



Report of the inspection of the Revenue and Customs Prosecutions Office

Executive Summary

July 2009

Introduction

This is the executive summary of Her Majesty's Crown Prosecution Service Inspectorate's report about the Revenue and Customs Prosecutions Office (RCPO).

Background

RCPO is one of the Law Officers' Departments, and was established under sections 34-42, Commissioners for Revenue and Customs Act 2005. RCPO is a specialist and independent government department responsible for carrying out criminal prosecutions for HM Revenue and Customs (HMRC) and the Serious and Organised Crime Agency (SOCA).

As the inspection was concluding, the Attorney General announced on 3 April 2009 that RCPO and the Crown Prosecution Service (CPS) would be combined to form a new public prosecution service. It is anticipated that this will take place during 2009-10, with further consolidation in 2010-11.

This report covers all the aims set out in the original scope and makes comment, where relevant, on issues that will have some bearing on the newly formed organisation. The recommendations and aspects for improvement are cast as if the organisation was continuing in its current state, although how they will be taken forward will depend on how the merger develops.

RCPO has two offices, one in London and the other in Manchester. In March 2009 RCPO employed 335.7 staff (full-time equivalent and excluding 33 temporary staff). There were 84.1 prosecutors (excluding the Director and Chief Operating Officer and 17 contract counsel), split between the two offices.

RCPO has five casework divisions, four of which support HMRC and the fifth supports HMRC and SOCA. In addition, there is one division dedicated to asset forfeiture and another to international, policy and legal advice. Corporate services are delivered through four units or teams under the Chief Operating Officer.

The number of cases received by RCPO has fallen as a result of the nature of the focus and priorities of HMRC and SOCA. Additionally, RCPO has been operating in uncertain conditions as the UK Borders Agency (UKBA) has become established, with the risk that its caseload might reduce still further.

RCPO has made good progress since the follow-up inspection. It has restored public and judicial confidence in HMRC prosecutions and has taken steps to improve its performance. In particular, it has improved its governance and underpinning policies, reduced its expenditure on counsel fees (partly attributable to a reducing caseload) and has developed its prosecution manual into a web-based tool.

Summary of findings

Advice, review and decision-making

The quality of decision-making is very good at all stages: the evidential and public interest stages of the Code for Crown Prosecutors were applied correctly in every case we examined. Cases are kept under close review following charge. The key decision and action record, used by prosecutors for recording their decision-making, is a useful document but needs to be revised so that there is a clear audit of decision-making after charge.

The provision of advice is not always timely and managers need to ensure that effective monitoring systems are applied consistently across the divisions. The telephone charging scheme is effective and RCPO should consider extending the scheme to include straightforward cases where a prospective defendant is in custody but suitable to be bailed.

Case management

RCPO achieves a good level of successful prosecutions (87.0% conviction rate). The standard of post-charge case preparation is generally good. Prosecutors and case managers are proactive in progressing cases and court directions are generally complied with. The timeliness of submission of committal papers and unused material schedules by HMRC needs to be addressed jointly and RCPO managers are now using the reinvigorated HMRC/RCPO Casework Standards Group as a means of doing so.

Overall, prosecutors are complying well with their duties in relation to disclosure of unused material. However, disclosure is not made as promptly as it should be in order to enable cases to progress at plea and case management hearings in the Crown Court. RCPO managers do not record public interest immunity applications in relation to sensitive material and, whilst we found nothing to suggest that there are any issues about decision-making in that respect, there is a need to introduce a log so that managers can monitor the numbers and types of applications being made. RCPO would benefit from the appointment of a disclosure champion/co-ordinator.

There were two custody time limit (CTL) failures in 2008-09. RCPO managers need to review the system and ensure that there is an effective monitoring system.

RCPO has a good commitment to learning lessons. The definition of an adverse outcome needs to be clarified and managers need to develop a more consistent approach to recording and monitoring the reasons for them. Prosecutors are aware of the importance of considering issues in relation to asset forfeiture when reviewing cases and satisfactory confiscation orders are generally obtained at the conclusion of cases.

RCPO handles complex and specialist casework well. Prosecutors have developed specialist skills and knowledge, and there is early involvement in working with investigators to agree case strategies. We have identified the work undertaken in relation to case handling and procedures in Missing Trader Intra-Community fraud cases as a strength.

The case at court

Specific days have been negotiated at the magistrates' courts where RCPO cases are in the main listed, and generally an RCPO instructed advocate presents their cases. However, RCPO has been unrepresented (in person) on rare occasions where cases have been listed at short notice in the more remote magistrates' courts where it is difficult to provide an advocate to attend court and managers need to address this. The RCPO presence at the Crown Court is much improved, although there is a need for trials to be adequately covered after the prosecution case has concluded.

The quality of advocates is good, both in-house and those instructed by RCPO. A great deal of work has been done to develop the selection procedures for Crown Court advocates, although the process for deciding on nomination when specific counsel is requested needs to be reviewed. The quality of instructions to counsel is fair and improving, although there is often a formulaic approach.

Managing resources

RCPO has operated comfortably within budget since its inception, benefiting from the income it receives from the Asset Recovery Incentive Scheme (which allows an organisation to retain a proportion of criminal assets seized). The organisation has made significant savings relating to counsel fees (partially attributable to a drop in caseload) and has strengthened its procurement processes. There is now greater ownership of resources as a result of the new delegated budgeting process. Managers are now taking steps towards adopting value for money principles more widely across the organisation.

The number of staff has increased considerably, despite a declining caseload. A recent internal review of staffing complements revealed that there was potential overstaffing in some support departments outside of its core casework divisions. This included teams for which staff had been recently recruited. Further development of RCPO's workforce planning processes is required, although how this is undertaken will depend on how the proposed merger develops.

Staff have a good understanding of what is expected of them and a recent job evaluation exercise further clarified staff roles and responsibilities. Staff morale has been high and staff turnover low. However, sickness absence is increasing (attributed to better reporting) and is now above RCPO's target. Greater efforts are now being put into addressing cases of high absence and also more general poor performance. There has been a significant improvement in the level and quality of training, with a generous budget provided.

Strategy and managing change

RCPO's vision was to become the government prosecutor. Its priorities and objectives were set out in its three year business plan for 2008-11. This vision will have to be revisited following the decision to merge RCPO with the CPS. RCPO has made progress in its planning and risk management processes.

RCPO has embraced change since it was set up, and change projects are generally handled well. There is a dedicated team, and a committee overseeing change projects. The main ongoing project is that relating to a new case management system (the Helios project), although the proposed merger with the CPS means that this needs to be reconsidered. The decision to embark on this major project was made shortly before the merger with the CPS was announced. This may result in significant loss of the funds so far invested unless the system can be adapted for use within the specialist divisions of the merged organisations.

Managing performance to improve

The process for producing performance data is currently largely manual, time-consuming and prone to error as a result of the inadequacies of SOLAR (the existing case management system). This situation would have improved with the introduction of the new case management system.

There are weaknesses with a number of the performance indicators currently used for the monthly performance summary presented to the Board. This performance data is not broken down by division; nor is divisional performance data consistent with the performance indicators in the performance summary. There is also limited dissemination of performance data to staff.

Leadership

There is committed leadership within the organisation, and senior managers are viewed as visible and approachable. Further clarification of the management roles and responsibilities for higher executive officer (HEO) staff is underway. Governance structures and underpinning policies to support governance have been strengthened and continue to develop. There is scope for rationalisation within the current main committee structure.

An equality scheme has been established; however it is only recently that an equality champion has been appointed, with their role yet to be determined. The equality action plan needs to have identified milestones and priorities need to be communicated to staff. There are no workforce diversity targets in place.

There is generally a good level of communication within the organisation, although there is scope for further development and greater consistency across the divisions. The ambitious plans as set out in the original communications strategy have been curtailed somewhat, which has affected plans to increase RCPO's exposure with external stakeholders. RCPO has established good communication channels with HMRC and SOCA at a senior level.

RCPO has developed its international work, and prosecutors have built up a wealth of knowledge in dealing appropriately with foreign agencies. There is a need to ensure that this expertise remains available to those handling HMRC cases within the merged organisation.

Recommendations

We make ten recommendations about the steps necessary to address significant weaknesses relevant to important aspects of performance, which we consider to merit the highest priority.

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- 1 RCPO managers should take steps to ensure that, where feasible, prosecutors retain case ownership and that any unavoidable changes do not affect timeliness or result in a change in case strategy (paragraph 3.7).

 - 2 RCPO managers should:
 - amend the key decision and action record so that there are discrete sections for review decisions; and
 - ensure that staff complete it to provide a clear record of review decisions and other key decisions and actions that take place in each case (paragraph 4.4).

 - 3 RCPO managers should:
 - include the timeliness of submission of unused material schedules and their accuracy in their performance reports to the HMRC/RCPO Casework Standards Group meetings;
 - implement the use of a public interest immunity (PII) applications log;
 - ensure that PII applications made without notice to the defence have been authorised in advance by a senior prosecutor and a specific record kept;
 - ensure that the key decision and action record is used to provide a full record of disclosure decisions and actions; and
 - raise the profile of the disclosure specialists (paragraph 4.25).

 - 4 RCPO managers should:
 - clarify the definition of an adverse case;
 - introduce the use of divisional adverse cases logs; and
 - take action if there are any lessons to be learnt (paragraph 4.42).

 - 5 RCPO managers should:
 - review the custody time limit (CTL) system and ensure the system is complied with, in particular the rechecking of CTL calculations and the retaining of a paper audit trail and ensuring that lessons learned are applied consistently across all divisions
 - ensure that prosecutors agree CTL expiry dates in court with the court clerk; and
 - consider appointing a CTL specialist. (paragraph 4.73).
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- 6 RCPO should review the process for ensuring that the nominations systems is fair and for deciding nominations when specific counsel is requested by the head of division (paragraph 5.13).
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- 7 RCPO should further develop its workforce planning processes to ensure fair and optimal allocation of staff to discharge its workload efficiently and effectively both in operational and support functions (paragraph 6.17).
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- 8 RCPO managers should consider their approach to advocacy in order to:
- provide greater opportunities for HCAs to develop their advocacy skills in the Crown Court, so that they can undertake Crown Court trial work; and
 - ensure maximum savings and efficiencies can be achieved by using in-house prosecutors in preference to external counsel in appropriate cases (paragraph 6.19).
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- 9 RCPO managers should:
- conduct a revised cost-benefit analysis for the Helios case management project; and
 - review the Helios contract to determine if the project should continue and, if so, what changes should be made to ensure it benefits both RCPO and the CPS (paragraph 7.12).
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- 10 RCPO managers should:
- review the current performance indicators used, to ensure that they are appropriate and consistent;
 - improve the format of the performance summary report so that it shows trends from previous months;
 - use clearly defined red/amber/green ratings for each indicator; and
 - generate a performance summary report to replace the current divisional situation reports, to ensure consistency of data, and highlight areas of concern within a particular division (paragraph 8.12).
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Aspects for improvement

We additionally identified 12 aspects for improvement within RCPO's performance.

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- 1 RCPO managers should consider whether the charging scheme should be extended to include straightforward cases where the suspect is in custody but suitable to be bailed (paragraph 3.14).
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- 2 RCPO managers should ensure that:
- prosecutors update their case lists monthly; and
 - systems for monitoring the timeliness of advice are uniformly applied across the divisions (paragraph 3.37).
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- 3 RCPO managers, together with HMRC, should address the ongoing performance issues across the two organisations (paragraph 4.8).
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- 4 In order to better assess their performance, RCPO managers should:
- reconsider the data collected in relation to timeliness of preparation of papers for cases due to be heard in the Crown Court and set appropriate targets; and
 - adopt the approach to collecting data in relation to ineffective trials used by the other criminal justice agencies (paragraph 4.32).
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- 5 RCPO managers should ensure that in-house advocates appearing in the Crown Court receive the same quality of instructions as counsel at the private Bar (paragraph 5.25).
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- 6 In order for poor performance to be tackled effectively, further training and support should be provided to managers to ensure this is done consistently and fairly across the organisation (paragraph 6.22).
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- 7 Management training should be further developed and enhanced. This should be made available to existing managers and be mandatory for new managers (paragraph 6.31).
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- 8 RCPO should develop and manage detailed divisional and team plans (paragraph 7.5).
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- 9 Team meetings should be used to disseminate performance information to staff. This will increase awareness amongst staff of performance targets, and highlight areas where a division is performing well, as well as areas indicating room for improvement (paragraph 8.13).
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- 10 Quality assurance reports should be distributed to relevant managers and staff to enable lessons to be learned and to minimise errors recurring (paragraph 8.16).
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- 11 RCPO managers should:
- review RCPO's equality action plan and incorporate clear timescales for identified milestones;
 - communicate priorities to staff in order that they can contribute to these as appropriate;
 - clarify the role of the equality champion; and
 - encourage higher staff declaration levels, to establish a clear picture of the diversity profile of its workforce by grade (in order to be able to benchmark and as a basis for setting targets to address any imbalances) (paragraph 9.20).
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- 12 The complaints procedure needs to be clearer, both in respect of complaints sent to other agencies to deal with and those received from other agencies for response. It should incorporate a quality assurance element. The complaints log should also be developed to give a clearer overview of complaints. Care should be taken to ensure all correspondence relating to a case is maintained on file (paragraph 9.22).
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Strengths

We identified five strengths within RCPO's performance.

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- 1 The early participation of RCPO prosecutors in the investigative process to the benefit of case building (paragraph 3.10).

 - 2 The availability of RCPO prosecutors at all times to provide pre-charge investigative and evidential advice to SOCA (paragraph 3.16).

 - 3 The high quality of decision-making (paragraph 3.21).

 - 4 The work undertaken by RCPO, in partnership with HMRC, in relation to case handling and procedures in Missing Trader Intra-Community (MTIC) fraud cases (paragraph 4.52).

 - 5 The work undertaken by IPAD staff in relation to letters of request (paragraph 9.26).

Good practice

1.1 Three aspects of good practice were also identified.

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- 1 The partitioning of documents into sections using numbered dividers in RCPO case files (paragraph 4.2).

 - 2 Preparation of case specific disclosure protocols: some for the prosecution team, some for service on the defence (paragraph 4.13).

 - 3 The use made by staff in Manchester of the notes section on the case management system (SOLAR) (paragraph 4.64).

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

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