

**HM CROWN PROSECUTION SERVICE INSPECTORATE**

**INSPECTION OF THE MANCHESTER PROSECUTION UNIT OF  
THE SOLICITOR TO HM CUSTOMS AND EXCISE**

**EXECUTIVE SUMMARY**

**Introduction**

1. This is Her Majesty's Crown Prosecution Service Inspectorate's (HMCPPI) report of the first inspection of the Prosecutions Group of the Office of the Solicitor to Customs and Excise (the Department). It centred on Unit Four of the Prosecutions Group based in Manchester.
2. The Department was the subject of inquiries (in 1999 and 2000) into the handling of two prosecutions. The Butler Report, following the inquiry in 2000, made a number of recommendations. A review was set up to examine the relevant issues, and the subsequent report, the Gower Hammond Report, in direct response to the Butler Report, recommended that the Department's Solicitor's Office should retain its prosecution function, but that the Solicitor should be accountable for this function to the Attorney General. The Gower Hammond Report also recommended that inspections of the prosecution function of the Solicitor's Office (undertaken by the Prosecutions Group) be carried out by HMCPPI.
3. The inspection was undertaken as a pilot, and its findings will assist HMCPPI in determining its methodology for future inspections of the Prosecutions Group. However, its prime purpose was to review the quality of casework decision-making and casework handling (including advisory work) in the Manchester Unit, including all matters that go to support the casework process. HMCPPI also examined other aspects of the Unit's performance, and has reported on a number of management and operational issues, including in particular the extent to which the Gower Hammond Report recommendations have been implemented.

**The Manchester Unit**

4. The Unit is based in Manchester, and deals with cases arising in the Department's Northern and Central regions of England and Wales, excluding East Anglia. It is also responsible for liaising with the Director of Public Prosecutions in Northern Ireland and the Crown Office in Scotland. Prosecutions in those jurisdictions are conducted by those authorities and not by Customs and Excise themselves. The Unit Head has strategic responsibility for VAT work, which involves liaising with policy administrators, as well as other Government departments and agencies.
5. At the time of our inspection, the Unit had the equivalent of 35.5 full time staff.

## **Main findings of the Inspectorate**

6. Inspectors found that the quality of casework is sound. Pre charge/summons advice is detailed and well reasoned, but is not always provided promptly. Decision-making is generally good, but there is still a lack of clarity about the responsibility for decisions to drop cases on public interest grounds. The quality of both advices and review notes would be improved if they included an analysis by specific reference to the tests under the Code for Crown Prosecutors.
7. Case preparation overall is sound, although there is some scope for improvement in committal preparation and instructions to counsel. Consideration of disclosure focused on the prosecution rather than investigation stage and, in current cases, lawyers were generally proactive in challenging unused material schedules which required amendment, although there were examples of past failures to examine schedules thoroughly.
8. Improvements in performance management need to be underpinned by the establishment of formal monitoring of casework quality by the managers to improve individual and Unit performance. There is general support throughout the Unit for the change programme, and inspectors were encouraged by the increasingly active engagement of staff in the operation of the Unit. It is clear that Unit staff provide a high level of service to stakeholders.
9. The Prosecutions Group has made considerable efforts to implement the Gower Hammond Report recommendations, in particular those relating to Crown Court cover and attendance at conferences with counsel, although there is still scope to increase the level of magistrates' courts cover. There has been significant progress in achieving a cultural change. The Prosecutions Group has also consulted with the rest of Customs and Excise, and ensured that the changes it has brought about have been effectively communicated. The Unit has played its part in ensuring that the recommendations are implemented as effectively as possible.
10. There are three matters in particular which need to be developed if the Prosecutions Group is to make independent care and conduct of its cases a complete reality. First, court appearances in cases for which it is responsible must be handled by its own staff, agents or advocates instructed by the Prosecutions Group. Secondly, there must be a clear understanding and acceptance that the final decisions in relation to both evidential and public interest tests of the Code for Crown Prosecutors rest with the Solicitor – with accountability being to the Attorney General. Thirdly, the senior lawyer responsible for the conduct of any prosecution must have access to all material where disclosure is in issue. These underpin the progress to independence which was the basis on which the Gower Hammond Report argued against the Butler Report approach that Customs and Excise should cease to be a prosecuting authority. These are all important matters which will need to be taken into account as the arrangements between the Prosecutions Group and HM Customs and Excise are finalised – especially as regards resources.

## **Specific findings**

### **Advice**

11. The quality of advice is good. However, although it was apparent that lawyers are considering the papers and making decisions, there was no clear audit trail, or indication that the Code for Crown Prosecutors had been applied. In particular, it was not clear if the public interest test was always being applied. Post-charge advice showed evidence of good continuing review, but lawyers need to consider potential gaps in evidence, to reduce the number of notices of additional evidence being served after committal.

### **Review**

12. Lawyers in the Manchester Unit are now generally making independent decisions, and continue to do so throughout the course of the case. There is an external impression, however, that lawyers are not making decisions, but are relying on the case officer and counsel. Maintaining the increased court coverage by lawyers and case managers who have knowledge of the case should help to dispel this impression. Clearer guidance on the responsibility for decision-making on public interest matters is also required. There must be a clear understanding and acceptance that the final decisions in relation to both evidential and public interest tests of the Code for Crown Prosecutors rest with the relevant lawyer in the Prosecutions Group rather than Customs and Excise administrators – with accountability being to the Attorney General.
13. There is a drive to learn from experience, with results being discussed in lawyers' meetings, counsel providing advice in all adverse cases and formalised arrangements with investigators and policy administrators (from within Law Enforcement) on specific issues. The work needs to be built upon, however, to ensure that all potential learning points are identified and resolved.

### **Case preparation**

14. Committal papers are reviewed and prepared quickly, but too many notices of additional evidence are served after committal. Instructions to counsel are adequate, but need improvement in both quality and timeliness of delivery.
15. The inspection did not include examination of the unused material in the cases in our sample, other than that which was in the possession of the Unit's lawyers. HMCPSI was not therefore able to form a view about the completeness or accuracy of the unused material schedules in the files which are prepared by investigators, or to determine whether or not full and proper disclosure was being made. Based on our scrutiny of how prosecutors had handled the cases in our sample, we concluded that primary disclosure was dealt with properly in 24 out of 30 relevant cases, although generally timeliness of service was poor. Secondary disclosure was dealt with appropriately in 17 out of 22 relevant cases.

16. There was evidence of most sensitive material schedules being thoroughly considered by lawyers, who displayed a clear understanding of the relevant tests. HMCPSI was concerned to note that some sensitive material was considered too sensitive for the reviewing lawyer to handle, or even know about. This can result in no lawyer in the Unit having access to all the material in a case. This is not a satisfactory arrangement - the senior lawyer responsible for the conduct of any prosecution (and this could be the Unit Head) must have access to all material where disclosure is in issue.

### **Performance in court**

17. The quality of in house lawyers is considered by others to be mixed, with a possible advocacy training need for some. Generally, counsel are considered to be competent, but there are concerns that some counsel continue to be briefed despite negative feedback. The service provided by some chambers could be improved, and the Unit has taken steps to address this.
18. Significant, and largely successful, strides have been made by the Unit to increase Customs and Excise representation in court, and to effect a considerable cultural change. There has been a substantial increase in court cover at the Crown Court since April 2002, with attendance by Unit staff at most plea and directions hearings, and throughout the course of the prosecution case. In addition, lawyers often attend court for the commencement of a trial, public interest immunity hearings and, if needed, thereafter.
19. Cases at Manchester City Magistrates' Court are generally handled by Unit lawyers, but magistrates' courts cases outside Manchester are nearly all handled by customs officers, and occasionally counsel. More work is required, therefore, to implement fully the recommendation that all prosecution proceedings in the magistrates' courts should be conducted by qualified lawyers, or appropriately trained Solicitor's Office staff.

### **Management and operational issues**

20. The Unit is well managed. The setting of performance objectives and targets is being informed by an analysis of performance in key areas, although there is a need for more structured monitoring of the quality and timeliness of casework and casework processes. The Unit is playing its part in evolving a Unit-wide performance measurement and monitoring system. The challenge now is to consider how this is integrated into action planning, performance appraisal and the training needs of individual staff.
21. The organisational structure within the Unit seems to be bedding down reasonably well. Staff are positive about the changes that have been introduced, and Unit meetings have helped with the effective implementation of the organisational restructuring.

## **Good practice and commendations**

22. The inspectors commended the following aspects of the Unit's performance:

- \* the on-going, continuous review of cases;
- \* the efforts that have been made to learn from experience;
- \* the increase in Crown Court cover;
- \* the general support for the change programme;
- \* the mentoring/job experience scheme for minority ethnic trainees; and
- \* the Unit Head's proactive approach to the management of stress.

## **Recommendations and suggestions**

23. Inspectors made nine recommendations identifying those aspects of performance where improvement was a priority. These related to:

- \* lawyers including in advice notes an analysis of the evidential issues and public interest factors they have taken into account when reaching their decision;
- \* lawyers agreeing an appropriate timetable, in complex advice cases, for the submission of papers and the provision of advice, and the development and implementation by the Unit Head of a system to ensure timeliness of advice;
- \* provision of guidance to lawyers on roles and responsibilities in relation to decision-making on proceedings orders, cases to be dropped on public interest grounds and stays;
- \* lawyers making a full record of review decisions on the case decision record;
- \* the monitoring of compliance with time scales for the submission by Law Enforcement of committal, 'sent' case 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;
- \* the monitoring of the quality of review and disclosure decisions, committal preparation (including drafting of indictments), and instructions to counsel;
- \* ensuring that effective custody time limits (CTL) monitoring systems are in place;
- \* the monitoring of compliance with the Case Management System; and
- \* the extension of participation in the business planning process to staff at Bands 2 and 3.

24. The inspectors also suggested action be taken as a lower priority on the following:
- \* ensuring that case managers:
    - prepare committals in straightforward cases under the supervision of lawyers;
    - prepare all instructions to counsel, subject to input and appropriate instruction from lawyers;
    - attend conferences with counsel where issues solely relating to the presentation of cases at court, including jury bundles, are to be discussed;
    - take responsibility for file management; and
    - check work delegated to case support officers, including, where appropriate, for clerical errors before it leaves the Unit;
  - \* the development and monitoring of systems to ensure work is covered in the absence of lawyers and case managers;
  - \* liaising with Manchester City Magistrates' Court to try and establish either:
    - a weekly dedicated court for Customs and Excise prosecution cases, or
    - a reasonable listing process;
  - \* review and clarification of staff roles and responsibilities between lawyers, case managers and administration staff, to avoid some duplication in work and;
  - \* the setting of formal terms of reference (including structure and purpose) for staff meetings, in order to improve effectiveness.
25. The full text of the report may be obtained from the Corporate Services Group at HMCPS Inspectorate (telephone 020 7210 1197).

HMCPS Inspectorate  
November 2002