



# **A review of the effectiveness of the operation of the Revenue and Customs Prosecutions Office charging scheme**

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## CONTENTS

<b>1</b>	<b>Introduction</b> .....	<b>1</b>
<b>2</b>	<b>Methodology</b> .....	<b>3</b>
<b>3</b>	<b>The Implementation of the Scheme</b> .....	<b>5</b>
	Project planning and oversight .....	5
	Value considerations .....	6
<b>4</b>	<b>The Operation of the Scheme</b> .....	<b>7</b>
	The structure .....	7
	Prosecutor coverage .....	7
	The case decision record .....	8
<b>5</b>	<b>The Charging Decision</b> .....	<b>11</b>
	The types of charging decision .....	11
	The quality of the charging decision.....	12
	The disputes resolution procedure .....	14
	Outcomes .....	15
<b>6</b>	<b>Performance Management</b> .....	<b>17</b>
	Performance information .....	17
	Quality assurance.....	17
	Joint performance management .....	18
<b>7</b>	<b>Conclusion</b> .....	<b>19</b>
	RCPO response .....	21

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# 1 INTRODUCTION

- 1.1 This is the report of Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) on the effectiveness of the operation of the Revenue and Customs Prosecutions Office (RCPO) charging scheme (the scheme). HMCPSI is given a statutory power of inspection of RCPO by virtue of Section 42 of The Commissioner for Revenue and Customs Act 2005 (the Act). Under the provisions of Sections 34-42 of the Act, RCPO came into existence in April 2005. This brought together HM Customs and Excise Prosecutions Office and the Inland Revenue Crime Group as one independent prosecution office.
- 1.2 HMCPSI has conducted one previous statutory inspection of RCPO<sup>1</sup>, which was a follow up to a non-statutory inspection undertaken in 2004<sup>2</sup>. At the time of the follow-up inspection, the inspection team was precluded from any form of file examination due to the provisions of Section 40 (1) of the Act which prohibited the disclosure of any information held by RCPO in connection with any of its functions. That prohibition has been removed following the inclusion of the necessary legislation in the Police and Criminal Justice Act 2006.
- 1.3 The team conducting this review has therefore had access to all the information necessary to undertake a full evaluation of all the relevant aspects.
- 1.4 The RCPO equivalent of the "statutory charging scheme" came into operation on 3 April 2007 following the publication of the second edition of the Director's Guidance under the provisions of Section 37 (A) (1) (a) of the Police and Criminal Evidence Act 1984 as amended. Prior to this the Director's Guidance only applied to cases investigated by the Serious and Organised Crime Agency (SOCA). Whilst the scheme covers all indictable only, either way or summary offences<sup>3</sup> submitted to RCPO by Her Majesty's Revenue and Customs (HMRC) investigators, this review focussed on those cases where the investigator sought an immediate charging decision. The majority of RCPO cases are now referred for a final charging decision in this way. In most of these cases the suspect will be in custody although in some they will have been bailed for the charging decision.
- 1.5 We did not consider those cases which had been subject to an ongoing investigation in which an RCPO prosecutor would have been giving advice from an early stage and a full file of evidence submitted for a final charging decision. Nor did we consider revenue investigations where a file is sent to RCPO for a decision and the proceedings are commenced by the laying of an information and the issuing of a summons.
- 1.6 The processes and structure of the part of the scheme where an immediate charging decision is requested by HMRC have only been in place since April 2007, whereas those where the full file of evidence is submitted for a charging decision are longstanding. Unless we indicate to the contrary, our findings refer only to the new processes and structure.

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1 An Overview Inspection of the Revenue and Customs Prosecutions Office (RCPO) Manchester and London Offices (November 2006)

2 Customs and Excise Prosecutions Office: London Based Casework Units (December 2004)

3 Paragraph 2.1 of the Guidance

- 1.7 Whilst RCPO prosecutors work within SOCA and provide charging advice, we have not considered in detail how their charging decisions are provided. The management of SOCA cases is different in a number of aspects, including the allocation of a prosecutor at the outset of the investigation.
- 1.8 At the time of the review in March 2008 the scheme had been operating fully for less than a year. There has been some initial review work by RCPO in July 2007 and HMRC in September 2007. The scheme had not, however, been subject to a full evaluation and our review is intended to assist in informing any such future evaluation. An evaluation planned for April 2008 was deferred pending the findings of our review. The review team focussed on the effectiveness of the operation of the scheme, including whether it was realising the expected benefits identified when the project was initiated. The team also considered the scope and quality of the performance information available to RCPO managers to assist them in managing the scheme and identifying where remedial action may be necessary.
- 1.9 The recommendations we have made are designed to assist the RCPO in improving the quality of the scheme and to strengthen the management of performance.
- 1.10 This review was conducted at the same time as a joint thematic review by HMCPSI and Her Majesty's Inspectorate of Constabulary into the effectiveness of the operation of the Crown Prosecution Service's charging scheme. However, there are significant differences between the two schemes in relation to their respective scopes, scale and operations. We have not therefore evaluated the comparative effectiveness of each scheme, although where appropriate we have commented on the impact of any differences in their operation.
- 1.11 The opportunity to carry out this review arose at short notice and the team are grateful to RCPO staff for the assistance given to them in undertaking the review.



## 2 METHODOLOGY

- 2.1 The review team gathered evidence from a number of sources, including an examination of completed cases, consideration of case decision records, interviews with RCPO staff and policy leads and senior investigators with HMRC, and an analysis of management information provided by RCPO. Additionally, inspectors observed prosecutors when they were making charging decisions on cases submitted by HMRC investigators.

### *File examination*

- 2.2 A selection of 16 completed cases was examined, including guilty pleas, convictions and acquittals after trial and those which were discontinued. In each case the decision to commence proceedings had been made after 3 April 2007 and had therefore been subject to the Director's Guidance. The relevant findings from that file examination are referred to at the appropriate parts of this report.

### *Case decision records*

- 2.3 We also examined each of the 18 case decision records (CDRs) made during the week of our review and the preceding week to evaluate the quality of the decision-making process, based upon the information provided by the HMRC investigator to the prosecutor.

### *Interviews*

- 2.4 Interviews were conducted with a range of staff in RCPO, including managers, prosecutors, and administrative staff. The review team also conducted interviews with HMRC senior investigators to ascertain their assessment of the effectiveness of the scheme.

### *Observations*

- 2.5 Arrangements were made to observe the process by which RCPO prosecutors determined whether a person was to be charged in accordance with the Director's Guidance. These observations were restricted to those cases where the prosecutor was being asked to make an immediate charging decision, as opposed to those cases where the full evidential file had been submitted to the RCPO office for a charging decision. In chapter four, we discuss the different routes by which a charging decision can be made in accordance with the Director's Guidance.

### *Management information*

- 2.6 The review team considered a range of management information, including the initial project initiation documentation, the Director's Guidance, supplemental guidance to prosecutors and performance data.



### 3 THE IMPLEMENTATION OF THE SCHEME

#### Project planning and oversight

- 3.1 The planning and delivery of the project to implement the scheme was effective. There was appropriate identification and consideration of project objectives, delivery timelines, resourcing and governance. The project plans, risk management plans and project meeting minutes indicate that the roll-out was well managed and overseen by the project team and a steering group. The project steering group included board-level RCPO managers, as well as staff, and members of HMRC with responsibility for criminal justice planning together with operational staff. This assisted both with the implementation of the scheme and ensured that HMRC investigators understood the reasoning behind its introduction. HMRC produced separate guidance to its investigators on the operation of the scheme.
- 3.2 At the outset of the project a number of anticipated benefits of the scheme were identified namely:
- the right person is charged with the right offence at the earliest possible time;
  - ensuring that the right type of evidence is gathered at the earliest stage prior to charge;
  - more cases result in convictions (with increases in guilty pleas) and a reduction in discontinuances;
  - a closer working relationship between HMRC investigators and RCPO prosecutors;
  - earlier and greater RCPO involvement will help focus the direction of the investigation; and
  - in appropriate cases a full file will be available before charge, reducing the number of hearings and delays.
- 3.3 The scheme was piloted over one weekend in March 2007, where all charging decisions arising out of investigations by one HMRC regional investigation team were made by RCPO duty prosecutors. Whilst there were some initial technical difficulties these were soon overcome. Duty prosecutors have clear guidance on how the technical aspects of the scheme work, including the actions to be carried out when there are duty prosecutor shift changes.
- 3.4 The project timeline included a review process, although this did not assess performance against all the aforementioned benefits envisaged at the initiation of the project (see below). Additionally, there were no plans to implement overall performance monitoring systems. The review mainly covered resourcing issues - staffing matters, rotas, scheme costs, accommodation and equipment; as well as health and safety. Some legal issues relating to compliance with the Director's Guidance were identified, but the review did not include any context as to scale nor was any supporting data provided. We have been informed that they were few in number. The issues identified were:
- a) charging (by HMRC) without interviewing the suspect;
  - b) HMRC not seeking charging advice in all bail cases; and
  - c) HMRC moving to charge immediately following an assault on an investigator.
- 3.5 It is perhaps unsurprising that in the early stages of the scheme a lack of awareness by all investigators of the terms of the RCPO Director's Guidance should arise. By the time of our review it was apparent that these were no longer issues.

### **Value considerations**

- 3.6 The project documents included prosecutor charging model options identified by RCPO and the rationale underlying their selection or rejection. These resourcing options included:
- a) recruiting additional lawyers whose sole role would be to undertake duty prosecution rotas; or
  - b) recruiting additional lawyers to undertake the out-of-hours element, with existing RCPO prosecutors undertaking the 9am to 5pm role on a rotas system; or
  - c) using existing RCPO prosecutors for both in-hours and out-of-hours rotas, with the latter attracting a pay supplement.
- 3.7 The last option was selected following a costing analysis of all three, and consultation with internal stakeholders and our evaluation indicates clearly that this was the most appropriate option.
- 3.8 Inspectors undertook an analysis of prosecutor rota/shift data collected since April 2007 which indicated that no requests for immediate charging decisions were received by the duty prosecutor in 50.3% of business hours shifts (namely 8am to 6pm Monday-Friday). In out-of-hours periods, no requests for immediate charging decisions were received during 26.2% of shifts (we discuss factors behind this in the next section).
- 3.9 The scheme was funded out of the existing RCPO budget provision, with additional staff headcount limited to the appointment of two charging administrators. Duty prosecutor coverage was provided from existing staff although with additional costs arising from the provision of the out-of-hours service during weekday evenings and weekends. As part of the project implementation, a costing exercise was undertaken to assess how much each charging decision cost in real terms, taking into account the additional out-of-hours shift payments and any time off taken in lieu of out-of-hours duty. The costing exercise estimated that on average each shift would attract a cost of £540. Each case referred for an immediate charging decision was costed at £345 and in those where the decision was to authorise charge the cost would be £375. This was based on a trend of activity showing that approximately 75% of referrals were made out-of-hours. RCPO data confirms the accuracy of this assumption: at the end of February 2008, 74% of referrals had been made during out-of-hours sessions.
- 3.10 Overall we considered the implementation of the project to be a **strength**.

## 4 THE OPERATION OF THE SCHEME

- 4.1 The Director's Guidance states that a defendant cannot be prosecuted for any offence unless the case has been subject to a charging decision<sup>4</sup> by an RCPO prosecutor. The scheme is therefore fundamentally different from that operated by the CPS and the police, where in the majority of less serious offences and others in which a plea of guilty is expected the charges are still made by the police. In practice RCPO staff only associated the scheme with those cases where the investigator wanted an immediate charging decision over the telephone. Cases where the full file, as had previously been the case, was submitted for advice as to whether a prosecution should be started, or those where the proceedings were commenced by the laying of an information and the issuing of a summons (predominantly revenue cases) were not thought of as being part of the scheme.
- 4.2 Whilst this approach did not impact on the quality of decision-making, it did impact on the way performance information was collected and analysed. We discuss this further in chapter six.

### The structure

- 4.3 We found that the structure of the scheme is effective, and although there were some initial teething problems, investigators can contact a duty prosecutor without difficulty. The ease with which investigators can transmit information to the prosecutor for an immediate charging decision can depend on where the alleged offence occurs. This can be done easily at those locations where there is a permanent HMRC office, but less so at locations where there is not a permanent presence. In these cases the investigator may give the prosecutor a verbal as opposed to a written report. In practice, there are few cases where a verbal, as opposed to a written, report is given. In the 18 case decision records (CDRs) we examined, covering a two week period, there was only one in which a verbal report was given.

### Prosecutor coverage

- 4.4 Each 24 hour period is divided into duty prosecutor shifts. From Monday to Friday there are three shifts:
- 8am until 1pm;
  - 1pm until 6pm; and
  - 6pm until 8am.
- 4.5 At weekends and Bank Holidays this reduces to two shifts in each 24 hour period, with one duty prosecutor per shift. Duty prosecutors receive an additional payment for undertaking out of hours' coverage. Coverage is provided from both the London and Manchester RCPO offices. Prosecutors must apply to go on the rota, and any application must be approved by their divisional head.
- 4.6 The charging advice is provided over the telephone. At the London RCPO office this is done from a specific room, where the charging administrator is also based. The facilities in this room are good. We did not visit the Manchester RCPO office however we understand that due to the lack of accommodation there is no room set aside for the duty prosecutor who therefore works from his or her usual desk.

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4 Paragraph 2.1

- 4.7 Out-of-hours shifts are covered from the duty prosecutor's home. There was an appropriate assessment of the home working environment as part of the implementation of the scheme and setup costs included the provision to all relevant staff of appropriate equipment for remote working. RCPO computer equipment is encrypted in compliance with Government requirements, but managers will wish to review this aspect of the operation of the scheme to satisfy themselves that all aspects comply.
- 4.8 RCPO has undertaken an analysis of the pattern of requests for charging decisions. This indicates that for the period April 2007 to February 2008, only 26% of requests for an immediate charging decision were made during office hours. The limited number of requests made during office hours was confirmed during our fieldwork observations. The reason for this disparity is attributable mainly to flight and ferry arrival patterns, and in particular the arrival times of flights and passengers from locations that historically pose a higher risk of involvement in the smuggling of illegal drugs.
- 4.9 At the end of each shift, the duty prosecutor is required to submit a CDR for each case together with a feedback form recording details such as the number of telephone calls received or indicating that no calls have been received. The guidance requires the duty prosecutor to return the documentation "by e-mail, fax, or by hand to the Rota Co-ordinator by the next working day".
- 4.10 We found that these returns were not always being made promptly, which diminishes the accuracy and integrity of data collected to identify the number of cases referred, calls received during each shift and initial referral outcomes. In January and February 2008, of the 132 duty prosecutor shifts recorded, only 67 (51%) had submitted the necessary documentation by the end of the first week of March 2008.

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#### **ASPECT FOR IMPROVEMENT**

In order to ensure the timely and accurate collection and analysis of caseload data:

- duty prosecutors should provide caseload returns within 24 hours of the end of their shift; and
  - managers should monitor the timeliness of individual returns and report weekly to divisional managers identifying outstanding returns.
- 

- 4.11 We note that since our fieldwork, steps have been taken to ensure compliance with this aspect of performance.

#### **The case decision record**

- 4.12 Each request by an investigator for an immediate charging decision should be made on a CDR, which is sent electronically to the duty prosecutor. The CDR, when completed, sets out the investigator's summary of the evidence, the prosecutor's decision, including where appropriate what offences to charge, and where necessary any further action that needs to be taken to gather or preserve evidence.
- 4.13 In almost all the CDRs we examined we found that the summary provided by the investigator was sufficiently detailed to inform the duty prosecutor of the facts of the case and the nature of the

evidence. Paradoxically, although the RCPO deals with some of the most serious types of criminal offending, many cases are evidentially straightforward, in particular in respect of defendants caught trying to smuggle prohibited goods such as drugs or goods subject to excise duties through airports. In the more problematic cases, for example those where goods were smuggled in lorries, we found that investigators identified issues which could evidentially weaken the case.

- 4.14 The quality of the duty prosecutor's entry on the CDR varied. We found that in nine of the 16 (56%) finalised cases we examined the duty prosecutor's advice was set out clearly and concisely. Some prosecutors set out in detail their reasoning including the basis on which each charge was decided. However, others merely indicated that they were satisfied that one of the two tests was satisfied. We discuss the operation of the two tests in chapter five. However, the records in the more recent cases we examined during our fieldwork indicated that the quality had improved. We found that 14 out of 18 (78%) of these CDRs were of an appropriate standard. In three of the four other CDRs the prosecutor had not set out the reasoning behind their decision to authorise charge and in one, the prosecutor's part of the CDR had not been signed.
- 4.15 It appeared from the times on the investigator's part of the CDR, that each of the three cases where the prosecutor's part of the CDR was not of an appropriate quality had been dealt with in the early hours of the morning. We recognise that the number of requests for out of hours' immediate charging decisions will not require the duty prosecutor to be at their desk (or indeed awake) throughout the duration of their shift. It is, however, important that investigators receive the same standard of service regardless of when they request a charging decision. Each charging decision should be of good quality, supported by clearly recorded reasoning and of sufficient detail that they can be relied on by the prosecution advocate. We make a recommendation about quality assuring prosecutor CDRs at chapter six.
- 4.16 The CDR provides for the duty prosecutor to set out what further actions are required by the investigator to complete the gathering of the necessary evidence. We found that some of the action plans were general in nature and did not set out any timescale for the completion of the necessary tasks, as required by the provisions of paragraph 5.6 of the Director's Guidance. We also noted during our fieldwork observations that in some cases the investigator completed the action plan section of the CDR before submitting it to the duty prosecutor.
- 4.17 In those cases where the duty prosecutor did not authorise charge at the initial stage, but required further evidence there was an assumption that the investigator would submit a full file for further advice. There was no process to ensure that these cases were submitted expeditiously following the initial advice.
- 4.18 In order to ensure that there is a full RCPO audit trail of these cases and to manage the progress of action plans, the systems for monitoring these cases needs to be strengthened.

**ASPECT FOR IMPROVEMENT**

To enable RCPO to manage those cases where the charging decision is deferred pending further evidence:

- action plans should be compiled by the duty prosecutor;
  - the target date for the completion of all tasks should be included; and
  - the charging administrator should monitor these cases and refer any not resubmitted by the target date to the appropriate head of division.
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The completed CDR should be provided by HMRC to the prosecuting advocate who conducts the first hearing. During the course of this review it became apparent to RCPO that this was not happening in all cases. These hearings may be conducted by counsel who would not necessarily be aware that the document should be provided. We understand that this issue is now being addressed by RCPO, and the process has been clarified with HMRC.

- 4.19 It is important that the advocate at court is sufficiently informed on all relevant issues to enable the case to progress at the first hearing. As we have indicated above, although most cases dealt with by RCPO are serious, they are often straightforward with defendants indicating a guilty plea at the earliest opportunity.

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**ASPECTS FOR IMPROVEMENT**

RCPO must ensure that:

- the prosecuting advocate receives a copy of the case decision record with the file at court; and
  - clear instructions are provided to the advocate as to the mode of trial recommendations and how the case should proceed.
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## 5 THE CHARGING DECISION

### The types of charging decision

- 5.1 The RCPO keeps performance data on the types of interim and final direction given where investigators request an immediate charging decision, although it does not currently, due to the approach we discuss at paragraph 4.1 above, include those cases where the full file of evidence is submitted for a charging decision or process is by way of summons. As we have stated all charging decisions are made under the provisions of the Director's Guidance, and it may therefore be instructive if all cases are included in any performance information.

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### RECOMMENDATION

We recommend that the RCPO ensures that all cases submitted for a charging decision, by whatever route, are included in any relevant performance information.

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- 5.2 The following table therefore only includes those cases where an immediate charging decision was requested:

Table 1: Telephone charging decisions by outcome.

<b>Telephone charging decisions April 2007 to Feb 2008 by defendant</b>	<b>Number</b>	<b>%</b>
Total number of charges – custody	824	90.5
Total number of charges – bailed	17	1.9
Total number of cautions	3	0.3
Total number of bail – further enquiries	43	4.7
Total number of no further action	21	2.3
Total number of early advice	3	0.3
Overall number of charging decisions made	911	100

Source: RCPO

- 5.3 The table indicates clearly the nature of the case mix dealt with by RCPO, with over 90% of defendants being refused bail by the custody sergeant at the time of charge. It also reinforces the comparative strength of the evidence in RCPO cases, with no further action directed in only 2.3% of cases. We have some concerns about the reliability of this aspect of the data which we discuss further in the section on the disputes resolution protocol.
- 5.4 Where a prosecutor is concerned about the strength of the case, such that they are not prepared to make an immediate charging decision, the investigator is required to submit the file to the RCPO office for formal advice. Whilst no further action is directed in few cases, managers would be assisted by the data indicating whether the decision was made on evidential or public interest grounds. There was also a need to reconcile those cases which were bailed for further enquiries with the final charging decision.

- 5.5 Supervisory staff in HMRC retain the authority not to submit a file to RCPO for a charging decision and can determine that no further action can be taken. There was anecdotal evidence that the proportion of these cases had reduced since the introduction of the scheme, but the relevant data was not shared between the two agencies. Managers in both organisations would benefit from this information being shared to satisfy themselves that cases are being referred appropriately, and on how many occasions the charging decision differs from the HMRC investigators recommendation.

### **The quality of the charging decision**

- 5.6 In 14 of the 16 (88%) finalised cases we examined it was appropriate to give an authority to charge at the time the request was made by the investigator. In two cases we considered that the prosecutor should have requested more information before giving authorisation. Our examination of two weeks case decision records (CDRs) during our fieldwork indicated that those charging authorisations were correct, although in one case the decision that it was in the public interest to authorise a charge was finely balanced.
- 5.7 Determining whether the Code tests had been applied correctly at the charging stage was more problematic. As we have discussed above the duty prosecutor relies on a written summary of the case provided by the investigator, together with any further information provided in the course of discussion, to determine whether to authorise a charge. They do not have access to the statements or material in the form of admissible evidence at this stage.
- 5.8 RCPO prosecutors apply the Code for Crown Prosecutors to their decisions. The Code states at paragraph 5.2 that Crown Prosecutors must be satisfied that there is enough evidence to provide a “realistic prospect of conviction” (the full code test). Paragraph 5.4 states that the prosecutor must consider whether the evidence can be used and is reliable. In considering whether the full code test is met the reference to evidence must be to that which is admissible. This wording leads some to interpret the Code as requiring the prosecutors to have the evidence in admissible form for their consideration. The investigating officer’s summary on the CDR would not itself meet this criteria as it provides only a précis or description of the actual evidence.
- 5.9 The guidance issued by the Director of RCPO states at paragraph 3.5:
- “In any case where the Charging Decision is to be made, and **all of the evidential material is available for review**, [our emphasis] the standard to be applied in reaching the Charging Decision will be the Full Test under the Code for Crown Prosecutors”*
- 5.10 There is a definition of what constitutes evidential material under the Director’s Guidance at paragraph 7.2. This is widely drawn, and includes:
- “verbal and written reports, and relevant information of any type”.*
- 5.11 The paragraph states that evidential material (applying this wide definition) can be considered when applying the full Code test. This suggests that there may be a tension between what is contained within the RCPO Director’s Guidance and the Code for Crown Prosecutors. This aspect of the RCPO Director’s Guidance differs from that contained within the Director of Public

Prosecution's Guidance issued under the CPS charging scheme. Under the CPS scheme<sup>5</sup> either an expedited or evidential report must be submitted before the full code test can be applied. In each case evidence, in a form admissible in proceedings, must be included. For the reasons we discuss below, we do not consider that the RCPO practice has any significant implications for the quality of decision-making. The key factor enabling us to come to this conclusion is the quality and comprehensiveness of the summaries submitted. Although the evidence may not have been put into written form or forwarded to the prosecutor, it was clear that the evidence did exist and could be placed into the appropriate form if required.

- 5.12 However, the result of this perceived mismatch between the terms of the RCPO Director's Guidance and the Code for Crown Prosecutors is some confused terminology.
- 5.13 In many of the cases and CDRs we examined the prosecutors stated they were applying the full code test when it was apparent that they had not considered the evidence in admissible form, but relied on what was set out and described in the summary (which would satisfy the Director's Guidance on the definition of evidential material but not that within the Code for Crown Prosecutors if it is given its narrow interpretation). In some other almost identical cases, however, prosecutors said they were applying the threshold test, albeit the evidence was said to exist.
- 5.14 The threshold test under paragraph 6.1 of the Code for Crown Prosecutors can be applied in determining whether a suspect who is to be detained in custody should be charged. This test requires the prosecutor to consider only whether there is at least a reasonable suspicion that the suspect has committed an offence, and if there is, whether it is in the public interest to prosecute. As this is a lower test than that required for a full code test decision, it can only be applied in limited circumstances, namely "those cases in which it would not be appropriate to release a suspect on bail after charge, but the evidence to apply the full Code test is not yet available" (paragraph 6.2 of the Code). As can be seen from the table at paragraph 5.2 in most RCPO cases where an immediate charging decision is required it would not be appropriate to release the suspect on bail. It is for this reason that an immediate decision is needed.
- 5.15 Paragraphs 3.6 and 3.7 of the Director's Guidance state clearly that RCPO prosecutors will assess the case against the threshold test where the evidential material required under the guidance is not available and it would not be appropriate for the person to be released on bail.
- 5.16 Despite this guidance it is apparent that there is a lack of clarity amongst prosecutors as to when they should apply which test. In every case the prosecutor's decision was based on what was set out in the summary, and whilst some indicated they were applying the full code test others indicated they were applying the threshold test. In some instances the facts were strikingly similar. In one case we examined the prosecutor indicated that they were applying both tests, albeit to different charges.
- 5.17 Additionally, investigators considered that there was a lack of consistency between prosecutors about when they were prepared to apply the threshold test. In some cases this was leading to suspects being released on bail for further evidence to be obtained when it appeared to the investigator that the criteria for custody were met and the threshold test should have been applied.

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<sup>5</sup> A modified version of the CPS scheme (the Director's Guidance Streamlined Process) is being piloted in a number of areas and we will be examining the implications of this in a separate report. It may raise similar issues.

- 5.18 Given the RCPO approach that prosecutors should work off summaries (and our acceptance of that approach), we think that the RCPO Director's Guidance needs to make it clear that:
- a) the full Code test should be applied where the prosecutor is satisfied by the information contained in the summary that sufficient evidence *already* exists (and is capable of being put into appropriate form) to provide a realistic prospect of conviction; and
  - b) the threshold test should be applied where the evidence is not yet available but can reasonably be expected to become available and it is necessary to keep the defendant in custody.

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## RECOMMENDATION

We recommend that the Director of the RCPO reviews the guidance to prosecutors to clarify the circumstances in which a full Code test may be made on the basis of a summary where an immediate charging decision is required.

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- 5.19 In those cases where the threshold test is applied initially, paragraph 6.6 of the Code states that the full code test must be applied as soon as reasonably practicable. Therefore, so long as paragraph 6.6 is complied with, the threshold test can be applied correctly, subject to satisfying the provision in respect of the withholding of bail.
- 5.20 This clarity is particularly important in those cases where the suspect wishes to plead guilty at an early stage. As we have stated, although the RCPO case mix involves a large proportion of serious cases, many are evidentially straightforward and result in guilty pleas. At the first hearing the prosecutor may have little more than the CDR (which includes the investigator's summary of the case and the duty prosecutor's decision) and the notebooks of the investigators. In our view the right approach is for the case to proceed only when the prosecutor has applied the full Code test (albeit on the basis of a summary) because he or she is satisfied that the evidence does exist to provide a realistic prospect of conviction. There is an adequate safeguard if the suspect is legally represented and enters their plea on the basis of legal advice, or has had the opportunity to obtain legal advice and to be legally represented. In such cases the plea of guilty itself is an acceptance that there is a realistic prospect of conviction.
- 5.21 In five of the cases in our file sample the proceedings were discontinued following an initial decision to authorise charge. In each case the decision to discontinue was correct in accordance with the Code. In one of the cases the prosecutor had identified the possible weakness in the case at the charging stage, although the decision to charge was correct. In another case information came to light which cast doubt on the guilty knowledge of one of the defendants. Although not within the direct scope of this review, we commend the RCPO on their consideration of the issues in that case, and in particular the assessment of the various options open to the prosecution following receipt of the further information.

### **The disputes resolution procedure**

- 5.22 The RCPO Director's Guidance sets out the process whereby investigating officers or custody officers can have a duty prosecutor's decision referred for review to a divisional head. We were informed that very few cases were referred for resolution and none of the files we examined indicated that there had been any challenge. However, no record is kept of the number of cases where the duty prosecutor's decision is firstly challenged or, secondly, changed following referral.

Under the current process, the original spreadsheet entry may be overwritten with the new decision, making it impossible to determine which decisions have been changed on review. This also diminishes the reliability of the RCPO data on the percentage of cases where the final decision is that there should be no further action. Whilst there may be few referrals, it is important that an accurate record is kept to identify any trends or performance issues relating to specific prosecutors.

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**ASPECT FOR IMPROVEMENT**

To enable managers to identify any trends or performance issues an accurate record should be kept of all cases referred under the disputes resolution procedure.

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**Outcomes**

5.23 The rate of successful outcomes has increased from 2006-07 to 2007-08. This maintains what we were informed was a year on year improving trend that pre-dates the introduction of the scheme. It is not, therefore, possible to say that the introduction of the scheme has contributed directly to the improvement in performance. It has, however, clearly had no detrimental effect.

5.24 The following tables illustrate the rate of successful outcomes:

Table 2: Annual Case Outcomes

<b>Combined magistrates' court and Crown Court Outcomes</b>	<b>2006-07</b>	<b>2007-08</b>
Guilty Pleas	53.2%	58.0%
Discontinuance	5.2%	4.4%
Attrition	9.6%	8.7%
Successful outcome rate	90.4%	91.3%

Source: RCPO

5.25 The discontinuance rate in the magistrates' courts improved from 9.0% in 2006-07 to 8.8% in 2007-08. Whilst this is a modest improvement, in real terms the number of cases discontinued fell from 32 to 23. The percentage improvement in the Crown Court was similarly modest, dropping from 3.9% to 3.2%, but again based on very low numbers (37 in 2006-07 compared with 30 in 2007-08).



## 6 PERFORMANCE MANAGEMENT

### Performance information

- 6.1 There are monthly situation reports provided by each division which provide contextual information on the range of RCPO key performance measures. These include the level of successful outcomes, judge directed acquittals and the volume and timeliness of written advice cases, as well as completed cases. As all RCPO cases require the charging decision to be made by a prosecutor, these performance measure are relevant in examining what impact if any the statutory change has had on RCPO performance and whether there is any significant difference between those decisions on cases which are submitted for advice, those submitted for proceedings to commence by way of summons and those where an immediate charging decision is requested. RCPO has not, however, made any links to performance based on the introduction of the scheme. Existing RCPO operating systems do not permit the identification of cases based on their mode of receipt (namely telephone or written), making it impossible to perform any automated analysis of cases to determine if this had any bearing on their outcomes.
- 6.2 RCPO is currently evaluating its performance information needs as part of the process of acquiring a new case management and reporting system. We found, and senior managers agreed, that the processes for gathering performance information needed to be strengthened. The gaps in performance management were due mostly to the inability of existing legacy systems to generate coherent performance reports. This contributed to the RCPO not identifying baseline performance and benchmarks when the scheme was introduced. However, with its relatively small caseload, it would have been possible (for example by using a pilot exercise) to baseline RCPO performance in the run-up to the implementation of the scheme, identify proxy targets and undertake sample checks periodically to identify if the expected benefits of the scheme were being realised.

### Quality assurance

- 6.3 Individual performance management involves managers examining two cases per month for each prosecutor and providing feedback on a monthly basis. There is also a run-through of the status of all cases allocated to the prosecutor. However, cases where there is an immediate charging decision are allocated, upon receipt of the file, to the appropriate division by the RCPO registry. In comparison to cases that are referred for written advice, it is less likely that the prosecutor who gave the charging advice will retain ownership of the case due to the divisional allocation system. This means that it is also less likely under the current process that a prosecutor will receive feedback on the quality of any immediate charging decision.
- 6.4 We recognise that the operation of the duty prosecutor scheme within the overall structure of the RCPO makes it very difficult for heads of divisions to ensure case ownership where an immediate charging decision is made. However, it is important that managers are informed about all aspects of the work of the staff they manage. One option would be for this task to be undertaken by a division within RCPO that has an overarching remit. As all that is available at the time of the immediate charging decision is the CDR this would not be resource intensive task.
- 6.5 The International, Policy and Advisory Division (IPAD) has a role in ensuring that quality standards are met and maintained across the RCPO. In that regard, IPAD provides assurance to the Board that managers are undertaking their quality assurance role as appropriate although it does not currently undertake any file examination.

- 6.6 There is no specific ongoing initiative aimed at evaluating the quality of immediate charging decisions. In November 2007 and January 2008, themed exercises were undertaken by divisional heads whereby all CDRs attached to files allocated to their division were examined and performance issues should have been raised with prosecutors on their division or, in the more likely scenario, to the divisional heads of other prosecutors whose charging decisions they had examined. This was not a structured exercise. No composite report was produced as it was considered that there were no major issues emerging, and issues of an individual nature were dealt with on a one-to-one basis or by e-mail. In the future RCPO managers will no doubt wish the quality of decision-making in cases where an immediate charging decision is made to be assessed as part of its comprehensive casework quality assurance regime.

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**ASPECT FOR IMPROVEMENT**

RCPO should develop a system where duty prosecutor charging decisions can be assessed effectively for quality on a regular basis by managers and feedback given to duty prosecutors

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**Joint performance management**

- 6.7 There are monthly meetings between the HMRC regional investigation teams (RITs) and the RCPO. An RCPO prosecutor is assigned to each RIT in a liaison role. Data is shared between the two agencies at these meetings, although it is not clear whether this relates to all charging decisions or only those where an immediate charging decision is requested.
- 6.8 An additional point for consideration is whether, in view of the modest number of case, it would be feasible for RCPO to collect information, and share it with the RITs on the proportion of cases where the charging decision differs from the HMRC recommendation. This would not necessarily be an indicator of quality but could be relevant to any cost/benefits analysis and value for money issues.



## 7 CONCLUSION

- 7.1 This review looked at one part of the operation of the RCPO, focussing on those cases where the prosecutor is requested to make an immediate charging decision by an HMRC investigator, in accordance with the statutory terms of the RCPO Director's Guidance.
- 7.2 At the time of our review in March 2008 the scheme had been operating for less than a year. It had not been subject to a full evaluation by the RCPO itself and our review was intended to assist in informing any such evaluation. The review team focussed on the effectiveness of the operation of the scheme, including whether it was realising the expected benefits identified when the project was initiated.
- 7.3 The RCPO charging scheme was implemented effectively, with constructive early consultation with key stakeholders. There was a detailed assessment of the unit costs of the scheme and the options that could be adopted to operate it successfully. Prosecutors are supportive of the scheme and it is managed efficiently. HMRC investigators find that the scheme works well and they are able to secure ready access to a RCPO prosecutor.
- 7.4 The scheme is operating effectively, with the right cases being taken forward without delay. The quality of decision-making is good. Some improvements need to be made in respect of the quality of the prosecutor's endorsement of their part of the case decision record (CDR), in those cases where an immediate charging decision is requested. They can be too brief and not set out clearly the basis on which decisions are taken.
- 7.5 There is a need to clarify aspects of the RCPO Director's Guidance, in particular on what basis, and on what material, the full Code test should be applied, as opposed to the threshold test. Inspectors found that there was an inconsistent approach by prosecutors.
- 7.6 The performance management of some aspects of the scheme could be improved, and in particular ensuring that all cases are included in performance information data, not just those where an immediate charging decision is required. The established liaison arrangements between RCPO and the RITs could be developed further with a greater sharing of data, for example the number and types of cases where an HMRC supervisor determines that there should be no further action.
- 7.7 We identify one strength and have made two recommendations which identify steps necessary to address weaknesses relevant to important aspects of performance which we consider merit the highest priority for RCPO in improving the scheme. We also identify five aspects for improvement, which relate to other aspects of the scheme that would benefit from improvement, but which do not have as high a priority.

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### STRENGTHS

- 7.8 The implementation of the charging scheme project (Paragraph 3.10).
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## RECOMMENDATIONS

7.9 We recommend that:

- 1 the RCPO ensures that all cases submitted for a charging decision, by whatever route, are included in any relevant performance information (paragraph 5.1); and
  - 2 the Director of the RCPO reviews the guidance to prosecutors to clarify the circumstances in which a full Code test may be made on the basis of a summary where an immediate charging decision is required (paragraph 5.18).
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## ASPECTS FOR IMPROVEMENT

7.10


- 1 In order to ensure the timely and accurate collection and analysis of caseload data:
    - duty prosecutors should provide caseload returns within 24 hours of the end of their shift; and
    - managers should monitor the timeliness of individual returns and report weekly to divisional managers identifying outstanding returns (paragraph 4.10).
  - 2 To enable RCPO to manage those cases where the charging decision is deferred pending further evidence:
    - action plans should be compiled by the duty prosecutor;
    - the target date for the completion of all tasks should be included; and
    - the charging administrator should monitor these cases and refer any not resubmitted by the target date to the appropriate head of division (paragraph 4.17).
  - 3 RCPO must ensure that:
    - the prosecuting advocate receives a copy of the case decision record with the file at court; and
    - clear instructions should be provided to the advocate as to the mode of trial recommendations and how the case should proceed (paragraph 4.19).
  - 4 To enable managers to identify any trends or performance issues an accurate record should be kept of all cases referred under the disputes resolution procedure (paragraph 5.2).
  - 5 RCPO should develop a system where duty prosecutor charging decisions can be assessed effectively for quality on a regular basis by managers and feedback given to duty prosecutors (paragraph 6.6).
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**RCPO response**

7.11 In response to the recommendations and aspects for improvement in this report the Director of RCPO has already initiated a number of actions to address most of the issues raised:

- Work has begun on clarifying the guidance to prosecutors (Recommendation 2)
- Updated guidance has been issued to duty prosecutors to ensure that caseload returns are provided within 24 hours of the end of their shift. The return of the form has been linked to payment for the shift to encourage compliance. (Aspect for Improvement 1)
- Steps have been taken to ensure that the prosecuting advocate is always in possession of the CDR at the first hearing. Clarification and renewed instruction have been given to HMRC investigators and the completed CDR is now copied to the RCPO registry in time to be sent to the prosecuting advocate that that hearing. (Aspect for Improvement 3)
- Duty prosecutors are now required to indicate whether a case is suitable/not suitable for summary trial, with and the CDR amended accordingly. (Aspect for Improvement 3)
- An enhanced system of quality assurance is being developed. (Aspect for Improvement 5)





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