



Review of the Fraud Prosecution Service

Executive Summary

October 2008

The Fraud Prosecution Service (FPS) was founded in September 2006 to provide a specialist function on a national basis, and also to re-establish the role of the specialist fraud prosecutor in the context of clear and more effective management supervision structures. The Service was formed as a division of the Crown Prosecution Service (CPS) London area and the Director FPS therefore reports to the Chief Crown Prosecutor for CPS London. This also means that the FPS is covered by the CPS London business plan, budget and performance targets, notwithstanding its national role both in operation casework and as the centre of excellence for fraud prosecution work.

There has been a positive direction of travel in terms of successful outcomes (convictions), which stood at a creditable 85% of the defendants proceeded against in 2007-08; underlying casework quality, which is characterised by strong legal decision-making and active case progression; and the development of management systems and leadership profile.

In the context of an increasing workload of about 250 cases at the time of writing, this level of success is largely attributable to the skill and experience exhibited by the majority of FPS lawyers and caseworkers, as identified in our file examination and confirmed to inspectors by external fraud professionals. Other contributory factors include effective teamwork (internally and with partners), a high level of individual commitment to casework, and appropriate management involvement in casework. In turn, these factors have combined to enhance significantly the Service's reputation with external agencies including the courts, police and defence practitioners.

Inspectors also identified a number of casework issues which need strengthening, in that they present a risk to the current trend of continuing improvement. In particular, the quality of instructions to counsel, quality of record keeping, limited use made of the CPS computerised case management system (CMS), and the approach and handling of asset recovery issues need to be improved. Whilst the quality of basic review decisions is good there is a need for charging prosecutors to be more consistently proactive in responding to foreseeable changes of circumstances, especially in cases involving more than one defendant. This was evident from a significant proportion of file sample cases which had resulted in an unsuccessful outcome.

The initial development of the FPS was directed with a degree of success by a dedicated project group, assisted by an external consultant and some staff from CPS London. The Director and Assistant Director have subsequently taken over the strategic responsibility for setting objectives and developing systems to meet them. As a result, systems which were transplanted from other units such as the CPS Headquarters casework divisions, as well as other more bespoke systems, have started to bed down into a more cohesive whole (although more needs to be done). This has enabled the FPS to carry out its basic function as a casework unit effectively.

There are very effective systems for the supervision of casework quality, which include a secondary level of difficult case reporting to underpin the CPS-wide case management panel framework. The systems for the provision of early investigative advice and pre-charge advice are flexible and relatively robust and there is a positive approach to post-charge case progression.

However, this progress is qualified by the fact that some systems and structures need to be developed to be fully effective. The FPS operates a different scheme for handling disclosure to the rest of the CPS. The role of the Disclosure Champion needs greater definition and an improved supporting infrastructure, so that it can help establish appropriate application of CPS policy and drive up consistency and overall performance. The arrangements for the Direct Communication with Victims scheme also need to be developed, disseminated and embedded. In addition, the system for the monitoring of advocates needs to be upgraded and applied systematically.

Significantly, where appropriate systems exist they are not always applied consistently by lawyers and caseworkers, and this needs to be addressed. For example, lawyers take different approaches to examination of undisclosed unused material. In relation to CMS some are skilled while others do not use it at all. Similarly, some lawyers provide monthly returns on their casework and some are more reticent about doing so. In the main caseworkers apply systems more consistently, but file organisation systems are not always applied and the quality of endorsement and record keeping is variable.

These inconsistencies present a current risk which will increase in significance as the caseload increases in volume and complexity. Some other systems which are effective at present are successful because they rely on the enthusiasm and hard work of managers and staff. For example, the casework supervision system places considerable pressure on some managers, which may not be sustainable in the context of an expanding caseload.

There is also some inconsistent application of systems between the London and the (smaller) York offices.

The decision in December 2007 not to close the York office is subject to review at the end of 2008. In the meantime the lawyers and caseworkers in York are providing a very high level of service in the main, but whilst the morale of staff in the London office is relatively high following the resolution of some teething problems, staff in York are affected by a degree of continuing uncertainty.

This decision will need to form part of a wider strategy to include resolution of the place and role of the FPS in the CPS and particularly whether it remains part of CPS London or becomes a Headquarters division. The CPS must also ensure clarity as to the relationship between the FPS and the complex casework units now being established at CPS area group level. The role of the FPS in providing a national service, and as a centre of excellence, provide a closer fit with the other roles of Headquarters divisions such as those dealing with special crime, terrorism and organised crime.

Strategic planning will depend to an extent on the future development of the external fraud landscape, much of which has yet to be determined fully, as well as factors specific to the organisation and funding of the CPS. Nevertheless, FPS senior managers need to start preparing a strategy for the future development of the Service without delay, given that the volume of fraud casework is generally expected to increase significantly in the next four years.

In the narrow sense this means the development of more sophisticated change management systems, including the implementation of a better business planning and risk management framework, and the preparation of a robust staffing strategy given that it takes time to train fraud lawyers and caseworkers. Even at current caseload levels, the FPS management and somewhat anomalous staffing structure needs to be developed to ensure that casework risks are reduced as far as possible. A new performance management regime is being designed at present and this will need to be reviewed and developed to ensure that it provides the FPS with enough information to be sure that it is running efficiently and effectively.

More broadly, FPS senior managers should also consider taking a more active role in contributing to wider CPS and national strategy insofar as they are likely to impact on the role of the FPS. This might, for example, include assessing the implications of the proposal in the government's Fraud Review (published July 2006) that the City of London Police take on the role of lead force for fraud investigation nationally, which is now beginning to take effect.

Given that most FPS work comes from City of London Police, the imminent expansion of their Economic Crime Department will have a knock-on impact on the caseload that FPS will be expected to manage in the coming year. Therefore, the CPS will need to assure itself that there are sufficient resources to deal with this. The future relationship of the FPS with the Serious Fraud Office also needs to be considered. At present, the acceptance criteria of both organisations are strikingly similar and there is scope for them to define their roles further, relative to each other. It may be that the National Fraud Strategic Authority (charged with developing and co-ordinating the implementation of the Fraud Review's findings and recommendations) is best placed to analyse the current fraud landscape and to develop a clearer vision for the future, but FPS managers should seek to engage in the process as far as possible.

The FPS senior management team is well equipped to take on this challenge, given that it has already demonstrated energy, strong leadership and sound supervision skills in the short time that the FPS has been in existence. Senior managers have successfully encouraged many of the lawyers who were recruited from different CPS units, some more willingly than others, to develop a sense of satisfaction at being part of the organisation. All have a high degree of professional respect for the senior managers and, in turn, this has enabled the FPS to tap effectively the reservoir of skill and experience represented by its lawyers and caseworkers.

The leadership is also respected externally. It has raised the profile of the FPS, increased external confidence in the service the organisation provides, and enhanced its reputation as a centre of excellence. Combined with the continued commitment and skill of its staff, this ensures that the FPS is well placed to deal with the current and future challenges it faces.

There now follows a list of the recommendations, aspects for improvement and strengths that are contained in the body of the report. It may assist to record the manner in which HMCPSI uses the terms:

- *Recommendation.* This is normally directed towards an individual or body and sets out steps necessary to address a significant weakness relevant to an important aspect of performance (i.e. an aspect for improvement) that, in the view of the Inspectorate, should attract highest priority;
- *Aspect for improvement.* A significant weakness relevant to an important aspect of performance (sometimes including the steps necessary to address this);
- *Strength.* Work undertaken properly to appropriate professional standards i.e. consistently good work.

In total we made 11 recommendations. We also identified 11 aspects for improvement and nine strengths.

Recommendations

We recommend that:

- 1 FPS managers, lawyers and caseworkers improve compliance with national standards for file endorsement (paragraph 4.15).
- 2 The FPS improve its systems for ensuring that all staff use the case management system as a casework tool (paragraph 4.20).
- 3 The FPS should develop systems for ensuring that prosecutors take a uniform approach to examining unused material, consistent with the terms of the Disclosure Manual (paragraph 7.7).

- 4 The FPS formalise the role of its Disclosure Champion (paragraph 7.9).
- 5 The FPS develop systems to ensure that its stated policy in relation to restraint and confiscation orders be disseminated to all relevant parties and applied robustly by its staff (paragraph 8.13).
- 6 The FPS develop systems to ensure that instructions to counsel are complete, timely and that they add value to the case (paragraph 9.9).
- 7 The National Fraud Strategic Authority consider the respective roles and inter-relationships of the numerous agencies currently involved in fraud investigation and prosecution as part of their function of developing and supporting the delivery of a national fraud strategy; and within that programme bring forward proposals for coherent, structured and co-ordinated arrangements. The FPS should engage actively in this process (paragraph 10.8).
- 8 The senior management team of the FPS develop bespoke business plans and objectives that reflect their own priorities. Risk management plans need to be improved and reflect key challenges that lie ahead (paragraph 10.11).
- 9 The senior management team review and consult on its operating structure as soon as possible, including the future of the York team. Also, in the short term it needs to assure itself that it has sufficient resources to deal with any immediate increase in caseload in the near future (paragraph 11.16).
- 10 The senior management team ensures that it undertakes regular formal reviews of performance underpinned by a documented and effective performance management framework to be in place by the end of 2008 (paragraph 12.6).
- 11 The FPS should review its management structure with a view to:
 - reducing the operational burden on senior managers;
 - ensuring that there are at least two people operating effective line management controls;
 - clarifying the role(s) required to manage the corporate and administrative functions of the FPS; and
 - balancing the focus on strategic and operational issues (paragraph 13.12).

Aspects for improvement

- 1 Together with other relevant organisations and CPS areas, the FPS should take further steps to ensure that its acceptance criteria are more widely known, and that appropriate cases are referred to it for consideration. It should log all acceptance decisions (paragraph 3.8).
- 2 The FPS should work to ensure that more standard casework systems are put in place, that they are complete, and are consistently applied by all staff and between offices (paragraph 4.5).
- 3 The FPS should develop a system to ensure that all advice given to investigators is recorded and cross-referred to the case file (paragraph 5.14).
- 4 The FPS should ensure that ancillary matters are considered and any advice recorded at the pre-charge stage (paragraph 5.23).

- 5 The FPS should introduce a uniform system for identifying case progression and witness issues (paragraph 6.12).
- 6 The FPS should ensure that systems for selection of counsel are robust and consistent (paragraph 9.6).
- 7 The FPS needs to bolster its capacity to manage change effectively (paragraph 10.15).
- 8 The FPS should implement a more formal induction programme for new staff (paragraph 10.19).
- 9 The FPS should review its current methods of predicting prosecution costs, with a view to improving the accuracy of forecasts (paragraph 11.7).
- 10 Managers need to ensure that there is an effective system for managing performance at individual level and that remedial action is taken where appropriate (paragraph 12.8).
- 11 The senior management team should engage with criminal justice partners with a view to implementing a more formal joint performance management regime that enables all agencies to learn from experience and continually improve performance (paragraph 12.11).

Strengths

- 1 The composition of FPS casework teams is regulated to ensure that the correct level of skill and experience is applied according to the degree of difficulty presented by the case (paragraph 4.8).
- 2 The systems in place to provide early investigative advice are sound and the quality of the advice given to police investigators is consistently high (paragraph 5.17).
- 3 FPS caseworkers take an active joint approach to case progression which places pressure on the defence and ensures that hearings and trials are effective as often as possible (paragraph 6.14).
- 4 The quality of letters of request is high (paragraph 8.18).
- 5 The FPS has quickly enhanced its reputation through the hard work of its staff and the quality of casework (paragraph 10.2).
- 6 The caseworkers in the York office work hard to provide an excellent level of support to advocates in the Crown Court (paragraph 11.23).
- 7 The quality and coverage of casework supervision by senior managers is very good (paragraph 12.1).
- 8 Senior managers are highly respected internally and externally and this has contributed to an improved reputation among other fraud and criminal justice agencies (paragraph 13.2).
- 9 Managers are constructive and collaborative in their dealings with partner agencies (paragraph 13.13).

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

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