





Report of the inspection of the Revenue and Customs Prosecutions Office

July 2009

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1 INTRODUCTION

Purpose of the inspection

- 1.1 This is Her Majesty's Crown Prosecution Service Inspectorate's (HMCPPI) report about the Revenue and Customs Prosecutions Office (RCPO).
- 1.2 The purpose of the inspection was:
 - to assess the quality of the decision-making, case preparation and performance of the Revenue and Customs Prosecutions Office (RCPO), including the effectiveness of management and operational arrangements to support the work of the organisation; and
 - to assess progress made since the follow-up inspection of RCPO in November 2006, including the progress made in implementing those recommendations and suggestions made in the 2002 and 2004 inspections which had not been fully achieved in 2006.

Background

- 1.3 RCPO is one of the Law Officers' Departments, and was established under sections 34-42, Commissioners for Revenue and Customs Act 2005 (the Act). 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).
- 1.4 HMCPPI was given a statutory power of inspection of RCPO by virtue of section 42 of the Act. The first inspection of RCPO was in 2006 and was a follow-up inspection to two non-statutory inspections undertaken in 2002 and 2004. In 2002 the Manchester Prosecution Unit was inspected: the report made nine recommendations and five suggestions. In 2004 the London Casework Units were inspected, and the report made ten recommendations and eight suggestions. In the course of this inspection we have assessed the extent to which the recommendations and suggestions made in the 2002 and 2004 reports have been addressed and a synopsis is included at Annex A.
- 1.5 A review of the effectiveness of the operation of the RCPO charging scheme was undertaken in 2008. The report, published in November 2008, made two recommendations and identified five aspects for improvement. We have included a synopsis of progress made so far at Annex A.

Context

- 1.6 The prosecutions currently managed by RCPO were previously undertaken by Her Majesty's Customs and Excise (HMCE) and the Inland Revenue. The failure of two major drugs prosecutions by HMCE, led to a review conducted by His Honour John Gower QC, assisted by Sir Anthony Hammond KCB QC. Their report (published in December 2000) recommended that the Prosecutions Group, within HMCE's Solicitor's Office, should retain its prosecution function but at the same time be given greater autonomy with its own budget and accountability to the Attorney General. This led to the creation of a discrete unit within HMCE known as the Customs and Excise Prosecutions Office (CEPO).
- 1.7 A further review of the department was set up in November 2002 following the termination of proceedings (known as the London City Bond cases) in Liverpool Crown Court after a 35 day abuse of process argument. The review was conducted by the Honourable Mr Justice Butterfield. His review concluded (in July 2003) that 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, with HMCE retaining its role as the investigative body. The government accepted these recommendations.

- 1.8 The O'Donnell Review (July 2003) recommended that HMCE and the Inland Revenue should be merged and this was announced by the Chancellor in the 2004 Budget. The new department is Her Majesty's Revenue and Customs. As a consequence, the Attorney General announced in October 2004 that the new prosecuting authority recommended by the Butterfield Report should also have responsibility for Inland Revenue prosecutions. As a consequence, the Revenue and Customs Prosecutions Office (RCPO) was established on 18 April 2005 under sections 34-42 of the Act. David Green QC was appointed Director in December 2004 and is still in post.
- 1.9 In April 2006 the Serious and Organised Crime Agency (SOCA) was established. It is an intelligence led agency, sponsored by, but operationally independent from, the Home Office. It was set up as a result of a merger of a number of bodies, including the part of HMRC dealing with serious drug trafficking. The establishment of SOCA meant that HMRC no longer proactively investigated drug trafficking cases, instead focussing on the taxable profits generated by such activity. The reduction in HMRC's workload therefore diverted some work away from RCPO. SOCA is a harm reduction agency with law enforcement capability. Its focus was, therefore, not specifically related to the arrest and conviction of offenders, and there has been an overall reduction in drugs trafficking prosecutions.
- 1.10 The original remit of RCPO (set out in the Act) was to be an independent prosecuting authority, handling all HMRC prosecutions. A memorandum of understanding was agreed between the two organisations as to how they should operate. SOCA cases are allocated between RCPO and the Crown Prosecution Service (CPS) (its Organised Crime Division was set up to handle such cases). RCPO tends to handle cases from SOCA that were previously dealt with by HMRC (large scale drugs trafficking and money laundering cases).
- 1.11 The UK Border Agency (UKBA) was launched as a shadow agency of the Home Office in April 2008, achieving full agency status in April 2009. The UKBA is an enforcement agency with the aims of protecting UK borders, and tackling smuggling and immigration crime. It brings together the Border and Immigration Agency, UK Visas and the border control operations of HMRC. There is currently a partnership agreement in place between HMRC and the Home Office. This sets out the interim arrangements and requirements for the UKBA until legislation has been enacted. The Borders, Citizenship and Immigration Bill is currently before Parliament. Once enacted, the Attorney General will designate which prosecuting agency will handle prosecutions arising out of the borders work currently being investigated by HMRC. We comment further on this below.
- 1.12 RCPO has been working on the assumption that it would receive casework from the new agency. It was envisaged that the minimum work it would receive would be border cases, assessed to be around 1,500 cases per year, and that it might also receive immigration cases, assessed to be around 2,000 cases per year. It is on this basis that RCPO's staffing numbers have been increasing, despite the reducing caseload. Having built up its staffing, RCPO anticipated that it would be able to resource a large proportion of the UKBA work with existing staffing levels.
- 1.13 The bulk of RCPO's caseload continues to be from HMRC. However, the number of cases referred to RCPO has fallen in recent years from both HMRC and SOCA. In 2006-07, RCPO received 1,403

cases compared to 1081 new cases in 2008-09. The fall in caseload has to be seen in the context of the establishment of SOCA and its focus on disruption and harm reduction.

- 1.14 A key priority for RCPO has been the seizure of criminal assets through confiscation orders. This is in line with the government strategy to take away the proceeds of criminal activity from offenders. There has been a rapid and ambitious expansion of the Asset Forfeiture Division (AFD) at RCPO in recent years. The organisation has benefited from this policy by being able to retain a certain percentage of criminal assets seized under the Asset Recovery Incentive Scheme (ARIS). The amount of criminal assets seized in 2008-09 was £21.9 million which was a small increase on that seized in 2007-08.
- 1.15 RCPO's vision (set out in its Business Plan 2008-11) was to become the government prosecutor, with an expectation that its caseload would increase from organisations such as UKBA. This confidence can be seen not only from the enlarged AFD, but also from the commissioning of a new casework management system (agreed in December 2008) and the evidence given by the Director to the Justice Committee on 10 February 2009. However, the situation has changed and RCPO is to be merged with the CPS.

Attorney General's strategic review

- 1.16 The Attorney General set up a strategic review in 2008, which has examined how best the Law Officers' Departments can build on their successes in recent years to ensure that they are fit for the future.
- 1.17 Arising out of this work, the Attorney General announced on 2 April 2009 that RCPO and the Crown Prosecution Service (CPS) would be merged. It is envisaged that the merger will take place during 2009-10, with further consolidation in 2010-11.
- 1.18 A Programme Board has been established, comprising the Director of Public Prosecutions, the Director of RCPO, the chief executive officers of the CPS and RCPO, a representative from the Attorney General's Office and non-executive directors from both RCPO and CPS. The Attorney General's Strategic Board will continue to oversee the merger.
- 1.19 A joint transition team has also been created, which is taking forward work streams to determine the implications for staff, delivery of prosecution services, approach to asset recovery, governance arrangements, existing change programmes, and how best to deliver savings and efficiencies. It is envisaged that a work programme will be published, followed by a period of consultation with staff, investigators and other government departments such as HM Treasury and the National Audit Office.
- 1.20 The Programme Board has now decided that on a date to be agreed all CPS and RCPO staff will become members of a combined organisation. They will be part of either a ring-fenced HMRC function, to be led by the Director of RCPO, or part of the merged work areas (which are mostly closely aligned with their existing function).
- 1.21 The announcement that RCPO would merge with the CPS came just as we were concluding our inspection. This report covers all the aims set out in the original scope. The report also makes comment, where relevant, on particular issues that will have some bearing on the newly merged organisation.

- 1.22 The recommendations and aspects for improvement are cast as though the organisation was continuing in its current state. If the merger with the CPS goes ahead as planned some of them will need to be amended in the light of that. How the recommendations and aspects for improvement will be taken forward depends on exactly what model is adopted on the merger. There are a number of approaches that could be taken and RCPO managers will need to adapt to the extent necessary in the light of the way the merger progresses.

Scope of the inspection

- 1.23 The full scope of the inspection was to:
- assess the quality and timeliness of casework decisions in cases handled by RCPO;
 - assess the quality of case ownership, preparation and case handling, and involvement of counsel;
 - assess the management of casework handled by RCPO and levels of decision-making;
 - assess the quality of advocacy including external counsel, in-house Higher Court Advocates (HCAs) and prosecutors;
 - assess the management and operation systems supporting the delivery of high quality casework, in particular performance management and the use of performance indicators, resource management and leadership;
 - consider the impact of initiatives e.g. the Prosecutors' Pledge;
 - review the progress made since the 2006 follow-up inspection, in particular progress made in implementing those recommendations and suggestions from the 2002 and 2004 reports which had not been fully achieved in 2006; and
 - make recommendations for improvement.
- 1.24 This inspection is the first to include a full scrutiny of the work of RCPO, including file examination and consideration of management issues.
- 1.25 The inspection included the Asset Forfeiture Division (AFD) as far as management issues are concerned but it will form part of a separate thematic review of asset recovery covering all three Law Officers' Departments (the CPS, RCPO and the Serious Fraud Office) that will be undertaken at a later date.

The structure of RCPO

- 1.26 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 RCPO structure is set out at Annex B.
- 1.27 As at 31 March 2009 RCPO employed the equivalent of 335.7 full-time staff (excluding 33 temporary staff). Divisions A, B, C and E, as well as AFD, International, Policy and Legal Advice (IPAD), Corporate Services and the Private Office are based in the London Office. Division D (with some staff from Division E) is based in the Manchester office. There were 84.1 prosecutors (excluding the Director and Chief Operating Officer and 17 contract counsel), split between the two offices.
- 1.28 The Director of RCPO reports to the Attorney General, and will continue to do so for the remainder of 2009-10 and 2010-11 until the merger with the CPS is complete. The Director is currently supported in delivering his responsibilities by the RCPO Board.

1.29 The Board consists of the Chief Operating Officer, Head of Finance, Head of AFD, Head of IPAD and each of the Heads of Division. In addition, the Board has three non-executive directors.

1.30 Details of RCPO's completed cases over the last three years are set out in the table below.

Completed Cases	Total Number of Cases		
	2008-09*	2007-08	2006-07
Drugs	636	744	798
Customs	8	9	8
Excise	141	220	239
Money laundering	11	27	17
VAT (non-complex/s.72(11) VATA**)	56	73	60
VAT (complex/MTIC)	5	14	11
Direct tax (non-complex/Grabiner)	32	56	43
Direct tax (complex)	8	14	17
Tax Credits (non-complex)	59	102	116
Tax Credits (complex/organised)	4	5	4
National Minimum Wage	4	2	0
Other	24	23	5
Total	988	1,289	1,318

* For 11 months to February 2009.

** VAT Act 1994

Methodology

1.31 Inspectors examined 63 cases against a database of questions specifically tailored for this inspection. This included 15 ongoing cases which we observed in court, which enabled us to consider current performance. Our observations at court also allowed us the opportunity of seeing the performance of advocates and the delivery of service in both the magistrates' courts and the Crown Court.

1.32 In cases which proceeded to prosecution we considered the quality of the pre-charge decision, application of the two stage test in the Code for Crown Prosecutors and the quality of casework processes. We made a number of assessments about the quality of decision-making and case handling in the course of the file examination. Key assessments are shown in the table at Annex C.

1.33 Inspectors considered a self assessment provided by RCPO together with supporting documents. We also conducted interviews with members of RCPO staff at all levels, criminal law practitioners and representatives of criminal justice agencies. Other stakeholders were also consulted by questionnaire. A list of individuals inspectors met or from whom comments were received is shown in the table at Annex D.

Structure of the report

- 1.34 The report is divided into nine chapters. Chapter 2 is an executive summary which includes an overview of findings, together with a list of recommendations, aspects for improvement and strengths that the inspection team identified.
- 1.35 Chapters 3 to 5 cover the provision of advice, review and decision-making, case management and the case at court. Chapters 6 to 9 deal with management systems and performance, and leadership.

2 SUMMARY OF INSPECTION FINDINGS AND RECOMMENDATIONS

Background

- 2.1 RCPO is currently the specialist prosecution authority for HMRC, and for drugs and firearms importations and associated money laundering cases investigated by SOCA. However, just as our inspection was concluding, the Attorney General announced that RCPO and the CPS would be merged. It is anticipated that the merger will take place during 2009-10, with further consolidation in 2010-11.
- 2.2 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 merged 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.
- 2.3 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 UKBA has become established, with the risk that its caseload might reduce still further.
- 2.4 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 and has developed its prosecution manual into a web-based tool.

Advice, review and decision-making

- 2.5 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.
- 2.6 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 defendant is in custody but suitable to be bailed.

Case management

- 2.7 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.
- 2.8 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 (PII) 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.

- 2.9 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.
- 2.10 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 generally satisfactory confiscation orders are made at the conclusion of cases.
- 2.11 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 strategy. We have identified the work undertaken in relation to case handling and procedures in Missing Trader Intra-Community (MTIC) fraud cases as a strength.

The case at court

- 2.12 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.
- 2.13 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

- 2.14 RCPO has operated comfortably within budget since its inception, benefiting from the income it receives from the Asset Recovery Incentive Scheme (ARIS, which allows an organisation to retain a proportion of criminal assets seized). The organisation has made significant savings relating to counsel fees 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.
- 2.15 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.

- 2.16 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

- 2.17 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.
- 2.18 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

- 2.19 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.
- 2.20 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

- 2.21 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.
- 2.22 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.
- 2.23 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.

- 2.24 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

- 2.25 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).
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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).
-

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).

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).
-
- 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).
-
- 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

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

- 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).
-
- 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).
-
- 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

2.27 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).
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- 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).
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- 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

2.28 Three aspects of good practice were also identified.

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).

3 ADVICE, REVIEW AND DECISION-MAKING

Introduction

- 3.1 In this chapter we discuss the quality of decision-making and provision of advice and charging decisions by RCPO, together with the processes for managing cases at the pre-charge stage and how RCPO assesses its performance in respect of this aspect of its work.
- 3.2 RCPO has always provided advice from an early stage (investigative advice) in its more complex cases and has provided written advice in other cases. Since the inception of the Serious and Organised Crime Agency (SOCA), RCPO has had the responsibility for deciding whether or not a suspect should be charged in a SOCA case. It took over responsibility in determining whether to charge in HMRC cases on 3 April 2007, when its telephone charging scheme came into operation.

Allocation of cases

- 3.3 Work is split between the London and Manchester offices geographically. Although the five casework divisions were originally set up as multifunctional units, they have now moved, for the more complex work, towards specialised units. The Manchester division's workload is still multifunctional, although it has a high proportion of excise work. The less complex cases, in the main emanating from the telephone charging decisions, are dealt with across four of the casework divisions. All of the work from SOCA is handled by one of the London casework divisions, which has a team based in Manchester to handle cases north of Birmingham.
- 3.4 Within the divisions, managers allocate cases taking into account experience and expertise, developmental needs and current caseloads. The prosecutors' monthly case lists (see paragraph 3.36) are used to assist in the monitoring of caseloads and ensuring an even distribution of work, although they do not in themselves provide an accurate indication of how much resource an individual case requires at any given time.
- 3.5 RCPO has adopted a mixed approach to case ownership. Cases charged through the telephone charging scheme are not necessarily allocated to the charging prosecutor. They are the more straightforward cases, in many of which the defendant pleads guilty at the first date of hearing and is committed to the Crown Court for sentence. Managers aim to ensure continuity of case ownership in cases where early or written pre-charge advice has been given, many of which are complex cases and likely to be long running. In addition, a second, more junior, prosecutor may be allocated: to provide that prosecutor with a developmental opportunity, as well as to provide assistance to the lead prosecutor and to oversee the case in short term absences, such as annual leave.
- 3.6 There is good continuity of case ownership where prosecutors have remained in RCPO in the same division. There was appropriate continuity of prosecutor in 54 out of 60 cases (90%) in our file sample.
- 3.7 Over the last two years, RCPO has employed a number of counsel contracted on a short term basis (for periods of three to six months). As well as addressing a need for more prosecutors, managers saw this as a means of providing less experienced counsel with the opportunity to develop a level of expertise in the work handled by RCPO, with a view to increasing the pool of counsel who could be instructed to handle their work. This has inevitably resulted in changes of prosecutors handling cases: on occasions, there have been numerous changes, even in the more

complex cases. Where there is a change of case ownership, the practice is for the original prosecutor to prepare a note for the new prosecutor's assistance. Despite this practice, the changes have caused difficulties in relation to timeliness while the new prosecutor has familiarised themselves with the case. More importantly, in some instances this has led to changes in the approach taken to the case and to inconsistent decisions being made. The use of contract counsel is being phased out, which should reduce the problem, but managers need to ensure that changes of prosecutor do not have a detrimental effect on cases.

RECOMMENDATION

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.

- 3.8 The practice of the original prosecutor preparing a note for a new prosecutor's assistance (see above) applies also to short term absences, such as periods of annual leave. There is a formal system in one division for ensuring that cases are progressed in the absence of the prosecutor, with the other divisions adopting a similar, informal, approach. Once a prosecutor has been chosen, a case manager is identified with a view to their working together throughout the progress of the case. There is good continuity of case manager: we found it in 53 out of 57 cases (93.0%) in our file sample. Case managers tend to work together and have a good idea of what is happening on others' files.

The provision of early advice

- 3.9 In larger or more complex cases, investigators may seek guidance from a prosecutor before arrests are made or before they are in a position to seek a charging decision. The provision of early advice can result in the investigation being more clearly focussed on gathering relevant evidence at an early stage, and assists in identifying what further evidence is required before a decision under the Code for Crown Prosecutors (the Code) can be made. It can also save resources for investigators and reduce the time that is needed to make a charging decision after arrest for the suspects.
- 3.10 SOCA investigators involve prosecutors from a very early stage in all their investigations. Prosecutors attend early meetings on live operations, which enables legal problems to be discussed and disclosure strategy to be agreed. This should enable problems to be identified as they arise and allow solutions and strategies to be employed at an early stage. The complex nature of many aspects of HMRC's criminal investigation work also requires the provision of advice at an early stage to ensure that essential lines of enquiry are identified. This takes place appropriately. Early advice was given in 23 cases in our file sample, and we are satisfied that early advice is given in all appropriate cases.

STRENGTH

The early participation of RCPO prosecutors in the investigative process to the benefit of case building.

- 3.11 Early advice is given in writing or in conference with the investigators. In particularly complex cases, counsel may be instructed to advise pre-charge and to attend case conferences with prosecutors and investigators. Counsel was instructed in three of the 23 early advice cases (13.0%) in our file sample.

The provision of written charging decisions

- 3.12 RCPO prosecutors provide written advice to charge or take no further action (NFA) in cases where the suspect is on bail to return to a police station pending a charging decision. HMRC investigators submit a written request and should include all the evidence in the case. Prosecutors provide their advice in writing. Written charging advice was given in 16 cases.

Telephone charging decisions

- 3.13 RCPO prosecutors provide charging decisions on the telephone in cases where it is considered that the suspect should be remanded in custody if charged. In these cases, HMRC send a written report by fax or email to the duty prosecutor, but do not include any witness statements. The report, however, contains sufficient detail to enable a proper charging decision to be made. The prosecutor records their decision on a case decision record (CDR), which is then sent to the investigator by email or fax. A telephone charging decision was made in 22 cases in our file sample.
- 3.14 HMRC investigators would like prosecutors to make telephone charging decisions in cases involving suspects who are in custody but suitable to be bailed. They consider that to do otherwise causes unnecessary delay, enables a suspect to continue to commit offences and creates a risk that the suspect will abscond before a decision is made. RCPO needs to consider its approach to the provision of telephone charging decisions, with a view to extending it to all straightforward cases. Most of this work emanates from border detection work, which may pass to the CPS as a result of the UKBA taking over responsibility for this work, or as a result of the planned merger. How any extension of the scheme will operate, therefore, may depend on the final decision in relation to the borders work. However, we consider that RCPO managers need to address the issue now.

ASPECT FOR IMPROVEMENT

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.

- 3.15 The telephone charging decision service is provided by RCPO 24 hours a day, seven days a week. All divisional prosecutors are expected to be on the rota during office hours and prosecutors may apply to go on the out-of-hours rota. Currently, all grades of prosecutors are represented on the charging rota.
- 3.16 Division E operate a separate rota for their work with SOCA, the main difference being that the prosecutors are on duty for seven days at a time. The volume of calls to the duty SOCA telephone charging prosecutor is low. This is partly owing to the nature of SOCA cases and partly because each Division E prosecutor has a work mobile phone and they are expected additionally to be on call for any queries with their own cases.

STRENGTH

The availability of RCPO prosecutors at all times to provide pre-charge investigative and evidential advice to SOCA.

- 3.17 There were 909 telephone charging decisions in 2008-09 (920 in 2007-08) and (617 (67.9%) were made out of office hours. The table below shows the outcomes for telephone charging decisions in 2008-09.

Telephone charging decisions by defendant 2008-09	Number	%
Total number of charges – custody	818	90.0%
Total number of charges – bailed	1	0.1%
Total number of cautions	16	1.8%
Total number of bail – further enquiries	55	6.0%
Total number of no further action	19	2.1%
Total number of early advice	0	0.0%
Overall number of charging decisions made	909	100%

Case-building

- 3.18 The nature of most cases handled by RCPO means that there is a period of case-building before charge. We found that prosecutors are proactive in building the case when they provide advice. They were proactive in 34 out of 37 relevant advice cases (91.9%). Overall, they take the opportunity of adding value: we considered prosecutors to be good at doing so in 31 advice cases and in 15 telephone charging cases.
- 3.19 However, asset forfeiture and other ancillary matters such as witness issues and disclosure were not always dealt with fully by prosecutors in their investigative advice. In the advice cases in our file sample, these matters were dealt with in 14 out of 30 relevant cases (46.7%). There was a similar picture in telephone charging cases: these issues were dealt with in only 12 out of 22 cases (54.5%).
- 3.20 Prosecutors are not always providing investigators with action plans for outstanding items of evidence of investigation, with agreed milestones for the actions. Some of the action plans that are provided are general in nature and do not set out timescales for the completion of necessary tasks. Nor do RCPO managers monitor investigator’s compliance with those action plans. This was an aspect for improvement that we highlighted in the 2008 report. RCPO managers have not yet had the opportunity of implementing a system to address this, but they need to include all advices and decisions to charge in the system, not just those subject to telephone charging.

The quality of review and decision-making

- 3.21 The quality of decision-making is very good. The evidential and public interest stages of the full Code test were applied correctly at each stage in every case examined. Feedback from HMRC and SOCA indicates that the provision of early advice is appreciated and valued by investigators. Our file examination showed that the quality of early and written advice is of a high standard, with the most appropriate charges being advised in 35 out of 38 cases (92.1%).

STRENGTH

The high quality of decision-making.

- 3.22 Where early advice or a written advice to charge is given, the prosecutor usually provides a detailed written advice to the investigator. The advices provided by prosecutors in Division D tended to be more detailed than those provided by other prosecutors. In our file sample, there was a complete record of the advice given in 37 out of 39 relevant cases (94.9%).
- 3.23 The CDR forms completed for telephone charging decisions tend to be very brief, often containing little more than a statement that the prosecutor is satisfied that the full Code or threshold test is satisfied, that it is in the public interest to proceed and specifying the wording for the charge to be brought.
- 3.24 On occasions, some prosecutors use the terms ‘full code test’ and ‘threshold tests’ in the CDR in a way that makes it appear as though they are applying the wrong test, although we considered that in practice the correct test was being applied. We made a recommendation to address this in the November 2008 report, following which the Director issued new guidance in January 2009 on the circumstances in which the full code test and threshold tests should be applied. All the prosecutors we spoke to were aware of the new guidance.
- 3.25 Prosecutors remain involved in decision-making in their cases throughout the course of their progress through the courts. There was continuous review in 45 out of 48 cases (93.8%) in our file sample, including a proper review before the defendant was committed or sent for trial in the Crown Court in 39 out of 42 cases (92.9%), and a proper review before trial in the Crown Court in 14 out of 15 cases (93.3%).
- 3.26 There was a complete record of all reviews undertaken following the decision to charge in 41 out of 46 cases (89.1%). However, the records did not always refer to the Code tests or provide details of the reasoning behind decisions.
- 3.27 The key decision and action record (KDAR) is used to record and identify the key internal decisions and actions that take place in each case, and an up-to-date version should be kept on SOLAR (the RCPO case management system).
- 3.28 There is a discrete section in KDAR for charging decisions. In telephone charging cases, at the time of making the decision, there will be no file opened on SOLAR and hence a KDAR is not completed with details of the telephone charging decision. The written advice is either incorporated onto SOLAR or cut and pasted into the KDAR form in its entirety. This latter course of action makes the KDAR very long and unwieldy. As with telephone charging cases, the CDR is now incorporated into SOLAR.
- 3.29 The layout of the KDAR should enable prosecutors to make a clear record of the advice and decisions in a case up to charge. Its layout does not, however, make it easy for prosecutors to make a clear record of continuing review decisions as there is no discrete section for post-charge decisions. This can make it difficult for someone picking up the case (for example, where there are changes of prosecutor or a case has to be progressed in a prosecutor’s short term absence) to determine what the review decisions have been. The design of KDAR needs to be improved.

3.30 The KDAR is a useful tool for recording reviews and other events but it is not always consistently completed. Two internal quality assurance checks on the completion of the KDAR, carried out nine months apart, have highlighted significant weaknesses. The inadequacy of review records was included in training in 2008 but the second check in early 2009 would suggest that, whilst the training has resulted in a 23% improvement a third remain as not being of sufficient standard. We make a recommendation to address this, in the following chapter.

The timeliness of review and decision-making

3.31 The overall timeliness of decision-making can be affected by delays in the submission of case notification forms by HMRC, followed by the need to register cases centrally before they are sent to the casework divisions. RCPO have addressed this with HMRC and a new case notification form has been designed.

3.32 Following receipt of the case, advice is not always provided in a timely way. In the more complex cases, prosecutors are expected to agree with the investigator a timescale for the provision of advice, and to discuss what further information is needed. For straightforward written advices, RCPO has undertaken to provide a full written advice within 15 working days (from receipt of a full set of papers). RCPO has set itself a target in the Business Plan for 2008-11 of providing written advice to investigators within 15 days of sufficient material being provided in pre-charge requests in 85% of cases. It achieved this target in 69% of cases in 2008-09. Some action has been taken to address timeliness, and we comment further on this below.

3.33 Prosecutors make post-charge decisions promptly. In our file sample, all reviews following the decision to charge were undertaken in a timely way in 44 out of 45 cases (97.8%).

Monitoring quality and timeliness

3.34 In 2008, HMRC raised with RCPO issues over the lack of timeliness of advice in some cases, which had resulted in HMRC resources being unnecessarily tied up. As a result, a system of monitoring across all divisions was introduced towards the end of 2008. A similar scheme had previously operated within Division D in Manchester.

3.35 All divisional heads now have systems for monitoring the quality and timeliness of advice by prosecutors, but these systems vary. Prosecutors are required to keep details of their outstanding advice cases on a spreadsheet containing:

- details of the case;
- whether a case planning conference has taken place;
- what the next agreed milestone is;
- what work is required from RCPO;
- when charges are anticipated;
- whether restraint action is required; and
- what resources are needed.

3.36 This information assists the line manager or divisional head in seeing the progress of advice cases. In some divisions, managers only use it to monitor cases where advice is going to take longer than 15 days. Case lists are also used to provide managers with details of progress in relation to post-charge cases. Case lists are not, however, always updated monthly.

- 3.37 Divisional heads and prosecutor managers should undertake a monthly file review of two files per prosecutor. In some divisions the review takes place with the prosecutor present; in others, the manager reviews the file and then discusses the results with the prosecutor. Both approaches are equally valid. The head of Division D keeps a running log of her case discussions with prosecutors.

ASPECT FOR IMPROVEMENT

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.
-

- 3.38 There is no formal monitoring of the quality of charging advices. Divisional heads carry out some informal monitoring, although feedback is not always given to prosecutors. There is also no systematic monitoring of the quality of decisions to take no further action (NFA). Some divisional heads look at a sample of the CDR forms for NFA decisions, but this appears to be sporadic and no formal records are kept. We highlighted the lack of monitoring as an aspect for improvement in the November 2008 report and this is still to be implemented, although a system is being developed.

4 CASE MANAGEMENT

Introduction

- 4.1 In this chapter we consider the way RCPO manages cases once proceedings have been instituted. The cases range from relatively straightforward cases where defendants plead guilty at the magistrates' courts and are committed to the Crown Court for sentence, to complex ones with large amounts of evidence involving difficult evidential and legal issues.

File management and endorsement

- 4.2 All files should be organised according to the RCPO Prosecution Manual standard case files format guidance. This sets out how a file should be organised and requires documents to be partitioned into different sections using numbered dividers. There is very good compliance with the system and files are well structured. The file was well organised in 58 out of 61 cases (95.1%). Nevertheless, it was not always easy to follow the history of a case where there was more than one defendant or where the volume of documents generated during the progress of a case meant that a number of files were required.

GOOD PRACTICE

The partitioning of documents into sections using numbered dividers in RCPO case files.

- 4.3 The key decision and action record (KDAR) should be used to record events, and one was properly completed in almost two thirds of the cases (63.9%) in our file sample. Completion was excellent in one case and good in 38 cases. It was fair in 18 cases and poor in four.
- 4.4 As we have commented upon in the preceding chapter, the KDAR is not always consistently completed. Some are completed meticulously, some do not cover all the key decisions and actions taken, and others contain vast amounts of irrelevant detail (often copied and pasted from other documents) The internal quality assurance check in 2009 found that a large number of KDARs did not provide an overall account of the case, and that the version on the case management system (SOLAR) did not always match the hard copy of the case file. RCPO managers have worked hard to ensure that KDARs are properly completed but more work needs to be done.

RECOMMENDATION

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.
-

Case progression

- 4.5 Case managers are responsible for case progression in their own cases and carry out their role efficiently. They chase up outstanding or late papers from HMRC, using SOLAR alerts and Outlook reminders. Correspondence is handled promptly and is of good quality. It was dealt with in a timely way in every case in the magistrates' courts and in 40 out of 41 cases (97.6%) in the Crown Court.
- 4.6 The timeliness of preparation of papers in cases where the defendant is to be committed to the Crown Court for trial is affected by whether HMRC submit the necessary papers and disclosure schedules within the timescales set out in the memorandum of understanding (ten working days before committal). Records of quality and timeliness of receipt are kept and shared with HMRC, although the data combines committals for trial and sent cases with committals for sentence. The figures for HMRC's submission of papers in the period 1 June 2008 to 30 November 2008 show that 81% of papers were in good order but that only 38% were submitted within the time scales, and the monthly figures do not show any sign of improvement.
- 4.7 RCPO has set a target in the Business Plan 2009-11 of 85% of committal papers being served within five working days of receipt where the papers have been received on time from HMRC. This target was achieved in the period 1 April 2008 to 31 January 2009. This figure does not truly reflect the prosecution team performance as it only includes those cases that were received on time: and so does not show the percentage of all committals for trial that were served in time. Nor does it include those cases where RCPO staff have worked to serve papers in time despite receiving them late. It also clouds the picture by including cases where a defendant has been committed to the Crown Court for sentence. This reduces the value of the data and RCPO managers need to collect more meaningful data and set targets that enable effective assessment of RCPO performance. We include this in an aspect for improvement at paragraph 4.32.
- 4.8 There is a good system of operational liaison between nominated prosecutors (known as link lawyers) and HMRC regional investigation teams, whereby performance issues affecting both organisations can be discussed. Concerns such as those relating to the quality and timeliness of papers submitted by HMRC have been discussed but until very recently this has not been taken forward at a strategic level. The recent reinvigoration of the HMRC/RCPO Casework Standards Group, at which both organisations are represented at a high level, should enable this sort of ongoing issue to be passed across the two organisations and acted upon and RCPO managers are taking this forward.

ASPECT FOR IMPROVEMENT

RCPO managers, together with HMRC, should address the ongoing performance issues across the two organisations.

- 4.9 Link lawyers also attend their court's user group meetings. Case managers have also been attending court user group meetings and case progression meetings where they are held, but until recently there has been no single point of contact for the courts. A recent initiative has seen the appointment of an RCPO case progression champion and the nomination of divisional heads with overall responsibility for each of the designated Crown Court centres. The initiative will also

see the gradual introduction of case manager contact points for the Crown Court centres. Once this has been implemented, the current plan is to extend this to the magistrates' courts where RCPO handle regular list days. The merger with the CPS may necessitate a change in the approach taken, as case numbers reduce and RCPO becomes a casework division within the CPS, but RCPO cases will continue to be listed regularly at some magistrates' courts and Crown Court centres and so this initiative should be progressed as planned.

- 4.10 RCPO staff work hard to ensure that cases are ready for each court hearing, and in the main cases are able to proceed. The prosecution was ready to proceed at all hearings in the magistrates' courts in 54 out of 60 cases (90%), and in the Crown Court in 34 out of 36 cases (94.4%). Court orders and time limits were complied with in 52 out of 59 cases (88.1%).
- 4.11 Letters of request (requests made to other countries for assistance in relation to gathering evidence and making enquiries) are drafted by prosecutors and sent to the international team in the International, Policy, and Legal Advice Division (IPAD). IPAD prosecutors ensure that they are of the appropriate quality before passing them to the Director for signature (for those countries where the letter has to have a handwritten signature) and sending them to the other countries through the UK Central Authority where necessary. We examined 19 cases where IPAD had been sent a draft letter of request. We considered that in six instances (31.6%), the letters had not been sufficiently well drafted by divisional prosecutors to enable them to be sent without amendment. All of the letters sent by IPAD were of good quality. There have been issues in relation to delays in preparation. The system of requiring that they be submitted through IPAD will inevitably increase the time taken, but it is important that all letters are to the appropriate standard. All of the cases we considered were dealt with by IPAD within the internally agreed timescales. IPAD prosecutors have also recently taken steps to resolve issues in relation to the consistency of their approach to quality control but this may not have been communicated to divisional prosecutors. We discuss in more detail the good international work undertaken by IPAD staff in paragraphs 9.23 onwards.

Disclosure of unused material

- 4.12 Disclosure of unused material is the process by which the prosecution will disclose to the defence any material obtained in the course of the investigation which does not form part of the prosecution case and which may undermine the prosecution case or may assist that of the defence. The nature of RCPO's work means that not only are there sometimes large volumes of evidence to consider, but there are often large amounts of unused material to look at with complex issues of disclosure.
- 4.13 Overall, prosecutors are handling the disclosure of unused material well. The principles of the Criminal Procedure and Investigations Act 1996 (CPIA) are applied and prosecutors continue to take responsibility for disclosure decisions throughout the progress of a case. They are proactive in ensuring that the schedules of unused material supplied by HMRC and SOCA officers are prepared correctly, returning those that are not correct for amendment. In the more complex cases, in which the investigative process usually involves input and advice from prosecutors, issues relating to unused material are considered from the outset and as the case progresses. Case-specific disclosure strategies are determined, and protocols prepared, in appropriate cases: for the prosecution team, as well as some for service on the defence. We consider this to be good practice.

GOOD PRACTICE

Preparation of case specific disclosure protocols: some for the prosecution team, some for service on the defence.

- 4.14 There are, however, some concerns in relation to disclosure. Initial disclosure is not served at the time of committal or service of the case papers in sent cases and it is not always served before the plea and case management hearing (PCMH). The delay, for the most part, is the result of late submission of schedules by HMRC or the submission of inadequate schedules which have to be returned for amendment. There is a difficult balancing act between the need to ensure that the schedules are accurate and the need to serve disclosure in time to enable the defence to consider it before the PCMH.
- 4.15 We were concerned to note that there were cases in the file sample which were disposed of by way of a guilty plea at the PCMH without initial disclosure having been served. Whilst this may well be as a result of late or inadequate submission of unused material schedules, it does not comply with the CPIA requirement to serve initial disclosure in all cases where a defendant has been committed or sent for trial.
- 4.16 There is a need for more effective liaison with HMRC in relation to the provision of timely and accurate unused material schedules, which the reinvigorated HMRC/RCPO Casework Standards Group should be able to address.
- 4.17 Concern was expressed by representatives of other agencies about differences of approach to disclosure issues being adopted by different prosecutors. We also noted one case in our sample there was a change of prosecutor and the second prosecutor took a different approach to the question of disclosure. We have referred to the issues which may arise if there is a change of prosecutor during the course of a case and have made a recommendation to address this. Managers also need to be alive to this issue when undertaking their monthly file checks.
- 4.18 The prosecutor's duty of initial disclosure was properly complied with in 27 out of 34 cases (79.4%). Of the other seven cases, in one case, the defence were allowed to inspect the unused material, despite it not being disclosable under CPIA; in another case, the prosecutor had not endorsed the schedules; and initial disclosure was made very late in a third case. In a fourth case, the defendant had indicated a not guilty plea and been committed for trial and initial disclosure had not been served by the time of the PCMH at which the defendant pleaded guilty. In the remaining three cases, there were difficult disclosure issues which had been identified but on which no decision had been made. Despite this, the defendants entered guilty pleas.
- 4.19 Continuing disclosure was properly complied with in 14 out of 16 cases (87.5%). It was not properly complied with in two cases. In one case, an item was disclosed as it was considered that it would assist the effective management of the trial when it did not fall to be disclosed under the provisions of CPIA. In the second case, continuing disclosure was purported to be made despite no disclosure officer's report having been sent following the receipt of the defence case statement.

Sensitive material and public interest immunity

- 4.20 Sensitive material is that which, if disclosed, creates a real risk of serious prejudice to an important public interest and may include, for example, details of informants or undercover investigators. There were 25 cases within the file sample which raised issues relating to sensitive material. Prosecutors dealt with it appropriately in 21 cases (84.0%). They did not deal with it appropriately in four cases. In two instances, the schedules were not endorsed; and in a third, the prosecutor endorsed the schedule to indicate whether or not the material was sensitive but not whether it fell to be disclosed under the provisions of the CPIA. We comment on the fourth case in the following paragraph.
- 4.21 There were three cases where the sensitive material gave rise to questions of public interest immunity (PII). The PII question was dealt with appropriately in two of the three cases, in one of which a PII application was made. The application was dealt with appropriately, although the prosecutor did not devise a strategy to deal with the progress of the case should an order to disclose the sensitive material be made. However, a similar, successful, application had been made in a linked case before the same judge. In the third case, the prosecutor correctly concluded that there needed to be a PII application but failed to take any action to make that application. In the event, the defendant pleaded guilty the week before the date fixed for trial but the application should have been made as soon as the issue was identified.
- 4.22 Prosecutors make all disclosure decisions and have to attend court for any PII application. Managers say they are confident that the numbers of PII applications have reduced and that they are made appropriately, but there is no system to provide RCPO with any assurance that this is the case. There is no requirement that prosecutors need a manager's approval before making an application, and a log recording the incidence and outcome of PII applications is not maintained. We consider that RCPO managers should introduce a system whereby all PII applications are recorded and monitored, in order to ensure that applications are made appropriately. In those cases where a prosecutor considers that a type III application (where no notice of the application is given to the defence) is necessary, there should also be a requirement for prior consent by a senior prosecutor (possibly by the Director himself) and a specific record kept of applications made without notice.

Recording of disclosure decisions and actions

- 4.23 Disclosure actions and decisions are not always fully recorded on the KDAR. There was a clear record on the KDAR in 21 out of 34 cases (61.8%). Non-compliance was either because there was no record at all or because the reasoning and decisions were not fully endorsed. There is good compliance with the requirement to keep sensitive schedules and any sensitive material securely away from the case file.
- 4.24 The prosecution manual contains guidance on RCPO's approach to disclosure, and the Intranet contains additional helpful material. There has been compulsory disclosure training for all prosecutors and case managers, and this training is provided to new staff. In addition, monthly disclosure clinics are held to enable prosecutors to seek help and guidance on difficult issues relating to disclosure.
- 4.25 Although RCPO has not appointed a disclosure champion, a prosecutor in IPAD has been nominated as a lead prosecutor. In addition, a prosecutor manager is responsible for running training courses and the disclosure clinics for new prosecutors referred to in the preceding paragraph. It would be a more coherent approach for RCPO to consider nominating a prosecutor to assume the role of disclosure champion for both offices.

RECOMMENDATION

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.
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- 4.26 There is regular liaison between IPAD and HMRC to discuss disclosure issues, and a member of IPAD is a member of the HMRC Disclosure Steering Group. RCPO has also been involved in assisting HMRC in devising its formal disclosure training, but will not be involved in delivering the training as HMRC wish to deliver it themselves. Informal assistance on disclosure is provided to HMRC's regional investigation teams through the link lawyer scheme (see paragraph 4.8). An RCPO prosecutor is a member of the SOCA Disclosure Forum and has been involved in providing disclosure training to SOCA officers.
- 4.27 There is no joint RCPO/HMRC disclosure manual but RCPO has been working with HMRC over the last 18 months to prepare a manual. It is being based on the ACPO/CPS disclosure manual but the procedures are considered to be different.

Steps to recover assets and proceeds of crime

- 4.28 In the main, RCPO staff take the need to take steps to recover assets and proceeds of crime seriously. RCPO has created a discrete division, the Asset Forfeiture Division (AFD), to deal with the most complex confiscation cases, restraint proceedings and the recovery of assets and proceeds of crime. The RCPO prosecution manual sets out clearly what the systems are, and the referral criteria to AFD are set out. An Internal Audit report on AFD had just been finalised and made positive findings.
- 4.29 A significant number of temporary staff (contract counsel) have been deployed in AFD, which has meant that there has been a high turnover of staff. We did not, however, consider the quality of the work undertaken by AFD as this will form part of a separate review during 2009-10. However, we did consider whether prosecutors in the other divisions were considering asset forfeiture and restraint as part of their file reviews.
- 4.30 Training and guidance has been provided to staff and templates have been devised. We have commented in the preceding chapter about the fact that ancillary issues, including asset forfeiture, are not always addressed at the charging decision stage. Prosecutors are, however, considering asset forfeiture and restraint routinely as part of continuing file reviews. A restraining order was sought pre-conviction in all four relevant cases. A satisfactory confiscation order was made at the conclusion of the case in eight out of nine relevant cases (88.9%).

4.31 RCPO has set itself a target in the Business Plan 2008-11 to increase year-on-year the value (£21.3m) of confiscation orders obtained in 2007-08 and to increase the volume. It achieved this in 2008-09. The value of confiscation orders achieved in 2008-09 was £69.2m (499 cases) and the amount recovered was £21.9m. A further £264,802 was collected on behalf of authorities outside of the jurisdiction.

Effective, ineffective and cracked trials

4.32 It is beneficial to reduce the rate of cracked and ineffective trials. Witnesses have to attend court unnecessarily and the conclusion of a case is delayed if it is adjourned. RCPO data reveals very low numbers of cracked and ineffective trials. There were no ineffective trials in the magistrates' courts and just four in the Crown Court in 2008-09. Thirty-four trials, involving 45 defendants, cracked in 2008-09. However, this data includes only Crown Court cases where a jury has been empanelled. This is not an approach that is adopted by other agencies, including HM Courts Service, who usually include all cases listed for trial but which are disposed of other than by way of trial, both in the magistrates' courts and the Crown Court. It is important that managers collect data in a way which enables them to better assess their performance, both in relation to ineffective trials and timeliness of preparation of papers for the Crown Court (see paragraph 4.7).

ASPECT FOR IMPROVEMENT

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.
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Successful outcomes

4.33 RCPO has set itself a target in the Business Plan 2008-11 of achieving a conviction rate of 85% (including guilty pleas) and of no more than 2.5% of cases in which a jury is empanelled resulting in a judge directed acquittal (JDA).

4.34 RCPO has a good successful outcomes rate, and the Business Plan target for the overall conviction rate was almost achieved in 2008-09. The guilty plea rate was 71.6% (1,079 of 1,506 defendants) and the overall conviction rate was 87.0% (1,310 of 1,506 defendants).

4.35 There was a JDA against three defendants in 2008-09. This amounts to 0.2% of the Crown Court case load, which is well within the target set in the Business Plan.

4.36 The following tables show RCPO's case outcomes (by case and the number of defendants) in each category for 2007-08 and 2008-09.

Case outcomes in the magistrates' courts				
	2008-09		2007-08	
	Case numbers (percentage)	Defendants (percentage)	Case numbers (percentage)	Defendants (percentage)
Guilty pleas	148 (84%)	181 (77%)	263 (74%)	304 (69%)
Conviction after trial	12 (6%)	14 (6%)	56 (16%)	64 (15%)
Acquittals	2 (1%)	2 (1%)	6 (2%)	6 (1%)
Discontinued	20 (9%)	42 (16%)	32 (8%)	64 (15%)
Total	182 (100%)	239 (100%)	357 (100%)	438 (100%)

Case outcomes in the Crown Court				
	2008-9		2007-08	
	Case numbers (percentage)	Defendants (percentage)	Case numbers (percentage)	Defendants (percentage)
Committed for sentence	158 (17%)	167 (13.2%)	335 (35%)	344 (29%)
Guilty pleas	558 (59%)	686 (54.1%)	432 (45%)	528 (44%)
Cracked trials	34 (3.5%)	45 (3.6%)	15 (1.5%)	22 (2%)
Stayed	0 (0%)	0 (0.0%)	3 (0.5%)	9 (0.5%)
Jury convictions	119 (13%)	217 (17.2%)	100 (10.5%)	146 (12%)
Jury acquittals	47 (5%)	97 (7.6%)	46 (4.5%)	92 (7.5%)
Judge directed acquittals	0 (0%)	3 (0.2%)	5 (0.5%)	8 (0.5%)
Discontinued (including judge ordered acquittals)	23 (2.5%)	52 (4.1%)	25 (2.5%)	58 (4.5%)
Total	938 (100%)	1,267 (100%)	961 (100%)	1,207 (100%)

Discharged committals and discontinuance

- 4.37 RCPO does not keep records of the number of committals that are discharged, either because they were not ready to proceed or after evidence has been considered. We saw nothing to suggest that cases are not ready to proceed at committal. During the course of our inspection, however, we became aware of two committals in which the defendant was discharged after evidence was called. This may not indicate that the original decision to charge was wrong but, in the absence of any records, managers are not able to satisfy themselves whether or not there is an issue that needs addressing. Discharged committals are recorded in case outcomes as discontinuances: this means that case outcome data does not provide a fully accurate picture.
- 4.38 The prosecution manual requires all proposed discontinuances (which includes cases in which no evidence is offered) to be referred to the Director, through the divisional head, for his approval. This is not complied with in all instances and to address any lack of clarity as to when the requirement applies, the guidance has now been reiterated.

4.39 RCPO has achieved its underlying measure target of a maximum discontinuance rate of 6% in 2008-09, with 94 defendants (6.2%) having the case against them discontinued (52 defendants were facing Crown Court proceedings). Records of discontinuances are not consistently kept, either on divisions (with the exception of the Manchester division) or in RCPO. The divisional heads' monthly board situation reports should include the data but it would appear that there are different interpretations of what should be included. This means that managers are not able to determine whether there are any learning points to take forward.

Learning lessons

4.40 There is a good commitment to reviewing adverse outcomes and learning lessons. There are systems in place for post-case conferences in adverse outcomes (although the lack of clarity in relation to the definition of an adverse outcome reduces the impact). Divisional heads consider all JDAs, and also approve all proposals to discontinue a case. JDAs are considered by the relevant divisional head to see if there were any lessons to learn, and wash-up conferences are held. Conferences are held at the end of every SOCA case.

4.41 In order to ensure that IPAD is made aware of all adverse outcomes, a formal monthly reporting system by divisional heads to IPAD was introduced in December 2008. Adverse outcomes are also discussed at the weekly divisional heads' meetings. IPAD should be invited to attend post adverse case conferences and will disseminate any lessons to be learnt and produce operational guidance if needed. Where appropriate, guidance is issued jointly with HMRC. For example, extensive guidance was issued to both organisations in August 2008, following a review of a serious case which was stayed as an abuse of process.

4.42 Divisional heads include adverse cases in their monthly situation reports, although the approach taken to which cases to include varies. Only one divisional head (Manchester) maintains an adverse outcome log with details of any action noted. The log includes all unsuccessful outcomes, including acquittals after a full trial. This means that divisional heads are not identifying lessons to be learnt and are not, therefore, able to take any appropriate action. IPAD may also not, therefore, have the opportunity to take any action necessary to improve RCPO performance in the future.

RECOMMENDATION

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.
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4.43 Where appropriate, performance issues (identified through routes such as the monthly file reviews) are discussed with an individual or addressed by training. AFD has recently introduced the inclusion of learning from experience as a standing item on the division's managers' meeting agenda. They discuss what has been found in the course of the monthly file reviews, in order to see what the division can do internally, and with partners, to improve. This is a positive step.

- 4.44 RCPO has also taken the opportunity to learn from successful cases. There are advices from counsel and conferences are sometimes held, where any lessons to be learnt are discussed with a view to improving performance. The RCPO Review (the staff magazine) includes details of successful cases and confiscation orders.
- 4.45 IPAD uses the intranet to update staff on case law and legislation, and has recently introduced a regular bulletin to disseminate new information. IPAD has also been working on the legal guidance on the intranet to improve the way it is managed and set out to make it easier to access and research.

Complex and specialist casework

- 4.46 Complex and specialist casework is well handled, and there is clear evidence of prosecutor involvement throughout their progress. A structure for regular case planning meetings in complex cases is set out in the prosecution manual. Case conferences are held at an early stage in most major cases, although they are not always consistently recorded.
- 4.47 A sensitive case list is maintained to ensure that the Director and Attorney General are kept informed of any issues arising. The list has a good structure and is updated in a way in which it is easy to identify recent events.

Missing Trader Intra-Community (MTIC) fraud

- 4.48 One of the casework divisions specialises in Missing Trader Intra-Community (MTIC) or 'carousel' frauds, and the head has strategic responsibility for all such casework. MTIC fraud involves a criminal attack on the VAT system that exploits the fact that the movement of goods between European Union (EU) member states is VAT free. The fraud can result in the loss of millions of pounds in VAT revenue, with an accompanying generation of substantial profits for the organisers. This can give rise to associated money laundering prosecutions.
- 4.49 A simple MTIC fraud involves the importation into the UK of low-bulk, high-value goods from a supplier in another EU state, free of VAT. The importer then sells the goods on to a UK purchaser, charging VAT on the sale. Instead of then accounting to HMRC for the VAT due, the importer disappears, hence the term 'missing trader'. Missing traders tend to operate for a short period of intensive trading in an effort to avoid preventative action before disappearing.
- 4.50 More complex MTIC frauds normally involve several other companies forming a chain of purchase and sale transactions, in order to give the appearance of legitimate commercial trading. Eventually, an exporting company will sell the goods back to an EU purchaser outside the UK. That transaction is free of VAT. Often the exporter is the same company that originally imported the goods, hence the term 'carousel fraud'.
- 4.51 MTIC fraud investigations and progress between charge and trial can be extremely lengthy and complex, and often involve multiple defendants. HMRC will usually hold large amounts of material which needs to be scrutinised by prosecutors in order to fulfil their obligations under the Criminal Procedure and Investigations Act 1996 (CPIA).
- 4.52 RCPO has developed a particular specialism in handling MTIC cases and their work has resulted in very successful outcomes. RCPO staff have a very productive partnership with HMRC, which is seen by HMRC as having been instrumental in the progress made in relation to MTIC cases. The

divisional head chairs the MTIC case handling group, which was set up some five years ago following the termination of proceedings in the London City Bond cases (see paragraph 1.7), and where the approach to be taken in relation to the complex disclosure issues has been agreed and difficulties resolved. The Director has worked hard to raise the profile and importance of MTIC frauds with both the judiciary and other prosecution authorities, and has introduced MTIC workshops. The feedback about the work undertaken by RCPO on MTIC frauds was extremely positive, and we consider their work to be a strength.

STRENGTH

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

Serious Organised Crime Agency casework

- 4.53 One of the casework divisions specialises in handling cases investigated by SOCA. This work involves intelligence-led operations against international drug smuggling and related money laundering.
- 4.54 SOCA's work is referred to either RCPO or the CPS's Organised Crime Division (OCD), and a protocol has been agreed in relation to the allocation of cases between the two organisations. The RCPO and CPS divisional heads work together to ensure that any difficulties in relation to allocation are resolved. SOCA considers the working relationships between SOCA, RCPO and OCD to be an outstanding success, and they value the work undertaken by prosecutors, who have a role as a critical friend and provide constructive criticism.
- 4.55 Prosecutors are involved in SOCA work from a very early stage, advising and assisting in the identification of the strategy that will most effectively reduce the harm caused by organised crime. The division's prosecutors provide a service to SOCA 24 hours a day, every day of the year. RCPO provides continuity of prosecutor throughout the progress of a case, which is appreciated by SOCA investigators.

Export control

- 4.56 One division has lead responsibility for cases concerning export control, strategic goods and sanctions violations, with the divisional head having the strategic responsibility for all such casework.
- 4.57 The cases involve the brokering, trafficking and export of military list goods without the necessary licence, or in breach of the terms of a licence; the unauthorised export of goods which may have a lawful civilian use but can also be used in the manufacture of weapons of mass destruction; and violations of sanctions or trade embargoes imposed by the United Nations or the European Union.
- 4.58 RCPO have designated a prosecutor to be the RCPO link with HMRC in relation to export control casework. Although there are some concerns about a lack of succession planning (until recently), HMRC consider that the quality of decision-making is good and they value the continuity of legal advice provided by the link lawyer.

- 4.59 The divisional head is the chair of Strategic Goods and Co-ordination Committee, where every case that is under investigation or the subject of a prosecution is discussed. The meetings, which are held every six to eight weeks, provide an overall case control, and the wide attendance means that all issues can be discussed and decisions made.

Direct tax and tax credit fraud

- 4.60 One casework division specialises in direct tax fraud, which involves handling much of the work of the former Inland Revenue Crime Group, and the head has strategic responsibility for all such casework. At the time of the follow-up report, there was still work to do in order to integrate former revenue work with the work handled by the rest of RCPO, and different working practices and interpretation of policy guidance still remained. Full integration has now been achieved, and the division works to the prosecution manual.
- 4.61 Some direct tax fraud casework is straightforward, but there are some cases which are complex and require specialist skills and knowledge. Currently, RCPO and HMRC do not have the benefit of a case handling group to look at issues surrounding ex-revenue cases, but the Direct Tax Case Handling Group was due to recommence its meetings at the time of our inspection.

The future for specialist casework

- 4.62 It is likely that RCPO's less complex work will pass to CPS Areas as a result of the merger, and that cases emanating from SOCA will pass to OCD. There will remain, however, a core of specialist casework, such as the MTIC frauds, export cases and complex tax cases, that would be best handled by specialist prosecutors working in a discrete casework division in CPS Headquarters. This would enable the specialist skills and knowledge that RCPO prosecutors have developed to continue to be deployed in successfully handling these very complex cases.

Use of the case management system (SOLAR)

- 4.63 SOLAR was designed for the original Customs and Excise Solicitors office, not just for prosecutions. It does not follow the work process and there are no work flows built into it. It is possible to import 'Word' documents into it, but not 'Excel' or any other documents. Helios is being designed to allow users to operate the prosecution manual system (its introduction may now be affected by the merger with the CPS – see chapter 8).
- 4.64 The combination of SOLAR and KDAR means that there is some duplication of recording. SOLAR is used for recording most important events and actions but not everything is to be found where it should be. It was used for core tasks including all reviews in 47 out of 60 cases (78.3%). The Manchester division makes effective use of the notes section on SOLAR; the London divisions do not.

GOOD PRACTICE

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

- 4.65 Telephone charging CDRs should be imported into SOLAR, but in the past often only a paper copy was retained on the file and not on SOLAR. From October 2008, a new system was

introduced to ensure that an electronic copy of the CDR is imported onto SOLAR. We carried out a spot check on site of CDR forms completed in February 2009 and this showed that electronic copies of the CDR are now being imported into the case file on SOLAR.

Custody time limits

- 4.66 RCPO have a written system for managing and monitoring custody time limits (CTL) expiry dates. Case managers should calculate CTL expiry dates and record them on the paper file, record them on SOLAR and set a SOLAR alert. This should be double-checked by the divisional senior case manager (SCM), who is responsible for updating the computerised CTL database (an 'Excel' spreadsheet) for their respective division with the name of the defendant to whom the CTL applies, its expiry date, the review date and details of the stage the case has reached. The senior case manager should also record prescribed reminder dates on the spreadsheet, which acts as a back up diary. A hard copy of each division's CTL diary should be printed out weekly, in order to ensure that both a paper and an electronic back-up are available.
- 4.67 Variations on this system operate in each division, with in some cases the SCM calculating the CTL date before passing a new file to the case manager. In one division the SCM initials the case history sheet on the paper file to show they have re-checked the calculation of the CTL.
- 4.68 All case managers have had training on CTLs and this was revisited following a quality assurance report in February 2008 which identified that SOLAR alerts were not being used to record CTL expiry or reminder dates in the majority of cases. Despite this, some interviewees advised us that they did not use SOLAR alerts despite the requirement in the written system. SOLAR alerts are not used as effectively as they could be.
- 4.69 Although the written CTL system requires senior case managers to initial the monitoring system when a weekly check has been carried out, no evidence of this actually taking place was revealed to us. Our file examination showed that the case was monitored and handled in accordance with RCPO systems in only seven out of ten relevant cases (70%).
- 4.70 In two divisions, the spreadsheet used to record CTL expiry dates was not sorted in order of either the date the CTL expires or the date of the CTL reminder. This makes it more difficult to see which cases have imminent CTL expiry cases thus increasing the risk of CTL expiry dates being overlooked.
- 4.71 Prosecutors at initial remand hearings do not calculate the CTL expiry date or agree the date with the court clerk. It would improve the system if they were made responsible for this initial calculation and check.
- 4.72 There have been two CTL failures in the last year (2008-09). The failures occurred in separate divisions. One of which was identified by us, having not been identified by RCPO. In both cases, the failure arose whereby an additional defendant was charged and remanded in custody sometime after other defendants were charged. The new CTL was not notified to the senior case manager and no application for an extension was made. In the first case the defendant was released on bail, in the other case, the defendant was in custody in another matter where the CTL had not expired, so was not released. Despite these two failures, CTL extensions are usually applied for in good time.

4.73 One division reviewed its procedures following its CTL failure, and introduced additional requirements for the senior case manager when registering the new defendant to check the custody status of the defendant. These revised procedures were not introduced across all divisions, hence a CTL failure being discovered by us whilst observing a case being handled by a different division. RCPO does not have a CTL champion and managers should consider appointing a champion, with responsibility for monitoring the compliance with the CTL system and disseminating good practice.

RECOMMENDATION

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.
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5 THE CASE AT COURT

Selection of advocates for magistrates' courts hearings

- 5.1 RCPO recognises that representation by in-house prosecutors, rather than self-employed advocates, can promote a consistency of approach at hearings, and help build a team ethos with HMRC officers from local regional investigation teams. It can also save costs. Therefore, list days (on which RCPO cases are listed if an adjournment is required) have been negotiated at the magistrates' courts in Dover, Haywards Heath, Uxbridge, and Manchester City. This allows efficient usage of in-house prosecutors, who are allocated according to rotas in the London and Manchester offices.
- 5.2 Currently, there is no set expectation that prosecutors appear in the magistrates' courts. In London, all prosecutors other than the divisional heads are on the rota, but this does not always ensure full coverage, particularly at Dover Magistrates' Court where RCPO is represented by counsel at a significant proportion of the list days. This tends to happen when a prosecutor is unable to fulfil their rota obligation due to casework pressure. Managers are aware of this problem and a new system has recently been devised to maximise compliance.
- 5.3 The Manchester office rota is followed more closely, but only six prosecutors are on it. Of these, only three are permanent staff. Other prosecutors may need to be placed on the rota in due course, to ensure appropriate coverage at Manchester City Magistrates' Court.
- 5.4 In-house prosecutors also cover some hearings at other magistrates' courts. In all other hearings, including almost all summary trials, self-employed counsel are instructed according to the nominations system. The vast majority of cases are covered, but occasionally this is not always possible at short notice. Inspectors noted an example of RCPO being represented by faxed letter at a warrant hearing, where the defendant was bailed unconditionally, then failed to surrender subsequently. We appreciate the difficulties that RCPO faces, having offices only in two locations but covering courts throughout England and Wales. However, it is essential that all hearings are covered by an advocate. The proposed merger with the CPS may make this easier to achieve. In the meantime, RCPO managers may wish to consider the possibility of approaching the CPS to see if they would be prepared to act as agents in these exceptional circumstances. There have also been issues around the ability of some counsel in the magistrates' courts, and these are covered below.

Selection of advocates for Crown Court hearings

- 5.5 Whilst there is no formal documented advocacy strategy, RCPO wishes to expand its in-house advocacy unit, which includes five Higher Court Advocates (HCA), who are also case prosecutors on the London operational divisions. At present they are authorised by the Director to appear in plea and case management hearings (PCMHS), mentions, contested confiscation hearings, and Newton hearings in straightforward cases. Most of their work involves presentation of PCMHS and mentions at the RCPO list days at Isleworth and Croydon Crown Court.
- 5.6 Members of the advocacy unit are selected by a robust selection system which has external involvement, and ongoing training provided by the head of unit. There is annual consideration of the role and membership of the advocacy unit, including the possibility of conducting Crown Court trials. At present they are not authorised to do so, as it is considered that there is a need to

instruct counsel in straightforward cases so that they can develop skills in handling RCPO work. The merger with the CPS may result in RCPO prosecutors no longer handling the more straightforward cases. It is, therefore, important that HCAs be provided with the opportunity to undertake Crown Court trials now, so that they can develop the skills and expertise necessary to be able to undertake the more complex work that RCPO is likely to retain. We make a recommendation to address this at paragraph 6.19.

- 5.7 According to the prosecution manual, cases are allocated to HCAs by the nominations process, although at present this is often by-passed by the advocacy unit clerk who identifies cases in the RCPO lists at Isleworth and Croydon in advance. If a not-guilty plea is entered at PCMH, then the case re-enters the nominations system so that it can be allocated to counsel.

The nominations system

- 5.8 RCPO maintains a central 'nominations' system for selection of external advocates, in order to maximise transparency, and ensure the fair distribution of cases between counsel at the private Bar. To this end, the role of the reviewing prosecutor and case manager has been reduced as far as possible. On receipt of a completed form from the case manager, the central nominations and fees team (CNFT) selects counsel from the Attorney General's Unified List (AGUL), and notifies chambers and the case manager, who then prepares and sends instructions to counsel. Before 2009, it was possible for the case manager or prosecutor to influence the process by requesting a particular counsel on the form. The system has been updated in January 2009, so that requests for specific advocates have to be made in writing by the head of division, with stated reasons. A short list of three counsel must be provided. In the fourth quarter of 2008-09, only two such requests, out of more than 25, had been granted.
- 5.9 Although the prosecution manual states that briefs are allocated according to the 'cab rank' principle, in fact there is an element of conscious selection by CNFT. In the less serious cases, briefs are allocated in the first instance to advocates who have yet to receive a brief in that year, so that the annual return made to the Attorney General's Office will show as broad a spread of allocation as possible. This initial selection is in the hands of the CNFT administrative officers, subject to the final assurance of the senior executive officer, who is the experienced head of the unit. The initial selection is not necessarily informed by counsel's performance record, or their record in relation to prompt and accurate fees calculations. The head of CNFT should take these factors into account when confirming the nomination, before it is formalised, although only one counsel out of 417 on the AGUL has a formal note against their name to indicate that they cannot receive a certain type of work.
- 5.10 The same approach is taken in relation to more complex and serious cases, except that the pool of counsel is smaller, and the choice tends to be more limited. This is accentuated when the case is suitable for standing counsel, which has equivalent status to the list of 'Treasury Counsel' prepared by the CPS, in that it contains a small number of highly skilled and experienced counsel who specialise in the type of case that is prosecuted by RCPO. The list has recently been expanded to include at least two counsel in each circuit outside London and the South East, where most are based.
- 5.11 CNFT systems are not fully documented, and operational staff are not aware of the mechanisms applied to nominate counsel. To an extent this undermines confidence in the system, especially where counsel who has recently received negative assessment is nominated again. Also, there

are concerns that the head of CNFT has ultimate authority in the nominations process, which means that he is able to override decisions made by heads of division, as well as case prosecutors and case managers, although he is not a prosecutor.

- 5.12 Most prosecutors observe that they should have a more significant role in the selection of advocates, particularly in more complex cases, where effective team-building requires that specific expertise and experience are taken into account when selecting counsel, because this can have a direct impact on the effectiveness of the prosecution team. Also, there is clear force to the argument that the prosecution should aspire to select the best advocate for the case, rather than select more evenly from a group of advocates, all of whom would do a competent job.
- 5.13 However, as a matter of policy, RCPO has made the process as objective as possible by removing any possibility of personal preference holding undue sway. There are clear historical reasons for this, relating to the fact that a small number of barristers have received a disproportionate amount of RCPO work in the past, albeit that this has been due in the main to the relative concentration of customs-type expertise in a small number of barristers' chambers. The clear benefit of the new system is in terms of transparency and fairness. However, the 'cab-rank' approach means that service to the public can be compromised as described above, especially where the AGUL is not yet fully reliable as a quality management tool. Therefore, RCPO should look at ways of returning the responsibility for selection of counsel to prosecutors, which must include full recording of selection decisions, and a robust system for auditing decisions on a case-by-case and annual basis. It may be that the final authority for selection of specific counsel in serious and complex cases should rest with divisional heads or the Director.

RECOMMENDATION

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.

The quality of advocacy

The Attorney General's Unified List

- 5.14 The AGUL exists to regulate quality by providing three lists of external counsel, graded A, B and C, by experience and aptitude. The lists are divided geographically by circuit. In general, list C counsel are one to five years call, list B counsel are five to ten years call, and list A counsel are more than ten years call. The lists are completely re-drawn every five years by the AGUL joint management board, which is chaired by RCPO. In effect, RCPO runs the appointment procedure, according to principles which have evolved over time, and which have been more recently informed by the Attorney General's diversity strategy.
- 5.15 A similar approach is taken to the appointment to the list of standing counsel. Independent though they must remain, they are expected to have a closer relationship with RCPO, once appointed. A top-up exercise was conducted recently to expand the list of standing counsel, and to provide greater coverage outside London, where a proportion of the more serious and complex cases are tried. This was achieved, although appointments to regional circuits have not necessarily been local. For example, according to the new list, counsel based in a Bournemouth chambers has been appointed to the North Eastern Circuit.

- 5.16 On completion of the nominations form, the case manager specifies the list from which counsel should be drawn, by reference to the complexity or sensitivity of the case. Therefore, the suitability of counsel is largely dependant on the accuracy of the lists. Inspectors received positive feedback in relation to most counsel nominated from the A and B lists. However, prosecutors and case managers reported that a number of C list counsel were not experienced or skilled enough to do justice to the cases in which they had been instructed. This had been accepted by RCPO managers who carried out a top-up exercise to expand the C list in late 2008, with a revised methodology to ensure that only suitable candidates were appointed.

The quality of Crown Court advocacy

- 5.17 In-house advocates do not appear in Crown Court trials, but RCPO managers have received very positive feedback about their performance in non-trial hearings. In-house advocates progress cases effectively in court.
- 5.18 RCPO performance assessments of external counsel in the Crown Court include occasional reports of counsel lacking the necessary skill or specialism. Inspectors were told by some stakeholders that counsel do not always engage fully with HMRC, or do full justice to the case in court, which is a cause of frustration. However, the general view of RCPO prosecutors and caseworkers is that quality of advocacy is good in the Crown Court. This is consistent with the outcome of inspectors' observations, which identified sound advocacy levels in the Crown Court, including one example of outstanding trial advocacy under challenging circumstances. Cases are progressed effectively at PCMHs, and this is assisted at subsequent hearings by bespoke trial readiness forms which are required at some Crown Court centres.

The quality of magistrates' courts advocacy

- 5.19 The quality of in-house advocates in the magistrates' courts is mixed, due to the inexperience of some prosecutors. All in-house advocates have to attend a training course before appearing in court and are provided with guidance.
- 5.20 The quality of representation by counsel in the magistrates' courts was called into question in the Inspectorate's follow up inspection of RCPO which was published in November 2006. RCPO performance assessments and feedback from prosecutors and case managers indicates that the AGUL C List is not reliable at present, in that not all counsel on the list are experienced in magistrates' courts procedure. During the file examination, inspectors identified a case where a junior counsel did not understand an important element of sentencing law in the magistrates' courts. It is expected that the recent top-up of the C-List, which involves more detailed inspection of applicants' experience, will improve the quality of the pool of counsel available for instruction in the magistrates' courts. However, the nominations system needs to ensure that adverse performance assessments continue to be taken seriously.

Advocacy monitoring

- 5.21 The head of the Advocacy Unit (AU) is responsible for monitoring all in-house advocacy. In the Crown Court this is done by a combination of personal observation and receipt of feedback from the judiciary, with whom there is a sound relationship. However, there is no formal advocacy monitoring system for in-house advocates in the lower courts. Adverse feed-back from stakeholders is relatively rare, but is followed up by the head of the AU, and the line manager at annual appraisal.

5.22 Case managers and prosecutors are required to complete and return performance assessments on all external advocates. The assessments are usually robust, with a small but significant number receiving adverse ratings. The assessments are considered by the head of CNFT, and logged on the quarterly return to the Attorney General's office. However the advocates are rarely seen on their feet in the magistrates' courts, and assessments are not taken at face value by CNFT because they are often necessarily based on limited information. The same caution is applied to Crown Court performance assessments, although case managers do tend to see the advocate in court. A developmental approach is taken to adverse assessments, in that RCPO will seek to resolve any issue with counsel informally, although the ultimate sanction of removal from the AGUL exists, but has never been used.

Instructions to counsel

- 5.23 All counsel receive a copy of RCPO 'Standing Instructions to Counsel', which is a well-drafted document. A new edition of those instructions is in the very late stages of preparation.
- 5.24 Overall, the quality of instructions to counsel is fair and improving, but sometimes a formulaic approach is taken, and instructions tend not to focus on the important case-specific issues or include all of the relevant documents. The prosecution manual does not prescribe the contents of the brief, which is drafted from a standard template. Of 53 relevant cases examined, instructions to external counsel were good in 13 cases (24.5%), fair in 29 cases (54.7%), and poor in 11 cases (20.8%). No examples of excellence were identified by inspectors. The main issues include a lack of any evidential analysis or summary of the facts (save standard reference to the summary prepared by HMRC), a lack of instructions on alternative pleas, or other matters including disclosure of unused material, and asset recovery. These issues were not considered in the quality assurance check carried out by IPAD in January 2008, which looked at compliance with the Director's undertaking to provide a case summary for cases in two Crown Court centres. A more positive picture of the quality of instructions was provided to inspectors by external counsel.
- 5.25 HCAs are not provided with the same instructions that are provided to counsel at the private Bar. Instead, they receive an instructions sheet. The quality of instructions sheets was adequate overall, and they are generally provided on time. However, we see no reason for not providing HCAs with the same standard of instructions as those sent to counsel.

ASPECT FOR IMPROVEMENT

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.

5.26 There is a lack of robust systems for ensuring the timely delivery of instructions to external counsel or internal advocates, despite reference to this in the 2006 follow-up report. Timeliness was varied.

Ancillary matters

Presence in the Crown Court

5.27 Most Crown Court hearings in which counsel present the case are covered, at least partially, by the prosecutor or case manager, and all divisions are ahead of target in relation to attendance at

'key hearings'. The 2006 report criticised the practice of case managers leaving trials at the conclusion of the prosecution case, leaving the possibility of case conferences taking place between HMRC officers and counsel. Little progress has been made, and whilst there is variation by division, case managers do not usually stay for the defence case. However, they report that whilst counsel might request information from an officer in the absence of an RCPO representative, no decisions would be made without the involvement of the prosecutor or case manager. Nonetheless, RCPO lacks a presence after the prosecution case has concluded in most trials, and this impacts on the profile of the organisation.

Witness care

- 5.28 RCPO has its own version of the Prosecutor's Pledge, but few staff are aware of it. In general, witness care is still seen as the responsibility of HMRC, which retains the role of witness warning. Some case managers were seen to take an active role in marshalling witnesses at court, although the HMRC senior officer usually takes the lead. Counsel is rarely involved.

- 5.29 Few RCPO cases involve civilian witnesses or victims, and the need for special measures is very rare. There is no system for ensuring direct communication with witnesses.

6 MANAGING RESOURCES

Management of financial resources

Budget management

- 6.1 RCPO has been funded with the expectation that its casework would rise and that there should be an increased focus on asset recovery from criminal activity. The organisation has increased staffing numbers accordingly. From 2006-07, RCPO has also benefited from income under the Asset Recovery Incentive Scheme (see below), which has allowed the organisation to operate comfortably within budget.

	2008-9*	2007-8	2006-7
	£'000	£'000	£'000
Net Operating costs	33,862	31,016	32,006
Original budget	36,397	36,000	37,200
Variance (surplus)	2,535	4,984	5,194

*from Management Accounts, full year forecast, February 2009

- 6.2 Since its inception, RCPO has operated within budget by a significant margin. In the two year period 2006-07 and 2007-08, RCPO was within budget, and the full year management accounts for 2008-09 indicate that net operating costs are within budget. The increase in net operating costs for 2008-09 was in spite of a fall in administration and programme costs: the increase is mainly attributed to a rise in staffing costs. RCPO has comfortably met its efficiency savings targets under the 2004 Spending Review and to date the 2007 Comprehensive Spending Review and remain within budget because its resource allocation has consistently been in excess of actual needs.
- 6.3 RCPO revises its annual budget midway through the year. During 2008-09 significant revisions were made to certain cost lines in the budget, including a £403,000 increase (amounting to a 3% increase) in staffing costs, a 229% increase in consultants' fees, a 113% increase in agency fees, and an additional cost line for depreciation (which had been omitted from the original budget).
- 6.4 From the start of 2008-09, a new delegated budgeting process (supported by a new financial reporting system) has been in place. Each division now has its own budget, which has increased ownership and awareness of budgets. The budgets for 2008-09 were largely determined by the centre. However, the 2009-10 budgets have been set much more in consultation with the divisions, leading to increased ownership. The monthly management accounts generated from the new reporting system form part of the Board report, thereby allowing more effective monitoring by senior management. RCPO recognises that more work is required to further embed the process into the organisation, and to increase accountability for any overspends and improve forecasting.

Income from criminal asset recovery

- 6.5 The Asset Recovery Incentive Scheme (ARIS) allows agencies in the criminal justice system to retain a proportion of the criminal assets they have seized as income. For the period 2008-09, under the scheme RCPO was able to retain 18.75% of all assets it recovered (for 2007-08:

16.67%). Income from ARIS fell by 16.6% between 2006-07 and 2007-08 to £3.4m. The management accounts for 2008-09 show income from ARIS continuing to fall to around £3.0m. The value of confiscation orders made and the amounts recovered have increased between 2007-08 and 2008-09.

- 6.6 RCPO drew down additional funding of £3m in 2007-08 using end year flexibility (EYF) provisions. EYF is a mechanism allowing departments to carry forward unspent Departmental Expenditure Limit provision into later financial years. The additional funding was necessary to cover administrative expenditure relating to the additional staff costs associated with increased activity on asset recovery, as well depreciation on refurbishment and IT establishment costs. Across the whole of its Vote, including both administrative and programme heads, RCPO reported a significant underspend in 2007-08. This underspend could have been mitigated had RCPO been able to reclassify programme income from asset recovery as administrative income.

Value for money – occupation of third floor at New King’s Beam House

- 6.7 The enlargement of the AFD team in 2006-07 was predicated on the need to merge the Enforcement Task Force (ETF), at the time part of SOCA, with the department. Existing accommodation was deemed insufficient to accommodate the ETF team, in addition to increasing the staffing numbers within the core team in AFD. RCPO considered five costed options as a way to achieving this and decided to take on the lease of the third floor of its London offices as the best solution.
- 6.8 The decision to lease and refurbish the third floor of the London office was not the cheapest, but had the advantage of having the AFD team within the same office as other departments. As the enlarged AFD team would be insufficient to fill all the space on the third floor, the business case outlined that this extra space could be utilised by creating a disclosure suite on the floor and relocating an expanded Electronic Preparation of Evidence (EPE) team. No disclosure suite has been established, and although the EPE team has moved to the third floor there has been no increase in staff numbers. Consequently the third floor is still not fully utilised, with approximately one third currently vacant. An accommodation strategy across the Attorney General’s department was being formulated at the end of the inspection.

Value for money – IT project

- 6.9 The current key IT project is the development of a new casework management system (Helios project). It was determined to go ahead with the contract in December 2008, with an estimated £3.4m in set-up costs and £314,000 in annual running costs. At the time it was considered that RCPO would continue in its present form and indeed expand, otherwise the project would have been questionable in value for money terms. There is now an urgent need to consider, in conjunction with the CPS, the future potential use of the system. At the time, the project was agreed with the Attorney General on the basis that the RCPO would continue in its present form and expand its casework.

Value for money – counsel’s fees, procurement and staffing

- 6.10 The organisation has made significant savings relating to counsel fees (see below) and has strengthened its procurement processes. More recently from the second half of the year (2008-09), RCPO senior managers have taken steps towards adopting value for money principles more widely across the organisation. This is demonstrated by the imposition of a recruitment freeze and the phasing out of agency staff and contract counsel from January 2009.

Payment of counsel fees

6.11 A new counsel fee scheme was introduced in 2006, with a three-tier fees regime using standardised fee rates. Significant progress has been made in the managing and accounting of counsel fees since the follow-up inspection in 2006. A recent National Audit Office report in January 2009 also recognises that there has been a marked improvement overall in RCPO's management of counsel fees. Tighter monitoring has helped to contribute to the significant fall in counsel fees (although there has also been a reduction in casework). Counsel fees fell by 23.7% between 2006-07 and 2007-08 to £11.4m. They are expected to rise slightly in 2008-09 to around £12m attributed to a projected up-turn in the more complex casework.

6.12 It is anticipated that further improvements will be made as delegated budgeting becomes more embedded within the organisation. Senior managers are encouraging divisions to dispute counsel invoices more rigorously in future where discrepancies between agreed and billed work are identified. This work should continue as work towards the merger with the CPS progresses.

Management of staff

Staff planning

6.13 We acknowledged in the 2004 report that the Customs and Excise Prosecutions Office had insufficient staffing levels in respect of its casework. Since then, casework has become more frontloaded, requiring greater prosecutor input at the earlier stages of a case, in the provision of early advice and case building and with the implementation of the charging scheme. RCPO has also needed to develop corporate services. An increase in staffing therefore was necessary. However, since then, the number of staff has continued to grow in the face of a declining caseload. In recent years, RCPO has also benefited from a number of contract counsel employed on short term contracts (there were 17 at the time of our inspection) who are not included in the figures below (as historically their costs have been included as part of the programme costs budget and not within staff costs). Staffing figures are shown in the table below.

Case numbers	2008-09	2007-08	2006-07	2005-06
Cases received	1,081	1,214	1,403	n.a.
Cases completed	988*	1,289	1,318	1,701
Staffing figures				
Permanent staff (full time equivalent)	330.9	297	257	240
Other staff (full time equivalent)	24	26	20	17
Total	354.9	323	277	257

* As at end of February 2009

6.14 In 2008-09, staff costs were 5% above the original budget set for the year (£16.1m compared to a budget of £15.3m). Whilst a recruitment freeze has recently been implemented (from January 2009) and agency and contract counsel are being phased out, a further increase is forecast for 2009-10 (3%) when staff costs are expected to increase to £16.7m. These figures do not include the costs of contract counsel, which are expected to fall from approximately £600,000 in 2008-09 to £100,000 in 2009-10 as they are phased out.

- 6.15 The expansion of AFD (referred to in paragraphs 6.7 and 6.8) has contributed to the increasing staffing levels. The original business case predicted that AFD staff numbers would increase from 22 to 50. This included an additional 13 staff from the national multi-agency Enforcement Task Force which RCPO funded from October 2007 (previously funded by the Asset Recovery Agency/SOCA). As at the end of 2008-09, staff numbers are in fact at 55 with 5.5 additional staff said to be required. Assets recovered and income are substantial, although well below that forecast in the business case. The increase in permanent staff is also partly as a result of the phasing out of contract counsel and agency staff.
- 6.16 There has been significant staff growth in support services and IPAD over recent years. RCPO has recently reviewed its staffing complements, which has highlighted overstaffing in some divisions and departments and understaffing in others. The analysis indicates that IPAD and some support services are overstaffed, yet out of the last thirty new joiners in 2008-09, 40% were recruited to either IPAD or one of the support services departments. It is the intention that surplus staff will be re-allocated to vacant positions within the operating divisions, although given required skills sets this may not be realistic in all cases. Without a full analysis it is not possible to judge how efficiently staffed RCPO is.
- 6.17 The process for allocating cases to prosecutors varied across divisions and teams. Staff generally felt that cases were allocated fairly, although there was a sense that staff could at times be overworked whilst perceived poor performers could be allocated less work. Due to the varying size and complexity of many cases, assessing appropriate work allocations and productivity both within and across divisions is inherently difficult. Some initial work in this respect has been undertaken to measure productivity but more needs to be done to assist effective workforce planning. How the work is undertaken will depend on the way the move towards the merger develops.

RECOMMENDATION

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.

- 6.18 During 2008-09, a job evaluation grade exercise was undertaken for staff at grade six and below. This has helped bring further clarity to staff as to what is expected of them. This includes clarification of management responsibilities of the grade six and HEO grades (see also paragraph 9.5).
- 6.19 Although RCPO has an advocacy unit in London, there is no clear advocacy strategy in place and managers do not provide any guidance as to the amount of time its in-house prosecutors should spend in court. Although counsel fees have fallen, RCPO has made no assessment as to whether certain cases could be more effectively handled in-house as opposed to allocating them to external counsel.

RECOMMENDATION

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.
-

Job expectations and performance appraisal

- 6.20 The last staff survey conducted in 2007 found that staff have a good understanding of what is expected of them, where they fit in and how their job contributes to the success of the criminal justice system and this continues to be the case. With very few exceptions, staff have job descriptions and are clear about what is expected of them.
- 6.21 There is a formal staff appraisal process in place. Most staff received an annual appraisal for 2007-08 and most had a mid-year review in 2008-09. The system was generally considered to work well although there was some concern expressed by staff interviewed regarding the consistency of scoring, in particular that perceived poor performers are not rated appropriately, and a perceived tendency to give the majority of staff a 'good' rating. Staff are also unclear as to the performance required to obtain an 'exceptional' rating. Objective setting could be improved upon and stronger links made between performance and personal development plans. There are plans to make further improvements to the appraisal process.
- 6.22 It is acknowledged that there is a small minority of poor performers in the organisation; some issues are long standing. Good work is now being undertaken by the HR department to support managers tackle poor performance. At the time of our inspection there were a number of cases being progressed formally.

ASPECT FOR IMPROVEMENT

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.

Managing attendance

- 6.23 The rate of sickness absence has increased from an average of 5.3 days absence per staff member for the 12 months to 30 June 2008, to 7.4 days to 30 September 2008 and to 8.5 days to 31 December 2008. The latter is above RCPO's target of 7.5 days. The HR department attribute the increase to more accurate recording as a result of implementing a new HR database (Trent) and a further increase is predicted in the final quarter of 2008-09, by which time the new system will be fully functioning. Not all managers are confident about the new system and are tending to keep their own manual records alongside this. At the time of our inspection, plans were well advanced to provide divisions with monthly HR reports giving a detailed breakdown of sickness absence.

- 6.24 As well as beginning to address poor performance, greater efforts are now being put into addressing cases of high absence, the two aspects often being closely linked. During 2008-09, around 25 medical referrals have been initiated or progressed, which demonstrates a preparedness to tackle these issues more formally.

Flexible working

- 6.25 RCPO operates a number of working patterns, including part-time, compressed hours, term-time only working and flexi-time. Staff are generally very positive about the flexibility in working arrangements, and see this as a key benefit of working at RCPO. However, there is perceived to be some inconsistency in application across divisions. Some of the more longstanding alternative working patterns have no facility for regular review built in and there are mixed views as to whether all these harmonise fully with business needs. More recently, there have been efforts to ensure that any new applications are discussed at senior managers' meetings, to ensure more consistent application. A policy on flexible working was nearing completion.

Staff recognition

- 6.26 RCPO operates a staff recognition scheme, and in 2007-08 awards totalling £11,880 were made to 60 staff and two teams. In 2008-09 this fell to £10,395, although a higher number of staff were recognised (91 and 5 teams). The number of awards made by each division varies significantly and more could be done to promote the scheme. There is also informal recognition of good work through mention of individuals in communications and within team meetings and staff conferences.

Staff morale

- 6.27 At the time of our inspection, there was a good level of staff morale and motivation. As found in the 2007 staff survey, it was clear that staff generally had a personal sense of doing a worthwhile job and making a difference. This is perhaps reflected in the relatively low staff turnover of 5.5% for 2008-09 (excluding work experience students and contract counsel).
- 6.28 A staff survey was conducted in 2005, immediately after the setting up of RCPO, and 2007. The results of 2007 survey demonstrated that good progress had been made in all areas surveyed. An action plan was developed to address aspects for development identified in the 2007 survey and this is reviewed periodically. A further survey was planned for late 2009 when questions are to be aligned with those used by the Cabinet Office for the civil service as a whole which will enable benchmarking with other departments.

Training and development

- 6.29 Training and development has improved greatly recently. There is an extensive range of training courses available, and feedback from staff regarding training was generally very favourable.
- 6.30 The majority of training is aimed at legal staff. Whilst this is inevitable, continued thought needs to be given to providing training opportunities for non-legal staff.
- 6.31 More recently attention has been focused on management training. Many managers interviewed had received limited management development training to date.

ASPECT FOR IMPROVEMENT

Management training should be further developed and enhanced. This should be made available to existing managers and be mandatory for new managers.

- 6.32 The corporate induction training provided to new joiners was well reported upon although new staff often have to wait some months before a course becomes available. The standard of job related induction is variable, and in some cases poor. A job related induction check list is being developed which should go some way towards addressing this.
- 6.33 The training budget has been revised downwards for 2009-10 to reflect the new economic reality, but is still relatively high. In the face of declining resources, RCPO will need to make greater efforts to ensure that it achieves value for money in its training and development activities.
- 6.34 RCPO has a target for each member of staff to receive five days training per annum, with £1,000 spent on each person. The organisation is broadly on target to achieving these targets overall for 2008-09. However, these figures are not broken down by division, job role or by legal and non-legal staff. A more detailed analysis would help in providing a fuller picture and identify where training resources should be targeted in future.

7 STRATEGY AND MANAGING CHANGE

Strategy and planning

- 7.1 RCPO's business plan for 2008-11 set out its priorities and objectives for the next three years. It also set out its vision, which was to become the government prosecutor, and strategic aim of becoming an effective, independent and specialist prosecuting authority that commands public confidence. We will comment on this, albeit that the merger with the CPS will largely overtake this plan.
- 7.2 The plan identifies six key objectives and for each sets out in broad terms what RCPO intends to do in respect of each of these and how. Under three of the objectives key measures by which progress will be measured are set out, whilst in respect of others measures of success are less clear. Where key measures are set out, they are not all comprehensive in coverage and some could be improved upon. There are no underlying plans that set out specific accountabilities and timescales for all the activities included in the business plan.
- 7.3 The business plan is reviewed on a half yearly basis by the Board. Whilst the review conducted during 2008-09 identifies where the organisation is on track or not, no actions were proposed for those measures not met or not on track.
- 7.4 Although staff were not consulted in the business planning process, most have a general awareness of the business plan.
- 7.5 There are currently no divisional plans linking to the overall organisational business plan. There are also no team plans for key support services such as for human resources or finance. A number of senior managers acknowledged that there would be benefits in having divisional plans. These would help ensure that staff are aware of their roles in achieving the business plan objectives. It would also help as RCPO moves towards the merger with the CPS.

ASPECT FOR IMPROVEMENT

RCPO should develop and manage detailed divisional and team plans.

- 7.6 RCPO has a strategic risk register to monitor high-level risks, together with operational risk registers for each of the divisions, corporate services, policy assurance and communications departments. Risks are co-ordinated by the Risk Manager and there is also a new risk committee. The organisation has made significant progress, but further work is required to embed risk management within day-to-day operations. For example, there is little mention of these in the minutes of team and divisional meetings. There are a number of inconsistencies between risk registers, particularly relating to scoring. The process whereby risks may be escalated from an operational risk register to the strategic risk register is also not evident. Whilst risks associated with an individual case are informally identified and managed by the prosecutor responsible for the case, there is some scope for extending formal processes to individual cases. A key corporate-wide risk identified is the security of information and concerted efforts have been put into managing this. This may have limited relevance in the context of the planned merger and may well merge into the transition planning.

Managing change

- 7.7 RCPO has developed in recent years systematic arrangements for managing change. Previously, change projects were mainly overseen by IPAD. But from the start of 2008-09, a Business Change and Governance Manager and team have been appointed to support change projects (within Corporate Services), with several staff PRINCE2 accredited. Projects are also overseen by the Change Programme Governance Committee. There are some discrepancies between the projects listed on the Project Status Report (maintained by the Change Programme Governance Committee and Business Change team) and list of projects maintained by finance that should be addressed in order to ensure the Change and Governance Committee oversees the projects.
- 7.8 Each project has a project manager, and change project boards are created for significant projects. Currently there is no consistent process for assessing lessons learned after projects have been completed. However, a new change management policy is currently being drafted which addresses this issue, as well as clearly setting out the stages each project should follow and clarifying the roles and responsibilities in a project.
- 7.9 RCPO has been engaged in many small and large scale change projects. Previous projects which have been successfully implemented include changeover to a new IT service provider, and the taking on the responsibility for charging from HMRC by RCPO.
- 7.10 Currently, the main project is the implementation of a new case management system to replace SOLAR (the Helios project). This is due to be completed by December 2009. The decision to go ahead with the Helios project was taken in December 2008 with the full support of the Attorney General. The timeline of key dates for the Helios project is set out below:

Date	Event
April 2008	First meeting of the Helios Procurement Board
August 2008	Three submissions received following invitations to tender
September 2008	Helios Procurement Board decided to proceed only with the supplier Detica
November 2008	Board approval is given to proceed with the project
December 2008	Detica contract is signed
December 2009	Helios to be implemented

- 7.11 The timetable for the Helios project is ambitious, but at the time of the inspection the project was on track and to budget. A cost-benefit exercise for the Helios project has been conducted by RCPO, which forecasts annual cost savings of £865,800 (consisting of staff, overheads and general efficiency savings) with cost savings of £432,900 forecast for 2009-10 (with implementation date expected in December 2009). The £865,800 forecast for 2010-11 involves some old cases still being run on SOLAR for the first twelve months after Helios goes live, it would appear that RCPO have been over-optimistic in some of these cost savings for the first year when six months of savings is predicted to be made in a three-month period. There is also no guidance provided in the analysis as to how cost savings will be measured, but this may be overtaken by the events of the merger with the CPS.

- 7.12 In view of the proposed merger with the CPS, a new cost-benefit analysis should be conducted to decide on the future of the Helios project. This should consider the amount of money spent and committed in accordance with the contract, and any benefits the system may have for the newly merged RCPO within the CPS, and to the CPS as a whole.

RECOMMENDATION

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.
-

- 7.13 There is currently a project board responsible for determining the future accommodation needs for RCPO, in consultation with other Law Officers' Departments. This is in the context of both the Manchester and London office leases expiring in 2011. This project will now need to be re-defined in light of the proposed merger.
- 7.14 Communications to staff about change projects are generally favourably regarded. Updates on all key projects can be found on the intranet, and staff have been directly involved in projects. Staff have been fully consulted on the Helios project, and three divisional staff have been seconded to the project team.
- 7.15 There are effective links between change projects and staff training, and the Learning and Development Manager attends planning meetings for key projects. A good level of training was provided to support the extension of charging and, more recently, training has been provided for the new HR database. Helios training has been included within the Training Catalogue for 2009.
- 7.16 The merger with the CPS will itself be a momentous change for RCPO, and it will inevitably require substantial planning and high levels of communication and engagement with staff if this is to progress successfully.

8 MANAGING PERFORMANCE TO IMPROVE

Introduction

- 8.1 Managing performance is an essential tool in driving improvement in order to deliver better quality services and improve accountability. To make this a reality, an organisation needs effective leadership and people management, as well as a robust, relevant and comprehensive performance system or process.
- 8.2 At the time of the follow-up inspection in 2006, neither of the two recommendations originally made in the London inspection in 2004 relating to managing performance had been implemented. RCPO has continued to rely upon its case management system (SOLAR) and CaseStat (an Excel-based programme used to collate management information) for its performance data, and its shortcomings have contributed to limited progress in this area.
- 8.3 The key recommendation was to replace SOLAR with a new system or database to enable more efficient and effective production of performance indicator reports. Initially, RCPO worked with HMRC in its development of a case management system but ultimately decided to develop its own. As a result, the recommendation has not been implemented, and reliance is still placed upon SOLAR and CaseStat to produce monthly updates. The process involved is manual and time-consuming as data must be re-keyed into CaseStat. This can introduce errors, and concerns remain regarding the accuracy of the performance data generated.
- 8.4 The adoption of a new case management system (Helios project) should enable the production of more accurate, timely and meaningful performance indicators. However, the new system is not due to be rolled out until December 2009, and a number of cases will be kept only within SOLAR for 12 months after this date. Collation of performance indicators during this time will remain challenging. How the project now develops will be affected by the proposed merger with the CPS.

Performance information and analysis

- 8.5 The other recommendation made in the London inspection in 2004 was that performance measures should be linked to the business plan. At the time of the follow up inspection in 2006, limited progress had been made in this respect. The current business plan (for 2008-11) shows that significant progress has now been made in this regard. However, gaps still remain. For example, there is no monitoring of staff turnover or absence on the monthly performance summary report, yet this is identified as a key measure in the business plan.
- 8.6 The monthly performance summary report lists all 36 performance indicators used by RCPO. This forms part of the monthly Board report presented at each meeting. We have identified the following weaknesses with the performance indicators used:
- There are variances as to whether the performance of the prosecution team (for example, HMRC and SOCA) or RCPO alone is being measured.
 - There are several performance indicators that add only limited value. For a performance measure to be meaningful there should be a target. However four of them do not currently have a target. The performance measure relating to supplier queries being resolved within three days is not the measure being monitored by finance; it is in fact payment of 95% of undisputed invoices within 30 days of receipt. In addition, the measure for resource accounts being laid before the parliamentary summer recess occurs only annually.

- The format of the performance summary could be improved. The current performance is shown in terms of the monthly and year-to-date figures. Yet only one red/amber/green (RAG) status is given. Previous months' performance is not provided and commentary to explain variances is brief.
- There were several instances identified where the RAG rating was not consistently applied, or was incorrect. This may reflect the fact that no key is provided on the performance summary as to what criteria determine a red, amber or green rating.
- There are some inconsistencies between performance indicators, particularly the timeliness measures. The written advice indicator is measured in terms of days, the committal indicator in terms of working days, and the disclosure of unused material indicator is measured in terms of calendar days.

- 8.7 A key priority for RCPO has been to increase the amount of assets confiscated from criminals in order to play its part in achieving the government target of recovering £250m of criminal assets by 2009-10. This commitment is set out in the Business Plan 2008-11, and the organisation measures itself on three key performance indicators detailed in the monthly performance summary (amount collected through confiscation orders, number of confiscation orders obtained, and value of confiscation orders obtained).
- 8.8 RCPO no longer sets itself an official annual monetary target for amount of criminal assets obtained through confiscation orders, despite the ambitious government target. For 2006-07, RCPO collected £24.2m of criminal assets through confiscation orders (against a target of £22.7m), RCPO collected £21.1m of criminal assets in 2007-08, significantly less than the target of £26.5m; this was not acknowledged in the annual report, and for 2008-09 onwards the target has been to exceed the previous year's figure, which it has done for 2008-09 (£21.9m). There is also no set target for the other two key performance indicators (number of confiscation orders, and value of confiscation orders), other than to exceed the previous year's level (which RCPO met in 2008-09).
- 8.9 We acknowledge the increasing difficulties in recovering assets from criminals; cases can be very complex and subject to delays, and recovery of the assets may not be possible if based overseas or are hidden. However the government target is to double the amount of criminal assets recovered in the four year period to 2009-10. Although we recognise that depriving criminals of their illegally gained assets itself has intrinsic value and benefit to society we would question whether RCPO's current confiscation targets are sufficiently challenging given the government's target for confiscation in 2009-10.

Accountability for performance

- 8.10 It has been recognised by senior management, that the current performance summary is too detailed for the Board's purposes. It is the intention from 2009-10 for the Board to be provided with a shortened version with the more detailed version to be considered by the Operations Committee.
- 8.11 Currently, the performance summary report is not broken down by division. It is therefore difficult to assess how each division is performing and for those measures indicating the need for action to be taken. It is not clear which divisions to focus on where remedial action is required.
- 8.12 Performance is also monitored through the monthly divisional situation reports and divisional assurance reports. The Business Improvement Group uses the divisional situation reports to monitor certain aspects of performance in the divisions. Although there is some commonality

between the reports, in general the divisional reports cover different performance indicators to the performance summary. However, where there are similarities, there are inconsistencies between them. For example, the timeliness measure for disclosure of unused material is within ten working days, whereas on the performance summary, this is within five working days. These situation reports are also published before the performance summary report and are therefore not subject to the same rigorous accuracy checks. The data is therefore less reliable.

RECOMMENDATION

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.
-

- 8.13 The level of performance information shared with staff is variable. The performance summary is not disseminated to staff. The Situation Reports are generally used by HEOs, grade six managers and divisional heads only. Staff are generally aware of their specific targets and performance against these but in many divisions, they do not receive routine feedback against these. Minutes of team meetings and interviews with staff indicate that in general there is a lack of discussion of performance at team meetings. Whilst headline performance is disseminated at staff conferences, regular updates to all staff about the overall performance of the organisation are lacking. More effective links could be established between staff personal objective setting and relevant performance targets.

ASPECT FOR IMPROVEMENT

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.

- 8.14 Weaknesses in the performance indicators and the accuracy of data have led to a lack of trust in them by management and staff. As a consequence, there is a reluctance to rely upon them in making decisions. We found few examples of where the performance indicators had directly driven improvement. One example identified was that supplier fees are now being paid on a more timely basis.
- 8.15 The Board recognises that there is a lack of trust in the current performance indicators, and has requested that a fundamental review of them be undertaken by the non-executive directors.

Casework quality assurance and improvement

- 8.16 IPAD undertakes a programme of quality assurance checks to ensure compliance with the prosecution manual. Robust reports identify case management issues, learning points and good practice but as they are not published (other than the recent provision of a summary to divisional heads) managers do not have sufficient information to identify learning points specific to their divisions or individuals. In some ways, this explains the reason why there are recurring weaknesses. The team who undertake the checks are anxious to ensure that the work they undertake enables staff to improve and would like to have the opportunity of working with divisional heads in relation to their findings. As it is, the system is effective but needs to be more visible to enable divisional heads to improve performance.

ASPECT FOR IMPROVEMENT

Quality assurance reports should be distributed to relevant managers and staff to enable lessons to be learned and to minimise errors recurring.

- 8.17 Managers are also required to review two files per prosecutor and case manager on a monthly basis. This is not always complied with, however compliance is improving. Managers also use prosecutors' monthly case lists and regular meetings to monitor progress of cases.

9 LEADERSHIP

Leadership and governance arrangements

- 9.1 The governance structure has been strengthened following a review in 2007-08 and continues to develop. As before, the Director continues to be accountable to the Attorney General, and is supported by the Board. The Board is now supported by the Audit Committee, Operations Committee, Corporate Services Committee, Equality and Diversity Committee and Change Programme Governance Committee. A further committee (Security and Information Committee) was formed in late 2008. The new committee structure better reflects the range of business activities within the organisation. In 2007-08, the organisation increased its non-executive directors from two to four (three in post at the time of our inspection) and this has proved helpful in giving them a stronger voice in challenging and assisting the Board in its work. The specific expertise brought in by non-executive directors has been of particular value, for instance in audit and risk management.
- 9.2 Further refinement of the governance arrangements is still required. The balance between the operational and strategic focus of the Board and subcommittees is still not ideal, with the Board spending more time than necessary on operational concerns at the expense of strategic issues. There is also scope for rationalisation within the current committee structure. For example, there is some overlap between the Operations Committee and Change Programme Governance Committee.
- 9.3 The Audit Committee (which comprises of all non-executive directors) advises the Board on the adequacy of the corporate governance arrangements, and is assisted by audit reports and IPAD in its work. The internal audit service is currently provided by HMRC (who were successful in the tender) and provide 150 days of work per year. The quality assurance function of IPAD also reports to the Audit Committee, where any recommendations are implemented by the Private Office.
- 9.4 A review in 2006 into policies underpinning the governance structure has led to significant improvements. In particular a new procurement policy was implemented in 2007, and a number of HR policies have been updated including a new travel and subsistence policy. The HR department is still in the process of introducing and revising other policies.
- 9.5 There is committed leadership in the organisation. Senior management have clear roles and responsibilities, however this clarity was more mixed in the case of grade six and other management grades. This was particularly in relation to a number of specialist legal roles that have not in the past carried management responsibilities. Following a job evaluation exercise, the leadership and management role of grade six staff is being reinforced. Whilst there are mixed views as to whether certain specialist prosecutor roles should carry management responsibilities, it had been determined that all grade six staff would in future have a management aspect to their role. However, as part of the merger arrangements it has been decided not to implement this decision. Similarly, not all higher executive officer (HEOs) roles carried management responsibilities in the past. Work is now well advanced in adopting a new generic job description for HEOs which incorporates management responsibilities.

Internal communications

- 9.6 Senior management are generally viewed as visible and approachable by staff. There has been significant improvement since the results of the last staff survey in 2007, which indicated that

communication by management was a key area for development. Since that time, efforts have been made to improve visibility and accessibility to staff, in particular through regular all-staff conferences, participation in divisional meetings and lunchtime open forums which provide an opportunity for staff to raise issues informally with the senior team.

- 9.7 There is generally a good level of communication within the organisation. Effective efforts in particular have been made to ensure the Manchester-based staff are included in communications and the installation of a video link with the Manchester office has made a significant contribution to this. There is a high level of reliance on communication via the intranet, which is well used. This is not always as user-friendly as it might be; one criticism, for example, is that a user really needs to know what he or she is looking for to find it, which can be an issue for new staff. Although plans to improve the intranet have recently been halted, the plan to issue a weekly bulletin to staff is still going ahead.
- 9.8 The framework of team meetings held within divisions has developed although there is scope for further development and greater consistency, for example, in the holding of all-staff meetings. The quality of meeting notes varies, and in some cases is poor. In particular, action points are not always highlighted or reviewed at the next meeting. Given that not all staff are able to attend all meetings the quality of notes in updating them is important. In some divisions there are few meetings that involve administrative and support staff. In such cases, these staff can feel excluded from hearing about overall RCPO issues which provides context to their roles and improves motivation.
- 9.9 Staff were aware that minutes from a range of corporate meetings are available on the intranet but they do not always have time to read these. Some form of summary of key issues covered would be helpful and this might usefully be incorporated within the weekly bulletin referred to above.

External communications

- 9.10 A key priority for RCPO has been to restore confidence in the prosecution process, following a number of problematic prosecutions previously undertaken by HMCE prior to the establishment of RCPO (see 1.6 onwards for more information). The judiciary and legal profession now have a greater degree of confidence in the preparation and presentation of casework by RCPO. It has also been important for the organisation to break with the past and develop its own identity and, in order to do this, RCPO has put great focus upon improving its external communications with stakeholders.
- 9.11 In January 2008, the Board agreed a major new communications strategy and, in March 2008, a detailed implementation plan was signed off. This was designed to strengthen relations with key audiences in HMRC and the wider CJS, to expand media and marketing services and help develop recognition for expertise in specialist areas. It involved recruiting a dedicated communications team of six with an annual budget in the region of £960,000 including salary costs. Although there is no direct benchmarking comparator, this is a generous budget for an organisation of the size of RCPO. This has recently been cut to £562,000 (including salary costs) for 2009-10.
- 9.12 The communications strategy identified RCPO's key external partners as HMRC, SOCA, the Attorney General's Office, the judiciary and courts as well as other agencies within the criminal justice system. A key strand of the strategy was relating to partner engagement, however funding

for this was halted in late 2008-09 due to financial constraints. Instead, RCPO intends to focus on more cost effective means of building up partner relations, such as organising open days at courts. A fundamental problem RCPO has had, is the similarity in its name with HMRC, thereby leading to a common misconception among external stakeholders that it is part of HMRC. The proposed merger with the CPS will obviously address this.

- 9.13 Communication is generally effective with HMRC. Individual RCPO divisional heads meet with all criminal investigation deputy directors in HMRC. There are also regular Regional Investigation Team (RIT) meetings with HMRC, where a RCPO prosecutor (the "link lawyer") is assigned to a RIT in a liaison role. This scheme works well in dealing with local performance issues, with good feedback from HMRC. Until recently, more strategic issues between the two organisations have not been dealt with as effectively. However, this has now been improved, with common issues identified at the internal link lawyer meetings now being properly escalated to the Casework Standards Group, where RCPO divisional heads meet with assistant directors from the HMRC.
- 9.14 We were told by both RCPO staff and representatives from HMRC that issues arise from time to time in relation to the different roles of HMRC legal advisers and RCPO prosecutors. There is currently a lack of clarity which needs to be addressed. There has been a concerted attempt by RCPO to ensure that the respective roles are clearly defined and draft guidance has been prepared. It is important that the guidance be finalised and issued.
- 9.15 There are also established communication channels with SOCA, which are mutually agreed as very good (see also paragraph 4.54). The head of Division E is a member of the SOCA Disclosure Forum, Disclosure Group, and Operational Practice Group. Particular casework issues and updates are dealt with in regular liaison meetings between SOCA, RCPO and CPS representatives in York, Birmingham and London.
- 9.16 The Director has worked hard in promoting the interests of RCPO among other criminal justice partners. He has established close links with senior management at both HMRC and SOCA.
- 9.17 IPAD has also played a key role in representing RCPO with external partners as well as taking forward joint initiatives. Successful joint initiatives include the extension of prosecutor charging (working with HMRC) and the introduction of designated court centres. IPAD has also worked closely with a wide range of criminal justice agencies including the Attorney General's Office, Home Office, Ministry of Justice and other government departments on the development of policy, legislation and guidance. This has included work on the development of the National Fraud Strategic Authority, disclosure, the national minimum wage and serious crime prevention orders.

Equality and diversity

- 9.18 RCPO has a single equality scheme and this is available on its website. There is a general awareness amongst staff of this scheme. In early February 2008, the organisation's Equality and Diversity Group was replaced by an Equality and Diversity Committee that reports directly to the Board and is responsible for progressing the equality action plan. Its focus so far has been on undertaking a number of equality impact assessments in line with the legislative requirements. At the time of our inspection these had yet to be published as planned. Many of the other planned activities in the action plan do not have clear timescales for completion and are outstanding. In order to encourage further progress, the Chief Operating Officer has recently been appointed as the RCPO's equality champion. The precise role of the champion had yet to be determined.

- 9.19 RCPO needs to review its equality action plan to address the weaknesses highlighted above. Depending on the transition to the merged organisation, some may be addressed by RCPO and some by RCPO adopting the arrangements relevant in the CPS.
- 9.20 In respect of the diversity of RCPO's workforce, females are over-represented which mirrors the position in the CPS. As at July 2008, females made up 57.7% of the overall workforce (66.9% of CPS staff as at March 2008) and nearly two thirds of prosecutor staff (64.4% CPS 58.4%), but just 22.2% of the senior management team (CPS 35.5%). In most other diversity aspects there is currently insufficient data from which to draw meaningful conclusions. For example, only 60.2% and 57.2% of staff have disclosed their ethnic origin and nationality respectively, and only 54.2% whether or not they have a disability. It is expected that the implementation of a new human resource database will assist in the collation and analysis of workforce equality data. The organisation currently has no workforce representation targets in place.

ASPECT FOR IMPROVEMENT

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).
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Handling of external complaints

- 9.21 There is a procedure in place for dealing with external complaints made to RCPO. However, this is not always adhered to. For instance, part of the procedure is that all complaints are acknowledged within three days. Whilst we were told that this was done, there was no evidence of letters being sent in the complaints files we reviewed. This is not helped by the absence of date stamping receipt in some cases when letters are received. Complaints that are referred to other organisations are not always managed as well as they should be. For example, in one case, the complainant was not informed that the complaint had been referred to another agency and wrote again to RCPO to follow it up. There is no formal quality assurance of the organisation's response to complainants.
- 9.22 A note of any complaints received is included within the monthly Board report but no detail is included, making this relatively meaningless. It would be appropriate for the complaints log to be reviewed periodically by the Operations Committee. There needs to be clarity as to action taken and any lessons learned.

ASPECT FOR IMPROVEMENT

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 a 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.

International co-operation

- 9.23 As a significant number of RCPO's cases have an international element, a key strategy is to effectively utilise international instruments such as Mutual Legal Assistance and Mutual Recognition schemes. IPAD is well placed to support prosecutors in achieving this.
- 9.24 RCPO has also been proactive with other government departments in ensuring the interests of the organisation are taken into account in any relevant EU and other international initiatives. For example, RCPO has been involved in discussions relating to the European Evidence Warrant and European Supervision Order.
- 9.25 The nature of RCPO's casework means that there is a need to work with the judicial authorities in other jurisdictions. This can involve the obtaining of evidence or examining of potentially disclosable materials from other countries, as well as seeking the return of suspects to the UK. IPAD staff have worked hard in liaising with other judicial authorities, both in visiting other countries and in hosting visits to the UK. They have received positive feedback about the quality of their letters of request and extradition work, and consider that the networking they have undertaken has enabled them to improve both their own work and the efficiency of the processes. They have a good working relationship with the UK Central Authority (UKCA) and the recent appointment by the UKCA of a single point of contact for dealings with RCPO has proved to be a success.
- 9.26 IPAD staff were involved in the creation of an international section on the Government Legal Service's intranet and have made available an extensive library of templates for use in drafting letters of request. They have also provided ongoing training to RCPO divisional staff in order to improve their understanding and knowledge. IPAD Prosecutors have built up a wealth of knowledge in dealing appropriately with foreign agencies and it will be important to ensure that this expertise remains available to those handling HMRC cases following the merger with the CPS.

STRENGTH

The work undertaken by IPAD staff in relation to letters of request.

- 9.27 On more day-to-day matters, IPAD works with AFD in assisting RCPO's international partners in the areas of restraint and confiscation, and overcoming legal issues of an international nature.
- 9.28 RCPO continues to support the Attorney General's international strategy with the objective that the best defence of security at home is the spread of liberty and justice overseas. An example of this is that RCPO hosted an international conference in May 2009. Entitled 'Is prosecution the answer?' the conference focussed on the current models of prosecution for offences from drugs and arms trafficking to tax fraud. A European perspective was provided by the Secretary-General from the Italian Supreme Court.

ANNEX A: PREVIOUS RECOMMENDATIONS AND SUGGESTIONS/ ASPECTS FOR IMPROVEMENT

Manchester report 2002

	Recommendation	Progress in April 2009
1	Lawyers include in advice notes an analysis of the evidential issues and public interest factors they have taken into account when reaching their decision.	Substantial progress. Achieved in relation to written advice cases. However, telephone charging decisions do not contain an analysis of the evidential issues and public interest factors taken into account.
2	In complex advice cases, lawyers agree an appropriate timetable for the submission of papers and the provision of advice, and that the Unit Head develops and implements a system to ensure timeliness of advice.	Achieved in the Manchester Division.
3	Lawyers make a full record of all review decisions on the case decision record.	Achieved. Records are made of review decisions, although the design of the KDAR can make it difficult to follow the audit trail and the records made of telephone charging decisions are limited.
4	In order to enable the Unit Head to measure performance, and improve the timeliness of case preparation, there should be monitoring of: <ul style="list-style-type: none"> • compliance with timescales for the submission by Law Enforcement of committal, 'sent' cases and summary trial papers, and unused material schedules; and • timeliness of service of committal and 'sent' case papers and unused material schedules on the defence, and the delivery of instructions to counsel. 	Substantial progress. Timeliness, other than instructions to counsel, monitored but data collected needs to be reviewed.
5	In order to enable the Unit Head to measure performance, and improve the standard of review and case preparation, the quality of review and disclosure decisions, committal preparation (including drafting of indictments), and instructions to counsel are monitored.	Achieved. Quality of decision-making and case preparation monitored.
6	The Unit Head ensures that effective custody time limit (CTL) monitoring systems are in place.	Limited progress. There is a system for monitoring of CTLs, but there were two failures in 2008-09. The same failing occurred in each case which suggests that either lessons are not being learned, or that they are not being disseminated across all divisions.

7	Compliance with the case management system is monitored.	Achieved. Compliance with the case management system is monitored through the monthly file reviews.
8	The Unit extends participation in the business planning process to staff at Bands 2 and 3, in order to achieve better cross-grade representation.	No progress. Staff not all involved in the business planning process for the Business Plan 2008-11 and there are no divisional or team plans in place.

London report 2004

	Recommendation	Progress in April 2009
1	Unit Heads develop and implement a system to ensure timeliness of advice, which should include provision for re-allocation where necessary.	Limited progress. Recent system of monitoring timeliness of written advices introduced, but there are still sometimes lengthy delays in providing advice.
2	Lawyers should keep cases under continuous review to take account of changes in the evidential position (or circumstances affecting the public interest test).	Achieved. Cases are kept under continuous review.
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.	Achieved. Records are made of review decisions, although the design of the KDAR can make it difficult to follow the audit trail and the records made of telephone charging decisions are limited.
4	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.	Substantial progress. The quality of papers submitted by HMRC investigators is monitored and discussed at operational meetings, although what data is collected needs to be re-examined. There remains a need to take issues arising forward at a more strategic level.
5.	CEPO managers: <ul style="list-style-type: none"> • make available full guidance on custody time limits within the Case Management System, which should be reinforced 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. 	Limited progress. Guidance on the CTL system is provided in the Prosecution Manual, but not on SOLAR. The manual back up system is not operated consistently. QA Check in February 2008 showed that SOLAR alerts were not consistently used, although more use is now being made of alerts now.

6	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.	Substantial progress. SOLAR is still in place, although a contract has been signed to implement a new case management system (Helios) and a dedicated team is in place. Implementation is planned for end December 2009.
7	CEPO managers develop performance measures linked to the business plan, to ensure consistent and effective assessment of unit performance.	Substantial progress. The Business Plan 2008-11 shows that good progress has been made. Gaps still remain and the measures of success for some key objectives are not clear.
8	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.	Substantial progress. A JEGS exercise was conducted in 2008-09, which has clarified some roles and responsibilities. Further work is still required to improve workforce planning in order to determine appropriate staffing numbers.

Manchester report 2002

	Suggestion	Progress in April 2009
1	Systems be developed to ensure work is covered in the absence of lawyers and case managers, and their operation monitored.	Achieved. Systems for covering the work of absent colleagues are in place, although they need to be formalised in some divisions.
2	The Unit Head liaises with Manchester City Magistrates' Court to try and establish either: <ul style="list-style-type: none"> • a weekly dedicated court for Customs and Excise prosecution cases; or • a reasonable listing process. 	Achieved. A reasonable listing process is in place at Manchester Magistrates' Court.
3	Formal terms of reference (including structure and purpose) for staff meetings are set in order to improve effectiveness.	This suggestion was not adopted. The framework for divisional meetings has developed and there is greater consistency. In some divisions there are few meetings that involve administrative and support staff.

London report 2004

	Suggestion	Progress in April 2009
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.	Substantial progress. Further papers received after committal are reviewed and served but more thought needs to be given to whether the committal papers should be amended and re-served.

2	Managers perform periodic dip checks to ensure that SOLAR alerts are being properly used and actioned.	Substantial progress. Managers are undertaking checks in relation to SOLAR alerts, but alerts are not always used, particularly in relation to CTLs.
3.	CEPO managers undertake work towards the reduction of resources used in the magistrates' courts, including taking steps to negotiate rationalisation of court lists.	Achieved. Magistrates' courts lists have been rationalised as much as practicable.
4.	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.	Limited progress. Systems for monitoring the delivery of papers to agents are in place but there is little evidence that monitoring is actually taking place.
5.	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.	Achieved. Records are kept in case files of court hearings.
6.	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.	Substantial progress. A new counsel fee scheme was introduced in 2006. An NAO review conducted in January 2009 concluded that there had been a marked improvement, with some minor issues to be resolved.
7.	CEPO managers extend the designation of individuals as contact points for court centres.	Achieved. Individuals have been designated as contact points for all court centres. Further work in developing these links is currently being undertaken.

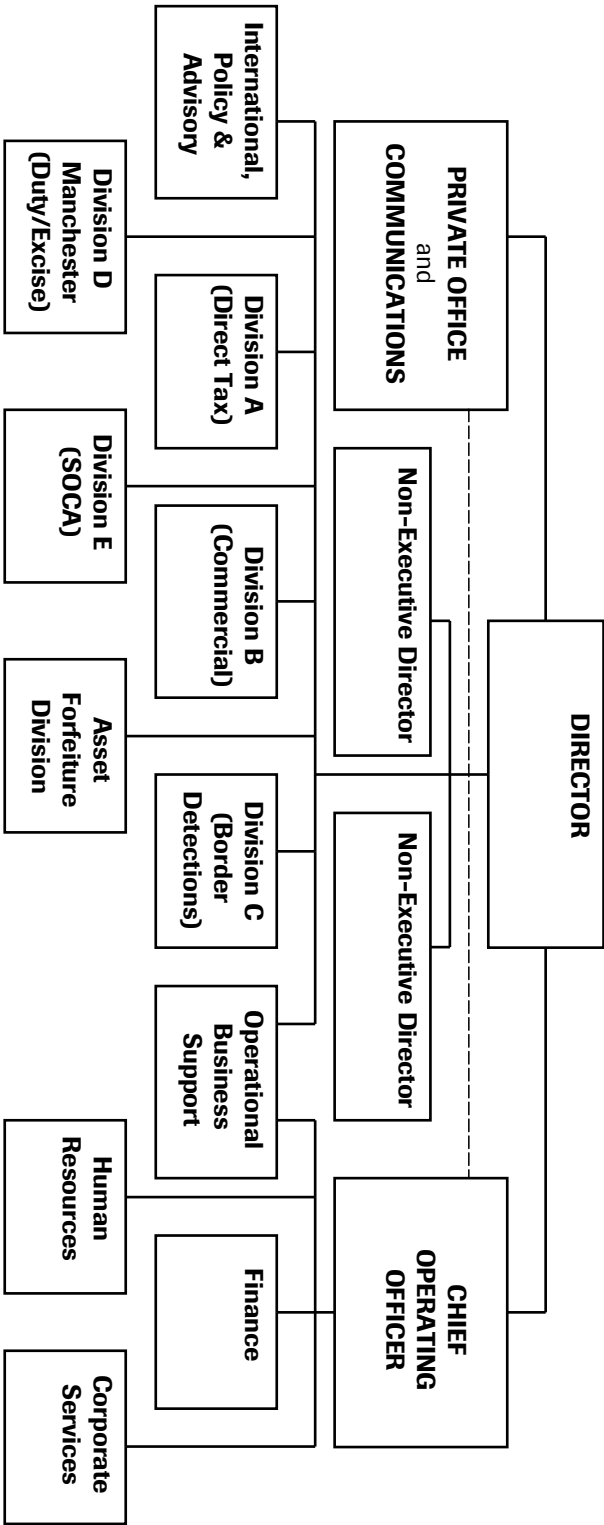
Charging scheme report 2008

	Recommendation	Progress in April 2009
1	RCPO ensures that all cases submitted for a charging decision, by whatever route, are included in any relevant performance information.	No progress. Action has been deferred until after the planned introduction of the new case management system (HELIOS).
2	The Director of the RCPO review 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.	Achieved. Guidance was published in January 2009.

Charging scheme report 2008 (continued)

	Aspect for improvement	Progress in April 2009
1	<p>In order to ensure the timely and accurate collection and analysis of caseload data:</p> <ul style="list-style-type: none"> • 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. 	Achieved. New systems have been introduced which delay payment of shift allowances until caseload returns are submitted.
2	<p>To enable RCPO to manage those cases where the charging decision is deferred pending further evidence:</p> <ul style="list-style-type: none"> • 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. 	No progress.
3	<p>RCPO must ensure that:</p> <ul style="list-style-type: none"> • 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. 	Limited Progress. The CDR form is still not routinely provided to advocates at the first hearing. Prosecutors do not cover the mode of trial representations at the time of making a charging decision.
4.	<p>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.</p>	Achieved. The feedback form has been amended to enable cases referred under the dispute resolution procedure to be recorded.
5.	<p>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.</p>	Achieved. A quality assurance system was introduced in January 2009, under which reviews of charging decisions will take place every six months. The first review was undertaken in January 2009.

ANNEX B: SENIOR MANAGEMENT STRUCTURE FOR THE REVENUE AND CUSTOMS PROSECUTIONS OFFICE (RCPO)



ANNEX C: FILE READING ENTRIES

General	Y	N	UK	NA	Y	N	UK		
Was the case allocated appropriate resource?	61	0	0	2	100.00%	0.00%	0.00%		
Was there continuity of reviewing prosecutor?	54	6	0	3	90.00%	10.00%	0.00%		
Was there continuity of caseworker?	53	4	0	6	92.98%	7.02%	0.00%		
Was there appropriate management involvement?	61	0	0	2	100.00%	0.00%	0.00%		
Was the Case Management Panel Effective?	3	0	0	60	100.00%	0.00%	0.00%		
Was there effective team working?	52	4	0	7	92.86%	7.14%	0.00%		
Was SOLAR used for core tasks, including all reviews?	47	13	0	3	78.33%	21.67%	0.00%		
Was there appropriate information sharing with other agencies?	60	1	0	2	98.36%	1.64%	0.00%		
How well was the file organised?*	58	3	0	2	95.08%	4.92%	0.00%		
Was the quality of the legal drafting sufficient?	55	2	0	6	96.49%	3.51%	0.00%		
Did RCPO comply with all court directions and time limits?	52	7	0	4	88.14%	11.86%	-		
	1	2	3	4	NA	1	2	3	4
RATE the quality of the file endorsements?*	1	38	18	4	2	1.64%	62.30%	29.51%	6.56%
RATE the level of proactivity employed?*	1	45	13	2	2	1.64%	73.77%	21.31%	3.28%
RATE the level of professionalism employed overall?*	1	50	9	1	2	1.64%	81.97%	14.75%	1.64%
	Y	N	UK	NA	Y	N	UK		
Investigative or Written Advice	Y	N	UK	NA	Y	N	UK		
Was Early investigative advice given?	23	39	0	1	37.10%	62.90%	0.00%		
Is there a complete record of the advice whether written or early investigative?	37	2	0	24	94.87%	5.13%	0.00%		
Was the full code test applied correctly?	38	0	1	24	97.44%	0.00%	2.56%		
Was the reviewer proactive in building the case?	35	3	1	24	89.74%	7.69%	2.56%		
Was there any avoidable delay in the progress of the case at the investigative stage?	13	25	1	24	33.33%	64.10%	2.56%		
Did counsel advise pre-charge?	6	32	1	24	15.38%	82.05%	2.56%		
Were other ancillary matters, such as disclosure, witness issues, and asset forfeiture/restraint considered?	14	16	2	31	43.75%	50.00%	6.25%		
Were the most appropriate charges advised at this stage?	35	3	1	24	89.74%	7.69%	2.56%		
	1	2	3	4	NA	1	2	3	4
RATE How well the prosecutor took any opportunity to add value at charging?*	1	30	6	1	25	2.63%	78.95%	15.79%	2.63%
	Y	N	UK	NA	Y	N	UK		
Telephone Charging Only	Y	N	UK	NA	Y	N	UK		
Was a telephone charging decision made	21	42	0	0	33.33%	66.67%	0.00%		
Is there a complete record of the charging decision?	19	2	0	42	90.48%	9.52%	0.00%		
If appropriate was the threshold test applied correctly?	6	0	1	56	85.71%	0.00%	14.29%		
If appropriate was the threshold test followed up with a full code test?	4	1	1	57	66.67%	16.67%	16.67%		
If appropriate was the full code test applied correctly?	18	0	1	44	94.74%	0.00%	5.26%		
Were other ancillary matters, such as disclosure, witness issues, and asset forfeiture/restraint considered?	12	7	2	42	57.14%	33.33%	9.52%		
Were the most appropriate charges advised at this stage?	20	0	1	42	95.24%	0.00%	4.76%		
	1	2	3	4	NA	1	2	3	4
RATE How well the prosecutor took any opportunity to add value at charging?*	0	15	2	2	44	0.00%	78.95%	10.53%	10.53%
	Y	N	UK	NA	Y	N	UK		
Review	Y	N	UK	NA	Y	N	UK		
Was there continuing review?	45	3	0	15	93.75%	6.25%	0.00%		
Were all reviews timely?	44	1	0	18	97.78%	2.22%	0.00%		
Is there a complete record of all reviews?	41	4	0	18	91.11%	8.89%	0.00%		
Was the code test always applied correctly?	45	0	0	18	100.00%	0.00%	0.00%		
	1	2	3	4	NA	1	2	3	4
RATE How well the prosecutor took the opportunity to add value when reviewing file?*	2	35	9	1	16	4.26%	74.47%	19.15%	2.13%
	Y	N	UK	NA	Y	N	UK		
Case Progression (magistrates' courts)	Y	N	UK	NA	Y	N	UK		
Was the case progressed proactively by RCPO?	59	1	0	3	98.33%	1.67%	0.00%		
Was there a joint approach to case progression?	58	2	0	3	96.67%	3.33%	0.00%		
Was communication with other parties appropriate?	58	0	0	5	100.00%	0.00%	0.00%		

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Was communication with other parties prompt?	58	0	0	5	100.00%	0.00%	0.00%
Was the case properly reviewed before committal/sending/trial?	39	3	0	21	92.86%	7.14%	0.00%
Was the prosecution ready for all hearings?	56	4	0	3	93.33%	6.67%	0.00%

	1	2	3	4	NA	1	2	3	4
RATE the proactivity of the approach to case progression?*	0	48	12	0	3	0.00%	80.00%	20.00%	0.00%

Case Progression (Crown Court)	Y	N	UK	NA	Y	N	UK
Was the case progressed proactively by RCPO?	40	1	0	22	97.56%	2.44%	0.00%
Was there a joint approach to case progression?	40	1	0	22	97.56%	2.44%	0.00%
Was communication with other parties appropriate?	41	0	0	22	100.00%	0.00%	0.00%
Was communication with other parties prompt?	40	1	0	22	97.56%	2.44%	0.00%
Were all applications for orders and directions made promptly?	34	2	0	27	94.44%	5.56%	0.00%
Was the case properly reviewed before trial?	14	1	0	48	93.33%	6.67%	0.00%
Was the prosecution ready for all hearings?	34	4	3	22	82.93%	9.76%	7.32%

	1	2	3	4	NA	1	2	3	4
RATE the proactivity of the approach to case progression?*	1	31	8	1	22	2.44%	75.61%	19.51%	2.44%

Use of Counsel Post Charge	Y	N	UK	NA	Y	N	UK
Was counsel instructed?	53	9	0	1	85.48%	14.52%	0.00%
Was the counsel instructed at an appropriate time?	53	0	0	10	100.00%	0.00%	0.00%
Was counsel/ HCA instructed of an appropriate level of experience?	56	0	0	7	100.00%	0.00%	0.00%
Was there appropriate continuity of advocate?	40	7	1	15	83.33%	14.58%	2.08%

	1	2	3	4	NA	1	2	3	4
RATE the quality of the written instructions to counsel?	0	13	29	11	10	0.00%	24.53%	54.72%	20.75%

CTLs	Y	N	UK	NA	Y	N	UK
Where CTLs applied was the case monitored and handled in accordance with RCPO systems?	7	3	0	53	70.00%	30.00%	0.00%

Disclosure	Y	N	UK	NA	Y	N	UK
Was the duty of initial disclosure properly complied with?	27	7	0	29	79.41%	20.59%	0.00%
Was the duty of continuing disclosure properly complied with?	14	2	0	47	87.50%	12.50%	0.00%
Was any sensitive material dealt with properly (including completion of schedules)?	21	4	1	37	80.77%	15.38%	3.85%
Did any unused material give rise to questions of public interest immunity?	3	22	1	37	11.54%	84.62%	3.85%
If so, did the prosecutor devise a strategy to deal with any potential adverse ruling?	1	2	0	60	33.33%	66.67%	0.00%
Was the appropriate type of PII application made?	1	0	0	62	100.00%	0.00%	0.00%
Did the prosecutor/counsel take the appropriate action (if any) in respect of any third party material?	2	0	0	61	100.00%	0.00%	0.00%
Was the disclosure record sheet used so there was a clear audit trail of decisions and actions?	21	13	0	29	61.76%	38.24%	0.00%

	1	2	3	4	NA	1	2	3	4
RATE the handling of disclosure material?*	1	18	8	7	29	2.94%	52.94%	23.53%	20.59%

Outcomes/basis of pleas	Y	N	UK	NA	Y	N	UK
Partial pleas	3	2	1	57	50.00%	33.33%	16.67%
Where partial pleas were accepted, was there good reason for the acceptance?							
Basis of pleas	4	0	0	59	100.00%	0.00%	0.00%
Was there a written record on file of the basis of pleas entered other than full admission of liability?							
Was there a suitable outcome analysis?	0	1	0	62	0.00%	100.00%	0.00%
Could more have been done by the RCPO to avoid the unsuccessful outcome?	0	0	0	63	-	-	-

Confiscation	Y	N	UK	NA	Y	N	UK
Where appropriate did RCPO seek a restraining order pre-conviction?	4	0	0	59	100.00%	0.00%	0.00%
Was a satisfactory Confiscation Order made at the conclusion of the case?	8	1	5	49	57.14%	7.14%	35.71%
Could RCPO have done more to secure a satisfactory confiscation order?	1	8	5	49	7.14%	57.14%	35.71%
Have appropriate steps been taken to enforce the confiscation order?	6	0	7	50	46.15%	0.00%	53.85%

* 1 = Excellent, 2 = Good, 3 = Fair, 4 = Poor

ANNEX D: REPRESENTATIVES OF CRIMINAL JUSTICE AGENCIES AND ORGANISATIONS WHO ASSISTED IN OUR INSPECTION

Crown Court

His Honour Judge Gilbert QC Honorary Recorder of Manchester

His Honour Judge Alexander QC

His Honour Judge Hope QC

His Honour Judge McGregor-Johnson QC

His Honour Judge McKinnon QC

His Honour Judge McKittrick QC

His Honour Judge Patience QC

His Honour Judge Stokes QC Recorder of Nottingham

His Honour Judge Warner QC

His Honour Judge Williams QC

Magistrates' courts

District Judge Berg

District Judge Devas

District Judge Richardson

HMRC

Mr R Clark Director Criminal Investigations

Mr E Stewart Director of Operations Criminal Investigations

Mr D Toon Director of Strategy and Planning, Criminal Investigations

Mr L Beaumont Deputy Director (London and South)

Mr R Bowie Head of Disclosure Coordination Unit

Ms E Smith Deputy Director, Criminal Investigations and Planning

Mr M Fuchter Head of P&Rs Border Policy

Mr J Richardson Strategic Goods and Co-ordination

Mr P Avery Regional Investigation team (Gatwick)

Mr M Bragg Regional Investigation team (Dover)

SOCA

Mr P Evans

Mr T Pearce

Attorney General's Office

Mr D Warner

Home Office

Ms F Kennah

National Fraud Authority

Ms S Quinn

Mr S Byrne

Mr S Shah

SFO

Ms K Harris

UKBA

Ms B Rusling

Ms S Morris

HM Courts Service

Mr B Hunter

Mr P Jabbal

Mr M Leptos

Miss D Starkey OBE

Defence solicitors

Mr O Kirk

Counsel

Mr F Afzal

Mr N Chapman

Mr T Hannam


Mr P Henry

Mr R Jory

Mr D Preston

Mr M Sutherland-Williams

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