.18 We noted from the files in our sample that some lawyers appear to ask counsel to advise on secondary disclosure as a matter of course, but that others do not. It is a perfectly proper approach to seek such advice from the counsel who is instructed to represent the prosecution at the Crown Court, but we consider that there needs to be a more consistent approach, and that the respective roles of counsel and the lawyer need to be clarified.
- 5.19 On the other hand, it appears that at court a more pragmatic and conciliatory approach is sometimes taken. This may be occurring because counsel is not always supported at court by a member of CEPO staff and, therefore, CEPO is not able to ensure that the Criminal Procedure and Investigations Act (CPIA) provisions are properly applied.

Sensitive material

- 5.20 Sensitive material was dealt with appropriately in 37 out of 44 relevant cases in the unused material sample. We could not ascertain the position in two of the remaining seven cases.

- 5.21 The evidence generally from the file sample was that the querying of sensitive schedules - that is, reasons for sensitivity - is good. We noted some items are included on sensitive schedules, with Disclosure Officers relying on the argument that operational methods and/or liaison with other agencies needs to be protected, in circumstances where we did not consider this to be justified. Lawyers need to be astute in testing this.
- 5.22 There does not appear to be any consistent practice in whether the sensitive material is actually viewed, although there is an expectation on the part of managers that it is. Some lawyers look at all the material, while others do not, but rely on counsel to do so. In many cases, actually seeing the items would not only more clearly demonstrate whether they undermine the prosecution case or assist the defence case, it would also often reveal any real lack of sensitivity.
- 5.23 We saw some examples of sensitive schedules being well and conscientiously endorsed, and others where they had not been fully endorsed or signed. We also noted lawyers being pro-active in considering what papers they might not have seen – this was clear in 33 out of 38 relevant cases in our sample.
- 5.24 There were two cases in our sample where late revelation led to the cases being stopped. In one case, CEPO offered no further evidence part way through a trial. In the second, CEPO offered no evidence prior to the trial commencing.
- 5.25 The quality of judgment in relation to cases involving sensitive unused material was generally good. We saw in one case an example of written submissions and explanations prepared for a Public Interest Immunity (PII) application. The issue is not awareness of what needs to be done about the material, but simple knowledge of it, and of its relevance.
- 5.26 In type III PII applications (where notice of the application is not given to the defence, and they are not represented at court), lawyers do not have to get the approval of a senior manager, although we note that it is expected that Unit Heads would know about any such applications. There is also no central register. We consider it to be essential that the appropriateness of any applications is monitored, that the Director is given notice of any proposed applications, unless that is precluded by circumstances.
- 5.27 Members of the judiciary expressed some concern over the approach to what is sensitive material, and how that information is shared with other agencies. Particular concern was raised in relation to the policy of neither confirming nor denying whether or not a defendant had been investigated as the result of information received, as opposed to some other reason. Inspectors understand the reason for such a policy - indeed it is one that is applied by other agencies, including the CPS and the police - but it is a policy that requires careful explanation. The evidence we gathered suggests that there may be scope in some cases for better presentation of the arguments by counsel.

Preston material

- 5.28 The regime under the interception of communications legislation is such that the material can only be retained for so long as it is needed for the authorised purpose(s) and, therefore, should be destroyed at an early stage when the investigation is in progress. This means that, generally, any material generated as a result of an interception is no longer in existence at the time of any prosecution. The law prohibits the introduction in evidence, or the disclosure to the defence, of any material that might exist.

- 5.29 Occasionally, not all this material is destroyed and, in such circumstances, prosecutors have to decide whether proceedings can fairly continue without disclosure of the material, at least to the trial judge. Such material is referred to as “Preston material” because the legal issues relating to its handling were considered by the House of Lords in its judgement in *R v Preston [1994] 2 AC 130*. Statutory provision (section 18, Regulation of Investigatory Powers Act 2000) now permits a judge to order disclosure to him or her alone. That procedure is likely to be invoked where a prosecutor feels that a judicial view should be sought as to what may be necessary to secure the fairness of the proceedings.
- 5.30 We saw evidence on the files of conferences being held with counsel where Preston material existed, and of notes being made – even though these were then retained on the file. There remain some issues around what is recorded, and where any record is kept. There is a variable practice about whether notes of conferences are made and, if they are, where they are kept. We consider that there needs to be a decision-making audit trail, and that any information or documentation needs to be held securely.

Security of unused material

- 5.31 We had concerns about the handling and storage of sensitive material at the time of the pilot inspection, and we continue to have concerns about its security. We saw highly sensitive material and information in some files in our sample. Sensitive material schedules are kept in separate envelopes, but there is no consistent approach or system for keeping sensitive material. We have already referred to the poor standard of accommodation. There is limited storage space and, as a result, CEPO is not in a position to store all sensitive material and schedules separately from the files. We consider that this sort of material should be separately stored. The Quality Assurance Team (QAT) issued a report on Disclosure in September 2003. One of its recommendations was in relation to the issue of storage of sensitive material, and still remains to be addressed.
- 5.32 CEPO does not have a secure email system to counsel’s chambers, and we were concerned to see the inclusion of sensitive information in such emails. We consider that managers should explore the possibility of entering into secure email arrangements with counsel’s chambers and other criminal justice agencies. In the meantime, staff should be advised not to send sensitive information by email, or indeed by post.

File management

- 5.33 The way unused material and related documentation is kept made it difficult to follow the disclosure trail. As stated above, sensitive material schedules should be kept in a separate envelope within the file. The CMS does not, however, contain instructions for the storage of other schedules and material. It would assist anyone looking at a file to establish compliance with the disclosure provisions if all documentation relating to disclosure (other than any sensitive information, as described above), including related correspondence, was kept in a separate folder within the file. CEPO needs to consider this, and to revise the CMS as appropriate. The QAT report on Disclosure includes a recommendation that consideration be given to adopting a record sheet or folder for larger, more complex, cases. The good practice set out in HMCPSI’s Report on the Review of the Disclosure of Unused Material (Thematic Report 2/2000) may assist further.

- 5.34 The recording of decisions on the Case Decision Record – that is, with explanations and reasons - is not comprehensive. We found that there is a tendency to certify only that disclosure has been done, rather than the decision and reasoning behind it. We commented upon the need to have a comprehensive record of review decisions in the last chapter, under “Review endorsements”. This applies equally to decision-making in relation to disclosure.

RECOMMENDATION

Lawyers ensure that there is a clear record of all the decisions made during the life of a case, including review and disclosure decisions.

Commentary

- 5.35 There are issues in relation to the late revelation by Law Enforcement to CEPO. We have already referred to the two cases in our sample where late revelation led to the cases being stopped. CEPO is dependent on the Department to reveal the existence of material to them. But there is also a need for lawyers to consider material carefully, as items that are revealed may well provide an indicator that other material may or must exist, or that issues need further probing. In these circumstances, lawyers need to be pro-active in probing the issues when dealing with disclosure. This explains, in part, why lawyers spend so much time considering disclosure issues. It also means that there is scope for case planning conferences to be a more useful tool in relation to disclosure issues.
- 5.36 CEPO managers told us that the policy is to apply the statutory tests strictly, although in practice we found that this is not applied consistently. As we have already stated, in five cases in our sample, lawyers supplied material that did not strictly fall to be disclosed. We have also commented on the fact that lawyers do not always examine all the sensitive material themselves.
- 5.37 When lawyers are dealing with a number of complex cases it can be difficult for them to assimilate all the details sufficiently to carry out either primary or secondary disclosure properly, even with the best of intentions. Added to this, is the problem that the interrogation of computers and the tracking of documents by the Department is not at an advanced stage. Disclosure is inevitably, and rightly, dealt with at a relatively early stage, but this means that the lawyer will still be learning about the case. CEPO is not always represented at court and may not become aware of later developments, which put what at one time seemed an irrelevant item in a significant new light. We would encourage a practice of adhering firmly to the CPIA framework, but would advise erring on the side of disclosure where there are borderline items and issues of interpretation.

RECOMMENDATION

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.

- 5.38 Overall, all aspects of disclosure were dealt with appropriately in 35 out of 44 (79.5%) cases in the unused material sample. In general terms, this compares favourably with the average performance of CPS Areas to date in our current inspection cycle, and is a similar finding to that for CPS Casework Directorate (who handle cases of a similar complexity and specialist nature).

Summary trial preparation

- 5.39 There are not many summary trials, because of the nature of most of the cases prosecuted by CEPO, and accordingly we did not see many files where there had been a summary trial. At the time of the pilot inspection, we commented on the fact that timescales for the submission of summary trial papers were not contained in the MUR (which was then in draft form) and note that the MUR has not yet been amended to include them. As we stated in our last report, we consider that timescales should be agreed with Law Enforcement.

Committal and “sent” case preparation

Timeliness

- 5.40 Once the necessary information is received from Law Enforcement, committal papers are prepared and served in a timely fashion. We considered service to be timely in 45 out of 50 cases in our random sample. However, it is not uncommon for files to be submitted to the units close to the committal date.
- 5.41 The receipt, preparation time and date committal papers are served is recorded on a spreadsheet to enable CEPO to tackle the problem of timeliness. With the co-operation of Law Enforcement, the timeliness of receipt of papers by CEPO has been monitored since April 2004, and problem cases are raised at the Regional Managers meetings. This is a welcome initiative, but it is still too early to ascertain its impact. The aim is for the meetings to be held two or three times a year, but this has not always been achieved. More frequent meetings, perhaps at an operational level, might be more immediately productive. We comment further on this initiative in the section below.
- 5.42 Some difficulties are being encountered in preparing committals because of poor quality photocopiers and problems with the reprographics department. We comment further on this problem under the section entitled “Office systems” later in this chapter.
- 5.43 There is currently no central system for monitoring service of committal papers, or the service of papers in indictable only cases sent to the Crown Court for trial. Instead, Case Managers rely on the SOLAR computer system alerts. These are set up when files are received by CEPO, and when the date for committal or service of the papers is known. Further, CEPO does not keep a record of the number of applications made to extend the time for service of papers, or the number of committals discharged because they are not ready, or extensions refused. Although we accept that there may not currently be an issue in relation to committals being discharged because they have not been prepared, or applications for extensions being refused, there clearly is an issue in relation to timeliness of service of papers on the defence. Managers need to consider whether the current system of setting alerts should be extended to include monitoring in relation to the service of committal and sent case papers on the defence.

Quality

- 5.44 We have commented above upon the welcome initiative to monitor the timeliness of receipt of committal papers from Law Enforcement, but consider that this should be extended to include monitoring of the quality of papers submitted. At present, the only qualitative check is that undertaken by lawyers when making their initial review, or when preparing committal papers. Although lawyers do take the opportunity to correspond with Law Enforcement to raise issues in individual cases, the lack of central monitoring is reducing the possibility of learning wider lessons across Law Enforcement and CEPO.

RECOMMENDATION

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.

- 5.45 The quality of committal bundles in routine cases sent to court is generally good, and bundles are quality checked before they are served. However, the quality of larger cases is more problematic - evidence may be served piecemeal, which gives the impression that the papers have not been considered by CEPO, as they are not always paginated or indexed.
- 5.46 CEPO aim to provide the defence with a courtesy bundle of papers at an earlier stage in larger cases, if committal preparation has not been undertaken. In these circumstances, although the evidence will have been considered by a lawyer, the papers may not be paginated or indexed. It is important that, if this occurs, the status of the papers is made clear to the defence. It is also important that a formal committal bundle, properly prepared, is served upon the defence as soon as possible and, in any event, well before any trial. It may also be prudent to agree a timetable with Law Enforcement and the defence for service of papers in large and complex cases.

Notices of Additional Evidence

- 5.47 Many of the cases CEPO deals with are complex, and are generally not trial-ready at committal. This means that additional evidence is often required after committal, and on occasions investigations continue up to, and during, the trial. This can result in numerous Notices of Additional Evidence (NAEs) being served. However, CEPO needs to be alert to the need to ensure that as much evidence as possible is obtained and served in a timely way.
- 5.48 We accept that it will always be necessary for some evidence to be served by way of NAE. It is important that, where this does occur, the papers are paginated in a way which makes the chronology of the case clear. This may simply require continuous pagination of NAEs, to follow on consecutively from the committal bundle and any earlier NAEs. In other cases, it may be necessary to re-paginate all the papers and serve a composite bundle before trial. This could also be an appropriate time to prepare and serve jury bundles, if counsel's advice on what to include has been received. It will be necessary, however, for CEPO to take into account the legitimate needs of others in the process, such as judges and defence practitioners, and to look for different ways of handling jury bundles, which may vary from case to case.

SUGGESTION

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.

Indictments

- 5.49 Case Managers draft simple indictments, with the remainder drafted by lawyers or counsel, depending upon the complexity of the case. In our random sample, counsel had drafted 17 of the 52 indictments.
- 5.50 There are template indictments on CMS to assist in their drafting. Thirteen out of the 35 indictments (37.1%), where we could ascertain the position, had been amended. Although some amendments were to correct avoidable errors, others were made because the nature of the case had changed, or to add more defendants (who had been committed for trial at a different time). The proportion of amendments made is higher than the average performance of CPS Areas in our cycle-to-date. The quality of indictment preparation can be seen as an indication of the thoroughness of review, and therefore can have an impact on the view taken by others of the quality of decision-making by CEPO. It is therefore important that lawyers ensure that indictments are drafted which properly reflect the evidence in the case.

Instructions to counsel

Quality

- 5.51 We examined 55 sets of instructions to counsel. We found 28 to be satisfactory or better (50.9%), 19 were less than satisfactory, and a further seven were poor. These are poor findings and do not compare favourably with the performance in CPS Areas in our cycle-to-date.
- 5.52 Generally, in the instructions we saw, there was no attempt to identify or analyse the issues. Most referred to the officer's case summary by way of analysis of the facts, but, by definition, this will not be concerned with the legal issues. It may well have been submitted before most of the evidence was gathered, at the time of the first hearing in court. There was also no reference to acceptability of pleas. Given the complexity of CEPO cases, we would have expected a better quality of instructions. We have acknowledged elsewhere in this report the work that CEPO lawyers are undertaking on their cases – the instructions we saw do little to demonstrate that they are in control of them.
- 5.53 Until July 2004, CEPO was using templates for instructions to counsel, containing a lengthy set of standard paragraphs relating to the conduct of the case. We commented in the pilot report on the fact that the use of standard paragraphs, coupled with a failure to properly address issues in a case, could result in counsel bypassing the instructions altogether. At the time of our last inspection, a new brief template was being considered, but it has only just been introduced. The new instructions will contain case-specific information, with standard instructions being collated separately. In addition, the template has a free text part, which should act as a reminder to lawyers and Case Managers to address the issues in a case and acceptability of pleas.

- 5.54 A Record of Review form is sent out to counsel with the instructions in each case. Counsel is asked to record their review of the evidence and the treatment of unused material. In practice, this is rarely completed and is not chased up. The form is a useful way of receiving an indication from counsel that they agree with the reviewing lawyer's view of the case, and the decisions in relation to unused material. It can also ensure that any additional work required is highlighted at an early stage. CEPO managers need to ensure that steps are taken by Case Managers to secure the return of completed forms.

Timeliness

- 5.55 Briefs are generally delivered in sufficient time for counsel to consider the evidence and issues in the case. We found that counsel was nominated in a timely fashion in 53 out of 54 cases in our random file sample, and that instructions were delivered in time in 47 out of the 52 cases where we could ascertain timeliness.

Plea and directions hearings

- 5.56 The MUR does not contain any guidelines about attendance at plea and directions hearings (PDHs). In practice, they are not always covered by CEPO representatives (although we comment in Chapter 6 on the good use of in-house advocates covering PDHs at the Crown Court in Croydon and Isleworth). Where PDHs are covered, they are properly noted.
- 5.57 PDH orders were complied with in 32 out of 37 relevant cases in the random sample. CEPO was at fault in only one of the five cases where there was a failure to comply with the orders. In the other four cases, either counsel or Law Enforcement were at fault.
- 5.58 Except in the most simple cases, the prosecution is not trial-ready at PDH. As we have already noted, the nature of the cases leads to a number of NAEs having to be served after committal, partly due to inevitable delays in obtaining forensic and foreign evidence. In our random sample, the case was not trial-ready in 18 out of 47 cases.

Conferences with counsel

- 5.59 The Gower Hammond Report identified the problem of investigating officers liaising direct with counsel, to the exclusion of the lawyer responsible for the case, and recommended that conferences with counsel should only be arranged by a member of the Solicitor's Office (Recommendation 9). It also recommended that all conferences should be attended by a lawyer or a suitably trained and experienced support staff member, save in very exceptional circumstances (Recommendation 10).
- 5.60 CEPO has implemented these recommendations (subject to the comments we make below). Case officers and counsel have been given clear instructions that the responsibility for arranging conferences rests with CEPO, and that a CEPO representative should always be present. We saw abundant evidence of conferences at which CEPO was present: they were represented at 37 of the 40 conferences held in cases in our file sample (we could not ascertain the position in one case). Lawyers attended conferences in 25 cases, and Case Managers in 12.

- 5.61 There were two examples in the file sample where conferences had taken place without CEPO. However, there was also an example of a conference that CEPO cancelled as they had not arranged it. Senior managers have taken positive action to stop conferences being arranged without their involvement, including writing to the Head of a set of barristers' chambers where there was a particular problem.
- 5.62 CEPO aim to send Case Managers (or Case Support Officers) to cover trials at the Crown Court until the close of the prosecution case. This is not always achieved, and the defence case is rarely covered (we comment further on this in Chapter 6). As CEPO are not present throughout the trial, it is possible that ad hoc conferences take place between the officer - who is usually present throughout - and counsel, without CEPO being present. Where a Case Manager or Case Support Officer is present at court, they may not be able to contribute positively to the discussions if they do not have knowledge of the case and its issues. Our court observations would suggest that the CEPO representative at court is not always familiar with the case (see Chapter 6), something that the Unit Heads will wish to address.
- 5.63 The CMS requires that the main points of the conference, and any decisions taken, be recorded on a Conference Record form. We found that conferences are being recorded in detail, with many files containing good typed notes and action points.

Provision of information for pre-sentence reports

- 5.64 Prompt provision to the Probation Service - in appropriate circumstances - of details of the prosecution case and the criminal record of the defendant, assists in the preparation of a timely and balanced report for the court's use when sentencing the defendant.
- 5.65 The CMS now contains guidance on when pre-sentence information should be provided in cases committed for trial. This is a welcome improvement since the pilot inspection, although it would be useful if guidance were included for automatic provision on cases committed for sentence.
- 5.66 The information should be sent to the Probation Service at the same time that committal bundles are prepared and served, although we did not always find it easy to ascertain if it had been served. It was provided in 27 out of 31 cases in the random sample - and served promptly in 26 of the 27 - but the position was not clear in a further 11 cases.

Custody time limits

- 5.67 Custody time limit (CTL) provisions regulate the length of time during which an accused person may be remanded in custody in the preliminary stages of a case. Failure to monitor the time limits and, where appropriate, to make an application to extend them, may result in a defendant being released on bail who should otherwise remain in custody.
- 5.68 We examined a total of 15 cases which were subject to CTLs, looking at the time limits imposed in both the magistrates' courts and the Crown Court. We also considered the units' CTL systems.

- 5.69 Expiry dates are calculated using a ready reckoner and the information should be recorded on the front of file. The expiry dates were accurately calculated in ten of the 15 cases. Of the remaining five, the expiry date was incorrectly calculated in two instances, and in the other three, there was nothing on the file to show that it had been calculated. Two cases had stickers on front of the files which were not completed, and there was no other CTL information on the file. In the final case, the Crown Court expiry date had not been entered.
- 5.70 Expiry dates should be clearly marked on the front of the file so they can be easily identified. The first date of hearing and the expiry dates were sometimes also written on the case history sheet. In two cases, the front of the file and the case history sheet showed different expiry dates. Space has now been provided on the front of the new file jacket and managers should ensure this is used to record CTL information.
- 5.71 The CMS gives only very rudimentary guidance on CTLs and omits essential information. It does not, for example, explain when CTLs may need to be re-calculated, or give guidance on dealing with appeals against the refusal to extend CTLs. Nor does it make it clear that CTLs apply to defendants and charges, rather than cases. In our file sample, there were two cases with no separate calculations for individual defendants, where they should have attracted different expiry dates. We understand that a recent failure arose when a defendant was re-admitted into custody after having been released on bail, but his previous time in custody was not taken into consideration when calculating the time limit.
- 5.72 Case Managers are responsible for setting SOLAR alerts for themselves and the case lawyer ten working days before the expiry date. Alerts had been set for Case Managers in ten of the 15 cases, but only seven of these were also set to the case lawyer. However, all but two alerts were for seven days before the expiry date, rather than the ten days set out in the CMS. This does not give enough time, particularly in the Crown Court, to ensure that applications are sent within the statutory time limits. We understand that some Case Managers use electronic reminders, but there needs to be a consistent system. All Case Managers should use SOLAR alerts set for ten working days before the expiry date.
- 5.73 At present, only one unit has a back-up system, whereby a record is kept electronically and then saved on disk. This is checked weekly by senior Case Managers, but they rely on individuals informing them of the existence of CTL cases and their progress. Some information can be obtained from electronic diaries and from checking SOLAR, but this can be time consuming. Another unit is in the process of introducing a back-up system, but they should all have a centrally managed manual back-up system, to ensure that review dates are acted upon in the absence of the Case Manager and lawyer, or if there is a problem with the SOLAR system.
- 5.74 The CMS includes a standard application to extend CTLs and an accompanying letter. These give guidance on ensuring that all relevant information is included, and includes a summary of the history of the case. We saw two full applications to extend CTLs: one was well drafted and had been sent to the lawyer for approval, but the other had been drafted and signed by a Case Manager without the approval of the case lawyer who noted there was some detail missing from the chronology. The application had been granted. We also saw two cases where insufficient notice had been given for applications to extend the CTLs, although they were within good time of the expiry date.

- 5.75 Although hearing endorsements generally made the custody status of defendants clear, where CTLs expired before trial dates there were no notes on file to confirm that the court had been canvassed for a fixture within the time limit. In one case, there was no endorsement as to the outcome of an application to extend CTLs for one of three defendants whose committal was delayed to one day after the expiry date.
- 5.76 The CMS should set down proper guidance for the management of CTLs in all circumstances and should be updated as a matter of urgency. Managers will also wish to consider further training. The guidance set out in the *Essential Actions and Good Practice Guide* issued by the CPS may assist the Unit Heads and CEPO in devising a consistent system and amending the CMS.

RECOMMENDATION

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.**

The Case Management System

- 5.77 The CMS directs the work of CEPO. It gives a generally comprehensive description of systems and processes and sets out the roles and responsibilities of each grade. Systems and processes are supported by standard template documents, which can be accessed electronically and, in some circumstances, attached to the electronic file within SOLAR.
- 5.78 CEPO managers have encouraged the use of CMS and the electronic file. In particular, they have ensured that the Case Decision Record is completed electronically in the majority of cases. This is then printed for the file and signed by the reviewing lawyer.
- 5.79 There is a 'notes' page available on the electronic file that can be used to record actions taken on cases and details of any telephone calls. However, this is not used routinely. At present, there is no document used as an audit trail for out-of-court work, although the Good Practice Committee is currently considering proposals to extend the use of the Case Decision Record for this purpose. The Good Practice Committee need to continue their efforts to find a suitable way of recording an audit trail on the file.
- 5.80 SOLAR alerts are used to warn Case Managers and lawyers of impending hearing dates and required actions, for example, the receipt of case papers, service of further evidence, and the expiry of CTLs. Our examination of the alerts set for our sample of CTL files suggests they are not used consistently.

- 5.81 As soon as SOLAR is opened, all alerts for that day appear on the screen. However, once the case has been opened the alert will disappear, whether or not any action has been taken. Alerts could therefore be ignored or forgotten, particularly in very busy periods. To combat this problem, some Case Managers use an electronic diary, as reminders set under this system need to be acknowledged before they disappear. Whilst this is helpful, it should be used in addition to SOLAR, rather than as an alternative. Other staff opening the electronic file may not have a full understanding of any actions that need to be taken.
- 5.82 Although the system contains a lot of very useful information, it has a limited ability to extract strategic management data. It can print some reports, but they are rarely used, as the system is very slow and they are not produced in a user-friendly format. This is unfortunate as the ‘overdue alert’ report could prove very useful. We comment further on the use of SOLAR under “Performance indicators and performance measurement”.

SUGGESTION

Managers perform periodic dip checks to ensure that SOLAR alerts are being properly used and actioned.

The role of the Case Managers

- 5.83 Senior Casework Managers no longer have their own caseload. They supervise the work of the units by maintaining centralised records, allocating cases and court coverage, and performing management checks. Recently they have been asked to take on more human resource and budgetary duties from the Business Management Unit, as most members of that unit have been seconded to the Independence Programme. This aspect of their work is impacting on their ability to handle more complex aspects of casework. It has also reduced the time they have to manage their units, and to train staff and monitor their performance.
- 5.84 The role of the Casework Managers is fairly well defined: they manage the progress of the case, while the lawyers make the decisions. There is some flexibility in answering defence correspondence and requesting further evidence, which largely depends on the experience of the Manager and the complexity of the case. However, for most standard procedures the responsibilities defined in CMS are adhered to.
- 5.85 Case Managers are not able to attend court with their cases as often as they would like due to a reduction in their numbers and an increase in the number of large operations. In order to maintain their work in the office, court coverage is increasingly shared between the units or covered by Case Support Officers.

The role of the Case Support Officers

- 5.86 There appeared to be little difference in practice between the roles of the Band 2 and 3 Case Support Officers, except that Band 3 officers attend court. While this can be a good way of widening their experience, care must be taken to ensure they are not asked to cover cases outside their experience. In addition, it is likely that they will not be familiar with the case they are covering in court. We comment further on this aspect in the following chapter.

File management

- 5.87 Although the use of SOLAR, and the recording of decisions on the system, has increased, maintaining both a manual and electronic file is proving challenging. The outcome of case hearings is recorded in two different ways. It is endorsed on a manual case history sheet if a member of CEPO is in court. Otherwise, information regarding the outcome of a hearing is obtained from counsel or the case officer, and recorded on SOLAR. This can be printed as a case history sheet, but it does not produce a complete narrative of court hearings. It is therefore very difficult to follow the chronology of events from the file.
- 5.88 In multi-defendant cases it can be hard to follow the case history. This is due in part to the difficulties in ascertaining court results, which is exacerbated where there are different results at different times, but is also because of the way correspondence is filed in CEPO cases. Not only is there a large volume of correspondence in multi-handed cases (those with more than one defendant), but there is also duplication of documentation. Hard copies follow faxes, and all emails appear to be printed. Keeping separate files of correspondence for each defendant could assist in the audit trail.

SUGGESTION

Mangers ensure that separate files of correspondence are kept for each defendant in big multi-handed cases.

Office systems

- 5.89 The Quality Assurance Team issued a report on File Location in April 2002; many of the issues raised in that report appear to have been dealt with. Case files are no longer sent to court unless a member of CEPO staff is to be present. A system has been introduced to track files sent and returned from court, and senior Case Managers keep their own electronic diaries of Crown Court hearings. We were told that cases are generally returned from court in good time, and that finding cases within the office is not an issue.
- 5.90 Problems remain, however, with the storage of finalised cases. Assurance checks are not always completed, which can result in incomplete files, or those containing sensitive information or material being sent for storage. This can create a security risk, as storage facilities are not intended to hold sensitive material. There is also a problem in relation to inaccurate details about file location, particularly when a case has to be stored in a number of boxes. This could create difficulties when case files need to be retrieved for any purpose, such as for an appeal, and indeed led to difficulties in the retrieval of some of the files required for our sample. CEPO managers will wish to ensure that assurance checks are undertaken when files are being prepared for long-term storage.
- 5.91 The units all register and monitor certain types of post, such as case papers and defence statements. One unit registers all post to identify when it was received, when it was delivered to the unit, and when it was passed to the Case Manager or lawyer. This helps to identify delays, and ensures that the mail is delivered to the right person. It also ensures that if the Case Manager or lawyer are absent, urgent post is passed to someone else to deal with. This could be extended to the other units.

- 5.92 The MUR guidelines are that correspondence is dealt with promptly, and in accordance with the Departmental deadline of ten working days. Letters which relate to legal issues are not always answered, and we saw two cases in our sample where such letters were not dealt with properly. In one case, the correspondence was simply not dealt with and in the second, there was unreasonable delay in responding. CEPO managers will wish to consider extending the monitoring referred to above, to include checks on the timeliness of response to letters.
- 5.93 The mailroom is not managed by CEPO. It contacts the service responsible for delivering files to court and arranges couriers. It is closed for part of the morning to enable all post to be opened and franked, but as CEPO's greatest need for couriers is to send urgent papers to court in the morning, this can cause difficulties: it is often necessary for staff to use taxis to deliver papers.
- 5.94 Due to the volume of papers in some cases conducted by CEPO, it is important that proper photocopying facilities are available to staff. Of the three photocopies available, two are old and constantly break down, and the other often becomes overheated because of overuse. Bundles containing more than 50 pages are supposed to be sent to the outsourced reprographics unit that is shared by the rest of the Department. In practice, this is not always possible because bundles are needed urgently and they are unable to meet the tight deadlines, or the content of the copying is sensitive.
- 5.95 The importance of these basic activities should not be underestimated. It is essential that staff are provided with access to basic equipment and support services to enable them to perform their duties properly. Problems such as photocopying and outgoing post may appear trivial, but ultimately they affect the quality and timing of papers being served on other parties, and the production of professional jury bundles.

Workload coverage

- 5.96 The central contact point on each unit appears to work well, helping to ensure that telephone calls and urgent post are dealt with in the absence of the lawyer/Case Manager. In addition, when Case Managers are absent, use is made of a printed list from SOLAR which shows the next date of hearing for each case, and any actions required.

Performance indicators and performance measurement

- 5.97 Information on hearing outcomes and workloads is contained in Casework Count Performance Reports. These Reports are based on information obtained from SOLAR in relation to workloads (cases received, closed, and in hand), and Case Hearing Reports giving information on outcomes that are supplied by the casework teams. These reports are printed from SOLAR at the conclusion of the case, and after any significant hearings, such as a committal or transfer, but their accuracy varies across the units. These are forwarded to the central registry and entered into a spreadsheet that is used to inform the Report. A check is also made of the hearing diaries held by the warnings team, to ensure that all the Case Hearing Reports have been supplied.
- 5.98 Given that all of this information is actually contained within SOLAR, this is labour-intensive and duplicates collation and extraction of information on case outcomes. However, SOLAR is not able to produce the data automatically. In February 2004, the QAT produced a report on Performance Indicators, in which they concluded that consideration should be given to the replacement of SOLAR with a database that

enables production of performance indicators; inspectors agree with this assessment. CEPO managers need to ensure that they consider this need when providing input to Departmental plans for a unified IT system that is likely to replace SOLAR. In the meantime, regular stock-takes are needed to ensure that accurate and up-to-date information is contained on SOLAR.

- 5.99 We commented upon the difficulties in using both the case file and SOLAR to record information in the section headed “The case management system”. SOLAR’s benefits are very limited, and the parallel systems are extremely cumbersome. It represents a major weakness in CEPO’s management of cases.

RECOMMENDATION

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.

- 5.100 The type of measures, and some of the definitions, in the Casework Count Performance Reports need to be reviewed, to ensure that the description is accurate - for example, conviction rate defined as a proportion of contests. In fact, they include guilty pleas, although this is only made clear in the graphic representations. Withdrawn, no evidence offered and stayed cases are measured in a single unit, and are not included as adverse results, while ‘lie on file’ cases are. Nor do measurements capture all the information that would be useful – for example, there is no measurement of the termination rate, or of cracked and ineffective trials.
- 5.101 As we stated in Chapter 4, the CMS does not specify the type and frequency of the risk-based checks that managers should carry out. Such an approach does not assist with working towards a consistent performance across the units. In addition, managers are often asked to supply figures that are not collated on a regular basis, for example information relating to certain types of cases, such as confiscation hearings. Collecting data in this ad hoc manner can cause problems for those staff asked to supply it.
- 5.102 Units should be working towards, and measuring their performance against, the same key targets, linked to the Business Plan. At the time of our visit, the Operations Division had not prepared a Business Plan (although we have since been given a draft). As a consequence, there were no casework unit Business Plans, which has put the Unit Heads at a disadvantage in properly measuring the performance of their units. There should be a standard set of management information, supported by consistent management checks, to enable managers to assess each unit’s performance properly. Additional checks and targets could be added to support unit plans, targeting areas for improvement where necessary.

RECOMMENDATION

CEPO managers develop performance measures linked to the Business Plan, to ensure consistent and effective assessment of unit performance.

6 PRESENTING CUSTOMS AND EXCISE CASES IN COURT

Court locations

- 6.1 The majority of Customs and Excise cases are heard at courts near to their main centres of work. This illustrates the nexus between the principal court centres and work centres:

Work centre	Magistrates' Courts centre	Principal Crown Court centre
Port of Dover	Folkestone Dover	Canterbury Maidstone
Gatwick Airport	Crawley Haywards Heath Horsham	Croydon Kingston
Heathrow Airport	Staines Uxbridge	Guildford Isleworth Southwark

- 6.2 Cases arising from the Port of Dover are allocated between the Crown Court sitting at Canterbury and Maidstone. Cases involving allegations of money laundering or the importation of controlled drugs are dealt with at Canterbury, with tobacco and alcohol smuggling cases heard at Maidstone.
- 6.3 Other court centres which cover points of entry into England and Wales or, for example, districts or areas in which VAT fraud occurs, also deal with Customs and Excise cases. However, this will be a small proportion of the work compared with the courts in the table.

The magistrates' courts

Court coverage

- 6.4 The Gower Hammond Report recommended that Customs and Excise investigating officers and local staff should no longer have rights of audience in the magistrates' courts, and that all prosecution proceedings in those courts should be conducted by qualified lawyers or appropriately trained Solicitor's Office staff (Recommendation 15).
- 6.5 Whilst CEPO has gone some way towards achieving this Recommendation, there still remain a number of magistrates' courts venues (particularly Uxbridge) where local Customs and Excise staff routinely prosecute.

- 6.6 CEPO lawyers, or counsel instructed to appear as agents for them, prosecute all cases at Haywards Heath Magistrates’ Court (video-link cases) and most cases at Dover Magistrates’ Court, but deployment of CEPO lawyers in these courts is reducing as workload increases. Where the court list is particularly light, local staff may be used at Dover Magistrates’ Court. However, initial remand hearings are heard at Folkestone and Crawley Magistrates’ Courts, and are dealt with by local Customs and Excise staff. The initial decision about whether to apply to remand the defendant in custody is not, therefore, made by someone independent of the investigation. Whilst we accept that the nature of these cases is such that an application to remand in custody is almost always the correct course, the current approach prevents there being an independent review of the case before the first hearing. Efforts to introduce a review stage before the first hearing have proved unsuccessful.
- 6.7 Possible options being considered by CEPO are to instruct solicitor agents or members of other prosecuting authorities to act in those courts where resources do not allow CEPO coverage. This would potentially resolve the issue concerning initial remand hearings at most court centres, but would not address the position at Uxbridge Magistrates’ Court.
- 6.8 The Bill to introduce an independent CEPO envisages that it will be responsible for court hearings in every criminal Customs and Excise case before the courts. This will include all magistrates’ courts hearings, and Customs and Excise officers will lose their rights of audience. Additional resources will, of course, be necessary before CEPO could undertake this work. We understand that provision has been made in the legislation being drafted for suitably trained caseworkers to appear in magistrates’ courts. In the meantime, however, CEPO needs to work towards covering more magistrates’ courts hearings.

RECOMMENDATION

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.

Listings

- 6.9 We found that there is scope to improve the effective allocation of resources to court. Some list courts have very few CEPO cases listed in them, or have mixed lists of civil cases (for which Customs and Excise is responsible) and criminal cases (for which CEPO is responsible). In one magistrates’ court, we noted that the second courtroom had such a mixed list, which included only three CEPO cases, and yet there would have been sufficient time in the first courtroom for all the CEPO cases to be listed together. To some extent, this may be increasing CEPO’s reliance on Customs and Excise court liaison officers.

- 6.10 We also observed courtrooms where an agent had been instructed to prosecute the list, but where other counsel had been instructed to prosecute other, specific, cases, none of which were complex. Instructing one counsel to cover all cases would have saved costs.

SUGGESTION

CEPO managers undertake work towards the reduction of resources used in the magistrates' courts, including taking steps to negotiate rationalisation of court lists.

Advocacy

- 6.11 Representatives of other criminal justice agencies told us that the quality of advocacy is satisfactory, with sufficient information being given to the court to determine issues of bail and venue. Our court observations support this view.
- 6.12 Whilst the advocates we observed were fully prepared, it is normal practice at Haywards Heath and Dover Magistrates' Courts for agents instructed to prosecute the court list to pick up their files on the morning of court. CEPO files are couriered to the court centre, where they are collected on the morning by the Customs and Excise Court Support Officer, who then gives them to the agent. Any delay in the arrival of counsel will either reduce their preparation time, or hold the court up.

SUGGESTION

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.

The Crown Court

Court coverage

- 6.13 The Gower Hammond Report recommended that, on hearings in the Crown Court, prosecuting counsel should be attended by a Prosecutions Group lawyer, or a suitably trained and experienced support staff member, save in very exceptional circumstances (Recommendation 10).
- 6.14 It is CEPO policy, which our court observations confirmed, to send the case lawyer to the first day of the trial. Additionally, they will attend any pre-trial Public Interest Immunity hearings. A Case Manager or Support Officer will attend until the end of the prosecution evidence, although they rarely stay for the defence case. Our file examination confirmed this approach. In some cases, there were very detailed notes of the prosecution evidence, but no reference to the defence case. This is in breach of the MUR guidelines, which envisage coverage for duration of the case.

- 6.15 It was difficult in some cases to see what the result was or, if appropriate, the sentence. In the absence of a Case Manager or Support Officer, CEPO relies on counsel to inform them of the result - the standard instructions to counsel reinforce this. On occasions, counsel either fail to provide the result, or do so late – something that we noted features in the counsel monitoring forms (see below). The QAT, in October 2003, reported on this issue, and made recommendations designed to improve the service by counsel. Our findings indicate that this was still a problem; managers will wish to assess progress against the recommendations made by QAT and take any necessary remedial action. The real issue, however, is that CEPO's absence from court throughout the proceedings reduces their ability to be in control of their cases.
- 6.16 We observed Case Managers and/or Support Officers in court covering trials, although we noted that other types of hearing, such as mentions and plea and directions hearings, were not covered. The MUR makes no provision for these hearings, but it should do. We have concerns about the role of the Case Managers/Support Officers in court, some of which we dealt with in the preceding chapter. From our observations, they appeared to play a minor part in the prosecution process. The MUR guidelines are that the CEPO representative should be familiar with the case, but it is not clear that this is being adhered to. The result is that CEPO do not have sufficient control over, or grip of, their cases.
- 6.17 We saw one case where the Customs and Excise Case Officer sat behind counsel, with the CEPO representative sitting at the side. We also observed an investigating officer working with counsel on the redrafting of the indictment, with no CEPO involvement. It is vital that CEPO takes its rightful place in the management of the case at all stages. The Case Officer has an important supporting role to play during the trial process, but this should be in collaboration with all the other members of the prosecution team.

CEPO advocates

- 6.18 The Gower Hammond Report recommended that consideration be given to CEPO lawyers with higher courts advocacy rights being used to appear in the Crown Court (Recommendation 12). In the light of this Recommendation, a pilot Advocacy Unit was set up in July 2002. The unit draws its staff of three lawyers from two of the three London units, although they retain their personal caseload. Members of the Advocacy Unit cover plea and directions hearings, mentions and committals for sentence at the Crown Court sitting at Croydon and Isleworth. They are considered to be competent, and we believe this is a good initiative.
- 6.19 The intention, once resources permit, is to develop the Unit further to cover other Crown Court centres, principally those at Canterbury and Maidstone.
- 6.20 Some solicitors received Higher Court Advocate-type training in February 2002 (along with the three barristers referred to above), but it was insufficient to provide them with the necessary qualification, as there was some confusion over the position of solicitors. Further training has now been scoped, and expressions of interest received, but CEPO considers that resource constraints have prevented them from progressing this any further.

Nomination of counsel

- 6.21 Counsel in CEPO cases are chosen from a list approved by the Attorney General, which has recently been updated and expanded. This has led to some problems in relation to the quality of advocacy in routine cases, which we expand on in the following section. The Counsel, Nominations and Fees Team (CNFT) is responsible for selecting counsel from the list, taking into account the nature of the case and counsel's expertise. The team try and ensure an even spread of work between counsel and chambers.
- 6.22 Cases are given a complexity marking when they are registered, which is used to assist in determining the grade of counsel to nominate. The CNFT takes into account the recommendation of the reviewing lawyer and/or Case Manager when nominating counsel, and also consider the guidance on what is required for counsel to be on the A, B or C list.

Advocacy

- 6.23 The specialised nature of CEPO cases and the issues that arise, particularly over disclosure, is such that counsel require a specific expertise, which will not necessarily be gained by undertaking more general prosecution work. Our findings, confirmed by those with whom we spoke, is that, overall, the quality of advocacy in the Crown Court is good. However, we understand from the judiciary that there have been some problems in the advocacy of routine Crown Court cases, which are felt to have stemmed from the expansion of the list of counsel available to be instructed to undertake CEPO work. This is an issue that could be addressed by more monitoring of counsel in court – we comment further on this below.
- 6.24 We observed a number of advocates in the Crown Court undertaking a range of work, including trials, plea and directions hearings, mentions and committals for sentence. All the counsel we observed were competent, with one being more than competent in a number of aspects. In particular, we were pleased to observe a robust assertion of the prosecution position in response to a general 'fishing expedition' by the defence in respect of unused material.

Returned briefs

- 6.25 Our findings confirm that, overall, the CEPO process of selecting counsel works well, although there remain concerns about the number of cases where counsel originally instructed was not available to conduct the trial (a returned brief). This problem (which is not unique to them) has been identified by CEPO, and work was undertaken by the QAT in November 2002. Their snapshot survey of a week's work indicated that, in at least 52% of hearings, nominated counsel returned their instructions. Further, in 40% of those cases, the counsel who appeared for the prosecution was not on the list of those recognised by CEPO as being suitably qualified to conduct Customs and Excise cases. We understand that there has been an improvement in the number of cases returned 'off-list', although the number of returns overall remains high.

- 6.26 At many hearings, the use of off-list counsel will not be a cause for concern, although we noted one case in our file sample where this happened at trial. Significant criticism was made of the calibre of counsel in the case, in particular the lack of specialist knowledge of the law relating to the confiscation of assets.
- 6.27 The system to date has been for chambers to contact the Case Manager, rather than the CNFT, for agreement to a change of counsel. This has just changed, in order to ensure that both notification and agreement for return to the CNFT, who will record the details. CEPO will thereby be in a position to monitor returns, and managers are confident that will reduce number of off-list returns.
- 6.28 Managers will wish to use the results of the monitoring of the level of returned briefs to assess progress against the recommendations made by QAT to reduce the number of returns, and take any necessary remedial action.

Facilities at court

- 6.29 There are dedicated facilities for Customs and Excise at the Crown Court sitting at Canterbury, Croydon, Isleworth and Maidstone. However, these have to be shared by investigating officers and CEPO staff, and can be cramped. CEPO also have the use of a desk in the CPS room at Southwark Crown Court.
- 6.30 Crown Court centres without dedicated facilities are covered by a joint Protocol between the CPS, Court Service and the Solicitor's Office dealing with the use of CPS accommodation by staff from CEPO. Separate arrangements are made with Crown Court centres when long-running cases are to be heard.

Quality of court endorsements

- 6.31 We have already commented upon the difficulties encountered in trying to follow the history of a case, particularly if there were a number of defendants. Neither the layout of the current file, or the Magistrates' Courts Hearings sheet, lend themselves to full and coherent endorsements. When agents are instructed they usually send CEPO a detailed note of what took place at the hearing.
- 6.32 CEPO staff make detailed notes of hearings they attend in the Crown Court. However, the endorsement of results of court hearings is variable, and SOLAR records are not always clear. Further, results of hearings and court directions are filed with the general correspondence, which makes it extremely difficult to determine the chronology of the case without trawling through voluminous amounts of paper. Not only is this resource-intensive, but it can also make it difficult for the prosecutor to deal with queries raised at court.
- 6.33 It would assist those who subsequently have conduct of the case to determine what has been agreed at earlier hearings, and issues such as the bail status of defendants, if all hearing notes were collated in one place on the file.

SUGGESTION

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.

Monitoring

- 6.34 Line managers have undertaken the monitoring of in-house prosecutors. At the moment, there are few in-house prosecutors who appear regularly at court, so the task is therefore not resource-intensive.
- 6.35 Counsel instructed to appear at the Crown Court should be monitored in every case, using an Advocacy Monitoring form. This is filled in by the Case Manager/Support Officer at court, or by the case lawyer. The form is not always completed, either because a CEPO member of staff is not present in court, or because some staff are inexperienced and perhaps not able to comment on counsel's performance in an informed way. Furthermore, as CEPO is not generally present in court during the defence case, they are missing the opportunity of witnessing counsel's advocacy during perhaps the most challenging aspect of court proceedings. The form is also used to record other aspects of counsel's performance, such as approachability and case knowledge. This is a useful exercise, but does not address an important objective of monitoring, which is to assess performance at court. This is particularly important in view of the complexity of some of CEPO's cases, and the recent extension of the list of counsel instructed to undertake CEPO work.
- 6.36 The forms are kept centrally and the results are noted by the Head of CNFT, who takes forward any negative feedback. Action taken includes correspondence and/or meetings with counsel and consideration by Management Board (chaired by the Head of Operations).
- 6.37 Inspectors noted - from the file sample and the monitoring forms - an example of very poor performance by a counsel over a considerable period of time, and in at least three different cases, but in only one of those cases was the brief taken away from them. We also saw another case in our sample where the brief had been taken away from counsel because of concerns over performance.

Counsel's fees

- 6.38 Counsel's fees are dealt with centrally by the CNFT, who deal with all the units' work as well as non-CEPO fees. We have some concerns about the limited checks undertaken on fees submitted. We understand that although checks are undertaken on court hearings, there are now no checks made on out-of-court work claimed for where the overall fee is under £10,000.
- 6.39 We also noted that no prior agreement is entered into with counsel over reading and preparation time. Bearing in mind the size of many of CEPO's cases, this makes costing and planning for counsel's fees a difficult task.

SUGGESTION

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.

7 RELATIONSHIPS WITH INTERNAL STAKEHOLDERS AND OTHERS INVOLVED IN THE CRIMINAL JUSTICE SYSTEM

Liaison with Customs and Excise

- 7.1 Following the Gower Hammond Report and the establishment of the principle of independent decision-making, the relationship with the Department has been required to undergo a fundamental change. There is no longer a solicitor and client relationship, but one between independent agencies at arm's length, in which the Department is an important stakeholder for CEPO. The relationship between the Department, the Attorney General and CEPO is governed by the *Memorandum of Understanding* (MOU), which was agreed in January 2003. In principle, the relationship with Law Enforcement is the same as that between the police and the CPS. We have referred throughout this report to the MUR, which defines the roles and responsibilities of investigators and CEPO in operational matters.
- 7.2 The change mentioned above, and the move towards an independent office following the Butterfield Report, has required a cultural change and a re-alignment of attitudes in both agencies. Although some tensions remain, CEPO has succeeded in obtaining acceptance of its responsibility for making public interest decisions in cases, both in relation to termination and in issues around the disclosure of sensitive unused material. CEPO consults with Policy where required to do so by the MOU, but the principle that the final decision rests with CEPO is respected.
- 7.3 Above the level of the individual case, and the day-to-day interaction between Law Enforcement and CEPO on an operational level, some valuable and regular contacts have been established. Particularly welcome has been the designation of a specific Unit Head as a point of contact to give legal guidance to specialist teams of investigators (such as the heroin team), and to discuss strategic issues peculiar to their areas of investigation. In general, the specialist teams are satisfied that, through CEPO, they have early access to counsel with expertise in their type of case.
- 7.4 CEPO has also been closely involved in raising the level of awareness of the importance of disclosure issues amongst investigators. They have helped them to address disclosure through training, the development of a Law Enforcement Action Plan and written guidance, and in updating the Handbook. One of the beneficial results of this is the allocation by Law Enforcement of a single Disclosure Officer who, in relevant cases, attends throughout the trial, and is able to deal both with ordinary investigation material and that deriving from sensitive sources.
- 7.5 In addition, there are meetings at intervals between Regional Managers and Unit Heads. Their remit covers such issues as the timeliness of receipt of case papers and other aspects of trial preparation; there is scope for increasing the frequency of these meetings. Good links also exist between case-related groups, for example the ongoing fraud cases involving the importation of high value goods, and money laundering cases. There is also the liaison with Law Enforcement and Professional Standards in cases which result in an acquittal, discussed in Chapter 4.

7.6 Despite the regular and multi-level contacts between the agencies, we noted that there was some delay by Law Enforcement in consulting CEPO on the strategic direction of investigations. This applies in particular to revenue investigations, which are the most resource-intensive for CEPO, and where early consultation can result in a more focused investigation. We were made aware of two cases where the investigations were redefined and reduced in scope at a late stage for such reasons. Put simply, there may be little to gain, and much to lose, in prosecuting cases for which CEPO does not - at any given time - have sufficient resources to ensure that it is in more than nominal control of the case, and that it is properly prosecuted, in particular with regard to disclosure. There is scope for a more joined-up approach to major revenue prosecutions.

Liaison with criminal justice partners

7.7 Unit Heads and other members of their teams undertake some local liaison, for example by attending Court User Group meetings at Croydon and City of London Magistrates’ Courts, South Eastern Circuit meetings, and the Kent Criminal Justice Board. There are also CEPO contact points for some courts. However, the fact that neither the units themselves - nor indeed Law Enforcement - are geographically aligned, tends to reduce the impact and influence of CEPO at local level. We are aware that consideration has been given to introducing an element of geographical alignment to the units, and that it is not thought to be feasible. We accept that view, but consider that extending the designation of individuals as local contact points would go towards enhancing CEPO’s impact and credibility at a local level.

SUGGESTION

CEPO managers extend the designation of individuals as contact points for court centres.

7.8 Liaison has already taken place with the Courts Service to discuss the brigading of work into Crown Court centres. More work needs to be done with magistrates’ courts staff at Dover and Hayward’s Heath, with a view to discussing the possibility of consolidating CEPO cases into a smaller number of courtrooms.

Liaison with other prosecution agencies

7.9 There are CEPO representatives on the CPS Advanced and Specialist Disclosure Group and in all five work streams (one of which is headed by a CEPO lawyer). CEPO also attends the Whitehall Prosecutors’ Group meetings, and meetings on confiscation and the impact of European Court of Human Rights issues. There is also ongoing engagement, and some cross-fertilisation, with other relevant agencies arising out of the Serious Organised Crime Agency (SOCA) and the proposed merger with the Inland Revenue.

Victims and witnesses

7.10 Although most of the witnesses in CEPO’s cases are from the Department, some are private witnesses. The MUR provides for CEPO staff to confirm the times of attendance of non-Departmental witnesses at court, and to manage them while they are there. It is important that private witnesses are looked after at court, particularly bearing in mind the nature of the cases CEPO prosecutes. This should be achievable if current expectations that a CEPO member of staff covers the prosecution case are met. It is a factor that managers need to take into account when considering the deployment of staff at court.

8 THE WAY FORWARD

Introduction

- 8.1 CEPO has undergone significant changes in the last two years, and is currently facing even greater change, with the move towards the creation of an independent prosecuting authority. Despite these challenges, CEPO has made considerable progress towards implementing the Gower Hammond Report recommendations. There was evidence of a closer strategic contact between Law Enforcement and CEPO and, consequently, of a more joined-up approach to the prosecution of major cases. However, there are still aspects of their work and organisation that require significant improvement: staffing levels and case coverage, accommodation, basic equipment and services, and IT and management information.

The current position

- 8.2 As CEPO does not have a Business Plan for the financial year 2004–05, its priorities have not been formally determined, and there appears to have been insufficient planning of work. It is not clear if CEPO’s capacity matches demand, but lawyers are stretched to a point where they are not able to do their job properly.
- 8.3 The size of cases, and caseload held by individuals, can mean that lawyers have only an ‘overview’ of a case and, consequently, they are not in a position to make all the decisions in the case themselves, which may have an impact on their ability to deal with disclosure issues properly. Their ability to master all the developing evidence in the increasingly large cases they are required to handle is questionable.
- 8.4 The staffing complement for the London casework units is 125. Currently, there are 120.5 staff in post, although nine members of staff are working in the two special project teams. The numbers of staff were increased following the Gower Hammond Report, but that increase was based on the Investigating Legal Advisory lawyers (ILAs) undertaking all pre-arrest advice. Neither does the figure take into account the development of project teams, the additional work being undertaken on disclosure, and the increase in numbers and size of cases handled by lawyers. Although we did not undertake a specific review of resources, there are clearly aspects of work that could be improved upon if there was more available manpower.
- 8.5 CEPO managers consider that lack of resources is preventing them from progressing in the way they wish, and from fully implementing the Gower Hammond Report recommendations. Their inability to implement them fully means that there remains some way to go in convincing partners in the criminal justice system that independence of decision-making has been achieved. This is particularly reflected in the fact that Customs and Excise officers continue to prosecute some cases in the magistrates’ courts - even after CEPO has taken them over - and that a CEPO representative, familiar with the facts and issues in the case, is not present in court at all stages of a case, including throughout Crown Court trials. Addressing these aspects could demonstrate to others in the criminal justice system that CEPO lawyers are independent decision-makers. It would also enable them to be more in control of their cases.

8.6 As we have stated earlier, the accommodation in the London office remains poor. It is still not a suitable working environment for the review and handling of large and complex cases, it does not enhance CEPO’s reputation with those who visit the office, and the lack of storage space creates security risks. Responsibility for accommodation rests with the Department and is currently being considered in the context of the merger of Customs and Excise with the Inland Revenue, and the placing of CEPO on a formal independent basis. The problem needs to be addressed on a proper strategic basis.

Conclusion

8.7 In order to attain a level of performance which will command the confidence of the judiciary and others 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 to handle casework to a proper professional standard. This is particularly important in the current circumstances, where not only do CEPO have to maintain their existing work, but they also have to plan for the move to an independent prosecuting authority, and additional work from the Inland Revenue and SOCA.

<p>RECOMMENDATION</p> <p>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.</p>

THE GOWER HAMMOND REPORT RECOMMENDATIONS

- (1) The Customs and Excise Solicitor's Office should retain its prosecution function.
- (2) Whilst the Solicitor's Office should remain part of Customs and Excise, in relation to his prosecution function the Solicitor should be accountable to the Attorney General and not to the Commissioners or their Chairman.
- (3) The solicitor/client relationship between the Solicitor and the Commissioners of Customs and Excise should cease in relation to the Solicitor's prosecution function.
- (4) In relation to his prosecution function the Solicitor should not be funded by the Commissioners. He should have his own budget and be accountable for his own expenditure. Thought should be given to his having his own Vote. In any event his funding should be "ring-fenced".
- (5) In the interests of promoting quality assurance, best practice and consistency in applying the Code for Crown Prosecutors we recommend that inspections of the prosecution function of the Solicitor's Office be carried out by the CPS Inspectorate.
- (6) Where cases are referred to the Solicitor's Office with a view to prosecution, decisions on whether or not to prosecute and whether to continue prosecutions should be made by a Customs and Excise lawyer after seeking the views of an administrator when appropriate on matters of policy and the public interest. The administrator's role will be particularly important in relation to cases with a revenue aspect. In such cases the lawyer should always consult an administrator before making the decision.
- (7) Adequate resources in terms of personnel, funding and accommodation must be made available to enable the Prosecution Group of the Solicitor's Office to operate efficiently and to deliver the service expected of it. This is vital.
- (8) Urgent consideration should be given to improving the working conditions, including accommodation, of staff in the Prosecutions Group with a view to eliminating overcrowding, reducing noise level, and affording reasonable privacy to lawyers – especially those in the Special Casework Division in London and Manchester engaged in heavy, complex and demanding casework.
- (9) Conferences with counsel should be arranged by a Prosecutions Group lawyer or a member of the support staff acting on the instructions of a lawyer and never by an investigating officer.
- (10) On hearings in the Crown Court and at conferences prosecuting counsel should be attended by a Prosecutions Group lawyer or a suitably trained and experienced support staff member, save in very exceptional circumstances.
- (11) The Solicitor's Office should be able to hold out good career prospects with a view to attracting and retaining lawyers of high calibre and potential.

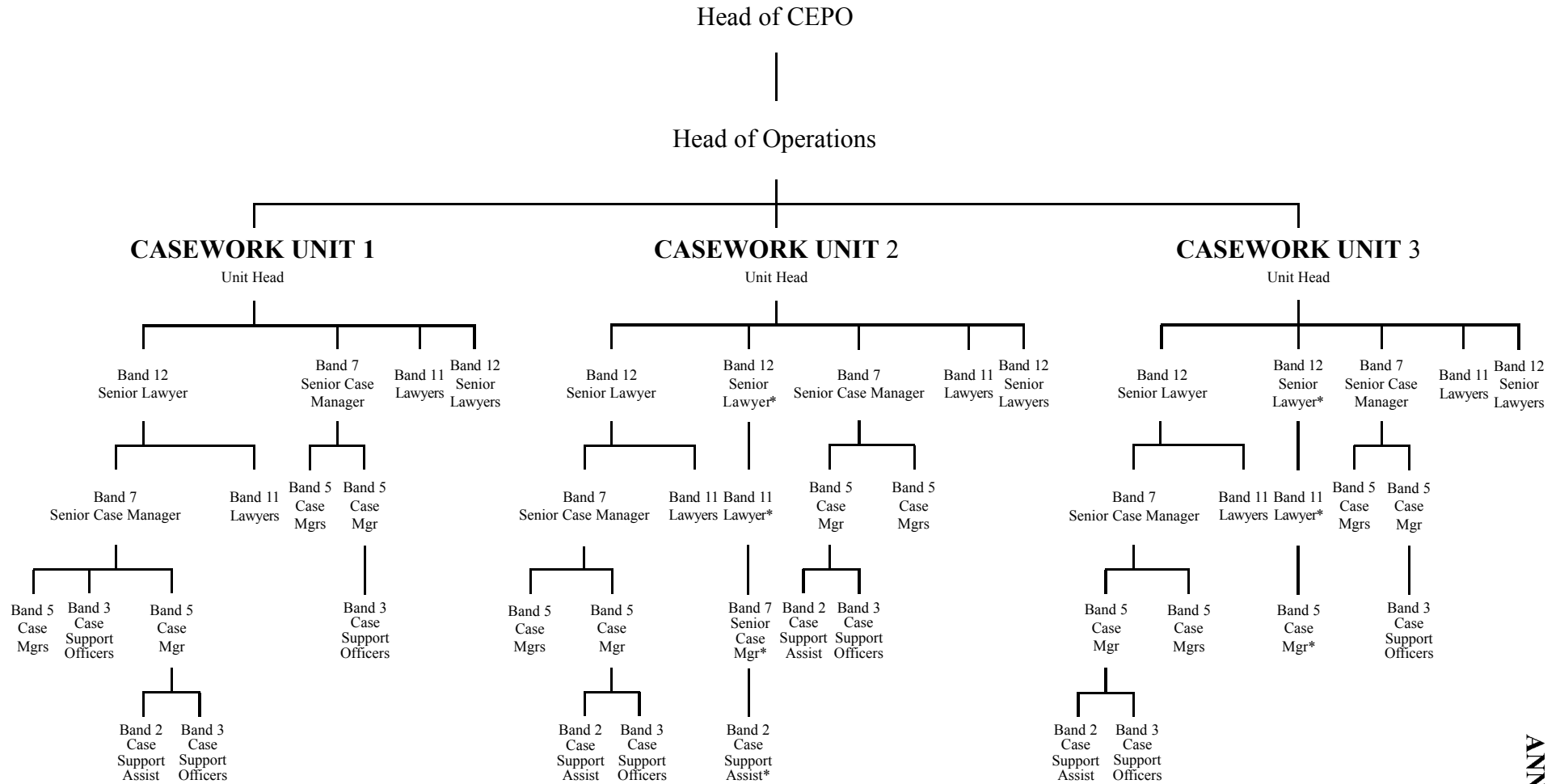
- (12) Consideration should be given to Customs and Excise lawyers with higher court advocacy rights using them to appear in the Crown Court:
 - (a) on plea and directions hearings;
 - (b) on interlocutory hearings not requiring the attendance of Counsel briefed to appear on trial;
 - (c) as junior counsel on trials;
 - (d) on guilty pleas;
 - (e) on appeals against summary trial convictions and sentences.
- (13) Customs and Excise lawyers without higher court rights should be helped to acquire them.
- (14a) Lawyers seconded from the Customs and Excise Solicitor's Office Prosecution Group to give legal advice to the National Investigation Service should remain or become members of that group and responsible to its Head.
- (14b) The length of the secondment period should be kept under review and, in the light of experience of the working of the secondment system, consideration should be given to whether the present two years secondment for individual lawyers should be reduced.
- (15) In accordance with the "Philips principle" and in line with CPS practice, Customs and Excise investigating officers and local staff should no longer have audience rights in Magistrates' Courts. All court proceedings relating to prosecutions or potential prosecutions should be conducted by qualified lawyers or appropriately trained Solicitor's Office staff.

THE BUTTERFIELD REPORT RECOMMENDATIONS RELEVANT TO CEPO

- (1) The Solicitor should no longer retain any responsibility for prosecutions brought by Customs & Excise. All prosecuting functions should be removed from the Customs & Excise Solicitor's Office and prosecutions conducted by a separate Prosecuting Authority [Chapter 11 para 14].
- (2)
 - a. The number of ILAs should be substantially increased to enable the objectives of Customs identified in paragraph 11.36 to be achieved [the appointment of an ILA at the outset of all sensitive, complex or substantial investigations].
 - b. ILAs should continue to have no part in the prosecution process.
 - c. The CPS Inspectorate should inspect and report on the ILAs to give an assurance as to the quality of their work.
 - d. Consideration is given to the transfer of responsibility for the ILAs to the Economic Secretary to the Treasury.
 - e. A review is conducted of the procedures for the recording and retention of advice given by the ILAs in the course of investigations, and the assurance of the quality of that advice given [Chapter 11 para 58].
- (3)
 - a. HMCPSI be given a clear and defined role in inspection and assuring the new prosecution organisation.
 - b. This relationship should ideally be placed on a statutory basis.
 - c. Specific and adequate resources are made available to HMCPSI for this purpose.
 - d. If appropriate, and this will depend on whether the Prosecutions Office remains part of Customs, joint inspection should be undertaken involving HM Customs & Excise internal assurance division and HMCPSI.
 - e. As part of the further definition of HMCPSI's role, it should specifically have the function of quality assuring the work of and advice given by the Investigation Legal Advisers [Chapter 11 para 76].
- (4) I consider that more regular and systematic dialogue between, for example, HMCE and the Court Service on practical issues, and HMCE and the Home Office on policy issues, would be a profitable and fruitful development for all involved. I recommend that the Head of the new Prosecuting Authority takes the lead in putting suitable arrangements in place [Chapter 11 para 80].

ORGANISATIONAL STRUCTURE OF THE LONDON UNITS

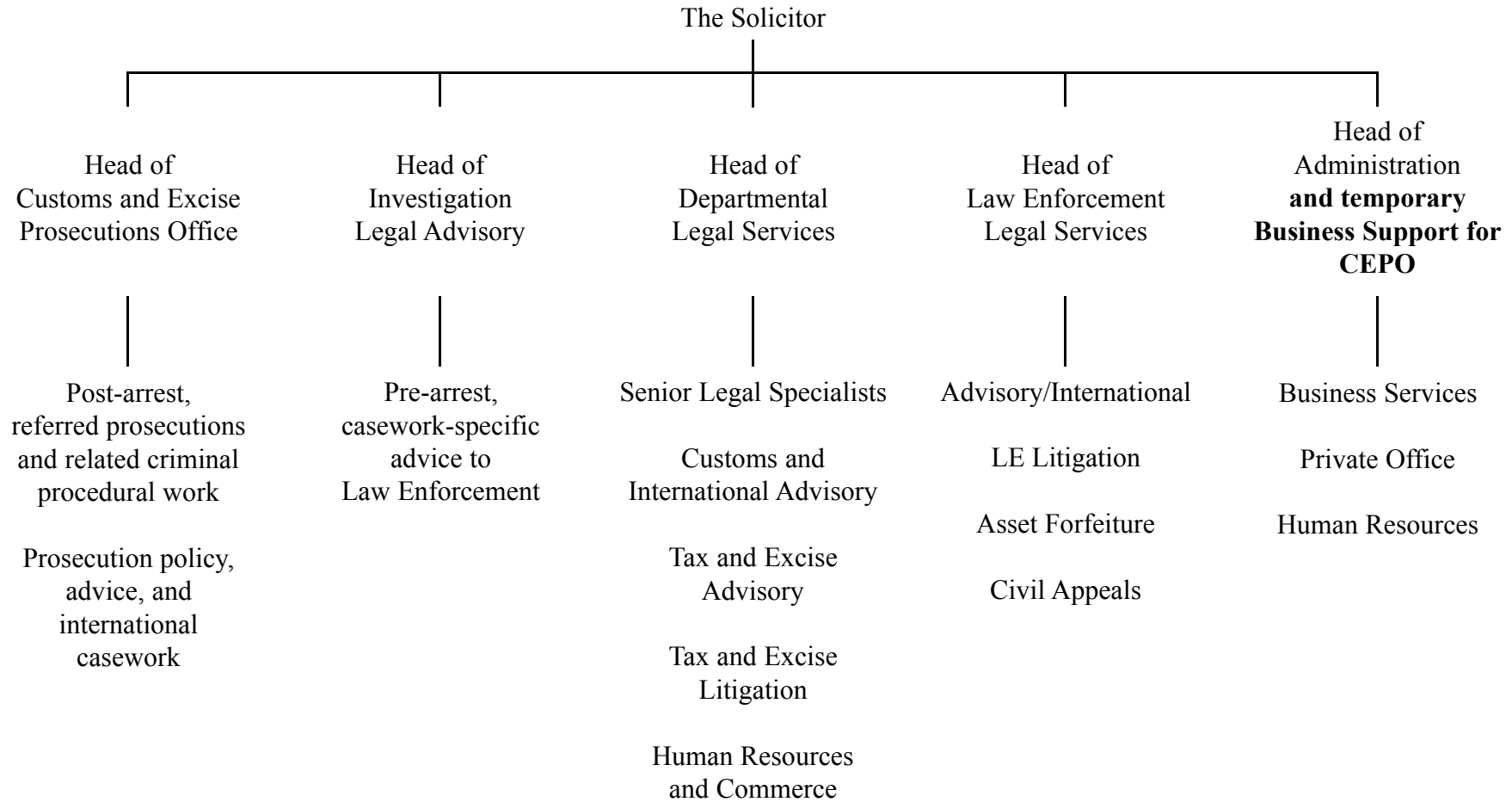
(as at 30 June 2004)



* Special Project Team members

SOLICITOR'S OFFICE STRUCTURE

(as at 1 July 2004)



**PROGRESS MADE BY CEPO IN IMPLEMENTING RELEVANT
RECOMMENDATIONS OF THE GOWER HAMMOND REPORT**

	RECOMMENDATIONS	PROGRESS MADE
R6	Where cases are referred to the Solicitor's Office with a view to prosecution, decisions on whether or not to prosecute and whether to continue prosecutions should be made by a Customs and Excise lawyer after seeking the views of an administrator when appropriate on matters of policy and the public interest. The administrator's role will be particularly important in relation to cases with a revenue aspect. In such cases the lawyer should always consult an administrator before making the decision.	Implemented.
R7	Adequate resources in terms of personnel, funding and accommodation must be made available to enable the Prosecution Group of the Solicitor's Office to operate efficiently and to deliver the service expected of it. This is vital.	There remains a need to commission a 'bottom-up' review of casework, to determine resources and accommodation required.
R8	Urgent consideration should be given to improving the working conditions, including accommodation, of staff in the Prosecutions Group with a view to eliminating overcrowding, reducing noise level, and affording reasonable privacy to lawyers – especially those in the Special Casework Division in London and Manchester engaged in heavy, complex and demanding casework.	Accommodation remains poor and is not conducive to proper case review and preparation, nor does it enhance the reputation of CEPO. [At present, CEPO is reliant on Customs & Excise for the provision of better accommodation.]
R9	Conferences with counsel should be arranged by a Prosecutions Group lawyer or a member of the support staff acting on the instructions of a lawyer and never by an investigating officer.	Implemented.

	RECOMMENDATIONS	PROGRESS MADE
R10	On hearings in the Crown Court and at conferences prosecuting counsel should be attended by a Prosecutions Group lawyer or a suitably trained and experienced support staff member, save in very exceptional circumstances.	Not fully implemented due to insufficient resources. Not all hearings are attended by CEPO representatives, and there is some concern over whether all Case Support Officers are in a position to be able to assist on the issues in the case. The lack of CEPO representation at the Crown Court brings with it a danger that ad hoc conferences will be held between counsel and the investigating officer.
R11	Consideration should be given to Customs & Excise lawyers with higher court advocacy rights using them to appear in the Crown Court: (a) on plea and directions hearings; (b) on interlocutory hearings not requiring the attendance of counsel briefed to appear on trial; (c) as junior counsel on trials; (d) on guilty pleas; (e) on appeals against summary trial convictions and sentences.	Some progress made with the introduction of the Advocacy Unit. A good start which needs to be built upon.
R13	Customs & Excise lawyers without higher court rights should be helped to acquire them.	Not achieved. Some lawyers have received training, but the course was not accredited. Further training has been scoped, but CEPO is unable to proceed due to insufficient resources.
R15	In accordance with the “Philips principle” and in line with CPS practice, Customs & Excise investigating officers and local staff should no longer have audience rights in Magistrates’ Courts. All court proceedings relating to prosecutions or potential prosecutions should be conducted by qualified lawyers or appropriately trained Solicitor’s Office staff.	Not implemented due to insufficient resources. Customs officers appear at the first hearing in many cases, dealing with issues such as bail. CEPO does not even handle all stages of cases where they have become responsible.

ANNEX 6**TOTAL NUMBER OF FILES EXAMINED FOR
THE LONDON BASED UNITS OF CEPO**

	Number of files examined
Advice	9
Withdrawn and stayed cases	6
Judge ordered and judge directed acquittals	17
List A cases	13
List B cases	14
List C cases	14
Standing Counsel cases	7
QC cases	8
Cases subject to custody time limits	15
TOTAL	103

**LIST OF REPRESENTATIVES FROM CUSTOMS AND EXCISE AND
CRIMINAL JUSTICE AGENCIES WHO ASSISTED OUR INSPECTION**

Customs and Excise

Mr K Byrne
Mr T Byrne
Mr S Coates
Mr P Evans
Mr S Evans
Mr B Foreman
Mr P Golightly
Mr N Hudson
Mr H Potts
Mr E Stewart
Mr W Williamson

Crown Court

His Honour Judge Ball QC, Chelmsford Crown Court
His Honour Judge Bathurst-Norman, Southwark Crown Court
His Honour Judge Fabyan Evans, Middlesex Guild Hall Crown Court
His Honour Judge Gratwick, Chelmsford Crown Court
His Honour Judge Joseph, Croydon Crown Court
His Honour Judge McGregor-Johnson, Isleworth Crown Court
His Honour Judge Neligan, Maidstone Combined Crown Court
His Honour Judge Patience QC, Maidstone Combined Crown Court
His Honour Judge Pratt, Croydon Crown Court
His Honour Judge Rivlin QC, Southwark Crown Court
His Honour Judge Robbins, Southwark Crown Court
His Honour Judge Simpson, Maidstone Combined Crown Court
His Honour Judge Webb, Canterbury Crown Court
His Honour Judge Welchman, Kingston upon Thames Crown Court
His Honour Judge Williams, Canterbury Crown Court

District Judge

Mr S Day, Uxbridge Magistrates' Court

Justice of the Peace

Mrs M Hamilton JP, Chairman of Sussex North Area Bench

Crown Court Staff

Mr C Harper, Southwark Crown Court
Mr P Jabbal, Isleworth Crown Court
Mr S Jones, Middlesex Guildhall Crown Court
Mr S O'Brien, Kingston upon Thames Crown Court
Mrs V Reed, Chelmsford Crown Court

Magistrates' Courts Staff

Mrs D Harrington, Uxbridge Magistrates' Court
Ms K McNally, Mid Sussex Magistrates' Court
Miss M O'Keeffe, Uxbridge Magistrates' Court

Counsel

Mr D Bartlett, Chambers of Michael Parroy
Ms S Egan, Christmas & Sheehan
Ms J Hopkins, Chambers of Roger John Ellis

Chambers' Practice Managers and Senior Clerks

Mr S Clark, Chambers of Michael Parroy

Defence Solicitors

Alistair Harper & Co
BCL Burton Copeland
Christmas & Sheehan
Godfrey, Davis & Waitt

We are grateful to the seven additional individuals who returned questionnaires, but whose details were not captured due to an administrative error.

HMCPST VISION, MISSION AND VALUES

Vision

HMCPST's purpose is to promote continuous improvement in the efficiency, effectiveness and fairness of the prosecution services within a joined-up criminal justice system through a process of inspection and evaluation; the provision of advice; and the identification of good practice. In order to achieve this we want to be an organisation which:

- performs to the highest possible standards;
- inspires pride;
- commands respect;
- works in partnership with other criminal justice inspectorates and agencies but without compromising its robust independence;
- values all its staff; and
- seeks continuous improvement.

Mission

HMCPST strives to achieve excellence in all aspects of its activities and in particular to provide customers and stakeholders with consistent and professional inspection and evaluation processes together with advice and guidance, all measured against recognised quality standards and defined performance levels.

Values

We endeavour to be true to our values, as defined below, in all that we do:

- | | |
|------------------------|---|
| consistency | Adopting the same principles and core procedures for each inspection, and apply the same standards and criteria to the evidence we collect. |
| thoroughness | Ensuring that our decisions and findings are based on information that has been thoroughly researched and verified, with an appropriate audit trail. |
| integrity | Demonstrating integrity in all that we do through the application of our other values. |
| professionalism | Demonstrating the highest standards of professional competence, courtesy and consideration in all our behaviours. |
| objectivity | Approaching every inspection with an open mind. We will not allow personal opinions to influence our findings. We will report things as we find them. |

Taken together, these mean:

We demonstrate integrity, objectivity and professionalism at all times and in all aspects of our work and that our findings are based on information that has been thoroughly researched, verified and evaluated according to consistent standards and criteria.